



An
Bord
Pleanála

Inspector's Report ABP-313886-22

Development	Single storey extension, comprising master bedroom and ensuite to side of existing two storey garage/granny flat to side of existing house.
Location	Fernhill, Glen Road, Delgany, Co Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	22359
Applicant	J. Kavanagh.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party v Refusal of Permission
Appellant	John Littlefield.
Observer(s)	None.
Date of Site Inspection	20/12/2022
Inspector	Enda Duignan

1.0 Site Location and Description

- 1.1.** The address of the appeal site is Fernhill, Glen Road, Delgany, Co Wicklow. The site is located on the southern side of Glen Road, c. 100m to the east of the N11 and c. 800m to the south-west of Delgany village. The appeal site has a stated area of c. 0.4ha. and comprises a 1.5 storey dwelling with a single storey link to the rear on its eastern side. A double storey, gable fronted, detached structure is located to the rear of the dwelling and is described as a garage/granny flat. There is an existing single storey stables building located to the west of the garage/granny flat and a shed structure is located further to the west, adjacent the western site boundary. The dwelling is served by a large area of amenity space on either side of the dwelling and an enclosed courtyard area is located to the rear of the dwelling. The existing roadside boundary is characterised by a combination of hedging and a timber fence and the gated vehicular entrance to the site is enclosed by a wall and pillars on either side.
- 1.2.** In terms of the site surrounds, there a number of detached dwellings located further to the east of the appeal site on the southern side of Glen Road. There is a forested area to the rear of the site and an existing stream (Three Trouts Stream) runs adjacent to the southern site boundary. Delgany Golf Club is located to the north of the appeal site, on the opposite side of Glen Road.

2.0 Proposed Development

- 2.1.** The proposed development seeks planning permission for the construction of a single storey extension to the side of the existing garage/granny flat. The proposed flat roof extension has a stated area of c. 29sq.m. and shall comprise a master bedroom with ensuite bathroom. The proposal also includes internal alterations and works to the exterior of the existing structure to provide a reconfigured entrance.

3.0 Planning Authority Decision

3.1. Decision

Wicklow County Council refused planning permission for the proposed development for the following 2 no. reasons:

1. The proposed development would represent consolidation of un-authorised development on this site, having regard to the existing granny flat/independent living unit in use as a dwelling on site for which no permission exists. In addition, the granny flat/independent living unit as existing and as proposed, is not in accordance with the Development Design Standards for a Granny Flat/Independent Living Units as outlined under Section 1 of Appendix 1 Development Design Standards, of the Wicklow County Development Plan, 2016-2022 insofar as:
 - a. The unit is separate to the main dwelling on site and forms a separate independent dwelling and not a granny flat/independent living unit.
 - b. The unit as existing has a floor area of 103sq.m which is well in excess of the maximum permissible floor area of 45sq.m.
 - c. The applicant is seeking an extension of 39sq.m resulting in a granny flat/independent living unit with a floor area of 142sq.m which is well in excess of the maximum permissible floor area of 45sq.m.
 - d. The structure is not capable of being functionally re-integrated into the main house when its usefulness has ceased.

The provision of such a form of development would be contrary to the County Development Plan Standards with regard to the development of granny flats/independent living units, would set an undesirable precedent for similar type development, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area

2. The existing and proposed development on site results in 2 no. separate dwelling units been served by a single waste water treatment system. In addition, no evidence has been submitted to show that the existing septic tank and percolation area is suitable to cater for the level of development proposed. In the absence of such information the proposed development would impact on the residential amenity of the site and be prejudicial to public health.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Wicklow County Council Planning Report forms the basis of the decision. The report provides a description of the site and surrounds and outlines a description of the proposed development. The report provides an overview of the policy that is applicable to the development proposal and summaries the site's planning history.

In terms of the assessment of the application, the Planning Authority note that whilst the existing granny flat may have been in situ since 2012-2014, it is considered to be unauthorised, and the Planning Authority would not consider granting planning permission for its extension given its unauthorised status. It is also stated that the granny flat as existing and proposed would be contrary to Section 1 of Appendix 1 Development Design Standards, of the Wicklow County Development Plan, 2016-2022.

In addition to the foregoing, it is stated that the development results in 2 no. separate dwellings using the same waste water treatment system which raises concerns with regard to public health and residential amenity. A refusal of planning permission is recommended for 2 no. reasons.

3.2.2. Other Technical Reports

EHO: Report received stating requesting additional information.

Roads: Report received stating no objection.

3.2.3. Prescribed Bodies

Inland Fisheries Ireland: Report received requesting additional information.

3.2.4. Third Party Observations

None.

4.0 Planning History

99/94: Outline planning permission refused by the Planning Authority and the Board for the construction of a dormer bungalow and septic tank.

5.0 Policy and Context

5.1. Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

5.2. Wicklow County Development Plan (CDP), 2022-2028.

The Wicklow Dublin County Development Plan (CDP), 2022-2028 came into effect on 23rd October 2022. Under the current CDP, the appeal site is located within a Level 10 Rural Area.

Given the nature of the proposed development, policy objective CPO 6.24 is relevant to the consideration of the application which seeks “To facilitate family / granny flat extensions for use by a member of the immediate family subject to protection of existing residential amenity and compliance with the criteria set out in the Development and Design Standards (Appendix 1).”

In terms of Private wastewater treatment systems and private water supplies, Section 13.1.1 (Water Infrastructure) of the current CDP acknowledges that “Through the planning process the Council will assess applications for the provision of private waste water treatment systems and water supplies in order to ensure proposals put forward are in accordance with the standards set out in EU/national legislation, EPA guidance and would not be prejudicial to public health.”

Relevant Appendices

- Appendix 1: Development and Design Standards.

Section 3.1.9 (Independent living units ('Granny-flats')) is relevant to the subject proposal and is detailed as follows:

“A ‘granny flat’ or ‘independent living unit’ is a separate living unit on an existing house site, used to accommodate a member of the immediate family, often an elderly parent, for a temporary period. The construction or conversion of part of an existing dwelling into a ‘family flat’ will only be permitted where the development complies with the following requirements:

- The need for the unit has been justified and is for the use of a close family member;
- The unit forms an integrated part of the structure of the main house – in exceptional circumstances, the conversion of an existing detached garage / store etc may be considered subject to the structure being in very close proximity to the main house;
- The unit is modest in size and in particular, it shall not exceed 45sqm and shall not have more than 1 bedroom;
- The unit shall not be sold or let as an independent living unit and the existing garden shall not be sub-divided;
- The structure must be capable of being functionally re-integrated into the main house when its usefulness has ceased.
- Permission for such units shall be restricted to a period of 7 years, after which it must revert to a use ancillary to the main house (e.g. garage, store hobby room) unless permission has been secured for its continuation as an independent unit for another period.

5.3. Greystones-Delgany & Kilcoole Local Area Plan (LAP), 2013-2019.

Under the LAP, the appeal site is located on lands zoned GB (Greenbelt) and are situated outside the settlement boundary for the LAP area. The objective of which is “To generally protect the open nature and landscape quality of lands, to protect and enhance local biodiversity, and to maintain the primary use of the land for agricultural purposes.” The policy notes that GB lands form part of the rural area and planning applications shall be assessed on the basis of the objectives and standards for the rural area, as set out in the Wicklow County Development Plan.

As per the Indicative Flood Maps (Map C), the appeal site is located within ‘Flood Zone A: High likelihood of flooding.’ Policy objective TS5 of the LAP seeks to “To restrict the types of development permitted in Flood Zone A and Flood Zone B to the that are ‘appropriate’ to each flood zone, as set out in Table 3.2 of the guidelines for Flood Risk Management (DoEHLG/OPW, 2009). Developments that are an ‘inappropriate’ use for a flood zone area, as set out in Table 3.2 of the guidelines, will not be permitted, except where a proposal complies with the Justification Test for Development

Management, as set out in Box 5.1 of the Guidelines. Flood Risk Assessments shall be in accordance with the requirements set out in the Guidelines.”

Although the Planning Authority have specifically referred to the LAP within their assessment of the planning application, it is unclear whether this statutory plan has been formally extended or whether the LAP has now expired.

5.4. Natural Heritage Designations

The nearest designated site is the Glen of the Downs Special Area of Conservation (SAC) (Site Code: 0007719), located directly to the north of the appeal site, on the opposite side of Glen Road. The ‘Proposed Natural Heritage Area: Glen of the Downs’ is also located to the north of the site on the opposite side of Glen Road.

5.5. EIA Screening

Having regard to the nature and scale the development which consists of an extension of an existing garage/granny flat in a rural 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

The main points raised in the First Party appeal can be summarised as follows:

- The submission notes that the Applicant has resided and raised a family in Delgany since the main house 'Fernhill' was constructed in 1982. The existing garage/granny flat was originally built in the late 1980's as a two-storey garage with a playroom & WC at first floor level and subsequently extended and remodelled to its current form in 2012 and completed in c. 2014 as independent living accommodation. It is stated that these works have been in their present use in excess of 7 years as independent living accommodation sub-servient to the main house and inhabited by the Applicant's daughter.

- It is noted that the Applicant has decided to move into the garage/granny flat accommodation and have his daughter move into the main dwelling itself, the sizes of which are more appropriate to both their needs.
- The appeal submission notes that the proposal comprises a modest single storey extension to the side of the independent living accommodation and as such will provide a much needed bedroom at ground floor level with an ensuite, in order to future proof the Applicant's needs for ease of accessibility. It is stated that the proposed extension will sit behind an existing fence and mature shrubs and will not be readily visible from the street to the front.
- The site should not be considered as a rural area in the true sense of the word given its location in the context of the N11 and Delgany Village. It is stated that the open nature and landscape quality of the lands would not be affected by way of this application.
- In terms of waste water treatment, it is stated that the existing dwelling and septic tank were constructed in 1982 and the converted garage in or around the late 80's. It is noted that this predates the adoption of (SR6) L991- and therefore this standard should not be imposed upon the Applicant. It is stated that the existing septic tank was designed in strict accordance with the recommendations for Septic Tank Drainage Systems as published by the Department of the Environment, O'Connell Bridge House, in November 1980. At the time, it was appropriately sized for two dwellings, the main dwelling itself along with future proofing for a possible dwelling on a site to the side (North East). Moreover, it was positioned on site within the permitted distances to dwellings, boundaries and watercourses.
- Notwithstanding this, it stated that prior to the construction of the existing dwelling on site, a full percolation test of the soil had to be carried out under the supervision of Wicklow County Council and the results deemed it to be satisfactory for the septic tank and associated percolation area. To now impose a regulation that was not in existence at the time of its construction is considered to be both onerous and unfair.
- It is indicated that the Applicant is happy that they are conditioned to address the concerns of the Planning Authority with regard to the suitability of existing septic and/or upgrading it to EPA Code of Practice.

- In terms of the use of the structure, the justification has been demonstrated and accepted by the Planning Authority and the structure is located in close proximity to the existing dwelling. However, limiting its size to 45sq.m. is an overly onerous regulation, and each case should be looked at individually.
- The proposed unit will not be sold as an independent living unit and the Applicant is quite happy to have a planning condition attached to cover this. There is also no intention to subdivide the garden.

6.2. Planning Authority Response

None.

6.3. Observations

None.

6.4. Further Responses

None sought.

7.0 Assessment

The main issues are those raised in the grounds of appeal, the Planning Report and the consequent reasons for refusal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. On the basis of the foregoing, the items to be addressed within this assessment will be considered under the following headings:

- Principle of Development
- Waste Water Treatment
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The proposed development seeks planning permission to extend an existing garage/granny flat. The proposal comprises internal alterations and the construction of a new single storey extension to the side of the existing garage/granny flat to provide a new bedroom with ensuite bathroom and walk in wardrobe. A new entrance will be provided on the western side of the garage/granny flat, leading to an entrance hall,

WC, kitchen/living/dining room and bedroom at ground floor level with an additional bedroom (with ensuite) and a study at first floor level. The submitted planning application form indicates that the floor area of the existing garage/granny flat is to be increased from 103sq.m. to 132sq.m.

- 7.1.2. It is evident from the appeal documentation that the existing 'independent living unit/granny flat' does not benefit from planning permission. The Applicant has indicated within the appeal submission that the structure was extended and remodelled to its current form in 2012 and completed c. 2014. The Planning Authority have highlighted within their assessment that they would not consider granting planning permission for its extension noting the unauthorised status of the structure. I note that there does not appear to be specific policy within the current CDP with respect to unauthorised or non-conforming uses. Therefore, I do not consider there to be any specific policy provision which would preclude the Board from considering a proposal which seeks to consolidate an unauthorised use.
- 7.1.3. I note that the County Development Plan has changed since the Planning Authority's determination on the application. In this regard, CPO 6.24 is the key policy objective that is relevant to the development proposal which seeks "To facilitate family / granny flat extensions for use by a member of the immediate family subject to protection of existing residential amenity and compliance with the criteria set out in the Development and Design Standards (Appendix 1)". In terms of residential amenity, I note that the existing dwelling is set on a large site and there is an existing residence located further to the north-east of the site. Given the overall scale and siting of the proposed development, the characteristics of the site and surrounds and the separation distances provided from nearest residence (i.e. property to the north-east), I am satisfied that the proposal will not unduly compromise the residential amenity of properties within the vicinity of the site.
- 7.1.4. Appendix 1 of the CDP defines a 'granny flat' or 'independent living unit' as a separate living unit on an existing house site, used to accommodate a member of the immediate family, often an elderly parent, for a temporary period. The policy states that the construction or conversion of part of an existing dwelling into a 'family flat' will only be

permitted where the development complies with various criteria. The first criteria relates to whether the need has been justified and whether it is for the use of a close family member. The appeal submission indicates that the Applicant has decided to move into the garage/granny flat accommodation and have his daughter move into the main dwelling itself, the sizes of which are more appropriate to both their needs. I am therefore satisfied that a need has been justified.

7.1.5. The policy notes that a proposal may be acceptable if the unit forms an integrated part of the structure of the main house. The policy states that in exceptional circumstances, the conversion of an existing detached garage / store etc may be considered subject to the structure being in very close proximity to the main house. I note that the existing garage had been converted to an 'independent living unit/granny flat' c. 2014, and the proposal seeks to extend the existing unauthorised use. Although the structure is located in close proximity to the existing dwelling, the structure is not an integrated part of the main house and the Applicant has not put forward or demonstrated any exceptional circumstances that may apply in this instance.

7.1.6. The policy stipulates that the unit shall be modest in size and in particular, it shall not exceed 45sq.m. and shall not have more than 1 bedroom. In addition, the unit shall not be sold or let as an independent living unit and the existing garden shall not be sub-divided. An additional policy requirement is that the structure must be capable of being functionally re-integrated into the main house when its usefulness has ceased. The proposal seeks to increase the floor area of the existing structure from 103sq.m. to 132sq.m. The floor area of the existing garage is proposed to be reduced and the internally modified and extended 'independent living unit/granny flat' will include 2 no. bedrooms and a study area. I also note the proposed study could be utilised as an additional bedroom if the need arose. I would concur with the commentary of the Planning Authority with respect to the scale of the proposed structure which is more akin to an independent and separate residential dwelling. Although there are no proposals to formally subdivide the existing garden, the 'independent living unit/granny flat' is served by decking and a patio area and garden area to the south and south-west which is somewhat detached from the main dwelling on site. I also note that structure is not capable of being functionally re-integrated into the main house when

its usefulness has ceased. On the basis of the foregoing, I consider the proposal to extend to the existing independent living unit/granny flat' to be contrary to policy objective CPO 6.24 of the current CDP and I recommend that planning permission be refused for the proposed development.

7.2. Waste Water Treatment & Drainage

7.2.1. The Planning Authority in their assessment of the planning application have indicated that no details have been submitted with respect to the existing waste water treatment system and concerns were raised with respect to its adequacy to cater to the proposed development. A report is also on the planning file from the EHO requesting the Applicant to submit certification that the existing septic tank and percolation area is in compliance with NSAI (SR6) of 1991. Alternatively, if the system is not in compliance with NSAI (SR6) of 1991, the Applicant was requested to submit proposals to upgrade the system to the current standard of the EPA Code of Practice Domestic Wastewater Treatment (Population Equivalent ≤ 10), 2021, and submit fully completed site characterisation form in accordance with the EPA Manual (2021).

7.2.2. I note that there is an existing water course that runs proximate to the southern site boundary (i.e. the Three Trouts River). A report on the planning file from Inland Fisheries Ireland acknowledges the location of the site within the Three Trouts River Catchment. The report notes that the river contains valuable fisheries habitat and supports stocks of salmonid fish species. It is stated that the current Ecological status of the waterbody, is Good and must, at a minimum be maintained of that status. The following recommendations were provided:

- The applicant demonstrates that the existing or any proposed upgrade to the existing waste water treatment plant is designed and constructed in accordance with the EPA's most recent Code of Practice.
- Mitigation measures are put in place to prevent discharges of suspended solids or any other deleterious matter to any watercourse both during and following the construction phase.

7.2.3. The proposed site layout plan identifies the location of the existing septic tank (10 person) and percolation area which is sited within the south-eastern corner of the

appeal site. I note that separation distances between the septic tank and percolation area and the nearby water course have not been identified on the submitted plans. The Appeal submission notes that the existing dwelling and septic tank were constructed in 1982 and the converted garage the late 1980s. It is stated that this predates the adoption of NSAI (SR6) of 1991 - and therefore this standard should not be imposed upon Applicant. The appeal submission notes that at the time, the septic tank was appropriately sized for two dwellings, the main dwelling itself along with future proofing for an additional dwelling on a site. In addition, it was positioned on site within the permitted distances to dwellings, boundaries and watercourses. Whilst I note the commentary of the Appellant, no documentary evidence has been submitted to demonstrate the adequacy of the existing waste water treatment system to cater to the proposed development and I am not satisfied that this could be addressed by way of condition in this instance. This is of particular relevance give the location of the existing water course relative to the existing septic tank and percolation area. I therefore share the concerns of the Planning Authority and I am not satisfied on the basis of the information on file, that the existing septic tank and percolation area is suitable to cater for the level of development proposed. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

7.3. Appropriate Assessment

- 7.3.1. I note the Glen of the Downs SAC is located to the north of the appeal site on the opposite side of Glen Road. Whilst an existing water course is located to the south of the appeal site and runs in an easterly direction, the water course is located downstream of the Glen of the Downs SAC. Having regard to the nature and scale of the development proposed, an extension of an existing 'independent living unit/granny flat', and to the nature of the receiving environment (i.e. located downstream of the Glen of the Downs SAC), 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

I recommend that the planning application be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the overall scale of the proposed 'granny flat/independent living unit', its separation from the existing dwelling on site and the inability to functionally re-integrate it into the main house when its usefulness has ceased, the proposed development is considered to be contrary to Objective CPO 6.24 of the Wicklow County Development Plan, 2022-2028, which seeks "To facilitate family / granny flat extensions for use by a member of the immediate family subject to protection of existing residential amenity and compliance with the criteria set out in the Development and Design Standards (Appendix 1)". The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The existing dwelling and the proposed extended 'granny flat/independent living unit' are served by a single waste water treatment system which is located proximate to an existing water course to the south of the appeal site. The Applicant has failed to demonstrate that the existing septic tank and percolation area is suitable to cater for the level of development proposed. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of this area.

Enda Duignan
Planning Inspector

21/12/2022