



An
Bord
Pleanála

Inspector's Report ABP-309258-21.

Development

For a change of use from existing granny flat to independent dwelling together with PERMISSION to make some alterations at the rear and side of the existing structure and to construct a boundary wall including all ancillary site services and works.

Location

5 The Crescent, Lifford, Ennis, Co. Clare.

Planning Authority

Clare County Council.

Planning Authority Reg. Ref.

20/83.

Applicant(s)

Mr. Flan Broderick.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party

Appellant(s)

Mr. Flan Broderick

Observer(s)

None.

Date of Site Inspection

05/05/2021.

Inspector

A. Considine.

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1.0 Site Location and Description

- 1.1. The appeal site is located to the north of St. Senan's Road, in a well-established urban estate to the north of Ennis Town Centre. The site lies to the north of St. Joseph's Hospital and is accessed off the R352, Tulla Road in the area of Corrovorrin in the town. The site lies to the west end of St. Senan's Road where the cul-de-sac, where The Crescent comprises 36 semi-detached two storey houses.
- 1.2. The site has a stated area of 0.009 hectares and comprises part of a larger urban dwelling site. The larger site comprises a two storey, 3 bed semi-detached house and the existing granny flat, which includes 2 bedrooms. The granny flat unit, the subject of this appeal, has a stated floor area of 59.56m².

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for a change of use from existing granny flat (granted planning permission Ref P05/41 old ETC reference) to independent dwelling together with PERMISSION to make some alterations at the rear and side of the existing structure and to construct a boundary wall including all ancillary site services and works, all at 5 The Crescent, Lifford, Ennis, Co Clare.
- 2.2. The application included a number of supporting documents including plans, particulars and completed planning application form. The Board will note that the applicant has sought permission for the change of use to an independent living unit for his own permanent occupation.
- 2.3. The existing unit has a stated floor area of 59.56m² and the proposed development will result in the creation of a separate private amenity space to the rear with an area of 27.88m².

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reason:

1. Having regard to the established character and pattern of development in the vicinity of the site, it is considered that the proposed development, which results in the creation of an independent residential unit on this site, would result in a form of development which is out of character with the pattern of development in the area, would constitute overdevelopment of the site, would result in a sub-standard development and would set an undesirable precedent for similar developments in this area. Furthermore, it is considered that the proposal by reason of its proximity and siting to the existing dwelling house would adversely impact on the amenities of this dwelling by reason of loss of privacy and private open space layout, and general disturbance. The proposed development would therefore seriously injure the residential amenities of the area, and depreciate the value of property in the vicinity, and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, planning history, including a pre-planning consultation where the applicant was advised that the PA would not be favourably disposed to the proposed change of use of the granny flat to an independent unit, and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The Planning Report raises a concern in terms of the ownership of the overall site and notes the works required to create the independent unit include the closure of internal openings and alterations to ground floor windows to include sliding doors. The development will also include the erection of a boundary wall. The report raises concerns in terms of the precedent a grant of permission would set and the cumulative visual impact that may result. In addition, the Planning Officer considers that the annexation of part of the rear garden of the existing house would give rise to adverse impacts on existing residential amenities due to the reduction in the private open space provision, as well as car parking demands.

The planning report concludes that proposed development is not acceptable, and recommends that permission be refused for the proposed development, as detailed above. This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. **Unsolicited Additional Information**

The Board will note that the applicant sought an extension of time to address the concerns of the Planning Authority, and on the 17th of November 2020, submitted unsolicited additional information. The submission is summarised as follows:

- Overdevelopment of site:
 - It is submitted that the development the subject of the change of use was granted permission without any mention of over development of the site.
 - There was no requirement to demolish the granny flat once it was no longer needed and was required to be integrated into the existing house. How does one scenario give rise to over development and the other does not?
- Out of character with the settlement pattern of the area:
 - There are no changes proposed to the settlement pattern of the area.
- Substandard development, negatively impacting on other houses:
 - The granny flat was constructed in accordance with the grant of planning permission as granted in 2005, the relevant building standards and the building control regulations at the time.
 - There is nothing substandard about the building.
 - It has not impacted negatively on any of the other houses in the vicinity.
- It would establish an undesirable precedent:
 - Each and every application is treated on its own merits and precedent is not applicable.
 - There are no changes to the proposed construction as it currently exists.

- The front of the building will remain as it is, with two front doors irrespective of whether or not the granny flat is returned to form part of the house or if it can be a stand-alone entity.
- There is a housing crisis and if the granny flat can be legally separated from the adjoining house then it provides a home for a member of the applicants family going forward, reducing the burden on housing need in Ennis by one family.
- The applicant has lived at this location for over 30 years, with him living in the granny flat for the last 15 years and some of his immediate family living in the original house. It is intended that an adult child of the applicant and their family will live in the original house into the future.

3.2.3. **Other Technical Reports**

None.

3.2.4. **Prescribed Bodies**

None.

3.2.5. **Third Party Submissions**

None.

3.2.6. **Representations**

Cathal Crowe TD has made representations to the PA on behalf of the applicant.

4.0 **Planning History**

The following is the relevant planning history pertaining to the subject site:

PA ref: 05/21041: Permission granted to current appellant to construct a granny flat extension including ancillary site works. Permission also sought to omit front porch granted under 05/2 and to continue canopy across front. This permission included the following conditions:

6. The granny flat shall not be sold, let or otherwise transferred or conveyed save as part of the main dwelling.

Reason: To restrict the use of the granny flat in the interests of residential amenity.

7. When the proposed granny flat use has ceased to be required, the occupier of the dwelling shall submit to the Planning Authority for agreement a set of drawings showing the area previously occupied by the granny flat reintegrated into the main dwelling so that it functions as a single dwelling unit.

Reason: In the interest of proper planning and orderly development.

PA ref: 05/21002: Permission granted to current appellant to construct extension to existing dwelling house and also extension for use as self-contained unit, including ancillary site works. Condition 5 stated as follows:

5. The proposed separate living accommodation shall be omitted from the development.

Reason: In the interest of proper planning and orderly development.

Immediately to east:

PA ref 20/76: Permission granted for works including the renovation and change of layout of an existing dwelling and to construct a new first floor extension over existing single storey area to side of house and change the roof design of an existing single storey area to rear of house, all at No. 4 The Crescent, Lifford, Ennis, Co. Clare.

This permission is being implemented.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. The NPF includes a Chapter, No. 6 entitled ‘People, Homes and Communities’. It sets out that place is intrinsic to achieving good quality of life. A number of key policy objectives are noted as follows:

- National Policy Objective 33 seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.

- National Policy Objective 35 seeks “to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

5.1.2. National Planning Objective 13 provides that “in urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected”.

5.2. **Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):**

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments:

- quality homes and neighbourhoods,
- places where people actually want to live, to work and to raise families, and
- places that work – and will continue to work - and not just for us, but for our children and for our children’s children.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

5.2.3. Section 5.6 of the guidelines suggest that there should be no upper limit on the number dwellings permitted that may be provided within any town or city centre site, subject to a number of safeguards which include the provision of adequate private open space, avoidance of undue adverse impact on the amenities of existing or future adjoining neighbours, good internal space standards of development and

compliance with plot ratio and site coverage standards adopted in development plans.

- 5.2.4. Section 5.9 deals with Inner suburban / infill sites and notes that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the revitalising areas by utilising the capacity of existing social and physical infrastructure. Such development can be provided either by infill or by sub-division of dwellings.

5.3. Development Plan

- 5.3.1. The Clare County Development Plan 2017 – 2023, is the relevant policy document relating to the subject site. Volume 3 of the Plan deals with the Municipal District Written Statement and Settlement Plans, with 3a relating to the Ennis Municipal District.
- 5.3.2. The site is located within an area zoned for Existing Residential where it is the stated objective '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.'

Appendix 1 contains the Development Management Guidelines and section A1.3.2 deals with Urban Residential Development.

5.4. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (Site Code: 002165) which is located approximately 0.5km to the west of the site. Ballyallia Lake SAC (& pNHA) (Site Code: 000014) is located approximately 1km to the North of the site.

5.5. EIA Screening

Having regard to nature and scale of the development, together with the brownfield nature of the site, 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

This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The issues raised reflect those as submitted under the unsolicited further information provided by the applicant to the Planning Authority and are summarised as follows:

- Out of character with the area –
 - There are no changes proposed to the settlement plan and the unit will continue to be used as a private permanent place of residence.
 - The unit is complete with dedicated water supply and separate metered electricity supply, both independent of the original house.
 - The unit was constructed in accordance with planning permission granted.
- Over development of the site -
 - The appellant cannot see how a permitted development now constitutes overdevelopment of the site.
- Sub-standard development –
 - The granny flat was constructed in full compliance with the original grant of permission, the building regulations applicable at the time and good construction practice. There is nothing substandard about the unit.
- Precedent –
 - Every application is assessed on its own merits.

- Precedent is not applicable in this instance.
- Adverse impact on amenities –
 - The applicant currently owns the full site, including the original dwelling.
 - The proposed works will be a reconfiguration of the rear of the dwelling to create 2 separate garden areas.
 - The appellants son lives in the original house and therefore the general disturbance to residents is negligible.
- Injury to residential amenity of the area –
 - There will be no change to the existing situation other than the splitting of the property into two legal entities.
- Depreciate the value of property in the area –
 - The structure has not impacted negatively on any other house in the vicinity in the past 15 years, it is most likely it won't impact them into the future.
 - Questions whether property values are in the remit of the planning authority.
 - Notes extension being constructed next door.

Given the current housing crisis, the proposed development will provide a home for a member of the appellants family, reducing the burden on housing need in Ennis.

6.2. Planning Authority Response

The Planning Authority submitted a response to the first party appeal requesting that the Board uphold its decision to refuse.

6.3. Observations

None.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Residential Amenity
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the development

- 7.1.1. The subject site lies within an established residential area within the town of Ennis, Co. Clare. Planning permission was granted in 2005 for the development of a granny flat on the site to accommodate the current applicants' family needs. The current application is to change the use of this granny flat to provide an independent residential unit, for the applicants own use. I also note that the appellant has resided in the permitted granny flat for the past 15 years.
- 7.1.2. The proposed development, if permitted, will result in the creation of a standalone residence and the erection of a boundary wall to the rear of the site will create an area of private open space for the newly established independent residential unit. The site is located within an area of Ennis, which is zoned for Existing Residential and where it is the stated objective:

‘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.’

In the context of the planning history, current national and location policy and the nature of the proposal before the Board, I am generally satisfied that the principle of the proposed development is acceptable.

7.2. Residential Amenity

- 7.2.1. Given that the proposed development does not provide for any significant physical development, other than the proposed rear boundary wall, I do not consider that a grant of planning permission will give rise to any significant visual impacts or impacts on existing residential amenity. I note that the Planning Authority considered the subdivision of the rear garden of the original house on the site, would adversely impact on the amenities of the house. I refer the Board to Section 5.9 (ii) of the Sustainable Residential Development in Urban Areas, 2009, which relates to the sub-division of dwellings, and which supports such sub-division subject to safeguards regarding internal space standards, private open space and maintenance of the public character of the area. In principle, I have no objection to the proposed development in the context of the character of the area. With regard to the quality of internal space standards and private open space, I note that the Clare County Development Plan is not overly prescriptive.
- 7.2.2. Given the nature of the location of the site, together with the planning history of the site, I note that the Sustainable Residential Development in Urban Areas Guidelines provide that all houses should have an area of private open space behind the building line and that the area of such private space will be influenced by the separation between buildings and plot widths. In this regard, and if permitted, I calculate that the proposed private rear garden space retained by the existing house would be approximately 66m², while the new house would have an area of approximately 28m².
- 7.2.3. Given the location of the site, I would agree that a grant of permission would result in a change from the existing character of the area. I would also be concerned that the quality of the open space proposed would be compromised given the northern orientation and the narrow nature of the site proposed. However, I note that the Guidelines, at Section 7.8, indicate that smaller patio-type rear gardens may be acceptable in more innovative layouts where communal open space in the form of a courtyard is also available as an option which can be visually more attractive than

narrow fenced-in gardens. In this circumstance, a condition could be included which excludes the proposed wall, and proposals for a more communal use of the rear garden area conditioned to be submitted to the PA for agreement.

- 7.2.4. In terms of the internal space standards, I note the concerns of the PA. The existing granny flat has a stated floor area of 59.56m², which is below the minimum floor area required for a two bed (3 person) apartment as detailed in the 2020 Apartment Guidelines. The existing unit includes two bedrooms with floor areas of approximately 6.8m² and 9m², again below the minimum floor areas required for single and double bedrooms (at 7.1m² single and 11.4m² double). In addition, the Apartment Guidelines require a minimum aggregate floor area for living / dining / kitchen rooms of 28m² for a 2 bed (3 person) unit and a minimum living / dining room width of 3.6m.
- 7.2.5. In light of the above, and if this was an application for a new build independent unit as proposed, it is clear that the proposal would not comply with the minimum standards required in the Apartment Guidelines. The development would, if permitted, result in a residential unit which falls well below the minimum standards in terms of design quality safeguards to ensure an appropriate level of residential amenity for occupants. In this regard, the development might reasonably be considered as sub-standard as concluded by the Planning Authority.
- 7.2.6. The nature of the subject appeal seeks to separate the unit from the original house and to establish it as its own entity. While connected to the original house, I am satisfied that the internal spaces can be considered acceptable as the wider amenity value of the overall site is afforded to the occupant. However, as an independent living unit, I have serious reservations that it gives rise to a substandard residential unit offering inadequate amenity for future occupants both internally and externally. I would also agree with the Planning Authority that a grant of permission would set an undesirable precedent for similar developments in this area.
- 7.2.7. While I note the submission of the appellant with regard to the adjacent property and the extension currently under construction, I would note that this is an extension to a single residential unit and is therefore not comparable. I also note that while the original grant of permission for the granny flat did not require the demolition of the unit when it is no longer required for the stated purpose, Condition 7 clearly requires

that the space be reintegrated into the original house so that it functions as a single dwelling.

7.3. Other Issues

7.3.1. Water Services

I note that the proposed development will continue to utilise the existing connections to the public services. I note that the appellant has indicated that the existing services have been provided independently of the existing house, however, I am unclear as to how and when the existing services to the granny flat unit have been separated from those associated with the original house on the site. I note that the original permission associated with the development did not require the separation of services, as the development of the granny flat was considered ancillary accommodation to the original house. Should the Board be minded to grant permission in this instance, it would be prudent that this matter be clearly established. Also, if independent water services have been constructed to the unit, it does not appear that a development contribution has been paid for said connections.

With this in mind and noting the details of the proposed development before the Board, including the fact that the applicant intends to continue living in the unit, I would consider that a condition restricting the selling or letting of the unit outside of the family until such time as the clarity on the separation of water services is provided, would be appropriate. I also note the comments of the Planning Officer that if permitted, development contributions would be payable.

7.3.2. Roads & Traffic

I am satisfied that the proposed development does not give rise to concerns in terms of roads and traffic matters.

7.3.3. Other First-Party Issues

The Board will note that the appellant has raised questions in relation to the concerns of the PA as they refer to over-development of the site, out of character with the pattern of development in the area and the sub-standard development cited in the reason for refusal. In the context of over-development and character, I would

note that in the situation of an extension to an existing house, and the retention of majority of the rear garden, which would occur in the absence of the proposed new dividing wall to be erected in the rear garden, together with the nature and scale of the proposed new independent unit, I would concur that issues of over-development and out of character with the existing settlement pattern potentially arise.

With regard to the resulting sub-standard development, this would relate to the amenity value of the unit and the original house, if permission to separate them is granted. I have discussed this issue above in this report.

7.3.1. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.3.2. Appropriate Assessment

The site is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (Site Code: 002165) which is located approximately 0.5km to the west of the site. Ballyallia Lake SAC (& pNHA) (Site Code: 000014) is located approximately 1km to the North of the site.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also 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.

8.0 Recommendation

I recommend that planning permission be refused for the proposed development for the following stated reason.

9.0 Reasons and Considerations

Having regard to the limited size of the site and the nature of development proposed, it is considered that the change of use of the existing granny flat to an independent dwelling would result in a substandard residential unit, in terms of internal residential amenity for future and existing occupants of the house, would result in over-development of the site by reason of inadequate provision of good quality open space and would set an undesirable precedent for similar developments in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

06/06/2021