



An
Bord
Pleanála

Inspector's Report ABP-314674-22

Development

Retention of alterations to the elevations of a dwelling, the conversion, the construction of a basement and the construction of a single storey, two-bedroom staff accommodation and storage shed located to the rear of the property.

Location

Willow Stud, Kineagh, Curragh, Co. Kildare, R56 Y766.

Planning Authority

Kildare County Council.

Planning Authority Reg. Ref.

22/388.

Applicant

Tom Treacy.

Type of Application

Retention permission.

Planning Authority Decision

Grant of retention permission.

Type of Appeal

First Party (Against S.48 Condition).

Appellant

Tom Treacy.

Observer(s)

None.

Inspector

Enda Duignan

1.0 Site Location and Description

- 1.1.** The address of the appeal site is Willow Stud, Kineagh, Curragh, Co. Kildare. The site has a stated area of c. 0.1243ha. and is located on the northern side of the R413, c. 400m to the north-west of where this regional road crosses the M9. The site comprises a large, detached double storey dwelling which is accessed via an existing vehicular entrance at the western end of the site's roadside boundary. The dwelling is served by generous landscaped gardens and a tennis court, stable building, shed and staff accommodation located to the dwellings north, all of which are accessed via a tarmac driveway.
- 1.2.** In terms of the site surrounds, there are a number of one-off dwellings located to the south and west of the appeal site. The remainder of the surrounding lands appear to be in agricultural use.

2.0 Proposed Development

- 2.1.** The proposal seeks retention permission for various alterations to development originally permitted under Ref. 03/257. The alterations can be summarised as follows:
- Increase in height of the dwelling from 8.6m to 9.5m.
 - The addition of 193sq.m. of accommodation at attic level for storage use and associated roof lights.
 - The provision of a basement level with access ramp and a total floor area of 639sq.m. The basement area comprises a gym area, garage space, storage, plant room and utility space.
 - Alterations to the elevations and fenestration of the dwelling including the addition of balconies,
 - The provision of a larger shed for storage and an attached 2 no. bedroom dwelling which is utilised for staff accommodation.
 - The provision of a tennis court/recreation area to the rear of the property.

3.0 Planning Authority Decision

3.1. Decision

Wicklow County Council granted retention permission subject to compliance with 7 no. conditions.

Condition No. 7 was included as follows:

The Applicant/Developer to pay to Kildare County Council the sum of €61,195.98 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Reason: It is considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Kildare County Council Planning Reports forms the basis of the decision. The First Planning report provides a description of the site and surrounds, 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 raise no concerns with respect to the works to the existing dwelling. In terms of the staff accommodation, a condition is recommended for the regulation of its use. However, additional information is recommended following consideration of the commentary of the Planning Authority's Environment Department. This related to the capacity of the existing septic tank and the Applicant was requested to demonstrate that it can adequately manage all wastewater from the development, particularly in light of the additional 2 no. bedroom dwelling.

The Second Planning report notes that revised proposals were submitted which proposed a new wastewater treatment system on site to cater for the hydrological loading generated from the dwelling and the staff accommodation. The submission also included a Site Characterisation Form. The proposal was deemed acceptable to

the Planning Authority and suitable conditions were attached to a grant of retention permission.

3.2.2. Other Technical Reports

Municipal District Engineer: Report received stating no objection subject to conditions.

Transport Department: Report received stating no objection subject to conditions.

Housing Department: Report received stating no objection subject to conditions.

Municipal District Engineer: Report received stating no objection subject to conditions.

Enforcement Section: Report received stating no objection subject to conditions.

Environment Department: Report received stating no objection subject to conditions.

Chief Fire Officer: Report received stating no observations.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Observations

None.

4.0 Planning History

03/257: Planning permission granted by the Planning Authority in January 2004 for the demolition of the existing dormer house and the construction of replacement two storey house, upgrading of existing septic tank and the construction of four additional stables in the stable yard.

5.0 Policy and Context

5.1. Kildare County Development Plan (CDP), 2023-2029.

The Kildare County Development Plan, 2023-2029 (CDP) came into effect on 28th January 2023. The site is located outside a designated settlement boundary within the rural area of the county Kildare. Development management standards are set out in Chapter 15 of the Plan with specific policy for residential development included within Section 15.4. In terms of residential extensions (Section 15.4.12), the policy notes that 'adapting residential units through extensions can sustainably accommodate the changing needs of occupants subject to the protection of residential and visual amenities. A well-designed extension can provide extra space, personalise and enhance the appearance of a dwelling. It would not be practical to set out a prescriptive approach to the design of extensions that would cover every situation, nor is it desirable to inhibit innovation or individuality. The following basic principles shall be applied:

- The extension should be sensitive to the appearance and character of the house and the local area (urban or rural).
- The extension shall have regard to the form and scale of the existing dwelling and should not adversely distort the scale or mass of the structure.
- The design and scale should have regard to adjoining properties.
- A flexible approach will be taken to the assessment of alternative design concepts and high-quality contemporary designs will be encouraged.
- A different approach may apply in the case of a Protected Structure, structures with significant heritage or within an Architectural Conservation Area.
- In rural areas, the design of extensions should have regard to the Key Principles set out in Appendix 4 Rural House Design Guide.
- The extension should not provide for new overlooking or loss of privacy below reasonable levels to the private area of an adjacent residence.
- The cumulative impact of the existing extent of overlooking and the overlooking that would arise as a result of any proposed extension need to be considered.
- The extension should not have an overbearing impact on neighbouring properties. Large extensions, particularly if higher than one storey, should be moved away from neighbouring property boundaries.

- New extensions should not overshadow adjacent dwellings to the degree that there is a significant decrease in daylight or sunlight entering into the house.
- An adequate area of private open space, relative to the size of the dwelling should be retained, generally not less than 25sq.m.
- Where required, it will be necessary to demonstrate that the existing on-site wastewater treatment system serving the main dwelling can facilitate the additional loading from the proposed extension. Where this cannot be demonstrated, it will be necessary for the on-site wastewater treatment system to be upgraded as part of the development proposal.'

It is policy, under Section 4.20 (Equine) of the CDP to:

- **RE P14** Actively promote and support the equine industry as an economic driver for Kildare.

It is also an objective of the CDP under Section 9.5 (Equine) of the CDP to:

- **RD O16** Ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting and design considerations.

In terms of 'Rural Economy & Rural Enterprise', it is an objective under Section 9.3 of the CDP to:

- **RD O5** Require new buildings and structures:
 - o To be sited as unobtrusively as possible.
 - o To be clustered to form a distinct and unified feature in the landscape.
 - o To utilise suitable materials and colours.
 - o To utilise native species in screen planting to integrate development into the landscape.

Section 15.9.8 of the CDP provides specific policy with respect to 'Agricultural Developments'.

5.2. The Kildare County Council Development Contribution Scheme 2023-2029

The Kildare County Council Development Contribution Scheme 2023-2029 was adopted on the 19th December 2022 and was effective from the 1st January 2023.

Section 7.2 (Area of Calculation) notes that the area of calculation in respect of buildings for the purposes of this scheme shall be the gross floor area.

Section 8 (Level of Contribution) sets out the development contribution applicable on planning permissions granted from the date of the adoption of the scheme.

Section 8.1 (Residential Development) notes that the development contribution rate shall be €62 per square metre.

In terms of agriculture/equine/horticulture development (Section 8.3), development shall be charged at a rate of €5 per square metre. However, the first 600sq.m. of agriculture/equine/horticulture development on any land holding shall be exempt from a charge.

All other development (Section 8.5, Miscellaneous), not covered elsewhere in the Scheme shall be charged at the rate of agriculture/equine/horticulture development €30 per square metre (Built).

Section 9 (Retention Permission) of the Scheme notes that no exemptions or waivers shall apply to any developments subject to retention permission.

5.3. Guidelines for Planning Authorities on Development Contributions (2013)

The 'Guidelines for Planning Authorities on Development Contributions (2013)' set out government policy for Planning Authorities for preparing and adopting development contribution schemes.

5.4. Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site. The nearest designated site is the Pollardstown Fen Special Area of Conservation (SAC) (Site Code: 000396), c. 5.2km to the north-west of the site.

5.5. EIA Screening

Having regard to the nature and scale the development to be retained, there is no real likelihood of significant effects on the environment arising from the development to be retained. 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

A First Party Appeal against Condition (No. 7) has been lodged on behalf of the Applicant (Tom Treacy). The main grounds of appeal are as follows:

- It is stated that there are a number of anomalies in the Planning Authority's Development Contribution Table and it is stated that the Development Contribution Scheme had been incorrectly applied in this instance. A table is provided by the appellant which outlines how the development contributions should be applied to each element of the development proposal. It is contended that a total development contribution of €20,978.89 applies in this instance.
- In terms of the attic conversion, it is stated that the roof was constructed as a traditional roof allowing the applicant better access to water storage tanks and for normal domestic attic storage. It is stated that the height is substandard, ranging from 1.2m to 2.1m, and can never have any purpose other than conventional domestic attic storage.
- In terms of the basement level, it is stated that the topography of the site allowed for a below ground basement garage to be built beneath the house as opposed to its side. There are no windows to this garage or permanent wall ventilation and so can never be used for habitable purposes. It contains a plant room, parking of cars, workshop and gym, all of which are facilities associated with a garage.

- In terms of the staff accommodation, this is a standalone unit of 68sq.m. and therefore falls under the rate band of '230sq.m. and under' and therefore a rate of €50 per sq.m. is applicable.
- The total floor area of the agricultural building is 213sq.m. which is less than the 600sq.m. threshold included in the development contribution and therefore no contribution is applicable to this element of the proposal.

6.2. Planning Authority Response

A response has been received from the Planning Authority dated 10th October 2022. It is stated within the response that the Planning Authority has reviewed the contents of the appeal and the calculation of the development contributions, and they are of the opinion that the financial condition No. 7 has been calculated correctly in terms of the attic conversion and basement level. The development contributions in respect of retention applications will be applied at the rate of standard applications for planning permission. However, the following adjustments have been applied:

- The rate applied to the agricultural shed is incorrect, it should be €10 per sq.m., 98sq.m. x €10 = €980 (a reduction of €1715.98 has been applied).
- Staff accommodation should have been calculated at €50 per sq.m., 68sq.m. x €50 = €3400 (a reduction of €1,020 has been applied).

It is stated that condition No. 7 has been reduced from €61,195.98 to €58,460.00.

6.3. Observations

None.

6.4. First Party Response

A First Party response to the Planning Authority's response was received on 14th October 2022. The reduction in applicable development contributions as outlined by the Planning Authority is welcomed. However, the Planning Authority are still ignoring the following facts:

- The attic space is not habitable and can never be habitable because of substandard heights. The attic is no different to any attic in any other house where it is used for general domestic storage.

- The basement is not a habitable area and is not different to an adjoining garage, except it is located beneath the house.
- There is no level applicable to the stables as the total area of the stables is less than 600sq.m.

6.5. Further Responses

None sought.

7.0 Assessment

7.1. The sole planning consideration relevant to this appeal case is whether the Planning Authority has correctly applied the Development Contribution Scheme in this instance. Since the original determination of the application and the response to the First Party appeal by the Planning Authority, the Kildare County Council Development Contribution Scheme 2023-2029 has been adopted and has been effective from the 1st January 2023.

7.2. The proposed development was deemed by the Planning Authority to be in accordance with the relevant Development Plan policy and was considered to be acceptable. The appeal, therefore, is confined to the matters concerning the specific condition, which the Applicant has appealed, and which, in this case, can be treated under Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended)*. Given the nature of the First Party appeal, I note that an inspection of the subject site was not warranted in this instance.

7.3. Condition No. 7 requires the Applicant to pay a development contribution in the order of €61,195.98. As per the Planning Authority's response to the First Party appeal, it was considered that the rate should be reduced to €58,460.00. The condition has been applied by the Planning Authority under the provisions of Section 48 of the Planning and Development Act 2000 (as amended) and the stated reason for doing so is that it was considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. As a new Development Contribution Scheme (2023-2029) has been formally adopted, it is therefore relevant to consider this appeal in the context of same.

- 7.4.** The first element of the development proposal relates to the attic conversion. The appeal submission contends that the height of the attic is substandard, ranging from 1.2m to 2.1m. It is stated that it can never have any purpose other than conventional domestic attic storage. As per Section 8.1 of the Development Contribution Scheme, a development contribution rate of €62 per sq.m. now applies to residential development. In terms of extensions to residential development, Section 8.1.1 notes that the first 40sq.m. of an extension to a house, including attached garages and the conversion of attic to habitable or storage areas shall be exempt. All domestic extensions shall be charged at the residential rate for any area above the 40sq.m. extension. The Scheme notes that the exemption in this section (i.e. Section 8.1.1) shall not apply to development for which retention permission is sought. Notwithstanding the fact that the attic space may not been classified as habitable space, the current Scheme is clear insofar as a development contribution is applicable to attic conversions which are to be used for domestic storage. As retention permission is sought in this instance, no exemption applies (i.e. the first 40sq.m.). In this regard, a development contribution of €11,966 now applies to this element of the development proposal (a further reduction of €579 has been applied) as per the recently adopted Scheme.
- 7.5.** In terms of the basement level, the appeal submission notes that the topography of the site allowed for a below ground basement garage to be built beneath the house as opposed to its side. It is stated that the basement is not a habitable area and is not different to an adjoining garage. From a review of the submitted plans and particulars, the basement area contains a plant room, car parking, gaming area, workshop, WC, lift and gym. As per Section 8.1.1 of the Scheme, an attached garage is classified as an extension and is subject to a development contribution, regardless of this space being classified as non-habitable space. The application of a development contribution is therefore appropriate in this instance and accords with Section 8.1.1 of the Scheme. On the basis of the rates included in the recently adopted Scheme, a contribution of €39,618 now applies to this element of the development proposal (a further reduction of €1,917 has been applied).

- 7.6.** For the agricultural shed, section 8.3 of the Scheme notes that the first 600sq.m. of agricultural, equine or horticultural development on any land holding shall be exempt from a charge. However, I note that Section 9 of the Scheme clearly stipulates that no exemptions or waivers shall apply to any developments subject to retention permission. Therefore, I consider a development contribution to be applicable in this instance. As per the recently adopted Scheme, the development contribution rate has been reduced from €10 per sq.m to €5 per sq.m. and a development contribution of €490 therefore applies to this element of the proposal (a further reduction of €490 has been applied).
- 7.7.** In terms of the staff accommodation, I note that there are no longer rate bands for different classes of development included within the recently adopted Scheme. Therefore, the standard rate of €62 per sq.m. for residential development shall apply to the staff accommodation. Therefore, on the basis of current Scheme, a contribution of €4,216 now applies to this element of the development proposal.
- 7.8.** In summary, I have considered the development proposal in the context of the Kildare County Council Development Contribution Scheme 2023-2029 which was adopted on the 19th December 2022 and has been effective from the 1st January 2023. The Scheme clearly stipulates that development contributions apply to extensions to dwellings which include attic conversions for domestic storage and attached garages. A development contribution therefore applies to the elements of this development for which retention permission was sought. In addition, no exemptions apply to the agricultural shed given that in instance retention permission was sought. In this regard, I consider that Condition No. 7 of the Planning Authority's Decision should be amended and a development contribution of €56,290.00 should be applied.

8.0 Recommendation

- 8.1.** Having regard to the above, it is recommended that Kildare County Council be directed that Condition No. 7 attached to the *Notification of Decision to Grant Permission* be amended as follows.
- The Applicant/Developer to pay to Kildare County Council the sum of €56,290.00 being the appropriate contribution to be applied to this development

in accordance with the Development Contribution Scheme (2023-2029) adopted by Kildare County Council on 19th December 2022 in accordance with Section 48 of the Planning and Development Act, 2000 (as amended). Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme (2023-2029) adopted by Kildare County Council on 19th December 2022.

Reason: It is considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

Enda Duignan
Planning Inspector

15th March 2023