



An
Bord
Pleanála

Inspector's Report ABP-314279-22

Development

Change of use of carport to side of dwelling previously granted planning permission under planning reference no. TA/190773 to home office and gym to include modifications to elevations together with all associated site works.

Location

Manorland, Trim, Co. Meath.

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

22667

Applicant(s)

Ray & Roisin Greene

Type of Application

Permission for Retention

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)

Philip Cantwell

Observer(s)

Bridget Cantwell

Sean Foley

Date of Site Inspection

6th October, 2022

Inspector

Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located along the southern side of Patrick Street in the townland of Manorland (1st Division) in Trim, Co. Meath, approximately 400m southeast of the town centre and c. 320m south-southeast of Trim Castle, in an area predominantly characterised by residential development and various community uses. It is situated at the westernmost end of a series of 3 No. detached dwelling houses that extends westwards from the junction of Patrick Street with the Ring Road and adjoins the St. Joseph's Community Nursing Unit to the west and Trim Fire Station to the south. The property has a stated site area of 0.387 hectares, is broadly rectangular in shape, and is presently occupied by a detached, dormer-style dwelling house with a free-standing garage to the rear of same, the redevelopment / reconstruction of which is nearing completion.

2.0 Proposed Development

2.1. The development proposed for retention consists of the following:

- The change of use of the carport / garage previously permitted to the side of the dwelling house under PA Ref. No. TA/190773 to a home office and gym (floor area: 34.03m²).
- Associated elevational modifications including the replacement of the front garage door with 2 No. windows and the insertion of French doors with integrated sidelights to the rear elevation.
- Ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

3.2. On 8th July, 2022 the Planning Authority issued a notification of a decision to grant permission for the retention of the proposed development, subject to 5 No. conditions. These conditions are generally of a standardised format and relate to issues including the use of the development and surface water drainage.

3.3. **Planning Authority Reports**

3.3.1. *Planning Reports:*

Details the site context, planning history and the applicable policy considerations before stating that the development to be retained is acceptable and will not impact on the amenity of neighbouring properties or the surrounding area. The report concludes by recommending a grant of permission for retention, subject to conditions.

3.3.2. *Other Technical Reports:*

None.

3.4. **Prescribed Bodies**

None.

3.5. **Third Party Observations**

- 3.5.1. A single submission was received from the appellant, however, in the interests of conciseness, and in order to avoid unnecessary repetition, I would advise the Board that the principal grounds of objection / areas of concern raised therein can be derived from my summation of the grounds of appeal.

4.0 **Planning History**

4.1. **On Site:**

- 4.1.1. PA Ref. No. TA/190773. Was granted on 18th June, 2020 permitting Ray & Roisin Greene permission for the re-constructing of an existing roof to form a new dormer extension at first floor level, a new single storey porch to front, a single storey extension to rear of existing dwelling together with a single storey extension to front on northwest side of dwelling. The development also includes a new detached domestic garage and all associated site works.
- 4.1.2. PA Ref. No. 2169. Was granted on 16th April, 2021 permitting Ray & Roisin Greene permission for the installation of p.v. solar panels on the rear roof to the dwelling house together with all associated site works.

5.0 Policy and Context

5.1. Meath County Development Plan, 2021-2027

5.1.1. Land Use Zoning

The proposed development site is located in an area zoned as 'A1: Existing Residential' with the stated land use zoning objective 'To protect and enhance the amenity and character of existing residential communities'.

5.1.2. Other Relevant Sections / Policies:

Chapter 11: Development Management Standards and Land Use Zoning Objectives:

Section 4: General Standards applicable to all Development Types

Section 5: Residential Development Standards:

Section 11.5.25: Extensions in Urban and Rural Areas:

DM OBJ 50: All applications for residential extensions in urban and rural areas shall comply with the following criteria:

- High quality design which respects, harmonises and integrates with the existing dwelling in terms of height, scale, materials used, finishes, window proportions, etc;
- The quantity and quality of private open space that would remain to serve the house;
- Flat roof extensions, in a contemporary design context, will be considered on their individual merits;
- Impact on amenities of adjacent residents, in terms of light and privacy. Care should be taken to ensure that the extension does not overshadow windows, yards or gardens or have windows in the flank walls which would reduce a neighbour's privacy;
- Extensions which break the existing front building line will not normally be acceptable. A porch extension which does not significantly break the front building line will normally be permitted;

- Dormer extensions shall not obscure the main features of the existing roof, i.e. should not break the ridge or eaves lines of the roof;
- Proposed side extensions shall retain side access to the rear of the property, where required for utility access, refuse collection etc.;
- Ability to provide adequate car parking within the curtilage of the dwelling house; and
- In all cases where diversion or construction over existing sewerage and/or water mains is required, the consent of Irish Water will be required as part of the application.

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299), approximately 150m northeast of the site.
- The River Boyne and River Blackwater Special Protection Area (Site Code: 004232), approximately 180m northeast of the site.
- The Trim Proposed Natural Heritage Area (Site Code: 001357), approximately 3.0km east of the site.

5.3. EIA Screening

5.3.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The subject application has sought permission to retain structures which enclose a previously open car port that was constructed over a foul water drain to which the appellant enjoys a Prescriptive Easement by virtue of decades of use in excess of 50 No. years.
- With respect to the development previously approved on site under PA Ref. No. TA/190773, the site layout plan submitted by way of further information as part of that application detailed the sewer line serving the appellant's property as remaining intact. Furthermore, Condition No. 1 of that grant of permission requires the works to be carried out in accordance with the drawings lodged as further information.
- The floor plan submitted with the subject application details the construction of a 100mm foul sewer with no indication that the sewer serving the appellant's property has been retained (although the site layout plan shows the latter as remaining in place).
- Prescriptive Easements may be extinguished or lost if they are abandoned, such as if the route of the drain were to be relocated. In such circumstances, the rights of easement are lost over its entire length. In the subject instance, the appellant's easement for his foul drain runs through several properties in the ownership of third parties and, therefore, any relocation of part of the sewer line may jeopardise the entire easement.
- When the foul sewer over which the appellant enjoys a prescriptive easement was installed, clay pipes were the typical method of construction. Accordingly, access is required to all parts of the drain for operation, maintenance and reconstruction purposes and such facilities would have been implied in the Prescriptive Easement as a necessity.
- The site notice fails to comply with the requirements of the Planning and Development Regulations, 2001, as amended.

- There has been no acknowledgement by the applicants of the appellant's easement over their property as required by Article 22.2 of the Planning and Development Regulations, 2001, as amended. In addition, there is no reference in the application documentation to the prescriptive easements enjoyed by both the applicants and the appellant across third party lands to the north which provide for the connection of their properties to the public sewer. Furthermore, while the site layout plan indicates the route of the foul sewer through those lands to the north, this has not been identified in yellow as required by the Regulations.
- The appellant does not consent to the construction of a dwelling structure on lands over which he enjoys a prescriptive easement as any such development would impede the operation, access to, and replacement of a foul sewer which is necessary for the use of his property (or any redevelopment thereof). The principle that a Planning Authority must have regard to each party that retains an interest in land the subject of a planning application was confirmed in *Frascati Estates Ltd. v. Walker 1975 IR 177*. That judgment was referred to extensively in *North East Pylon Pressure Campaign Ltd. & Anor v. An Bord Pleanala & Ors 2017 IEHC 338*. While the Board cannot interpret matters of law, Section 50.1 of the Planning and Development Act, 2000, as amended, permits the Board to refer questions of law on any appeal or referral to the High Court for decision.
- There are concerns that the excavation and construction work already carried out on site may have resulted in damage to the existing sewer (while noting the proximity of the River Boyne Special Area of Conservation). Large excavators and loaded trucks were observed traversing the route of the sewer and the pipework in question was not constructed to withstand such heavy traffic.

Neither PA Ref. No. TA/190733 nor the subject proposal have indicated the protection afforded to the foul sewer as per *Balscadden Road SAA Residents Association Ltd. v. An Bord Pleanala [2020] IEHC 586*.

- There are concerns that any damage to the existing sewer caused by the construction activity could potentially contaminate the private well / drinking water supply serving the appellant's property.
- Any interference with the appellant's easement over the development site could impair the value of his property or its suitability as security for a mortgage.
- From a review of mapping obtained from www.landdirect.ie, it is evident that there are no burdens registered over the private lands to the north and northwest of the development site for public or private foul sewers / drains.

There is no correspondence on file from Irish Water to confirm that the private drain running north from Patrick Street is in its charge.

- The proposed development serves to substantially vary the nature of the development permitted under PA Ref. No. TA/90773 and contravenes Condition No. 1 of that grant of permission. In this regard, while the site area has been confined to the footprint of the change of use, it is considered that the development site should correspond with that shown in PA Ref. No. TA/90773 given the material departure from Condition No. 1 of that grant of permission.
- The application site includes lands recently transferred from the St. Joseph's Hospital complex and therefore incorporates part of the curtilage of a protected structure.

6.2. Applicant's Response

- The grounds of appeal are without substance and the Board is requested to uphold the decision to grant permission for retention.
- The proposal complies in full with the Meath County Development Plan, will not result in any loss of amenity, does not pose a risk to public health, and is in accordance with the proper planning and sustainable development of the area.
- Although the report of the case planner does not comment on the issue of drainage, the Advice Note appended to the grant of permission includes a

number of clarifications as regards the planning code and other legal rights and statutory provisions etc.

- The proposed development accords with the applicable land use zoning and is in keeping with the style and character of the existing house. It will not result in any adverse impact on the amenity of property in the vicinity.
- The original 100mm diameter foul sewer extended from the appellant's property and passed under the rear south-eastern section (living room) of the applicants' dwelling house before continuing along the rear of the house and under the then kitchen return. It subsequently turned at a right angle to pass under the original garage, latterly a car port, and out onto the main road.

It is because of the change of use of the car port to a home office & gym and its integration into the main house that a new 150mm diameter sewer was constructed to an engineer's specifications. The sewer was re-directed from under the new home office and constructed to the side of the house in the newly extended side passageway. These works were carried out without interference to the use of the sewer by the appellants and comply with the applicable Irish Water standards. The works were inspected during installation and on completion of the tie-ins to the existing sewer with no exceptions being brought to the attention of the applicants. The pipework has also been visually inspected regularly to ensure no flow issues.

- The allegations of possible damage to the sewer and interference with prescriptive rights etc. are not planning issues but matters of civil law. There has been no adverse impact on the services to the neighbouring property and any issues relating to a loss of easements are not matters to be adjudicated on by the Board.
- The primary focus of the appeal is that any relocation of part of the sewer 'may' jeopardise the entirety of the appellant's easement and that the works 'may' have damaged the drain thereby potentially contaminating the appellant's water supply / private well. In this regard, no evidence has been provided to support the contention that the appellant's well has been contaminated and his property could be connected to the public water supply. Furthermore, it should be noted that the relocation of the applicants'

soakaway to the western site boundary has improved the context of the appellant's well.

- The concerns raised in the appeal are unfounded while legal issues relating to easements are not within the jurisdiction of the Board.

6.3. **Planning Authority Response**

- States that the Planning Authority is satisfied that all of the matters raised in the grounds of appeal were considered during the course of the planning assessment as detailed in the report of the case planner.
- The proposed development is consistent with the policies and objectives of the Meath County Development Plan, 2021-2027.
- The Board is requested to uphold the decision to grant permission for the retention of the proposed development.

6.4. **Observations**

6.4.1. *Bridget Cantwell:*

- During the assessment of the previous planning application lodged on site under PA Ref. No. TA/190773, the observer highlighted her prescriptive easement over a sewer line which extended through the development site. Accordingly, in response to a request for further information issued by the Planning Authority as part of its determination of that application, revised proposals were subsequently submitted which substituted the ground floor accommodation originally proposed over the aforementioned sewer with an open car port so as to minimise interference with the observer's easement in terms of future maintenance & access etc. to the shared sewer. These revisions, as well as the assurances given by the applicants that no alterations would be made to the shared sewer and no new construction carried out over same, were accepted 'in good faith' by the observer.

The applicants failed to construct the permitted development in accordance with the approved plans and instead built over the observer's prescriptive easement to the shared sewer.

- A Warning Letter was previously served on the applicants with respect to the removal of an old stone wall that formed part of the curtilage of St. Joseph's Hospital / Nursing Home, the erection of new boundary treatment, and the excavation works required to accommodate the new garage structure. These works have had a negative impact on the heritage value and character of the surrounding area.

6.4.2. Sean Foley:

- There are concerns that the applicants were previously served with a Warning Letter as regards the *'removal of dry stone wall forming curtilage of a protected structure, and the erection of boundary walls and fencing in excess of 2 metres in height without the benefit of planning permission'*. Furthermore, in breach of the terms and conditions of the grant of permission issued for PA Ref. No. TA/190773, the applicants have destroyed a well maintained and historic boundary wall to St. Joseph's Hospice and replaced it with a mass concrete construction that is in most places in excess of the allowable height of 2m.
- The decision of the Planning Authority to grant permission for the subject proposal would appear to have ignored PA Ref. No. TA/190773. The report of the case planner has also emphasised that the matters referred to in the Warning Letter are not included in the grant of permission. In this regard, it is difficult to understand why the planning history of the site has been largely ignored.
- The development proposed for retention (i.e. the home office & gym) is the same as the proposal originally lodged as part of PA Ref. No. TA/190773 which was subsequently revised in response to a request for further information through the replacement of part of the ground floor accommodation with an open car port so as to minimise interference with a third party's easement. In effect, the rationale for the redesign incorporating the car port was to provide for an ease of access to a shared sewer line should the need arise. Therefore, by ignoring PA Ref. No. TA/190773, the Planning Authority has allowed the applicants to revert to their original design which has the effect of detrimentally impacting on the neighbouring property.

6.5. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- Impact on neighbouring property
- Impact on built heritage considerations
- Procedural issues
- Appropriate assessment

These are assessed as follows:

7.2. Impact on Neighbouring Property:

- 7.2.1. From a review of the available information, it is apparent that the primary issue raised in the grounds of appeal concerns the potential impact of the development proposed for retention on a shared sewer that passes through the application site and over which the occupants of neighbouring property (i.e. the appellant) purportedly enjoy a prescriptive easement for the purposes of accessing, maintaining or replacing etc. the sewer in question. In this regard, and by way of background, I would advise the Board that the subject proposal effectively amounts to the amendment of the development previously permitted on site under PA Ref. No. TA/190773 through the change of use of the carport / garage approved to the side of the dwelling with associated alterations to the elevational treatment etc. It is at this point that I would suggest that the implications of the subject development on the shared sewer must be considered in context by reference to the specifics of the planning history of the site.
- 7.2.2. During the assessment of PA Ref. No. TA/190773, it was asserted by the present appellant that he enjoyed a prescriptive easement over a shared foul water sewer which passed through the development site. By way of summation, it would appear that this sewer extended westwards from the neighbouring dwelling house and past the rear of the original house on the subject site before performing a right-angled

turn and passing beneath an attached garage and then connecting to the mains sewerage on the public road. The development proposal originally submitted under PA Ref. No. TA/190773 (which provided for the wider redevelopment of the existing house on site) sought to demolish the aforementioned garage and to extend the dwelling house westwards. This would have had the effect of replacing the garage over the shared sewer with habitable accommodation. It would appear that no agreement could be reached between the neighbouring parties as regards the possible re-routing of the sewer from beneath the existing & proposed construction and, therefore, in response to a request for further information, the applicants opted to redesign the development to provide for a car port over the existing sewer line which would remain untouched. Notably, this decision was seemingly made on the basis of legal advice received by the applicants. The provision of the new car port (as opposed to habitable accommodation) in place of the former attached garage could thus be described as maintaining the 'status quo' with respect to the nature of the construction over the sewer. It was on the basis of this revised design that permission was subsequently granted for PA Ref. No. TA/190773. However, the development currently under consideration for which permission has now been sought for retention effectively seeks to revert to the original design that was previously amended by the applicants themselves in response to legal advice.

- 7.2.3. While I would acknowledge the validity of the appellant's concerns as regards his ability to access the sewer in question for maintenance or replacement purposes and the assertion that he enjoys a 'prescriptive easement' over / to it by virtue of decades of use, it is not the function of the Board to adjudicate on property disputes and, therefore, any alleged interference with any such easement / right of way would essentially amount to a civil matter for resolution between the parties concerned. In this respect, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer or diminish any right over the property in question.
- 7.2.4. With regard to the suggestion that any damage to the existing sewer caused during the course of construction works already carried out on site could potentially give rise to pollution events, including the contamination of the appellant's private well / water

supply, I do not propose to engage in speculation as to whether or not any such damage has actually occurred. Indeed, in the absence of any evidence to the contrary, it would appear that the works in question have been undertaken without incident or interruption to the drainage network serving the appellant's property. In this respect, although there are conflicting details on file as regards the current drainage arrangements on site serving the appellant's property (the site layout plan shows the sewer continuing to pass beneath the subject development whereas the response to the grounds of appeal refers to the re-routing of the sewer from under the home office and the construction of a new 150mm diameter sewer to the side of the house), it would seem that the development has been undertaken to an engineer's specification and in accordance with the applicable standards without any loss of drainage services to the appellant's property,

7.3. Impact on Built Heritage Considerations:

- 7.3.1. Concerns have been raised in relation to the removal of a section of stone walling that previously formed part of the grounds of the neighbouring St. Joseph's Hospital / Community Nursing Unit. More specifically, reference has been made to the potential loss of built heritage arising from the removal of this wall given that it would appear to have fallen within the curtilage of St. Joseph's Hospital which has been designated as a protected structure (LA RPS ID No. 91304) by virtue of its inclusion in the Record of Protected Structures contained in Appendix 6 of the Meath County Development Plan, 2021-2027.
- 7.3.2. From a review of the available information, it would appear that during the determination of PA Ref. No. TA/190773 it was established that the applicants were in the process of acquiring a strip of land to the west of the original dwelling house from the Health Service Executive and that this had been incorporated into the development site. It then appears that upon the receipt of a grant of permission for PA Ref. No. TA/190773 development works commenced on site with the stone wall that previously formed the dividing boundary between the applicant's house and St. Joseph's Hospital being removed and replaced with a new retaining wall with fencing overhead. On 18th November, 2021 the Planning Authority subsequently issued a Warning Letter to the applicants in respect of the *'removal of dry stone wall forming curtilage of a protected structure; and, the erection of boundary walls and fencing in excess of 2 metres in height without the benefit of planning permission'*. The report

of the case planner prepared for the subject application provides some further clarity in this respect by stating that the *'planning permission does not include these elements'* seemingly in reference to the grant of permission issued under PA Ref. No. TA/190773.

- 7.3.3. With respect to any unauthorised development on site, including any alleged non-compliance with the terms and conditions of previous grants of permission issued on site, it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority. The subject proposal does not include for any of the aforementioned boundary works (with the development site being limited to the footprint of the change of use and associated works) and it is my opinion that any unauthorised works on site, with the exception of the subject matter of the current application, and any associated built heritage implications arising as a result of same, are matters to be more appropriately directed to the Planning Authority in the first instance.

7.4. **Procedural Issues:**

- 7.4.1. *The Adequacy of the Submitted Plans and Particulars / The Validity of the Planning Application:*

Concerns have been raised as regards the adequacy of the documentation submitted with the planning application, however, it is my opinion that there is sufficient information on file to permit a balanced and reasoned assessment of the proposed development and that procedural matters, such as a determination as to the adequacy of the plans and particulars provided, and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements.

7.5. **Appropriate Assessment:**

- 7.5.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development

would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Meath County Development Plan, 2021-2027, the site location within an existing built-up residential area, and to the minor scale, form and design of the development proposed for retention, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, carried out and completed 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. 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.

Reason: In the interest of public health.

3. All external finishes to the proposed development shall harmonise in colour and texture with the existing dwelling on the site.

Reason: In the interest of visual amenity.

4. Site development and building works shall be carried out only between the hours of 0800 and 1800 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviations from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Robert Speer
Planning Inspector

12th October, 2022