



An
Bord
Pleanála

Inspector's Report

ABP-310701-21

Development	Retention of a single storey dwelling, originally permitted as a garage, and associated site development works.
Location	Station Road, Piercetown, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21106
Applicant(s)	Mary Connors
Type of Application	Retention Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Mary Connors
Observer(s)	Sarsfield Drive Residents
Date of Site Inspection	25 th August 2021
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The site is located at Station Road, Piercetown, approximately 800 metres west of Newbridge town centre. It is located directly east of Newbridge train station and accessed via a narrow private access road that leads off the R416 to the south ('Station Road'). The accessway runs along the western boundary of the site. It also provides access to a commercial fuel depot and distribution facility ('Capital Oil'), which is directly to the north of the appeal site.
- 1.2. The site is part of a larger, narrow piece of land. The southern section accommodates an existing dwelling, which was permitted under Reg. Ref. 20/623 in November 2020. The northern section of the plot is the location of the existing dwelling for which retention permission is currently being sought. The building was originally permitted as a domestic shed to serve the dwelling granted permission under Reg. Ref. 20/623 but has since been converted to be used for habitable purposes.
- 1.3. There are some sheds and kennels situated between the subject dwelling and fuel depot. The site is mainly covered with tarmac and gravel and is enclosed by 2m high block walls on each side.
- 1.4. The abutting land to the east comprises a housing estate of two-storey detached houses known as Sarsfield Drive. The rear gardens of these houses back onto the appeal site. Further to the south, across Station Road, there are further houses in the residential estates of Piercetown and Dara Park.

2.0 Proposed Development

- 2.1. The proposed development is for retention of a single storey dwelling house and all associated site development works.
- 2.2. The Planning Authority requested Further Information on 18th March 2021, including in relation to: a potential conflict between traffic generated by the proposed dwelling and a fuel storage depot to the north; the removal of stables and kennels on the site; and submission of a Shadow Study.
- 2.3. The Applicant responded with 10th May 2021.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission on 3rd July 2021, for the following reasons:

- 1) Condition No. 5 of Reg. Ref. 20/623 – which is for the adjoining dwelling to the south – required that the permitted domestic shed be used for domestic purposes only, ancillary to the main dwelling, and not for human habitation. The subsequent unauthorised conversion of the shed to a dwelling unit has resulted in a substandard residential unit. The development for which retention permission is sought contravenes Policy DL1 of the County Development Plan 2017-2023, and is contrary to the requirements of Condition no. 5 of Reg. Ref. 20/623, would be seriously injurious to the residential amenity of the future occupants of the dwelling, and would set an undesirable precedent for similar substandard developments. It would, therefore, be contrary to the proper planning and sustainable development of the area.
- 2) The existing residential entrance accesses a shared laneway serving an industrial user, creating a conflict and traffic hazard, exacerbated by the hazardous nature of the industrial site, the flammable materials stored therein and frequency of delivery vehicles using the internal access road. Retention of a residential access on the laneway would contribute to being a traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis for the Planning Authority's Decision:

- The subject development contravenes Condition 1 of Reg. Ref. 20/263, as a dwelling was constructed instead of the permitted garage.
- The development does not comply with Condition no. 5, which limits the use of the structure as ancillary to the dwelling and that it should not be used for human habitation.

- The dwelling, as constructed, is taller, wider and longer than the permitted garage and does not resemble the permitted structure in any way.
- The in-situ structure is considered substandard in terms of residential amenity due to its proximity to tall boundary walls, thereby ensuring views from bedrooms are directly into concrete walls, and there is an inappropriate quality of natural daylight that is achievable.
- The Applicant was requested, as part of a request for further information, to submitted revised drawings that showed the removal of the stables and kennels from the site. However, this was not provided.
- The Applicant has installed a mobile home on the site as well as constructing a new dwelling (whilst retaining the existing dwelling). However, permission was only granted to demolish the existing dwelling and to construct a new one. Therefore, there are three habitable structures on the site where permission has been granted for only one (two dwellings and a mobile home).
- The Further Information Response provided by the Applicant does not address safety concerns arising from a conflict between residential and industrial traffic accessing the existing fuel depot adjacent the site. The Municipal District Engineer recommended that permission be refused on this basis.

3.2.2. Other Technical Reports

- Municipal District Engineer requested Further Information on 26th February 2021. The report noted that the site entrance for the house opens onto an access road for a fuel storage depot. This arrangement invites potential conflict between site traffic and HGV's carrying flammable liquids to and from the adjoining depot. Upon receipt of the Applicant's FI Response, the MD Engineer was not satisfied that the concerns raised had been adequately addressed and recommended refusal on 28th May 2021.
- Water Services – No objection, subject to condition.
- Roads, Transportation and Public Safety Department – No objection, subject to condition.

3.3. Prescribed Bodies

- Irish Water – No objection. All works are to comply with the 'Irish Water Standard Details for Water Infrastructure'. Where the applicant proposes to connect directly or indirectly to a public water/wastewater network operated by Irish Water, the applicant must sign a connection agreement with Irish Water.

3.4. Third Party Observations

There is a single third party observation from the adjoining residential estate ('Sarsfield Drive Residents Association'). The main issues raised are as follows:

- Proposed development is not compliant with the site's non-residential zoning objective.
- Overdevelopment of the site.
- Proposal is not compliant with Condition 5 of Permission Reg. Ref. 20/623, which required that the permitted garage – now being used as a dwelling – must not be used for habitable purposes.
- Visual Impact on adjoining residential properties.
- Insufficient separation distances from site boundaries.
- Existing structure is larger than what is permitted.
- Concern that a further application made be made for a shed / garage type structure.
- Planning application should be invalidated as it fails to refer to subdivision of the site.
- The existing dwelling is substandard in design and quality terms.
- Concern that the site will experience further intensification and new development (apartments, commercial development, etc.)

4.0 Planning History

There is relevant planning history in relation to the subject site, which is summarised as follows:

Reg. Ref. 20/623: On 5th October 2020, permission was granted for the demolition of an existing dwelling on the site, and its replacement with a new two-storey house with garage, domestic store and all associated site works. Conditions 4 and 5 are notable and required photographic evidence of the demolition of unauthorised kennels on the site, and that the permitted domestic garage would not be used for human habitation, respectively. It is noted that the garage in this instance is the extant house to the north, which is the subject of this appeal case, and for which retention permission is now being sought.

UD7346: There is an active enforcement file in relation to the subject site, which was opened in 2019. This is for the placement of a mobile home on the land and the hardcore surfacing of a domestic garden area with broken quarry stone to form a commercial yard. Further enforcement proceedings were opened against the use of a permitted garage on the site for habitable purposes, which has a floor area exceeding that which was permitted (i.e. 110 sq m).

5.0 Policy Context

5.1. Newbridge Local Area Plan 2013-2019 (Extended to 2021)

- 5.1.1. The site is zoned 'Objective J – Transport and Utilities' under the Newbridge Local Area Plan 2013-2019, extended to 2021 ('LAP'). The LAP states that the purpose of this zoning objective is to provide for the needs of public transport and other utility providers.
- 5.1.2. Car parks and commercial development associated with the provision of public transport services are envisaged for this zone. Table 18 (Land Use Zoning Matrix) of the LAP states that a dwelling is not permitted in this zone.

5.2. Kildare County Development Plan (2017-2023)

5.2.1. The current Development Plan is the *Kildare County Development Plan 2017-2022* ('Development Plan'). The following policy sections are relevant:

- Chapter 4 sets out Housing Policy in relation to inner suburban/infill sites.
- Chapter 16 sets out Urban Design Guidelines.
- Chapter 17 sets out Development Management Standards, where Section 17.4 deals with Residential Development.
- Table 17.5 Minimum Private Open Space Requirements for Dwelling Houses.

5.2.2. Table 4.1 of the Development provides guidance on appropriate locations for new residential development and states the following in this regard:

“Inner Suburban / Infill: The existing built fabric of large towns often contains residential areas where additional dwellings can be accommodated without compromising the existing residential amenity or residential character of the area. The provision of additional dwellings within inner suburban areas of towns can be provided either by infill or by sub-division. Infill residential development may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. Sub-division of sites can be achieved where large houses on relatively extensive sites can accommodate new residential development without a dramatic alteration in the character of the area or a negative impact on existing residential amenities. Sub-division shall be considered subject to safeguards regarding residential amenity, internal space standards, private and public open space, car parking and maintenance of the public character of the area.”

5.2.3. Policy DL 1: *“Promote a high quality of design and layout in new residential developments and to ensure a high quality living environment for residents, in terms of the standard of individual dwelling units and the overall layout and appearance of the development.”*

5.2.4. Objective SRO 1: *“To encourage the consolidation of existing settlements through well designed infill developments in existing residential areas, located where there*

are good connections to public transport and services and which comply with the policies and objectives of this Plan.”

- 5.2.5. Objective SRO 5: *“To facilitate sub-division of larger dwellings on extensive sites in urban areas that are well served by public transport and subject to adherence to the relevant standards set out in Chapter 17 of this Plan”.*

5.3. **Natural Heritage Designations**

There are no designated European sites within the vicinity of the subject site. Pollardstown Fen SAC (Site Code: 002162) and pNHA (Site Code 000396) are located approximately 700 metres to the west of the site.

5.4. **EIA Screening**

Having regard to the nature and small scale of the proposed development, which consists of a single dwelling located in a fully serviced, urban area, and its proximity to the nearest sensitive location, 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 permission for the proposed development.

The main grounds of appeal are summarised as follows:

- The design of the house is single storey with a pitched roof structure, has a low height and will have no negative visual impact at this location.
- The Planning Authority permitted a garage at this location of similar height.

- The houses at Sarsfield Drive directly adjoining the proposed house are 2-storey in height with deep gardens as shown on the submitted Site Layout Plan. There will be no overlooking or obstruction of light to any of these adjoining houses.
- The bedrooms of the proposed dwelling have large windows as shown in the attached photographs. Adequate light will enter these rooms. There are similar side windows facing onto the boundary walls within the adjoining single storey houses Nos. 23-29 Sarsfield Drive.
- A report completed by TPS M Moran & Associates have prepared a technical traffic assessment report in support of the grounds of appeal, which states:
 - The Applicant has a right-of-way over the access road to the west and is maintained jointly by the fuel operator and Applicant's family.
 - There is a fuel distribution operator at the northern end of the access road, which is gated and operated with a key pad locking system. There is also a key pad lock at the southern end of the access road.
 - The extent of heavy vehicles using the access road is limited with less than 10 trips recorded during an hourly period. There are no recorded accidents along this section of the R416 at its junction with the access road indicating safe operation of this section of the R416 in the vicinity of the appeal site.
 - The Council's Transportation Department and Fire Officer did not object to the proposed development.
 - The existing access road has ample capacity to accommodate the existing daily traffic volumes generated by both the existing fuel distribution operation and the existing dwelling.

6.2. Applicant Response

- None.

6.3. Planning Authority Response

- The Planning Authority has reviewed the First Party Appeal and has no further comments or observations to make. The Board is referred to the Planning Report and reports of the various technical departments completed during the assessment of the application.

6.4. Observations

An observation from Sarsfield Drive Residents Association has been submitted in relation to the subject appeal. It raises the following main concerns:

- Attention is drawn to Permission Reg. Ref. 20/623, which required that the permitted domestic shed must not be used as a habitable dwelling.
- The owners of subject site have not complied with the previous planning permission, upon which no objection was lodged.
- The in-situ structure (permitted garage) is larger and taller than what granted planning permission. This has reduced the amount of light entering the residential properties associated with Sarsfield Drive.
- Given the roof height, pitch and construction, it is possible that a dormer extension may be added in the future.
- The building is not compliant with the Building Regulations.
- The permitted heating system is at odds with the present method of heating the building, which is fully oil-fired central heating.
- The oil storage tank and oil burner flue are not the permitted locations onsite, with the latter next to bedroom windows, thus causing the ingress of dangerous fumes.
- No shadow study / sunlight and daylight assessment has been completed, which was requested by the Planning Authority as Further Information. The amount of light entering the subject building is reduced due to the high boundary walls abutting the development and are such that they would likely render the structure unsuitable for habitation.

- The Vehicle Study carried out and included in the Appeal was completed during light traffic hours, in the summertime, when less traffic movements could be expected due to the nature of the business (home heating oil). The dwelling poses a serious threat to the Applicant, residents of Sarsfield Drive, the environment and human life due to the possibility of an accident.
- The Applicant has had a persistent disregard for the planning process and has constructed various unauthorised buildings on the site (stables, dog kennels, mobile home, etc.).
- The existing house – for which retention permission is now sought – is a substandard dwelling and should not be granted permission.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Zoning
- Access
- Appropriate Assessment

7.1. Zoning

- 7.1.1. The site is zoned 'Objective J – Transport and Utilities' under the Newbridge Local Area Plan 2013-2019 (as extended). The purpose of this zoning objective is to provide for the needs of public transport and other utility providers. The 'Land Use Zoning Matrix' of the LAP (Table 18) states that a dwelling is not permitted in this zone. The land use 'dwelling' is, therefore, in conflict with the zoning for the site and not supported by the relevant statutory plan.
- 7.1.2. It is noted that the provisions of Section 37(2)(b) of the Planning and Development Act, 2000 (as amended) do not apply in this case as it is zoning objective of a Local Area Plan, and not a Development Plan, that would potentially be contravened by the proposal.

7.2. Access

- 7.2.1. The proximity of the fuel depot to the north is noted. During an inspection of the site, large HGVs and delivery vehicles could be seen refuelling at the facility and the use of heavy equipment and machinery was evident. The existing dwelling is located a short distance from the forecourt of the fuel depot where refuelling activities take place (approximately 15 metres).
- 7.2.2. The dwelling and the fuel depot both have shared use of the access lane that leads from Station Road and runs along the western boundary of the appeal site. The Applicant states that they have a right of way over the lane. There is no dispute in relation to this.
- 7.2.3. However, I share the concerns raised by the Council's Municipal District Engineer in that insufficient details have been provided by the Applicant demonstrating that the access road can be used safely. The access arrangement invites potential conflict between site traffic and HGVs carrying flammable liquids to and from the depot.
- 7.2.4. The Applicant submits that the drivers of the delivery vehicles have specific safety training for delivering to and within urban areas. Whilst this is acknowledged, there are multiple traffic movements emanating from the distribution depot, often in the order of up to 10 trips during a given hourly period. The delivery trucks travel directly past the front entrance of the appeal site and are required to use the laneway as the sole means of accessing the R416 to the south.
- 7.2.5. The side-by-side, co-existence of a dwelling and industrial operation of this nature and scale is incompatible in my opinion, particularly given the flammable and potentially hazardous nature of the substance (home heating oil) that is being stored and pumped onsite, and transported along this shared accessway.
- 7.2.6. In summary, having regard to the site's zoning ('J – Transport and Utilities'), which does not permit a dwelling, its close proximity to a fuel storage and distribution depot, and the potential to cause a traffic and public health hazard, I consider that the proposed development is not appropriate and should not be granted permission.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and small scale of the development, retention of a dwelling within an established and serviced urban area, it is considered that no Appropriate Assessment issues arise. It is therefore 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 be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1.1. The appeal site is located in an area zoned 'J- Transport & Utilities' in the Newbridge Local Area Plan 2013-2019, as extended, where the stated objective is to provide for the needs of public transport and other utility providers. This objective is considered reasonable and dwellings are not permitted under this zoning objective. The proposed development would, therefore, materially contravene the land use zoning objectives of the Newbridge Local Area Plan 2013-2019, as extended, and would be contrary to the proper planning and sustainable development of the area.
- 9.1.2. The proposed development by reason of its proximity to, and its shared access arrangement with, an existing industrial development (a commercial fuel depot) endangers public safety by reason of creating a traffic hazard and additional, conflicting traffic movements. The proposed development is, therefore, prejudicial to public health.

Ian Boyle
Planning Inspector

22nd September 2021