



Development	Retention of Garage and all associated site works
Location	No.44 Berkley Lawns, Cloghabrody, Thomastown, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21717
Applicant(s)	Mr Hugh Coffey
Type of Application	'Retention' Permission.
Planning Authority Decision	Grant with Conditions
Type of Appeal	3 rd Party vs. Grant
Appellant(s)	Ms Helen McConville
Observer(s)	None
Date of Site Inspection	16 / 07 / 2022
Inspector	L. W. Howard

1.0 Site Location and Description

- 1.1. The stated 0.041ha application site, being No.44 Berkley Lawns, is located within the well-established Berkley Lawns residential estate, within north Thomastown, Co. Kilkenny. No.44 Berkley Lawns fronts onto the southern side of the internal Berkley Lawns estate road, a cul-de-sac of detached 2-storey dwellinghouses (see copy of 'location map' attached, together with photographs taken at the time of physical inspection).
- 1.2. Access into the Berkley Lawns residential estate is off R448 aligned north to south through Thomastown.
- 1.3. The single 2-storey detached dwellinghouse onsite, is well set back from the road edge, consolidating the established building-line fronting onto the road, and thereby strengthening the local residential streetscape and associated visual and residential amenity.
- 1.4. An existing driveway from the road, along the site's SE facing lateral boundary (shared with the 3rd Party Appellant) passed the eastern gable end, enables vehicular and pedestrian access onto the site, as well as on-site car parking and accessibility through to the existing single storey domestic garage structure. Accessibility along the driveway through to the garage at the rear is controlled by way of a solid wooden gate.

2.0 Proposed Development

- 2.1. The proposed development comprises the following elements –
 - the retention of a single storey domestic garage to the rear,
 - all associated site development works,all at No.44 Berkley Lawns, Cloghabrody, Thomastown, Co. Kilkenny.
- 2.2. Detailed clarification regarding the substance, composition and spatial arrangement of the proposed development on the application site, is provided by –

- the applicant initially as part of the planning application documentation and mapping / drawings (received by the Planning Authority dated – 20/08/2021), and then subsequently in the ‘Further Information (F.I.) Response Submission’ (received by the Planning Authority dated – 29/10/2021), and
- the Planning Authority in the Planning Officers ‘planning report’ dated 17/10/2021.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Planning permission granted, subject to 5no. Conditions.

3.1.2. Having regard to the issues raised in the 3rd Party Appeal, the following Conditions are considered as noteworthy :

C3 specification that garage to be “incidental to the residential enjoyment of the dwelling” and shall not be used for “habitable purposes”, the housing of animals, or for “commercial purposes”.

Reason : In the interest of residential amenity, and the proper planning and sustainable development of the area.

C4 within 4-weeks of the date of permission, applicant to carry out all works to the proposed gutters, as shown in documentation submitted on 29/10/2021.

No part of the proposed development, incl. gutters and eaves, “shall abut, oversail or otherwise physically impinge on any adjoining property, unless the written agreement of the owner(s) thereof is firstly obtained”.

Reason : In the interests of orderly development.

C5 all surface water run-off from roofs, driveway and paved areas, shall not be allowed to discharge onto the public road, or to adjoining properties.

Reason : To avoid interference with other properties, and to prevent damage to the public road with consequent traffic hazard.

3.2. Planning Authority Reports

In the reports of the Planning Officer (see dated 07/10/2021 & 17/11/2021), the key planning issues are assessed as follows:

3.2.1. The 'Principle' of Development –

- Site designated with 'Existing Residential' zoning objective.
- Consider the garage "will comply" with the Zoning Objective for the application site.

3.2.2. Proposed 'Design' of Domestic Garage –

- Clarify application for the Indefinite Retention of a single storey domestic garage, constructed to the rear of the detached dwellinghouse on the application site.
- Note floor area of the garage is 27.8m², with a height of 3.7m.
- Further, external finishes are in keeping with the dwellinghouse.
- Express no objection to the design of the garage.

3.2.3. Overhang of adjacent shared boundaries –

- Note garage location on site, proximate to the side and rear boundaries.
- Notwithstanding the Drawings submitted, and having regard to observations at site inspection, comment "the gutters located to the side overhang the common boundary".
- No letter of consent, allowing for such overhang has been submitted.
- 'Further Information (F.I.)' response – 29/10/2021) :
 - No letter of consent from the adjacent property owner, giving permission for the overhang, was received by the applicant.
 - Rather, a revised Section drawing submitted showing that the applicant will replace the existing guttering, using a 45mm wide and 75mm high pressed metal gutter, which will not overhang and be contained within the boundary of the application site (see Drawing No.2021-515-100A).
 - There will be no surface water runoff to the adjoining properties.

3.2.4. Surface Water overflow –

- Note garage is similarly located in close proximity to the rear site boundary. No provision is apparent to prevent surface water onto the adjoining property.
- ‘Irish Water’ submit comment that “it is not permissible for surface water to go to drain”, as shown in application documentation. Revised proposal from the applicant, in this regard, to be submitted as ‘further information’.
- Consider ‘Further Information’ (F.I.) in this regard is necessary.
- Further Information response :
 - Revised proposals by the applicant (F.I. response dated 29/10/2021), show that surface water drainage will now be by way of ‘a 1.5mØ soak-pit’ located within the curtilage of the application site (see Drawing No.2021-515-101A).

3.2.5. Proposed ‘Use’ of Domestic Garage, to be retained –

- Planning permission is sought for the retention of the single storey domestic garage on site.
- Clarity and confirmation was sought from the applicant “that the use of the garage will be incidental to the dwelling house and the structure will not be used for any commercial purposes”.
- Consider ‘Further Information (F.I.)’ from the applicant on this issue, is necessary.
- Further Information response :
 - The applicant (Mr. H. Coffey) submits confirmation that use of the garage will be incidental to the dwelling house on site, and that it will not be used for any commercial purpose (F.I. response dated 29/10/2021).

3.2.6. Development Contributions –

- Assessed as per ‘Class 3’ of the Kilkenny County Council’s Development Contribution Scheme.

3.2.7. Other Technical Reports –

None Apparent.

3.2.8. “Impact on Natura 2000 Site (SAC or SPA)” –

- Note that a ‘screening exercise’ was completed
- This study “showed that no significant impact is likely having regard to the distance of the application site from any Natura 2000 site”.

3.2.9. “EIA Conclusion” –

- Reference that a preliminary examination of the nature, size and location of the proposed development has been completed.
- This study determined that “there is no real likelihood of significant effects on the environment” consequent from the proposed development
- Therefore conclude that an EIAR is not required.

3.2.10. Conclusion –

Having regard to :

- the design and scale of domestic garage structure for which ‘retention’ permission is sought,
- the Policies and Objectives of the Kilkenny County Development Plan 2021-2027,
- the 3rd Party Submission, and
- the ‘Further Information (F.I.)’ received,

“It is considered that the development does not seriously injure the amenities of the area, be prejudicial to public health, and if in accordance with the attached Conditions the development would accord with the proper planning and sustainable development of the area”.

3.2.11. Recommendation –

Recommend ‘retention’ permission be granted, subject to Conditions.

3.3. **Prescribed Bodies**

Irish Water No objection in principle. However, emphasise “It is not permissible for surface water to go to drain as per application” (Report – 28/09/2021).

3.4. Third Party Observations

One Third party submission noted, as received from P. McConville, on behalf of H. McConville (*).

The issues argued include –

- proximity of garage to the shared lateral boundary, prohibits maintenance of the wooden fence which will consequently rot;
- garage gutters overhang the shared boundary;
- consequent restriction of natural light, “darkens their kitchen”;
- garage is a ‘focal point’ when viewed from upstairs windows;
- garage casts a shadow in the garden;
- garage “has spoiled the enjoyment of the tenants of the house”;
- additional traffic, consequent of repairing “old cars”;
- consequent devaluation of their property (upon advice of estate agent);
- confirm inclusion of photographs;

Confirmation that all issues raised were considered in deriving the Planning Officers recommendation.

(i) Current 3rd Party Appellant

4.0 Planning History

4.1. No relevant Planning History apparent with respect to the application site.

4.2. The following Planning History relates to the surrounding contextual ‘Berkley Lawns’ residential estate :

Reg.Ref.No.21/284	Application by T. & C. Gibbons for the erection of an extension and alterations to existing dwelling and all associated site works, all at No.20 Berkley Lawn, Cloghabrody, Thomastown, Co. Kilkenny. Application deemed by the Planning Authority as ‘Withdrawn’.
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Reg.Ref.No.21/217

Permission Granted to A. Morrissey for development at the detached house comprising construction of a new single storey extension to the rear and partially to the side, and all other ancillary internal and external works, all at No.12 Berkley Lawn, Cloghabrody, Thomastown, Co Kilkenny. Permission granted under Managers Order No.322, dated 12/05/2021, subject to 06no. Conditions.

Reg.Ref.No.16/30

Permission Granted to J. & L. Caffrey for development at the existing detached house, comprising –
Construction of a 2-storey extension to the side (west) for extended kitchen, utility and study on the ground floor and bedroom on the first floor,
enclosing the front porch, and
all other ancillary internal and external works.
Further, ‘retention permission’ granted for the third Velux rooflight on the east (closest to the rear of the property) and retention of the sliding door to the rear that replaced a window,
all at No.7 Berkeley Lawn, Thomastown, Co. Kilkenny.
Permission granted under Managers Order No.181, dated 14/03/2016, subject to 05no. Conditions.

Reg.Ref.No.12/237

Permission Granted to R. & A.M. Lynch for development comprising a 2-storey extension to side of existing dwelling, with associated site works, all at No. 10 Berkley Lawns, Thomastown, Co. Kilkenny.
Permission granted under Managers Order No.309, dated 19/07/2012, subject to 03no. Conditions.

5.0 Policy Context

5.1. Development Plan

5.1.1. Kilkenny City & County Development Plan 2021-2027

Volume 1 – County

13.30.7 Existing residential

Objective To protect and improve residential amenities and to provide for new residential development appropriate to the scale and character of the settlement

Permissible Uses Dwellings

5.1.2. Thomastown Local Area Plan (2019 – 2022)

Adopted 25th March 2019. Came into effect on the 06th May 2019.

Relevant provisions include :

4.5 Core Strategy Policy & Objectives:

Objectives:

CSO1.3: To implement the Zoning Objectives set out at Appendix A of this LAP.

Appendix A: Land-Use Zoning Categories :

Existing / New Residential

Objective To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered.

Permissible Uses Residential (Houses), Residential (Extensions, Granny Flat, etc)

(see pg. 59 of the Thomastown LAP 2019)

Appendix D Menu of appropriate Objectives / Policies for Water Services in Development Plans :

General Policies in relation to Water Services

- (a) To work closely with Irish Water to identify and facilitate the timely delivery of the water services required to realise the development objectives of this plan;

Water Supply

- (h) To protect both ground and surface water resources, and to work with Irish Water to develop, implement and maintain Water Safety Plans – to protect sources of Public Water Supply and their contributing Catchment.

Wastewater Services

- (l) To require all new development to provide a separate foul and surface water drainage system and to incorporate sustainable urban drainage systems;
- (m) To prohibit the discharge of additional surface water to combined (foul and surface water) sewers in order to maximise the capacity of existing collection systems;

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. 3rd Party Grounds of Appeal – Ms Helen McConville (No.43 Berkley Lawns, Thomastown, Co.Kilkenny) :

The 3rd party grounds of appeal are set out fully in the documentation dated 13th December 2021 (c/o Mark Kelly, MK Architecture & Building Surveying Ltd.). These may be summarised as follows :

- 6.1.1. Located on the western side of her property, No. 43 Berkley Lawns, the garage “completely obscures and blocks any natural daylight or sunlight from that side”. This is particularly through the late afternoon and early evening time.
- 6.1.2. Concern regarding the “large velux window approximately 1.0m from my boundary”. Consequent impacts include loss of the privacy of the garden, enabling the garage occupier to look into her garden, as well as into the back windows of her house.
- 6.1.3. Notwithstanding the large size of the garage, it has been built far too close to her shared boundary, approximately 150mm away. The gutter also overhangs her property. Note the ‘Condition’ attached to the Planning Authority decision, “that gutter be set back behind the legal boundary”. Assert that “this has not been done to date”.
- 6.1.4. Argue that the garage in itself, “completely devalues my property”.
- 6.1.5. Request –
- consideration be given to the above, and
 - the applicant be asked “to demolish all or at least part of the garage to make it far more amenable to me private space”.
- Express disappointment and surprise that retention permission was granted.

6.2. **Planning Authority Response**

Stated “no further comments” (13/01/2022).

6.3. **Applicant’s Response – Mr Hugh Coffey (No.44 Berkley Lawns, Thomastown, Co.Kilkenny) :**

The applicant’s response to the 3rd party grounds of appeal is set out fully in the documentation dated 06th January 2022 (c/o Ray Davis, Carriganna, Stradbally, Co.Waterford). These may be summarised as follows :

6.3.1.

6.3.2. In response to the argument that the existing single storey garage blocks / obscures natural light and direct sunlight, the applicant contextualises that the garage replaces a “previous steel shed type structure”, which was built up to the shared lateral site boundary, and which was in position for the last 14-years without expressed concern or objection.

Further, several mature trees exist directly to the rear of No.43 that are more injurious re. blocking natural light / direct sunlight than the garage.

6.3.3. Contrary to the arguments made by the 3rd party appellant that overlooking with consequent loss of privacy would result from the rooflight in the garage roof facing her property, the applicant emphasises that the existing garage is a single storey non-residential structure. Therefore no possibility exists of overlooking.

6.3.4. In response to the 3rd party concerns regarding the proximity of the existing garage to the shared boundary, the applicant sets out that an alternative reasonable scenario could have been one where the applicant undertook to build the garage within the parameters of a ‘Class 3 Exempted Development’, under Schedule 2 Part 1 of S.I. No.600 of 2001, as amended. Under this alternative, applicant could have completed the garage with a floor-area of 25m² (rather than the existing 27.85m²), a roof apex height nearly 300mm higher than existing, and with a footprint proximity right up to the shared site lateral boundary, “and be totally exempt from the planning process, in its entirety”.

6.3.5. Condition No.4 attached to the Planning Authority’s decision to grant retention permission, required the applicant to carry out all works to the proposed ‘gutters’, as shown in the ‘Further Information (F.I.) documentation lodged with the Planning Authority dated 29/10/2011. Having now lodged the current 3rd party appeal against the ‘retention’ of the existing single storey domestic garage, the neighbour – 3rd party appellant has effectively obstructed the applicant from progressing to completing the ‘Conditioned’ works to the ‘gutters and eaves’, and thereby ensuring that they do not

abut, oversail, or otherwise physically impinge on the adjacent property owned and occupied by the 3rd party appellant.

Completion of these works as Conditioned, would directly address one of the principal issues of concern argued by the 3rd party appellant against the proposed 'retention' of the single storey domestic garage.

Should the Board decide to grant 'retention' permission for the garage, "the applicant, as per Condition 4(a) noted if included, will complete the said works in full compliance with the revised information as submitted to Kilkenny County Council under 'Further Information' (Detail "A" on Drawing No.2021-515-100-A)".

6.3.6. Single storey domestic garage structures, as proposed for 'retention' permission under the current 3rd party appeal, are common features within numerous rear gardens. Considering the high level of finish to the garage, applicant asserts it "would have no impact on the value of the appellants property".

6.3.7. Request that 'retention' permission be granted.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site within its local context, and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Principle and Location of the proposed development, for ‘retention’
- Visual Amenity Impact : Townscape / Streetscape
- Residential Amenity Impact
- Site Boundary : Encroachment / Land – Legal Issues
- Appropriate Assessment.

7.2. Principle and Location of the proposed development, for ‘retention’:

- 7.2.1. The application site is zoned “Existing Residential”, with the objective to protect and improve residential amenities, and to provide for new residential development appropriate to the scale and character of the settlement (ref. Sect.13.30.7 “Existing Residential” of the Kilkenny City & County Development Plan 2021-2027, Volume 1 – County).
- 7.2.2. I distinguish that the ‘Zoning’ provisions of the Thomastown Local Area Plan 2019, vary slightly from those set out in the County Development Plan 2021-2027. Under the Thomastown Local Area Plan 2019, the application site is zoned “Existing / New Residential,” wherein the objective is “to allow for new residential development and other services incidental to residential development”.
- 7.2.3. The applicable zoning matrix designates residential land use as being permitted within the zone. The “Existing Residential” zoning objectives therefore seeks to ensure that any new development, inclusive of development ancillary to the residential land use (eg. domestic garage), within existing neighbourhoods has minimal impact on, and enhances existing residential amenity.
- 7.2.4. The challenge, having regard to the proposed architectural design, the footprint location onsite, and the relevant requirements of the Kilkenny City & County Development Plan 2021-2027, Volume 1 - County, and the Thomastown Local Area Plan 2019, is to ensure the proposed ‘retention’ of the existing single storey domestic garage development, has no disproportionate adverse impact on the existing residential development and associated amenity within the Berkley Lawns residential estate generally, and no unacceptable impact on the amenities enjoyed by the

adjacent neighbours specifically, including that owned and occupied by the 3rd party appellant – No.43 Berkley Lawns.

7.3. Visual Impact / Streetscape:

- 7.3.1. The sense of place of this 'Berkley Lawns' cul-de-sac residential precinct is clearly influenced by the architectural style, design, and general finishing with respect to materials and colouring of the existing row of detached 2-storey dwellinghouses, all set in a local topographical and environmental context, and at low residential density. Having regard to the established scale and pattern of development in the area, from the view there is a consistency in size and scale of the residential built environment which contributes to the existing streetscape and associated visual amenity. This can be clearly seen from the photographs attached, taken at the time of physical inspection.
- 7.3.2. As one moves along the Berkley Lawns estate cul-de-sac, no reasonable visibility is possible of the rear of the properties, and including and specifically the rear of No.44, the application site. However, in proximity to the adjacent road frontages of No's. 44 & 43 respectively, limited visibility up the driveway of the existing single storey domestic garage structure at the rear south-east corner of the site, behind a solid wooden gate, is possible.
- 7.3.3. From the rear, intervisibility is restricted to the rear elevations and rear yards / gardens of surrounding properties, of which there are only few and which appear generally compliant with the relevant Standards set out in each of the Kilkenny City & County Development Plan 2021-2027, Volume 1 - County, and the Thomastown Local Area Plan 2019. Notably, and as referenced by the applicant in the response submission to the 3rd party appeal, single storey domestic garage structures comparable with that existing on the application site – No.44, are features within several of the rear gardens locally.
- 7.3.4. Having regard to the location and character of the application site within its contextual surrounds, to the footprint location of the existing single storey domestic garage to the rear south-east corner of the site, behind a solid wooden gate, clearly ancillary and

subordinate to the primary dwellinghouse on the site, and to the statutory requirements of the zoning objective 'Existing Residential' together with other relevant requirements of the Kilkenny City & County Development Plan 2021-2027, Volume 1 – County, and the Thomastown Local Area Plan 2019, I believe that the 'retention' of the garage would not be visually overbearing nor out of character with the pattern of existing residential development locally.

7.3.5. I accordingly share the view articulated by each of the applicant and the Planning Authority that the proposed 'retention' of the single storey domestic garage structure, would be acceptable from a planning point of view, with no negative impact on the prevailing local 'Berkley Lawns' streetscape and associated visual amenity.

7.3.6. In my view, a refusal of 'retention permission' for the existing single storey domestic garage structure, as understood argued for by the neighbouring 3rd party appellant, would be disproportionate to the argued infringement, if such were to be the case at all, and having regard to the fact that a consequent visual impact, must logically and reasonably be expected of any type of supplementary domestic improvement works to the existing primary dwellinghouse on the application site. In my view, this cannot be avoided, subject to compliance with relevant provisions of the Kilkenny City & County Development Plan 2021-2027, Volume 1 - County, and the Thomastown Local Area Plan 2019. Application of the provisions of these statutory planning references, should be towards positively enabling reasonable domestic improvement works, whilst protecting residential amenities both of individual property owners (eg. neighbouring 3rd party appellant), as well as collectively at Berkley Lawns.

7.3.7. Accordingly, I believe 'retention' of the existing single storey domestic garage would be in accordance with the proper planning and sustainable development of the area.

7.4. Residential Amenity Impact

7.4.1. Having regard to all of the information available, and to my own observations made at the time of physical inspection (see photographs attached), I am of the view that the proposed 'retention' of the existing single storey domestic garage structure, located at

No.44 Berkley Lawn, Thomastown, will have no serious, or disproportionate negative impact on the prevailing residential amenity in the area generally, and in the context of the current 3rd party appeal, the adjacent property – No.43 Berkley Lawns particularly. In this regard, I have given consideration to potential threats to residential amenity as follows :

7.4.2. Visual Obtrusion & Visual Amenity : see as discussed at paragraph 7.3 above.

7.4.3. Loss of Natural Light or Overshadowing : Application site – No.44, located to the northwest of the neighbouring 3rd party appellants property – No.43. Correspondingly, the existing single storey garage structure located set back from the applicants primary dwellinghouse (and the rear of the adjacent 3rd Party Appellants dwellinghouse), abutting the shared SW to NE aligned lateral boundary with the rear yard / garden space of adjacent No.43.

Having regard to the proximity and orientation of each of the properties Nos.44&43 to each other; the footprint location of the existing single storey garage structure; to the height of the garage structure with a notable gentle pitch to the roof profile towards the rear yard / garden at No.43; the existence on the application site historically, at this footprint location, of a comparable “steel shed type structure”; and to the existence of substantive mature trees on the SW rear boundary of No.43; reasonable mitigation of threat of overshadowing has been achieved. Certainly in my view, reasonable access to natural light / sunlight both in the rear facing living rooms and the rear yard / garden of the 3rd Party Appellants adjacent property would be no worse than that enjoyed to date.

7.4.4. Overlooking / Privacy Loss : No window openings exist, or are proposed in the SE-facing elevation wall of the existing garage structure proposed for ‘retention’.

The 3rd Party Appellant does however submit argument that overlooking, with consequent loss of privacy would result from the rooflight in the garage roof facing SE over both the rear living rooms and rear yard / garden of No.43. In response, having physically inspected the application site in context and the existing single storey domestic garage structure particularly, I am inclined to the view that the sole function

of the pair of rooflights (1no. in each roof pitch) is to enable natural light / sunlight to enter the garage. Attached photographs of the internal space of the garage, clearly show that it would not be physically possible at all for residents / occupiers to use these openings as a point of domestic outlook. Neither are humans that tall, nor is there a floor level existing or proposed within the garage enabling such outlook. Clearly therefore the existing single storey domestic garage structure on site has both been constructed and now proposed for 'retention' for use for non-habitable domestic purposes. Accordingly, I share the applicant's conviction that no possibility exists of overlooking, and therefore in this regard comprises no threat to the residential amenity currently enjoyed by the adjacent 3rd Party Appellant.

- 7.4.5. Noise : No increase at all above that currently characterising domestic residential use of the application site, must reasonably be anticipated.
- 7.4.6. Private Amenity / Leisure Space : Both adequate and usable private amenity space has been retained to the rear of the application site, nor will serious negative impacts result on adjacent rear domestic amenity spaces, in compliance with the relevant provisions of the Kilkenny City & County Development Plan 2021-2027, Volume 1 - County, and the Thomastown Local Area Plan 2019 .
- 7.4.7. Separation Distances between Side Walls of Houses : Adequate separation distances are retained in compliance with the relevant Statutory Development Plan provisions, enabling for adequate domestic maintenance and access. This is particularly relevant with regard to the current proposed 'retention', whereby vehicular accessibility is required from the local estate road passed the SE facing gable end of the applicants dwellinghouse on the No.44 property, through the wooden gates to the existing garage.
- 7.4.8. In Situ Views / Outlooks : No designated views exist with respect to the collection of domestic dwellinghouses comprising the 'Berkley Lawns' residential estate.

- 7.4.9. On-Site Car Parking : Adequate onsite car parking space exists, in compliance with the relevant provisions of the Kilkenny City & County Development Plan 2021-2027, Volume 1 - County, and the Thomastown Local Area Plan 2019. No increased need for such space is generated by the proposed 'retention' development. Rather, I understand the existing garage structure as part of the applicant's provision of such on-site car parking, whilst ensuring protection from the elements and ease of maintenance.
- 7.4.10. Access and Traffic Safety : The existing dwellinghouse on the No.44 property, is already served with access onto the local 'Berkley Lawns' estate road. No additional traffic generation will result from the proposed 'retention' development.
- 7.4.11. Having regard to the information available, and my observations made at the time of physical inspection, I believe the proposed 'retention' of the existing single storey domestic garage development will have no serious, or disproportionate negative impact on existing residential amenity in the area generally, and the adjacent property – No.43 specifically. Accordingly, I believe the existing single storey domestic garage structure to be satisfactorily compliant with the "Existing Residential" Zoning Objective, and therefore in accordance with the proper planning and sustainable development of the area.

7.5. Site Boundary : Encroachment / Land – Legal Issues :

- 7.5.1. I have taken careful note of the arguments made by the 3rd party appellant, in respect of possible land / legal matters relating to the proximity of the existing garage wall to the shared lateral site boundary with the application site, and to the eaves / gutters overhanging her property. Further, whereas the 3rd party appellant points out that the applicant has not yet complied with the Planning Authority's Condition attached to its decision to grant 'retention' permission, "that gutter be set back behind the legal boundary" (see Condition No.4, paragraph 3.1.2 above), I believe that it would not be possible for the applicant to demonstrate such compliance with Condition No.4 until the current 3rd party appeal has been decided by the Board, and noting in this regard

that the Board might conclude a decision different to that made by the Planning Authority.

- 7.5.2. In this regard I note and share the applicants view, submitted in response to the 3rd party appeal such that by lodging the current 3rd party appeal, the neighbour – 3rd party appellant “effectively obstructed the applicant from progressing to completing the ‘Conditioned’ works to the ‘gutters and eaves’, thereby ensuring that they do not abut, oversail, or otherwise physically impinge on the adjacent property owned and occupied by the 3rd party appellant”.
- 7.5.3. Noting this as a principal concern argued by the 3rd party appellant against the proposed ‘retention’ of the single storey domestic garage, I reference that the applicant sets out clearly in the response submission to the 3rd party appeal, a commitment “to compliance with Condition No.4(a), and will complete the said works in full compliance with the revised information as submitted to Kilkenny County Council under ‘Further Information (F.I.)’ (Detail “A” on Drawing No.2021-515-100-A)”.
- 7.5.4. However noting the above, and notwithstanding the arguments raised against the proposed ‘retention’ of development by the 3rd party appellant, I have had regard to the application for ‘retention’ permission on its planning merits alone, as set out in the above discussions. I am inclined to the view that any decision on the planning application does not purport to determine the legal interests held by the applicant, or any other interested party in relation to impact of development on shared boundary demarcation in this instance (ie. ‘gutters’ & ‘eaves’ overhang).
- 7.5.5. I would also draw attention to Section 34(13) of the Planning and Development Act, 2000 as amended, which relates as follows: “A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”. In this regard, I reference the explanatory notes which read as follows – “This subsection ... makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate”. Consequently, I understand that any legal obligations

on the applicants, to ensure that the legality of landownership and user privileges enjoyed by the 3rd party appellant in particular are not compromised, are covered.

- 7.5.6. Further in this regard, I have also had reference to the applicants' revised plans and drawings of the proposed 'retention' development (ie. Detail "A" on Drawing No.2021-515-100-A), submitted by the applicant as part of the 'Further Information ('F.I.')
- response submission (dated 29/10/2021) to the Planning Authority.

I have had regard to these 'F.I.' revised drawings as reasonable, and as constructively addressing the 3rd party appellants concerns. These revised 'F.I.' drawings clearly illustrate the single storey domestic garage, inclusive of all elements (ie. roof gutters & eaves), as being within the confines of the application site – No.44 Berkley Lawns. Minor works by the applicant to achieve this end would be necessary. I note the applicant's stated commitment to completion of these works in full compliance with the revised information as submitted to the Planning Authority under 'F.I.' (ie. Detail "A" on Drawing No.2021-515-100-A), dated 29/10/2021.

- 7.5.7. Consistent with the pragmatic approach evident by the Planning Authority in its decision to grant 'retention' permission subject to Conditions, I believe that satisfactory compliance by the applicant in this regard can be achieved by way of further supplementary Condition, should the Board be so minded as to a grant of 'retention' permission.

- 7.5.8. Accordingly, I do not believe these arguments by the 3rd party appellant against the proposed 'retention' of the single storey domestic garage development to be reasonable and substantive grounds for refusal.

7.6. **Appropriate Assessment :**

- 7.6.1. Having regard to the nature and modest scale of the single storey domestic garage development proposed for 'retention' permission, to the location of the application site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any European site, no Appropriate Assessment issues arise and 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. Having regard to all of the above, I recommend that 'retention' permission be GRANTED in accordance with the following Schedules.

9.0 **Reasons and Considerations :**

Having regard to the "Existing Residential" Zoning Objective for the area and the pattern of residential development in the area, it is considered that, subject to compliance with Conditions set out in the Second Schedule, the proposed 'retention' development would be in accordance with the relevant provisions of the 'Kilkenny City & Co. Dev. Plan 2021-2027, Vol.2 – County', and the 'Thomastown Local Area Plan 2019'; would not seriously injure the amenities of the 'Berkley Lawns' residential neighbourhood, or of the property in the vicinity; would not be prejudicial to public health; and would be acceptable in terms of traffic safety and convenience. The proposed 'retention' development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions :**

- 01.** The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 20th day of August 2021, as amended by the further plans and particulars submitted on the 29th day of October 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.

Reason: In the interest of clarity.

- 02.** (a) Within 4-weeks of the date of this permission the applicant shall carry out and complete all works to the proposed gutters, as shown on the further plans and particulars submitted on the 29th day of October 2021
- (b) No part of the development including fascia boards, eaves, soffits, gutters, drainpipes or other rainwater goods, together with boundary walls, shall at any time overhang or physically encroach onto the neighbouring property, unless the written agreement of the owner(s) thereof is firstly obtained.

Reason : In the interest of orderly development.

- 03.** The existing dwellinghouse and single storey domestic garage proposed for 'retention', shall be jointly occupied and used as a single residential unit, and the garage shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

The garage shall not be used for any of the following :

- habitable purposes;
- the housing of animals;
- commercial uses.

Reason : In the interest of clarity, to restrict the use of the garage in the interest of residential amenity, & of the proper planning and sustainable development of the area.

- 04.** All drainage arrangements, including the attenuation and disposal of surface water runoff from roofs, driveway, and paved areas, shall comply with the revisions shown in the further plans and particulars submitted on the 29th day of October 2021, and the requirements of the Planning Authority for such works and services.

Reason : In the interest of public health, and to avoid interference with adjoining properties..

- 05.** The external materials, colouring and finishes of the existing single storey domestic garage, proposed for 'retention', including roofing, shall be the same

as those of the existing dwellinghouse. Any changes or revisions in this regard, shall be submitted to, and agreed in writing with the Planning Authority, prior to the commencement of such works.

Reason : In the interest of visual amenity.

- 06.** Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the application site, without a prior grant of planning permission.

Reason : In the interest of residential and visual amenity, and in order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwelling

- 07.** The applicant shall pay to the Planning Authority a financial contribution in respect of all 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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

L.W. Howard
Planning Inspector

07th December 2022