



An
Bord
Pleanála

Inspector's Report

ABP-310318-21

Development	Retention for change of use of existing structure to rear of house (measuring 27 sq.m) to habitable accommodation and permission to demolish existing rear extension and build new extension (measuring 95sq.m) to rear of house.
Location	13 Alder Grove , Mount Pleasant, Waterford City
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	20821
Applicant(s)	Mark Walsh
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Kevin and Bridie Hodge
Observer(s)	None

Date of Site Inspection

26th of August 2021

Inspector

Caryn Coogan

1.0 Site Location and Description

- 1.1. 13 Alder Grove is an end of cul de sac detached single storey dwelling within a suburban residential estate of Waterford City. It is 0.0532 Ha within a mature residential area called Mount Pleasant.
- 1.2. The plot has a south-east orientation, with a small pocket of public open space to the east, an adjoining dwelling to the west and a dwelling to the rear (north), where the third party appellant resides.

2.0 Proposed Development

- 2.1. The development as described in the public notices is as follows:
 - (i) Retention of the change of use of the structure to the rear of dwelling (27sq.m.) to habitable accommodation;
 - (ii) Demolish existing rear extension attached to dwelling
 - (iii) Construct a new extension (95sq.m.) to accommodate a wheelchair accessible bedroom and bathroom, and a living area linking to existing structure at rear of house to create a granny flat.
- 2.2 According to the submitted documentation the small structure to the rear of the dwelling is to be used as a physio area with an office and bathroom.
- 2.3 In response to the further information, it is indicated the detached structure has been erected using boundary walls during the 1990s.

3.0 Planning Authority Decision

3.1. Decision

Waterford City and County Council granted planning permission for the development subject to 6No. conditions.

Condition No. 3:

The detached office/ physio structure, the retention of permission herein, shall be used solely for purposes incidental to the enjoyment of the dwelling. It shall not be used for habitable or commercial purposes.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

- The construction of the building is acceptable onto the rear wall as it was carried out in the 1990s. The use as a physio room is acceptable.
- The applicant liaised with Irish water over the drainage issues in the rear garden and revised proposals are included on the site layout plan.
- Development contribution

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

Irish water: No objections.

3.4. Third Party Observations

There were two third party objections received citing the following concerns:-

- Shed should not be used for habitable purposes
- Unauthorized use of shed
- Not suitable for habitable use
- Drawings are inaccurate
- Detached structure using boundary walls as structural walls and this impacts on neighbours and their rights
- Privacy

4.0 Planning History

Enforcement Ref: UCD 2125:-

There is a long and complex planning history associated with the detached structure in the rear garden of the subject site.

5.0 Policy Context

5.1. Development Plan

Waterford City Development Plan 2013-2019 (as extended)

Section 7.9 The creation of a granny flat to be occupied by a member of the occupant family is generally acceptable, provided it is not a separate detached unit and it is possible to provide direct access to the remainder of the house. The flat shall not be let or sold separately.

5.2. Natural Heritage Designations

The closest Natura 2000 site is Lower River Suir SAC approx. 1km to the north

5.3. EIA Screening

Having regard to the planning history of the site, the brownfield nature of the subject site, together with the scale of the proposed development, 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

Peter Thomson Planning Solutions has taken an appeal against the decision to grant planning permission for the development on behalf of Kevin and Bridie Hodge who reside to the rear of the subject site at 31 Rosewood Drive.

- The subject house has been previously extended and a single storey shed erected on and over the rear wall. The previous owner stored garden equipment in it shed. The structure is perpendicular to the appellants house and is located 2.2metres from the common boundary and appellant's main bedroom window.
- The applicant bought the house in 2004, and built two extensions under the exempted development regulations. The shed was converted to a self-contained living unit for private rent. There was enforcement action taken in 2015, and the applicant failed to comply with it.
- Under the further information it is proposed to convert the structure into a physio room. There are no proposals to address the encroachment onto the common boundary.
- There is no objection to the extension of the main house. The applicants needs, including providing accommodation for his father, can be met within the house.
- The change of use of the former shed will seriously impact on the appellants residential amenity because it is located so close to their property and alongside their sleeping accommodation. A physio room is not incidental to the habitable use of the house.
- With the planning and court history the appellant has no faith in the applicant complying with Condition No. 3. The structure should be removed from the site as the applicant will continue with unauthorised use of same.

6.2. Applicant Response

The applicant has responded as follows to the appeal:

The applicant is a wheelchair user, and there has been improved accessibility to the property since its purchase in 2004.

The physio room is for his daily exercise. The free standing building to the rear of the dwelling has been established since 1990.

The applicant will comply with Condition No. 3.

6.3. Planning Authority Response

There were no new issues raised.

7.0 Assessment

- 7.1 The dwelling at 13 Alder Grove is a bungalow located within a mature residential estate within Waterford City. The rear of the dwelling has been previously extended under the exempted development schedules as prescribed in the *Planning and Development Regulations 2001 (as amended)*. Under the current proposal it is proposed to demolish a previous rear extension (13sq.m.) and construct a new accessible bedroom, bathroom and living room extension (95sq.m.).
- 7.2 In the original submission documents, it was stated in the cover letter that the applicant requires wheelchair accessibility and access to physio equipment (which would be provided to the front of the dwelling). The application also included for retention of a structure in the rear garden as habitable accommodation. This structure is the contentious issue of this appeal. The third-party appellants who reside in the contiguous house to the north have taken this appeal. There is no objection or concern regarding the demolition and extension works associated with the main dwelling. The grounds of appeal are focused on the structure built on the communal boundary.
- 7.3 The structure (6.2m x5.3m) in the rear garden is built up onto the rear communal wall between the subject site and the appellants property (31 Rosewood Drive). The structure has been the subject of a Warning Letter and Enforcement Proceedings. It allegedly has been used as rental habitable accommodation. Under the current application, the applicant applied for retention of same as habitable accommodation. The planning wrote to the applicant on the 7th of January 2021 informing him that it is not favourably disposed towards the retention of the detached structure.
- 7.4 The applicant stated in prose to the further information on the 1st of April 2021, that the extension is to accommodate his father, and that the structure along the rear boundary will be used as a physio and occasional office. The applicant confirmed the structure was built on the communal boundary wall.
- 7.5 The Board should be mindful that the structure has been the subject on in ongoing disputes that resulted in the planning authority taking enforcement proceedings and

apparently the unauthorised use of the structure for habitation purposes continued. It is an unacceptable habitable structure built on the common boundary wall with 31 Rosewood Drive. I consider the planning application to be somewhat disingenuous whereby the original proposal stated the structure was to be retained for habitable purposes and the new extension was to cater for accessible accommodation for the applicant with exercise rooms to the front of the dwelling.. Upon realising the planning authority was not in favour of the habitable use of the structure, the proposals were revised to convert the structure into a physio room, and office for occasional use and a bathroom. Condition No. 3 of the permission refers to the structure as a 'detached office/ physio structure' which it is not. I refer to the revised public notices received by the planning authority on 7th of April 2021, and it refers to ' the existing structure to the rear of the house (measuring 27sq.m.) to habitable accommodation. There are photographs illustrating that the rear wall of the structure is a party wall between two residential properties.

- 7.6 Furthermore, the Board should take note of the context and building line of the neighbouring dwelling to the north. It is unacceptable and inconceivable that a structure has been erected so close to a third party house and bedroom window (2metres) and used for habitation purposes. Given the proximity, I consider the proposed use and Condition No. 3 to be unacceptable. Following completion of the extension, there will be ample room, as originally proposed for an exercise/physio room within the main dwelling.
- 7.7 The structure to the rear should be a garden or storage shed only, it should not form a habitable extension or independent structure associated with the main dwelling due to its relationship and proximity to the neighbouring house to the north.

7.8 Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

8.0 Recommendation

8.1. The planning authority's decision to grant should be upheld by the Board.

9.0 Reasons and Considerations

Having regard to the site's location within a mature residential area of Waterford City and the policy and objectives set out in the Waterford City and Environs Development Plan 2013-2019 (as extended), the nature, scale and design of the proposed development, the pattern and layout of the existing residential development in the immediate area of the subject site, it is considered that subject to compliance with conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and would be in accordance 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 [as amended by the further plans and particulars submitted on the 21st of April 2021] 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>The existing structure to be retained to the rear of the dwelling and constructed on the communal boundary wall, shall be used as a shed or store ancillary to the main dwelling on the subject site. It shall not be used for habitation or an integral use associated with the main dwelling.</p> <p>Reason: In the interests of protecting existing residential amenities associated with neighbouring properties.</p>

3.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, or shall be erected on the site/within the rear garden area without a prior grant of planning permission.</p> <p>Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the extended dwelling]. [In the interest of the amenities of the area.</p>
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Caryn Coogan
Planning Inspector

1st of September 2021