



An
Bord
Pleanála

Inspector's Report

ABP-315690-23

Development	Retention permission for attic conversion, alterations to front, sides and rear facades of house and associated site works.
Location	3 Stranacarry Court, Kilcurry, Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	22882
Applicant	
Type of Application	Retention
Planning Authority Decision	Refuse Retention Permission
Type of Appeal	First Party
Appellant	Gerry & Margaret McKeever
Observer	None
Date of Site Inspection	3 rd June 2023
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located at 3 Stranacarry Court, a development comprising 6 no. detached bungalows/dormer bungalows arranged around a cul-de-sac, located c. 2.5 km north-west from the centre of Dundalk, Co Louth.
- 1.2. The appeal property is a three bedroom, hipped roof, dormer bungalow and is bound to the west by an internal access road, to the east by agricultural lands and to the south-west by the garden of an adjacent property.

2.0 Proposed Development

- 2.1. The proposed development comprises retention permission for an attic conversion (stated floor area 66 sqm), and alterations to the front, side and rear elevations, specifically, 2 no. dormer windows on the front/north elevation, a dormer window on the side/east elevation, and the provision of a window and a double door on the rear/west elevation. 2 no. roof lights on the rear/west roof slope are highlighted in colour on the drawings submitted but are not annotated as being proposed under the planning application/appeal.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to REFUSE retention permission on the 6th January 2023 for 1 no. reason which can be summarised as follows;

- The ceiling height fails to meet the minimum standard as per Building Regulations (2019) Technical Guidance Document F, and as such would result in a substandard level of accommodation for occupants, would set an undesirable precedent for similar inappropriate development in the vicinity, and would be contrary to the proper planning and sustainable development of the area.

Planning Authority Reports

3.1.1. Planning Reports

The report of the Planning Officer notes that the proposed development is acceptable in terms of design and impact on the amenity of the area, however the attic space is not compliant with the Building Regulations (2019) Technical Guidance Document F, and as such would result in a substandard level of accommodation for occupants.

The report of the Planning Officer recommends a refusal of retention permission consistent with the Notification of Decision which issued.

3.1.2. Other Technical Reports

None received.

3.2. Prescribed Bodies

None received.

3.3. Third Party Observations

None received.

4.0 Planning History

Appeal Site

A number of planning applications are referred to in the report of the Planning Officer however I am satisfied that none are of relevance to the current application/appeal. The subject site was the subject of An Bord Pleanála reference PL.15.203594 under which retention permission was granted by the Board for a garage and a boundary wall.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Louth County Development Plan 2021-2027 is the relevant development plan, under which the appeal site is zoned 'L1 ' Strategic Reserve'. The provisions of the Louth County Development Plan 2021 - 2027 relevant to this assessment are as follows:

- HOU 34 – House Extensions.
- Section 13.8.35 – House Extensions.

5.2. Natural Heritage Designations

The appeal site is not located within or close to any European Site.

5.3. EIA Screening

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended) and therefore is not subject to EIA requirements.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first-party appeal by EHP Services on behalf of the applicants, Gerry and Margaret McKeever, against the decision to refuse retention permission. The grounds for appeal may be summarised as follows;

- The decision of the Planning Authority was not grounded in planning guidance, advice or the County Development Plan, but an incorrect interpretation of an unrelated building control issue, and as such is *ultra vires*.
- There is no provision under the Planning and Development Act, 2000, as amended, or the Planning and Development Regulations, 2001, as amended, which empowers a Planning Authority to determine a planning application on

non-planning grounds, and particularly for issues which have their own separate legislation, regulation and processes.

- The Planning Officer's position as outlined in the planning report in relation to fire safety issues not being applicable to the planning assessment equally apply to matters relating to building control.
- Building Control matters are addressed under the Building Control Acts 1990 – 2014, and the Building Control Regulations 1997 – 2021, and not the planning process.
- Reference in the Planning Officer's report to a ceiling height of 2.4 metres as being a 'minimum' requirement under Technical Guidance Document (TGD) F, 2019, is incorrect. Diagram 3 in TGD F refers to the 2.4 metre ceiling height as a 'suggested dimension' whereas the Planning Authority have applied it as an absolute standard.
- The Planning Officer has incorrectly referred to Building Regulations Technical Guidance Document F as a policy, whereas it is guideline.
- TGD F provides that *'in the case of material alterations or change of use to buildings, the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate. In particular the adherence to guidance, including codes, standards, or technical specifications, intended for application to new work may be unduly restrictive or impractical'*. The approach in the 2002, 2009 and 2019 versions of the TGD (relevant sections attached to appeal submission) are almost identical in respect of floor to ceiling heights being considered as a guideline and not an absolute requirement.
- There is no reference in Section 13.8.35 of the Louth County Development Plan 2021-2027 to attic conversions.
- The Development Plan does not require compliance with Building Control guidelines as the issue is dealt with under a difference code.
- The attic conversion has provided usable accommodation without any impairment to its functionality.

- The proposed development does not result in any detrimental effect on adjoining property.
- No. 1, 2, 4, and 5 Stranacarry Court have had their attics converted. No. 1, 2 and 4 Stranacarry Court have front dormers.
- The attic conversion, being completed in 2011, is immune from enforcement. As the appellants are selling the house they are now seeking to regularise planning matters.
- The floor to ceiling height in the attic is 2.5 cm below 2.4 metres and is not a substantial shortfall. Describing the attic as substandard based on a minor deviation of the TGD's suggested height guidelines is punitive.
- No internal consultations were undertaken in respect of the proposed development. The Planning Authority undertook to determine an issue based on the incomplete and inaccurately applied TGD standard. The Planning Authority failed to consider any alternative approaches as suggested in the TGD.
- TGD guidelines were not referred to in the assessment of any of the previous attic conversion planning applications in Stranacarry Court. It is unclear why it has become an issue in the case of the current application, this highlights a lack of consistency and puts the appellants at a disadvantage.
- The refusal reason does not meet the standards set out under the Development Management Guidelines 2007.
- Should the Board consider, the appellants are amenable to removing the floor in the attic and dropping the floor to achieve the 2.4 metre floor to ceiling height.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

A submission has been received from the Planning Authority stating they have no further comment to make in respect of the appeal, requesting the Board to uphold their

decision and stating that it remains the position of the Planning Authority that the proposed development is substandard with reference to the Building Regulations (2019) Technical Guidance Document F, which it notes assists the Planning Authority in determining applications for attic conversions.

6.4. Observations

None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Refusal Reason 1
- Impact on Residential Amenity
- Impacts on Visual Amenity
- Appropriate Assessment

7.2. Refusal Reason 1

7.2.1. The refusal reason cited by the Planning Authority for the proposed development is based on non-compliance with Buildings Regulations, specifically Technical Guidance Document F 2019, which concerns ventilation. The Planning Authority state that, as the proposal fails to meet the minimum standard for ceiling height set out in the Guidance document, the proposal would result in a substandard level of accommodation for the occupants. The first party contend that building control matters are addressed under separate codes, and not the planning process, that the decision of the Planning Authority was based on non-planning issues, and as such is ultra vires. Additionally, the first party note that Planning Authorities consideration of the TGD is flawed as it is guidance and not policy, and that their interpretation of Technical Guidance Document F 2019 is incorrect as the 2.4 metres referred to is a 'suggested dimension' and not a 'minimum' requirement as contended by the Planning Authority.

- 7.2.2. Regarding the Planning Authorities reliance on Building Regulations as a reason for refusing retention permission for the proposed development, I note Section 7.8 of the Development Management - Guidelines for Planning Authorities (2007) which states that it is inappropriate to deal with matters which are dealt with under other controls, unless there are particular circumstances (e.g. the matters are relevant to proper planning and sustainable development, and there is good reason to believe that they cannot be dealt with effectively by other means). This section of the Guidelines relates to planning conditions, and whilst this appeal does not relate to the attachment of planning conditions requiring compliance with other legislation, but rather the refusal of retention permission on the basis of non-compliance with building regulations, in my opinion the above guidance is pertinent in considering whether the approach of the Planning Authority is reasonable. Following the advice contained in the above guidelines, in my opinion, it is outside the remit of the Planning Authority, and of this appeal to determine whether or not the floor to ceiling height of the attic conversion complies with the Building Regulations and as such I consider that that the Planning Authority should not have refused retention permission for the proposal on the basis that the floor to ceiling height in the attic does not comply with the Building Regulations.
- 7.2.3. The first party have proposed to address the shortfall in the floor to ceiling height by altering the floor of the attic. However, on the basis of the reasoning outlined at paragraph 7.2.2, I do not consider that such amendment is required in order to permit the proposed development, and as such a condition requiring same is unnecessary.

7.3. Impact on Residential Amenity

- 7.3.1. Noting the design and nature of the proposed development, and the relationship of the proposed development to adjacent property, I am satisfied that the proposed development does not have a significant negative impact on the residential amenities of adjoining property.

7.4. Impact on Visual Amenity

- 7.4.1. Having regard to the scale and design of the proposed development, I do not consider that the proposed development would have a significant negative impact on the visual amenities of the area. Furthermore, I consider that the proposed development accords

with Policy HOU 34 and Section 13.8.35 of the Louth County Development Plan 2021 – 2027 in relation its scale and design.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.0 **Recommendation**

8.1. Having regard to the above it is recommended that retention permission is granted based on the following reasons and considerations and subject to the attached conditions.

9.0 **Reasons and Considerations**

Having regard to the provisions of the Louth County Development Plan 2021-2027, to the Development Management - Guidelines for Planning Authorities (2007), and to the prevailing pattern and character of existing development in the vicinity and to the nature and scale of the proposed development, it is considered that, subject to compliance with the condition set out below, the development as proposed would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The 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 with the Planning Authority prior to
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	commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. Reason: In the interest of clarity.
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Planning Inspector

5th June 2023