



An
Bord
Pleanála

Inspector's Report

ABP-311481-21

Development	Retention of garage. Proposed change of use of garage to granny flat. Associated site works.
Location	1 Clogheraun Brook, Staplestown, Donadea, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	211020
Applicant(s)	Celine and Karl Finlay
Type of Application	Permission
Planning Authority Decision	Split Decision
Type of Appeal	First Party
Appellant(s)	Celine and Karl Finlay
Observer(s)	None
Date of Site Inspection	8 th February 2022
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site is No. 1 Clogheraun Brook, Staplestown, Dondea, Co. Kildare, W91 AX6T. The site accommodates an existing, detached, two-storey dwelling and domestic garage. The garage is to the rear of the property, behind the house, on the site's western boundary.
- 1.2. The site is adjoined to the east and west by residential properties, each of which accommodate large, detached dwellings and the south by agricultural fields. There is a small drainage channel running along the southern boundary of the site and vehicular access is from a public road to the north.
- 1.3. St. Kevin's GAA Club is across the road to the north.
- 1.4. Staplestown village centre is roughly 500m to the west.
- 1.5. The stated site area is 0.25ha, approximately.

2.0 Proposed Development

- 2.1. The proposed development comprises three main elements:
 - 1) Retention of a single storey garage at the rear of an existing garage
 - 2) Change of use of existing original approved garage to a granny flat / family flat
 - 3) Ancillary site works

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a split Decision on 31st August 2021, whereby a notification to grant retention permission was issued for the single storey garage situated at the rear of the existing garage and ancillary site works, and to refuse permission refused to convert the existing original approved garage into a granny flat for a family member.
- 3.1.2. The proposed granny flat (change of use) was refused for 1 no. reason, which was that by reason of the detached nature of the garage it would be contrary to the

requirements for family flats as set out in Section 17.4.9 of the Kildare County Development Plan 2017-2023. The proposed change of use would set an undesirable precedent for similar types of development in the vicinity and would, therefore, be contrary to the property planning and sustainable development in the area.

3.1.3. Condition No.5 requires a development contribution to be paid (€2,338.35).

3.2. Planning Authority Report

3.2.1. Planning Reports

The following main points were made:

- A garage was permitted under Reg. Ref. 16/952. However, the structure built onsite is larger than what was approved.
- It is proposed to change the use of part of the garage to a family flat for an immediate family member. A letter has been provided by a GP. However, for the purposes of data protection, its details cannot be outlined.
- Section 17.4.9 of the Kildare County Development Plan 2017-2023 (the 'Development Plan') sets out Council policy for family flats. The proposed family flat would not be linked directly to the main dwelling, which contravenes the policy.
- Recommendation is for Split Decision, including refuse permission to convert the garage into a granny flat, and to grant retention permission for the domestic garage as constructed.

3.2.2. Other Technical Reports

Environment Section: Requested further information, including a Site Suitability Assessment confirming that the additional effluent loading generated by the proposed development can be catered for by the existing treatment system that the existing effluent system is compliant with the relevant planning permission, and evidence of ongoing maintenance to ensure satisfactory performance.

Water Services: No objection, subject to standard condition.

Area Engineer: No objection, subject to standard conditions.

Transportation: No objection, subject to standard conditions.

Enforcement Section: Warning letter issued to the developer in relation to alleged non-compliance with Permission Reg. Ref. 16/0952. Main concern raised is in relation to the onsite percolation area, which does not meet the recognised environmental standard.

3.3. **Prescribed Bodies**

Irish Water: No objection, subject to standard conditions, including that the Applicant must sign a connection agreement with Irish Water prior to the commencement of the development and that the development shall be carried out in compliance with Irish Water standards, codes and practices.

4.0 **Planning History**

Subject Site

Reg. Ref. 16/952: The Planning Authority granted permission in November 2016 for the construction of 3 no. two-storey houses, detached domestic garages, individual effluent treatment systems, and ancillary site works.

The subject site is identified as 'Site No. 1' on the Proposed Site Layout Plan lodged as part of the original planning application (Drwg. No. P1304-06).

Adjoining site to the west

Reg. Ref. 05/1179: The Planning Authority granted permission in September 2005 for the retention of a dormer bungalow, domestic garage, and ancillary site works.

5.0 **Policy Context**

5.1. **Kildare County Development Plan 2017-2023**

Section 3.3 Settlement Hierarchy

Section 3.3 of the Kildare County Development Plan 2017-2023 (the 'Development Plan') recognises Staplestown as a 'Rural Settlement'.

Section 3.4.3 Settlement Strategy

Section 3.4.3 (Settlement Strategy) states that Rural Settlements are located throughout the county. It is proposed that settlements will develop as local centres for rural catchments with growth appropriate to cater for local demand. Lower densities will be encouraged in appropriate locations to provide alternatives to one-off rural dwellings in the immediate rural area. Expansion will be controlled to minimise pressure on services, the environment and unsustainable commuting patterns.

Section 17.4.9 Family Flat

Section 17.4.9 states that a Family Flat is a temporary arrangement to accommodate an immediate family member or a carer within an existing dwelling unit in a semi-independent capacity. Applications for a family flat shall have regard to the following requirements:

- Applicants shall submit documentary evidence at application stage to demonstrate the need for a family flat;
- The proposed unit should be linked directly to the main dwelling by a connecting door;
- Accommodation must be subsidiary to the main dwelling in scale and only in exceptional cases will more than one bedroom be permitted; and
- Any external doors permitted (to provide access to private / shared open space or for escape from fire) shall be limited to the side or rear of the house.

It is normal procedure to include conditions in any grant of permission that the family flat cannot be sold, conveyed or leased separately from the main residence, and that when the need for the family flat no longer exists the dwelling must be returned to a single dwelling unit.

5.2. Other Policy

- *Guidelines for Planning Authorities on Development Contributions, 2013*
- *Kildare County Council Development Contribution Scheme, 2015-2022*

5.3. Natural Heritage Designations

The site is not located within a designated Natura 2000 site.

The nearest European site is Ballynafagh Bog SAC (Site Code: 000391), which is roughly 2.8km to the southwest.

The Donadea Wood pNHA (Site Code: 001391) is approximately 300m to the east and Hodgestown Bog NHA (Side Code: 001393) is roughly 2.6km to the southwest.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal comprises a letter from the Applicant and an accompanying letter from their agent (Fitzpatrick Draughting Ltd.).

It relates to the proposed change of use to a granny / family flat and the development contribution applied under Condition No. 5 of the Council's Decision.

The main grounds of appeal can be summarised as follows:

Change of Use (Existing Garage to Granny Flat)

- The granny flat would be exclusively lived in by the father of Celine Finlay (one of the Applicants), so that he can provide ongoing assistance with minding and caring for the children in the main house.
- One of the Applicants has recently suffered an injury that has had a major impact on her ability to interact with her children and take care of them independently. Her father is currently living in the house to provide help and for the family's health and wellbeing. He is currently living in the sitting room of the main house, which is causing untold strain on the family. He requires his own space, suited to his needs, so that he can continue providing help to the family.
- It was expected that the Planning Authority would have granted permission for the granny flat as a formality. Therefore, sufficient information outlining the personal circumstances that apply was not provided to the Planning Authority.

- The proposed granny flat is in accordance with Section 17.4.9 of the County Development Plan.
 - Regarding Dot Point 1, all necessary medical documentation has now been provided. In this regard, 2 no. letters from GP practices are appended to the appeal, which outline certain medical conditions that apply to one of the Applicants and her father.
 - Regarding Dot Point 2, the outbuildings were already built before the property was purchased by the Applicant, and there was no subsequent way to change the site layout and connect the granny flat to the main house. It is impossible to do that now without destroying the site layout. Also, funds would not permit it.
- If permission is granted, it would not set an undesirable precedent as there are exceptional circumstances in this case.

Development Contributions

- The development contribution fee as per Condition No.5 has been incorrectly applied by the Planning Authority. The correct contribution fee should be €962.85, as opposed to €2,338.35.
- The Planning Authority incorrectly applied the development contribution rate (€27.51) to the full floorspace of the existing domestic garage (85sqm). However, a partial section of the garage has already been permitted under Reg. Ref. 16/952, which is 50sqm. Therefore, only 35sqm should have subject to the development contributions.

6.2. Planning Authority Response

The Planning Authority response to the grounds of appeal can be summarised as follows:

Change of Use (Existing Garage to Granny Flat)

- Having regard to the detached nature of the proposed family flat ('granny flat') it would materially contravene Section 17.4.9 of the County Development

Plan, which requires a family flat to be linked directly to the main dwelling by a connecting door.

- To grant permission for the proposed family flat would set an undesirable precedent for similar development elsewhere in the county.

Development Contributions

- Having reviewed the planning files associated with the site, including Reg. Refs. 16/21/1020,16/952 and 15/727 it is noted that permission was previously granted for a detached garage with a floor area of 47.5sqm.
- In accordance with the Council's Development Contribution Scheme 2015-2022 9(iv), an application to retain an extended area to that previously granted will have contributions applied to the additional floor area only.
- The development contributions in this case have been incorrectly calculated. The original floor area of 47.5sqm should have been deducted from the current floor area. Accordingly, the Planning Authority should have only calculated on the additional 37.5sqm (retention of the garage), which is a contribution amount of €1,031.62 (37.5sqm * €27.51sqm).

6.3. **Observations**

- None.

6.4. **Further Responses**

The Applicant provided a response on 19th November 2021, which can be summarised as follows:

- Acknowledges the Planning Authority has recalculated the development contribution fee amount and does not contest this revised amount.
- The Applicant cannot see any other way to make their family home work given the medical issues previously described.
- Suggestions were made by the Planning Authority, prior to the Applicant purchasing the house, that a granny flat could be allowed on the site.

- The Applicants are willing to enter into a declaration and would support a condition on any grant of permission that is issued, which requires the granny flat to be used solely by the Applicant's father. The granny flat could be converted into a children's play area if, for whatever reason, the Applicant's father no longer requires it.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Change of Use / Proposed Family Flat
- Development Contribution
- Wastewater Treatment System – New Issue
- Appropriate Assessment

7.1. Change of Use / Proposed Family Flat

- 7.1.1. The Planning Authority refused permission for the proposed granny flat because it would be detached from the existing house and, therefore, considered contrary to the requirements of Section 17.4.9 of the Development Plan.
- 7.1.2. The purpose of the proposed family flat is this case to allow a direct family relative – the father of one of the Applicants – to live nearby and be at hand, so that he can provide ongoing assistance with minding and caring for the children in the main house.
- 7.1.3. The Applicant has recently suffered a serious physical injury which has reduced her ability to take care of her children independently. As a result, her father is currently living in the house to provide additional care for children living in the family home. The Applicant states that the proposed development would allow the individual concerned to enjoy the benefits of independent living, outside of the existing family home, whilst simultaneously helping with the young children and being able to avail of family support, close at hand, as they also have their own health issues.
- 7.1.4. Section 17.4.9, as set out in full in Section 5 above, states that a family flat is a temporary arrangement to accommodate an immediate family member or a carer

within an existing dwelling unit in a semi-independent capacity. Applications for a family flat should be linked directly to the main dwelling by a connecting door, as required under Dot Point 2. The policy also states that it is normal procedure to include conditions in any grant of permission that the family flat cannot be sold, conveyed, or leased separately from the main residence, and that when the need for the family flat no longer exists, the dwelling must be returned to a single dwelling unit. This is considered good planning policy and common practice for such types of development proposals.

- 7.1.5. I note that the Applicant submits in their appeal that the onsite outbuildings were already built, before the property was purchased, and there was no possible subsequent way to change the site layout and connect the granny flat to the main house. It is asserted that it would be impossible to do that now without destroying the site layout.
- 7.1.6. Having regard to the information on file, together with my site inspection, I note that the property is relatively large and has a stated site area of approximately 0.25ha. It accommodates a detached dwelling and has spacious front and rear gardens. The dwelling is offset from both of its side boundaries and there are no apparent physical restrictions on the site that would prevent a family flat from being linked directly to the main dwelling by either via a connecting door, or corridor, which is a requirement of Section 17.4.9 of the County Development Plan (Dot Point 2). [In relation to the Applicant's reference to funds being an issue, this is not a material planning consideration, and so cannot be taken into account by the Board.]
- 7.1.7. I consider that the other dot points requiring documentary evidence demonstrating the need of a family flat (Dot Point 1), that the accommodation must be subsidiary to the main dwelling in scale and generally have no more than one bedroom (Dot Point 3), and that any external doors permitted should be limited to the side or rear of the house (Dot Point 4), have been met by the Applicant. However, as Dot Point 2 has not been complied with, it is recommended that permission be refused.

7.2. Development Contribution

- 7.2.1. The Applicant states in their original appeal that the Planning Authority incorrectly applied the development contribution rate (€27.51) to the full extent of the existing

domestic garage (85sqm). However, a partial section of the garage was already permitted under Reg. Ref. 16/952, which is roughly 50sqm. Therefore, only 35sqm approx. should be subject to a development contribution levy.

- 7.2.2. In this regard, I note the Planning Authority's response where it is stated that they have since reviewed the relevant planning files and that it is acknowledged permission was previously granted for a detached garage with a floor area of 47.5sqm. The Planning Authority goes on to say that 'the development contributions in this case have been incorrectly calculated' and that the original floor area of 47.5sqm should have been deducted as part of their workings.
- 7.2.3. Accordingly, the Planning Authority has revised their calculations to apply to the additional 37.5sqm of floorspace only, which equates to a contribution amount of €1,031.62 (37.5sqm * €27.51sqm).
- 7.2.4. I note that the above is in accordance with the Kildare County Council Development Contribution Scheme 2015-2022 Part 9(iv), where it is stated that 'an application to retain an extended area to that previously granted will have contributions applied to the additional floor area only'.
- 7.2.5. The Applicant responded to the Planning Authority's submission on 18th November 2021, whereby the Council's revised contribution fee was acknowledged and not disputed.
- 7.2.6. Accordingly, I recommend that should the Board be minded to grant permission for the retention of the garage that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000, as amended.

7.3. Wastewater Treatment System – New Issue

- 7.3.1. A Warning Letter was issued to the Applicant in July 2021 in relation to alleged non-compliance with certain conditions attached to Permission Reg. Ref. 16/0952. One of these conditions is in relation to onsite percolation and that the current arrangement does not meet any recognised environmental standard.
- 7.3.2. I note that very limited information was submitted as part of the original application demonstrating how the proposed family flat would cater for wastewater disposal.

There is no Site Characterisation Form and no details have been provided in relation to the existing method of effluent treatment arising from the existing dwelling. The capacity of the existing septic tank is also unknown and there is no information on file to suggest that the current method of wastewater treatment is sufficient, or if it would need to be upgraded to ensure compliance with the relevant EPA standards due to the proposed family flat, if permitted / constructed onsite.

7.3.3. I note that the Planning Authority did not cite this as a reason to refuse permission for the proposed family flat. However, the Council's Environment Section requested further information in this regard and this has not been addressed. Details requested include confirmation as to whether the additional effluent loading generated by the proposed development would be able to be catered for by the existing treatment system, whether the existing effluent system is compliant with the relevant permission, and provision of evidence to show any ongoing maintenance that has occurred to ensure satisfactory performance.

7.3.4. Having regard to the above, I am not satisfied that the proposed development would not be prejudicial to public health. I note this is a new issue and the Board may wish to seek the views of the relevant parties. However, having regard to the other substantive reason for refusal, which is set out below, it may not be necessary to pursue the matter.

7.4. Appropriate Assessment

7.4.1. Having regard to the nature and scale of the proposed development, which is for retention of a garage, conversion of an existing garage to a family flat, and associated site works, and the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, it is 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 retention permission be granted for the unauthorised garage to the rear of the existing domestic garage, in accordance with the submitted plans and particulars, and based on the reasons and considerations marked (1) under, and

subject to the conditions set out below; and that permission be refused for the proposed change of use of the existing original permitted garage to a family flat / granny flat, based on the reasons and considerations marked (2) under.

9.0 Reasons and Considerations (1)

- 9.1. Having regard to the provisions of the *Kildare County Development Plan 2017-2023*, including the design, location, nature, and size of the proposed domestic garage, it is considered that, subject to compliance with the conditions below, the development does not seriously injure the amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.
- 9.2. Having regard to the *Kildare County Council Development Contribution Scheme 2015-2022, Guidelines for Planning Authorities on Development Contributions (2013)*, Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended)*; it is considered that the Planning Authority be directed to amend the wording of Condition No. 5, as follows:

Conditions

1.	<p>The development to be retained shall be in accordance with the plans and particulars lodged with the application 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>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>

3.	<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>
4.	<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>
5.	<p>The developer shall pay to the planning authority a financial contribution of €1,031.62.00 in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Reasons and Considerations (2)

- 9.3. Having regard to the provisions of the Kildare County Development Plan 2017-2023, including Section 17.4.9 'Family Flat', which requires that a proposed granny flat be linked directly to the main dwelling by a connecting door, it is considered that the

proposed development would not be in accordance with the relevant Development Plan policy, and would be inappropriate and injurious to the amenities and character of the area. It would, therefore, be contrary to the proper planning and sustainable development of the area.

- 9.4. Having regard to the paucity of information on the file in relation to wastewater treatment and disposal facilities, the Board is not satisfied that the proposed development, particularly in conjunction with other existing wastewater systems in the area, would not give rise to a risk of groundwater pollution. It is considered, therefore, that the proposed development would be prejudicial to public health.

Ian Boyle
Planning Inspector

19th April 2022