



An
Bord
Pleanála

Inspector's Report ABP315445.23

Development

Retention permission of garage structure, permission to undertake completion repair works (re-roofing, wall, roof repairs). Permission for change of use of garage structure and extension to provide a physical connection for the purposes of granny flat, with the inclusion of solar panels. Retention of 3 ancillary structures for domestic use on site.

Location

Loughnavalley, Mullingar, Co. Westmeath.

Planning Authority

Westmeath County Council.

Planning Authority Reg. Ref.

22/490..

Applicant(s)

Stephen Bennett.

Type of Application

Retention and Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party.

Appellant(s)

Stephen Bennett.

Observer(s)

None.

Date of Site Inspection

26th April 2023.

Inspector

Aisling Cunnane.

1.0 Site Location and Description

- 1.1. The appeal site is situated in a rural area, c. 0.75 km metres west of Loughnavalley in Co. Westmeath. The site accommodates a dormer style dwelling house, which has an attached pergola on the west elevation.
- 1.2. There is a structure built in the northeast corner of the site, which is stated to be a garage structure. This structure straddles the east boundary of the site, which is a shared boundary with an adjacent property. There is a dwelling house on the adjacent site to the east, which has a building line slightly forward of the dwelling on the appeal site.
- 1.3. There is a mature tree line along the front boundary of the site, which adjoins the R 390 regional route. There is also a culverted drain at the front site boundary. There is no set back from the public road and no adequate sight distance triangle is established at the site entrance.
- 1.4. There is a home office, of wood construction located at the rear of the site and along the north site boundary. There is also a workshop, semi-constructed, positioned along the west boundary of the site, along with a garden shed.

2.0 Proposed Development

- 2.1. It is proposed to retain a garage structure, a home office and a workshop on site and it is proposed to change the use of the said garage structure to a granny flat/living accommodation, which would measure 93 sq.m.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for the proposed development on the 2nd of November 2022, for the following reasons:

1. The Council is not satisfied based on the information submitted that the applicant complies with CPO 16.29 in relation to bona-fide need for such a

granny flat unit at this location. Furthermore, the development is contrary to CPO 16.29 in that the development represents haphazard and non-integrated development, by reason of its overall design, scale and location in close proximity to the side boundary of the site and to the private garden of the neighbouring property, would lead to overlooking and provides a substandard level of residential amenity for future occupants of the proposed development. Therefore, the proposed development would seriously injure the residential amenities of any future occupants and neighbouring properties and depreciate the value of adjoining properties and be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development, by reason of its scale, siting and design including its elevational treatment and relationship to the adjacent residential properties, would be visually incongruous and detract from the visual amenity of the area and surrounding properties and would seriously injure the amenities of the area, and accordingly, would be contrary to the policy CPO 16.27 of the Westmeath County Development Plan 2021 -2027 and be contrary to the proper planning and sustainable development of the area.
3. In the absence of satisfactory documentation submitted on file to demonstrate that the existing septic tank has the capacity and is satisfactory to serve this development, it is considered that to permit the development as proposed would be premature, would be prejudicial to public health and would therefore be contrary to the proper planning and sustainable development of the area.

The Chief Executives Decision reflects the planners report.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planners report cites relevant planning policy. It refers to a previous application, which was made invalid after a site inspection was not possible and on re-inspection it was found that development had already commenced. In discussing the merits of the application, the planners report raises concerns regarding the scale of the proposal and therefore questions the bone-fides of it. The report accepted that a physical connection with the main house was established.

3.2.3. Regarding design, layout and overlooking the planners report cited serious concerns regarding the general scale of design and overlooking with respect to 5 windows on the eastern elevation facing the neighbouring property. In addition, the report raised concerns regarding the outdoor terrace, which is designed at a higher level with steps down to ground level, which the planner's report describes as overlooking into the neighbour's property.

3.2.4. The planners report considered that the proposed dimensions are substandard for a person with limited mobility and care requirements.

3.2.5. The planners report cited the District Engineers report.

3.2.6. A recommendation to refuse permission for three reasons was made.

3.2.7. Other Technical Reports

3.2.8. District Engineer

3.2.9. No objections subject to conditions.

Proposed condition relating to: The removal of front boundary to achieve sight lines.

Proposed condition relating to: The existing road drainage - shall not be impaired.

Proposed condition relating to: Surface water shall not flow onto public road.

3.2.10. Public Health and Services

3.2.11. The District Engineer required a condition to be included for the applicant to provide written certification that the onsite wastewater system is capable for the additional

capacity and that the existing treatment system is in line with the EPA 'Code of Practice: Wastewater treatment and Disposal Systems Serving Single Houses (P.E. greater of equal to 10) 2021.

This report stated that the septic tank inspection report gives limited details of the existing septic tank with no commentary and no recommendations. Therefore, this report concludes that based on details submitted, the proposal had not demonstrated that the proposal would not have negative impacts on public health.

4.0 Planning History

4.1. Planning Register Reference No 22/258, Stephen Bennett, Invalid Application.

5.0 Policy and Context

5.1. Development Plan/Policy

Westmeath County Development Plan 2021 – 2017

CPO 16.27 Alterations and extensions to existing dwellings: Extensions and/or alterations should respect the main dwelling. Where contemporary designs are proposed, proposals should not detract from the visual amenities of the main dwelling or neighbouring properties. Extension works should not encroach, oversail or otherwise physically impinge third party properties. Proposals should be designed in such a way as to eliminate overshadowing or overlooking of adjoining property.

CPO 16.29 Dependent Relative Accommodation/Granny Flats: Proposals for this type of accommodation should demonstrate: A bona-fide need for such a unit;

A physical connection to the main house with direct access to the main dwelling;

That the proposal does not impact adversely on either the residential amenities of the existing property or the residential amenities of the area;

That the accommodation can revert back to being part of the original house when no longer occupied by a member of the family.

CPO 9.27 To require an assessment of the existing waste water treatment system by an assessor in the event of a large extension to a property, to ensure the system

meets the EPA Code of Practice for wastewater treatment 2009 and any revisions thereof.

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

5.2. Natural Heritage Designations

Lough Owel SAC (000688) is situated c. 12km northeast of the site. Lough Ennell Sac is situated c. 8 km east of the site. Ballymore Fen SAC is situation c 6km west of the site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any 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 grounds of appeal are:

- The proposal is to convert an existing garage to a granny flat, with a proposed floor area of 93.3 sq. m.
- It is intended to improve visual amenity and bring it up to modern Building Regulation standards.
- It is submitted that the intention is to have minimal impact on the single neighbouring property, which is set forward from it so there is no overlooking.

- Any potential overlooking can be overcome by a low fence. The height of the proposal will remain the same.
- The materials; white render and larch are proposed to blend with existing dwelling and the surrounding woodland.
- Regarding the Council not being satisfied with policy CPO 16.29, it is submitted that CPO 16.28 refers to this situation, and the reasons why CPO 16.28 are satisfied are stated.
- This is a bone-fide case to accommodate the appellants mother-in-law who has medical issues, there is a physical connection to the main house with direct access to the main dwelling, it does not impact on residential amenities of properties, the accommodation can revert to being part of the original house.
- The F.I. request the proposal was inaccurately described as 'a four bedroomed granny flat', when it is in fact a three-bedroom unit of 93 sq. m. and which is being built on the footprint of the original garage structure.
- The three bedrooms, which are proposed are for the appellants mother-in-law, her night-time carer and her husband.
- Ground and upper floor plans of the existing house were submitted as part of F.I. showing that it is a 4-bedroom house and with a family of 3 children and no downstairs bathroom it is not possible for the appellants mother-in-law to even visit the house.
- Detailed medical correspondence is submitted with regard to the appellants mother-in-law.
- The granny flat is designed for a person with limited mobility and the planner's contention under the planner's report, that it is substandard for a person with limited mobility, is refuted.
- A physical connection to the main house is proposed, and this is acknowledged in the planners report. Additionally, the accommodation can clearly revert back to being part of main house when it is no longer needed, and the planners report acknowledges this.

- If anything the proposal will improve the residential amenity standards of properties in the area and will achieve the highest standards in terms of building regulations and design.
- As the proposed granny flat is lower than the side of the main house, it will barely be visible from the side of the road.
- Great care was taken during the design process to minimise any impact on neighbours.
- Due to uncertainty around when the garage was built that it was decided to go for Retention. The planner's report is referred to which raises questions over when the garage was constructed, Photographs are attached, which date to 1999, which it is stated, clearly show the presence of a garage structure. It is stated that any works carried out over the years have been wall, floor and roof repair works, to improve the condition of the garage.
- The planners report refers to '5 windows on the eastern elevation' it is stated that a high-level timber fence of 1.8 metre is proposed to prevent any overlooking of the adjacent property. It is also proposed to install high level hedge planting at the area where the sliding doors face onto the external decking at the rear.
- Two alternative options are presented in floor plan/arrangement, which is stated would minimise any impact to surrounding properties.
- The proposal is fully compliant with CPO 16.26.
- The proposed granny flat accommodation is an upgrade of an existing structure, which it is stated, was in place before the construction of the adjacent house.
- There are a number of anomalies in the planner's report.
- Regarding the septic tank it is stated that the existing percolation area is considered good with no recommendations given to upgrade the septic tank. There is a quotation submitted from an engineering company, stating the costs involved to carry out a Site Characterisation Assessment Report as per the EPA Code of Practice for Domestic Wastewater Treatment Systems 2021, to include a trial hole assessment, drawings and

recommendations to upgrade the existing septic tank to meet the extra occupancy, if necessary. It is stated that the appellant is fully committed to having the required tests carried out.

- It is submitted that no submissions were received by the planning authority during the 5-week period for public consultation.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authority's reason for refusal, and I am satisfied that no other substantive issues arise. AA also needs to be considered.

7.2. There are two elements to this appeal; the retention of garage structure and ancillary structures and permission for change of use of garage to granny flat accommodation.

7.3. The main issues, therefore, are as follows:

1. Retention of garage structure and ancillary structures.
2. Permission for Change of Use of Garage Structure to Granny Flat.
 - Development Plan/Policy
 - Visual and Residential Impact

- Waste Water Treatment
- Traffic Safety
- Other Issues
- Appropriate Assessment

7.4. **Retention of garage and ancillary structures**

- 7.5. The proposal is referred to throughout the appeal submission as existing garage. The planner's report has indicated that the area where the garage structure is located did not have a garage thereon in 2009. The appellant has stated that the photographic evidence of a garage structure to the east of the site and slightly rear of the rear building line, dates back to 1999. The latter photograph submitted by the appellant, appears to be a form of garage structure in the general area of the subject garage structure, although it appears to of a substantially smaller scale to that which is presently constructed on site. Notwithstanding the above there is no substantive evidence on file of a point in time when the current structure, the subject of retention was constructed.
- 7.6. I consider that the subject retention application at hand refers to a garage, which on the date of my inspection, appeared to be in use 'for purposes incidental to the enjoyment of a dwelling' as a domestic garage. As the retention of garage pertains to an ancillary use to the main dwelling and there is no occupancy involved, I consider that the issue of additional turning traffic movements on the servicing road is not applicable.
- 7.7. The overall scale and height of the subject garage is subservient in scale to the main dwelling; therefore, I consider this issue to be satisfactory. The floor area of the garage to be retained is stated to be c.93 sq. m., which is satisfactory. There is an open area space at the rear of the structure to the north. This open space area would impinge on the residential amenity of the adjoining property to the east and I am cognisant of this open space areas elevated height, over and above the adjacent site. With regard to a garage structure, I would question the requirement for an open space patio area attached to a garage. Given the issue of adjacent residential amenity, I consider that this open space area should be appropriately permanently

screened, by way of condition, in the event that the board is minded to grant permission for retention of the garage structure.

7.8. There are 2 windows facing east on the garage structure, at a separation distance of 1.3 to 1.5 metres from the boundary, which is wholly unacceptable from the perspective of privacy and residential amenity of the adjacent site to the east, notwithstanding any proposals to screen this boundary and erect fencing, which can become weathered/destroyed over time. The appellant states that care was taken throughout the design process to minimise impacts on neighbours. It is difficult to accept this assertion given the prevalence of overlooking windows on this elevation. I would recommend that windows on the eastern elevation be omitted/closed up, in the event that the Board is minded to grant permission for retention of the garage structure.

7.9. The ancillary structures, which are proposed for retention comprise a garden shed, a home office at the rear – north of the site, with a stated floor area of 23 sq. m and a workshop, which is positioned on the west boundary of the site, which has a stated floor area of 22 sq. m. I consider that these structures are acceptable and do not compromise the visual and residential amenities of the area. Solar panels are proposed to be installed. The appellant refers that he has no issue with siting these within the site, which is acceptable.

7.10. **Permission for Change of Use of Garage Structure to Granny Flat**

7.11. Development Plan/Policy

7.12. The relevant development plan policy is CPO 16.29 as cited above. I consider that part of the development plan policy CPO 9.27 in relation to large extensions is also relevant. Having considered the documentation on file including medical details relation to the proposal, it is deemed that a bone fide case has been established for the applicants' mother-in-law, who requires care. It is considered that a physical connection with the main house has been established. It is also deemed that the proposed accommodation can revert back to being part of the original house when no longer occupied by a family member. All of the above criteria area satisfied in accordance with CPO 16.29. However, the issue of visual and residential amenities of the area will be discussed under para's 7.14 to 7.18.

7.13. Visual and Residential Impacts

- 7.14. The planner's report has stated that it considers that the front elevation of the proposed granny flat to be visually incongruous. Albeit of contemporary design, I do not consider it to be visually incongruous. I am satisfied with the proposed white render and larch finishes. I note that the planning report raised issue with the restricted size of the proposed granny flat, however the appellant has submitted that the proposal is fully compliant with Part M, Building Regulations.
- 7.15. Under the appeal submission the appellant has proposed 2 additional options in terms of floor plan and elevation design. Both option 1 and 2 propose two bedrooms in the proposed granny flat (as opposed to three bedrooms submitted under the planning application). It is stated that the ground floor bedroom of the main house would be utilised to make up the third bedroom. While I consider that a two-bedroom approach would provide enhanced residential amenity to potential future occupants of the proposed granny flat, I do not agree that either of the two proposals, option 1 or option 2, are satisfactory from the perspective of residential amenity and privacy of the adjacent site to the east.
- 7.16. Option 1 proposes three windows plus an opaque glass bathroom window on the eastern façade. Option 2 proposes two windows plus an opaque glass bathroom window on the eastern façade.
- 7.17. It is noted that the planning authority has stated serious concerns regarding the 5 no. overlooking windows on eastern façade of the proposed granny flat, which was submitted under the planning application. Notwithstanding screening proposals, which are not necessarily permanent, and notwithstanding the two additional options presented above, I also consider that the proposal would represent overlooking of the adjacent garden. The privacy and residential amenity of the adjacent property would be seriously compromised by the addition of 3 to 5 overlooking windows (from various options), on the eastern elevation, in such close proximity to the eastern site boundary. I note that there is a small shed on the other side of the site boundary within the adjacent site. Nevertheless, I consider that if the proposal was to be permitted the side windows on the eastern elevation would be required to be omitted, with the exception of the bathroom, which could be conditioned to be of obscure glass. Provisions such as roof lighting could be incorporated into the overall design. If the board is mindful of granting permission for the change of use from garage to

granny flat this issue may be addressed by way of condition, with omission and re-design of windows to be agreed in writing with the planning authority.

- 7.18. It is noted that the windows facing the applicants own private open space on the western elevation of the proposed granny flat are high level windows for the most part, say except for the dining area at the rear – west elevation of the proposal.
- 7.19. Waste Water Treatment
- 7.20. The proposed granny flat has an occupancy of three bedrooms, one for each of the following persons: the applicants Mother-in-law, her husband and her night-time carer. I note that Options 1 and 2 provide for 2 bedrooms but an additional bedroom would be integrated for use of the granny flat for the main house. However, the occupancy of the proposal would remain at 3 as one room in the main house would be used. The appellant under his submission states that he has three children. The septic tank assessment form has stated a population equivalency of 5 persons. Therefore, the occupancy of the entire development; dwelling house plus granny flat would increase to 8 persons.
- 7.21. The septic tank assessment submitted under the application is very basic and is not a substitute for an EPA Site Characterisation Form as per the EPA Code of Practice. The site layout map submitted indicates the location and area of the distribution zone. However, there is no detail submitted regarding the distribution piping, sizing, dimensions, and there are no calculations regarding projected loading capacity/population equivalency regarding the proposed development. The septic tank assessment states that there is no evidence of adverse vegetation indicators. At the time of my inspection, the entire area surrounding the septic tank was covered with polythene, therefore it was not possible to verify/confirm that there were no issues with respect of current functioning of the septic tank and associated distribution area, with respect of vegetation indicators.
- 7.22. It is noted that there is an existing private bored well on site. Details submitted do not provide any further information on satisfying the provisions of the EPA Code of Practice regarding bored wells and minimum required distances etc to distribution areas. The lack of documentation on file in this regard is concerning.
- 7.23. The district engineer under his report regarding wastewater treatment required a competent person to certify that the onsite waste water treatment system is capable

of additional capacity and that the existing treatment system is in line with 'EPA Code of Practice: waste water treatment and disposal systems serving single houses'. The planning authority clearly stated under its third reason for refusal, that 'In the absence of satisfactory documentation' on file to demonstrate that the existing septic tank has the capacity to serve the development, that it would not be prejudicial to public health, to paraphrase. I note that no further documentation has been submitted under the appeal, save for a quotation on how much it would cost to carry out the relevant tests under the EPA Guidance Document. I note that the appellant made a suggestion that the weather was bad at the time of the appeal submission, which prohibited digging trial holes. Notwithstanding this, I consider that a quotation for works is not substantive documentary evidence in accordance with EPA Code of Practice requirements.

7.24. Furthermore, the lack of detail submitted would conflict with CPO 9.27, which requires that large extensions require an 'Assessment of the existing waste water treatment system by an assessor in the event of a large extension to a property, to ensure the system meets the EPA Code of Practice for wastewater treatment 2009 and any revisions thereof'. I consider that this policy is relevant because when the granny flat reverts to use as part of the main dwelling, it would be considered as 'A large extension'. As this issue is a fundamental public health issue, I concur with the planning authority regarding the third reason for refusal.

7.25. Traffic Safety

7.26. I note that the district engineer has required that in the event of a grant of planning permission, the following condition would be applied:

'The applicant is to remove the front existing boundary to accommodate for 3m x 150m sightlines. The new boundary is to be installed behind the 3 m. The new sightlines are to be achieved and maintained at all times from the proposed access point. These shall remain unobstructed, and nothing shall be planted, sown, constructed or erected forward of the sightlines. Any pole or column materially affecting visibility must also be removed.....' inter alia.

7.27. On the date of inspection, it was noted that the access to the site approaching from the north and south is blind, in that the actual entrance to the site has no sight distance triangle established. This would represent visibility problems for

approaching motorists travelling on the R390 approaching the site. This is also problematic from the perspective of insufficient sight distances upon site egress. The servicing route is a heavily trafficked regional route, where maximum speed limits apply, and which is marked by a white line - no overtaking. While I note that this access is in use for some time under the current occupation of the dwelling house, I would have concerns regarding the proposed intensification of use on the site and the additional turning traffic movements, which would be generated by additional occupancy on the site (at least one additional carer coming to the site full time and presumably the appellants father-in-law). I concur with the District Engineers comments regarding the removal of the front boundary. In the event of a grant of planning permission, I consider that it would be important to stipulate this by way of condition. Or otherwise, given the substantive reason for refusal, the board may be minded to include this in the schedule for refusal, as it is an issue of public safety.

7.28. Appropriate Assessment

7.29. Having regard to the minor nature of the proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. Having regard to the above assessment, I recommend that permission be GRANTED for the retention of garage structure and ancillary structures, subject to conditions as per Schedule 1 under and that permission be REFUSED, for the change of use from garage to granny flat accommodation as per Schedule 2 under, based on the reasons and considerations and subject to the conditions set out below.

9.0 Schedules 1 & 2

Schedule 1

Reasons and Considerations

Having regard to the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development, of retention of garage and ancillary structures, would not seriously injure the visual amenities of the area or residential amenity 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.	<p>The development shall be 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 prior to commencement of development and the development shall be carried out and completed out in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>All windows on the eastern façade shall be permanently infilled/closed up.</p> <p>The patio area at the rear (north) of the garage shall be permanently screened from the eastern perspective.</p>

	<p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority, within three months of the date of this decision.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>The structure shall be used for domestic purpose only incidental to the enjoyment of the dwelling house, under no circumstances shall the structures be used as habitable accommodation or commercial use.</p> <p>Reason: In the interest of residential amenity.</p>
4.	<p>Surface water drainage arrangement shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>

Schedule 2

1. The board is not satisfied, on the basis of submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site. The proposed development would therefore be prejudicial to public health.
2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a heavily trafficked road, and in the absence of an appropriate set back and with inadequate sight distances.

Aisling Cunnane
 Planning Inspector
 15th May 2023