



An
Bord
Pleanála

Inspector's Report

ABP-310257-21

Development	Detached domestic garage and associated site works
Location	Gallowshill, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20129
Applicant(s)	Sylvia Heffernan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Sylvia Herrnan
Observer(s)	None
Date of Site Inspection	19 th July 2021
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The subject site has an address at De Clare House, Gallows Hill, Bennettsbridge Road, Kilkenny, R95 Y82F. It is approximately 1.7km east of Kilkenny city centre and has a stated area of approximately 0.05ha.
- 1.2. It is located between an existing residential development, Gallows Hill, which is directly to the south, and the River Nore pedestrian pathway, which runs parallel to the site, approximately 10 metres to the north. The River Nore itself is located approximately 25 metres to the north.
- 1.3. There is an existing, partially constructed dwelling on the site. It is largely obscured from view, however, due to the presence of mature tree stands, hedges and dense undergrowth situated around the periphery of the site.
- 1.4. The site slopes downwards towards the river, which is from south to north, and there is a fall of approximately 5.5 metres. Access to the site is via an existing laneway from the west, which leads to Bennettsbridge Road, and runs directly along the site's northern boundary. The wider area to the east, south and west is characterised mainly by a mix of detached and semi-detached housing.

2.0 Proposed Development

- 2.1. The proposed development is for a detached garage domestic garage and associated site works. The garage would be located to the side (west) of the partially constructed, permitted dwelling.
- 2.2. The Planning Authority requested Further Information on 22nd June 2021 in relation to the blocking of an alleged public access / laneway (Item 1), potential for visual impact (Item 2), details regarding boundary treatments (Item 3) and compliance with conditions pertaining to previous permission on the site (Reg. Ref. 11/299) (Item 4).
- 2.3. The Applicant responded on 1st December 2021, after a three-month extension was granted by the Planning Authority.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission on 23rd April 2021, for 3 no. reasons, which are summarised below:

1. The proposed development, if granted, would extend and consolidate an unauthorised development which has occurred on the subject site, and is in contravention of Reg. Ref. 11/299.
2. The documentation submitted as part of the application is inadequate to make a full assessment of the impact of the proposed garage. The proposed development is at a visually prominent location along the River Nore Linear Park and would impinge on the environmental management of this park.
3. The existing dwelling, as constructed onsite to date, has physically restricted a public Right of Way within the River Nore Linear Park. The proposed development, if granted, would further restrict the identified right of way, which is identified on *Appendix D of the Kilkenny City and Environs Development Plan 2014-2020*.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report recommended that planning permission be granted for the proposed development, subject to conditions. The recommendation was overturned by Council's Senior Planner, however, for the following reasons:

- No elevation treatment provided of the proposed garage.
- The parent permission for the dwelling (Reg. Ref. P11/299, extended under Reg. Ref. P16533), is due to expire on 16th June 2021.
- There is an established public right of way across the lands, which the proposed development impedes.
- There are live enforcement files in relation to the site, which in the view of the Planning Authority, confirm that unauthorised works have taken place onsite.

- The Council has not consented to allow the Applicant to use the public laneway as an access to the site and there is no record of the laneway having been extinguished as a public thoroughfare. Therefore, the Applicant has not demonstrated a legal right to close off the lane to the public, which is currently the case.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

Irish Water – no objection, subject to standard conditions.

Department of Culture, Heritage and the Gaeltacht (Wildlife and Natural Heritage Section) – no response.

3.4. Third Party Observations

None.

4.0 Planning History

Subject Site

Planning Applications

Reg. Ref. 11/299: The Planning Authority granted permission for a three-storey dwelling and associated site works to include provision of a pedestrian path and cycle path to existing access road on 29th February 2012. (Permission for Extension for Duration of Planning Permission was granted under Reg. Ref. P16/533 on 30th September 2016.)

Reg. Ref. 09/537: The Planning Authority granted permission for a three-storey dwelling and associated site works on 26th April 2010.

Enforcement

ENF19/111: An Enforcement Notice was issued on 29th February 2020 for non-compliance with various conditions attached to Reg. Ref. 11/299.

ENF21/007: An Enforcement Notice was issued on 26th January 2021 for the construction of an unauthorised boundary wall at the rear of the site.

5.0 Policy Context

5.1. Development Plan

Zoning

The site is subject to land use zoning objective 'Existing Residential' – *To protect, provide and improve residential amenities* under the *Kilkenny County Development Plan 2014-2020 ('Development Plan')*. The principle of a domestic garage is considered acceptable in this zone.

5.2. Natural Heritage Designations

The site is partially located within the River Barrow and River Nore SAC (Site Code – 002162). It is also approximately 20 metres to the south of the River Nore SPA (Site Code – 004233) and 260 metres to the west of Archersgrove pNHA.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal against a Decision to Refuse Permission has been lodged by Applicant. The main grounds of appeal are as follows:

- Refusal Reason No. 1 implies that the dwelling and associated works permitted under Reg. Ref. 11/299 is unauthorised development. This is incorrect. The granting of permission for this development by the Planning Authority, its completion in accordance with conditions, and resolution of a current legal dispute will render the scheme fully planning compliant.
- There is no registered public right of way extending over the laneway. The information shown on Figure 7.2 of the Development Plan ('Green Infrastructure and Rights of Way') is not proof that the route is a legal right of

way for public access, or that the Council has a right of access over the Applicant's land.

- However, if the Council establish a public right of way over the laneway, the provision of a garage would not interfere with it. Having somewhere to discreetly park cars out of sight would be favourable.
- A full response to the alleged breaches of conditions was submitted by the Applicant in their RFI Response, which was accepted by the SE Planner.
- The only works onsite, which have been the subject of alleged unauthorised development, is the construction of a wall on the rear boundary of the site. However, this has been proven not to be unauthorised, to the satisfaction of the Planning Authority.

6.2. Planning Authority Response

The main comments are as follows:

- Two enforcement notices have been served on the Applicant (Refs ENF. 19/111 and 21/007). One is in relation to non-compliance with conditions pertaining to Permission Reg. Ref. 11/299. The second is for the unauthorised construction of a wall on the rear boundary of the site. The files have been referred to the Council's Solicitor for court action.
- The response provided in the Applicant RFI's Response does not address all conditions, including Condition 1 (completion of the proposed development in accordance with details submitted), Condition 3 (submission of details to the Planning Authority regarding the location of a vehicular entrance, prior to commencement of development), and Condition 5 (treatment of knotweed onsite).
- There have been further works onsite since the proposed dwelling was granted permission, including site excavation works and construction of a retaining wall. The cumulative impact of these changes is significant and the subject of ongoing enforcement proceedings.

- The proposed garage, if granted, would extend and consolidate an unauthorised development that has occurred onsite, which is in contravention of Permission Reg. Ref. 11/299, particularly Condition 3. Condition 3 requires the construction of a continuous 2m high stone /random rubble wall along the northern boundary of the site with no access.

6.3. Observations

- None.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Amenity
- Unauthorised Development
- Legal Right of Way
- Appropriate Assessment

7.1. Amenity

- 7.1.1. The key issue for assessment relates to the use of the proposed garage and its potential for visual and amenity impact on its receiving environment, including that of the public pathway running between the subject site and the River Nore to the north.
- 7.1.2. The garage is proposed to be situated within the northwest corner of the site, on the west side of the partially constructed house. The garage would be single storey and have a flat roof reaching a maximum height of 2.7 metres. It would have a stated area of approximately 51 sq m. [It is noted that Schedule 2 Part 1 Class 3 of the Planning and Development Regulations 2001 (as amended), provides that a structure of 25 sq m in area and height less than 3m is exempted development, subject to certain conditions and limitations.] The front (north) elevation, facing the public pathway, is proposed be of natural stone. The remaining walls would be finished in render. The two roller doors are proposed to have a wood or stone-coloured powder-coat finish.

- 7.1.3. The greatest potential for visual impact would be from the public pathway to the north. However, during a site inspection, it was noted that unimpeded views into the site from this location are generally not possible due to the presence of dense vegetation running between the northern boundary of the property and the public path. Other viewpoints from the south, east and west would also be heavily restricted due to the location of the proposed structure being situated amongst mature trees and dense foliage, which would help screen the development from public view from most potential viewpoints.
- 7.1.4. The fall in level, moving from south to north means that the proposed garage would be in a low-lying position on the site and would not be prominent. The appearance of the garage from the laneway would also be appropriate given its low height and proposed use of natural construction materials, including stone, which are in keeping with the site context and surrounding environment.
- 7.1.5. Having regard to its siting and the established natural landscaping and screen planting on, and around, the site, I consider that the proposed domestic garage would be appropriately assimilated into the landscape without causing any significant amenity impact.

7.2. Unauthorised Development

- 7.2.1. Refusal Reason No.1 states that the proposed development, if granted, would consolidate an unauthorised development which has occurred on the site. The Planning Authority references alleged non-compliance with some of the conditions attached to Permission Reg. Ref. 11/299, and other forms of illegal site works that have taken place, including, for example, the construction of a retaining wall along the southern boundary of the site.
- 7.2.2. The Applicant refutes this, states that permission exists on the site for a dwelling, and submits that a detailed response was provided to the Planning Authority as further information which fully addresses each of the relevant conditions pertaining to Reg. Ref. 11/299.
- 7.2.3. Enforcement matters are a function reserved for the relevant Local Authority and the Board have no role in resolving such disputes. It would, therefore, not be appropriate to assess the planning status of the extant development onsite in the context of this appeal case.

- 7.2.4. Condition 3 of Reg. Ref. 11/299 required the construction of a continuous 2m high stone or rubble wall along the northern boundary of the site. Whilst the proposed garage would be located on a partial section of this boundary, it is considered that a high-quality boundary treatment can still be implemented along this site frontage.
- 7.2.5. In the event permission is granted by the Board, it is recommended that a condition be included that requires full details of the proposed northern site boundary, including of the front northern elevation of the proposed garage, and that the remainder of the boundary be constructed as a continuous 2m high stone or random rubble wall. This would also assist in shielding the side elevations of the proposed garage from view and help maintain privacy for future users of the development.

7.3. Legal Right of Way

- 7.3.1. Reason for Refusal No. 3 is in relation to a disputed Right of Way that runs along the existing laneway directly to the north of the site.
- 7.3.2. The Planning Authority references Figure 7.2 'Green Infrastructure and Rights of Way' in the Development Plan as evidence that the Applicant does not have a legal Right of Way across the laneway. In response, the Applicant submitted a property Folio Plan to the Planning Authority as part of further information to demonstrate the laneway is in Applicant's ownership. The Applicant also points out in their appeal that the Planning Authority would not have granted permission for the permitted dwelling, as it did, under Reg. Ref. 11/299, if they did not have the requisite legal access in 2011.
- 7.3.3. There is an ongoing legal dispute in relation to a land ownership issue. However, regardless the legal ownership status of the laneway in question, I would note the provisions of Section 34(13) of *Planning and Development Act, 2000 (as amended)* relating to 'Permission for Development', which states that "*a person shall not be entitled solely by reason of a permission under this section to carry out any development*". Therefore, in the event permission is granted, there may be other legal considerations that apply, and which the landowner may need to address outside of the planning system.

7.4. Appropriate Assessment

- 7.4.1. The subject site is partially within the 'River Barrow and River Nore SAC (Site Code – 002162)'. The next closest European Site is the 'River Nore SPA (Site Code – 004233)', which is approximately 20 metres to the north of the site.
- 7.4.2. The Applicant has not provided a NIS, or Appropriate Assessment (AA) Screening Report. However, the site has previously been assessed for AA purposes for a proposed dwelling and garage under an AA Screening Report submitted in support of Permission Reg. Ref. 11/299. The report, prepared by Roger Goodwille & Associates, notes that none of the Annex 1 habitats occur on the subject site, but several Annex II species are found in the river. It concluded that the site has no real ecological connection with the river and, therefore, there was no requirement for a Natura Impact Statement.
- 7.4.3. Having regard to the nature and small scale of the proposed development, which is for a domestic garage which is ancillary to be permitted dwelling, it is considered that no appropriate assessment issues arise. It is, therefore, not considered that the proposal would be likely to have a significant effect individually or in combination with other plans and projects on a European site and there is no requirement for a Stage 2 Appropriate Assessment.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objective for the site, the design, location and size of the proposed development, which is for a domestic garage, it is considered that, subject to compliance with conditions below, the development would not seriously injure the amenities of the area and would, therefore, be accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development to be retained shall be in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Full details of the proposed northern site boundary, including of the front northern elevation of the proposed garage, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>a) The garage shall be used for domestic purposes only and shall remain ancillary to the dwelling.</p> <p>b) The domestic garage shall not be used for human habitation for any commercial use or carrying out any trade.</p> <p>Reason: In the interest of clarity.</p>
4.	<p>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.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>
5.	<p>All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.</p> <p>Reason: In the interest of traffic safety.</p>

Ian Boyle
Planning Inspector

22nd September 2021