



An
Bord
Pleanála

Inspector's Report

ABP-312363-22

Development	Construction of shed and retention of the front boundary fence
Location	Clwydian Villa, Station Road, Bennettsbridge, Co. Kilkenny R95 T6F7
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21854
Applicant(s)	Eoin Wemyss & Nadia Ryan
Type of Application	Retention Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Gerard & Teresa Freyne
Observer(s)	None
Date of Site Inspection	1 st September 2022
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.2131ha is located on the southern side of Station Road, Bennettstown within the speed limits of the village. The site contains a detached two storey dwelling with side elevation to the public road and recently constructed but yet to be completed garage. The immediate area is characterised by similar low density detached dwellings typical of an approach road to an urban area.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Retention permission is sought for a single storey pitched roof domestic shed (53.54 sqm) to the side of the existing dwelling and the retention of the front boundary timber fence along the roadside edge.
- 2.2. The application was accompanied by a cover letter that states inter alia that the applicant replaced the previous shed on site with the newly constructed shed. It is further stated that the previous shed was located in exactly the same location as the one subject to retention.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Kilkenny County Council issued a **split decision** as follow:
- 3.1.2. **GRANT** the retention of a single storey pitched roof domestic shed to the side of the existing dwelling for subject to 4 no conditions summarised as follows:

1.	Compliance with plans and particulars submitted
2.	Development Contribution
3.	Garage to be used solely for purposes incidental to the dwelling
4.	No part of proposed development shall impinge on adjoining properties

3.1.3. **REFUSE** the retention of the front boundary timber fence along the roadside edge for the following 2 no reasons as summarised:

1. The existing entrance to the applicant's property is substandard in terms of sightlines, with no visibility in the eastern direction due to the position and height of the front boundary timber fence.
2. It is considered the 1.8m fence is out of character with the adjoining properties and therefore creates a negative visual impact on the approach to the village of Bennettsbridge.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- The **Case Planner** having considered the scheme recommended that a split decision be issued. The notification of a split decision issued by Kilkenny County Council reflects the recommendation.

3.2.2. Other Technical Reports

- **Area Engineer** – Recommended refusal of the retention of the front boundary timber fence.

3.3. **Prescribed Bodies**

3.3.1. None

3.4. **Third Party Observations**

3.4.1. There is one observation on the planning file from Gerard & Teresa Freyne (adjoining house to the east).

3.4.2. The issues raised relate to the shed to be retained is not a replacement structure, visual impact, insufficient contiguous elevations, impact to any future road widening proposals, adequate space on the site to relocate the shed, use of shed to house dogs and associated noise and odour.

4.0 Planning History

- 4.1.1. There is no evidence of any previous appeal on this site. No planning history has been made available with the appeal file. It is noted from the Case Planners file that a Warning letter was issued, ENF21054 refers. No further details are provided.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Kilkenny County Development Plan 2021 – 2027**.

5.2. Natural Heritage Designations

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

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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

- 6.1.1. The third-party appeal has been prepared and submitted by Sheehan Planning on behalf of Gerard & Teresa Freyne, adjoining property to the east, and may be summarised as follows:
- Proximity of the structure to be retained to the boundary of the appellants home, and to the size and the use of the structure, significantly diminishes their residential amenity.

- Contrary to the Case Planners report there is an established building line at this location with the majority of the dwellings on both sides of Station Road set back from the roadway.
- The siting of the shed to be retained does not integrate with the house on site. While the refusal of the retention of the roadside boundary is welcomed its removal will have the effect of further exposing the external views of the shed.
- The roadside timber fence is visually obtrusive and incongruous to its context
- The part of the shed closest to the appellants property is in use as a dog kennel, housing, from time to time, numerous dogs. Concern is raised that there may be a commercial element to the dog kennel. The dogs in question are hunting dogs and not household pets. This gives rise to a noise nuisance from barking dogs day or night and a foul odour from dog faeces.
- The recommended condition governing use of the shed was not attached to the decision to grant permission and the nuisance arising from what appears to be the commercial use of the authorised shed continues.

6.2. Applicant Response

6.2.1. None

6.3. Planning Authority Response

6.3.1. Kilkenny County Council advise that they have no further comments.

6.4. Observations

6.4.1. None

6.5. Further Responses

6.5.1. None

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Traffic Safety
- Visual Amenity
- Other Issues
- Appropriate Assessment

7.2. Principle

- 7.2.1. Retention permission is sought for a single storey pitched roof domestic shed (53.54 sqm) to the side of the existing dwelling and the retention of the front boundary timber fence along the roadside edge. The retention of the timber fence is discussed separately below.
- 7.2.2. This is an established residential area where the development of a domestic shed for uses ancillary to the main house is generally considered an acceptable use in principle. However, in this case I am concerned with regard to the location and possible commercial use associated with the shed.
- 7.2.3. The applicant submits that the shed is required for storage of garden equipment and outdoor toys. However, it was observed on day of site inspection that the shed is divided into two sections with the section closest to the shared boundary with the appellants housing 4 adult dogs in 4 separate wire mesh kennels. The front section of the shed appears to be used for storage. These observations align with the concerns raised by the appellant that the shed is being used as a dog kennel for hunting dogs. No information has been made available with the appeal file from the applicant in response to the concerns raised.
- 7.2.4. While there is no objection to the suburban location and use of the shed for domestic uses ancillary to the main house the use of this shed as a commercial dog kennel would be unacceptable given the proximity of same to adjoining properties. It is

therefore recommended in the interest of clarity that should the Board be minded to grant permission that a condition be attached requiring that the garage be used solely for purposes ancillary to the residential use of the dwelling and shall not be used for commercial purposes or human habitation, sublet, sold separately, otherwise transferred or conveyed, except in combination with the dwelling.

- 7.2.5. In terms of the established building line it is accepted that the shed to be retained steps forward of the front building line of the main house onsite and adjoining properties. However, given the orientation of the house on site, the topography of the site, the established dense shared boundary with the appellants property to the east together with the recommended condition as set out above regarding use I am satisfied that the location of the shed is acceptable.

7.3. Traffic Safety

- 7.3.1. Kilkenny County Council in their first reason for refusal stated that *the existing entrance to the applicants property is substandard in terms of sightlines, which fall far below the required distance with no visibility in the eastern direction due to the position and height of the front boundary timber fence.* .
- 7.3.2. The proposed development is located on a Local Primary Road L2638 within the 50kph zone. The road is approx. 5m wide with a footpath either side. As documented by the Area Engineer the sightlines required for this road is 120m in both directions at a setback distance of 2.4m. However, taken into consideration that the entrance is located within the 50kph zone a sightline of 70m in both directions at a setback distance of 2.4m would be acceptable.
- 7.3.3. I agree with the Area Engineer that an on-site inspection confirmed that the sighting in the east direction could not be achieved even at a 2m setback distance due to the position of the 1.8m timber fencing that was erected behind the roadside wall.
- 7.3.4. Given the location of the appeal site together with the scale and height of the timber fencing to be retained I am not satisfied that the vehicular movements generated by the scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. Refusal is recommended.

7.4. Visual Amenity

- 7.4.1. Kilkenny County Council in their second reason for refusal stated that by virtue of its height on top of an existing stone wall it is considered the 1.8m fence is out of character with the adjoining low stone walls of the adjoining properties and therefore creates a negative visual impact on the approach to the village of Bennettsbridge.
- 7.4.2. The applicant states that as part of the renovation works to their garden they also removed the leylandii hedgerow “*which had become overgrown and was causing a traffic hazard at the existing vehicular entrance.....[and] was also causing an obstruction at the vehicular entrance of the neighbouring property to the east*”. The applicant further states that given the orientation of the appeal site facing west and the topography of the surrounding landscape where the bungalows on the north side of Station Road are located a higher level than those to the south, the removal of the leylandii hedge resulted in significant overlooking of their property from pedestrians and vehicular traffic. This caused significant concern to the applicants who have small children and were worried for their privacy and safety. The applicants therefore decided to place a new timber panel fence which is 1.8m high along the entire frontage of the site.
- 7.4.3. While the applicant has set out the reasoning for the removal of the roadside hedgerow and its replacement with a tall timber fence it remains that the design response in this instance raises visual amenity concerns with regard to its suitability at this location. I refer to the site photos taken on day of site inspection where it is evident that the scale and extent of the timber fence as constructed has had little or no architectural regard to its context resulting in an urban intervention that is visually incongruent. Refusal is recommended.

7.5. Other Issues

- 7.5.1. **Development Contributions** – I refer to the Kilkenny County Council Development Contribution Scheme 2018. The development is not exempt from the requirement to pay a development contribution. It is therefore recommended that should the Board be minded to grant permission 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.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the development and its distance to the nearest 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 considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that a **SPILT** decision issue granting permission for the retention permission of a single storey pitched roof domestic shed (53.54 sqm) to the side of the existing dwelling and the refusal of permission for the retention of the front boundary timber fence along the roadside edge.

9.0 Refuse - Reasons and Considerations

- 1) The existing entrance is substandard in terms of sightlines, which fall below the required distance with no visibility in the eastern direction due to the position and height of the front boundary timber fence. It is considered that the retention of the boundary fence would result in a traffic hazard and therefore is not in accordance with the proper planning and sustainable development of the area.
- 2) By virtue of its scale and height on top of an existing stone wall it is considered that the 1.8m timber fence is out of character with the adjoining low stone walls of the adjoining properties and therefore creates a negative visual impact on the approach to the village of Bennettsbridge. The retention of the front boundary timber fence is therefore contrary to the proper planning and sustainable development of the area.

10.0 Grant - Reasons and Considerations

- 10.1. Having regard to the Kilkenny County Development Plan 2021 – 2027, it is considered that, subject to compliance with the conditions set out below, the proposed shed to be retained, would not adversely affect the visual or residential amenities of properties in

the vicinity and, would be in accordance with the proper planning and sustainable development of the area.

11.0 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, 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 detached garage shall be used solely for purposes ancillary to the residential use of the dwelling and shall not be used for commercial purposes or human habitation, sublet, sold separately, otherwise transferred or conveyed, except in combination with the dwelling.</p> <p>Reason: In the interest of the residential amenities of the area, clarity and the proper planning and sustainable development of the area.</p>
3.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. No surface water shall be allowed to discharge onto the public road or adjoining properties.</p> <p>Reason: In the interest of orderly development and public health</p>
4.	<p>The developer shall pay to the planning authority a financial contribution 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 the commencement of development or in such phased payments as</p>

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.

Mary Crowley

Senior Planning Inspector

14th September 2022