



An  
Bord  
Pleanála

## Inspector's Report

**ABP 316996-23**

### Development

Modifications to partly constructed dwelling as granted planning ref. 20/477. Planning permission sought for competition of dwelling with modifications to that granted planning ref. 20/477 and completion of all associated site works in accordance with planning ref 20.477.

### Location

Tullylost, Rathangan, Co Kildare

### Planning Authority

Kildare County Council

### Planning Authority Reg. Ref.

23/136

### Applicant(s)

Kevin Gorry

### Type of Application

Retention and Permission

### Planning Authority Decision

Grant retention with conditions

### Type of Appeal

Third Party

### Appellant(s)

Sean and Margaret Crerar

### Observer(s)

None

**Date of Site Inspection**

24<sup>th</sup> November 2023

**Inspector**

Louise Medland

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## Appendix 1 – Form 1: EIA Pre-Screening

## **1.0 Site Location and Description**

- 1.1. The site subject to this appeal (hereafter referred to as 'the site' is located at Tullylost, Rathangan, Co Kildare, approximately 1.59km south of Rathangan.
- 1.2. The site is a linear plot located on the northern side of the R414 between existing dwellings to the west and east of the site. The site is relatively level throughout with the western and eastern site boundaries defined by post and wire fencing, with the northern boundary demarcated by an existing hedgerow. The roadside southern boundary is defined by an existing hedgerow and a post and rail fence which has blocked off a previous access to the site. The site is accessed from the eastern portion of the boundary.
- 1.3. The site is currently occupied by a single storey dwelling, an existing concrete base along the western boundary, treatment and percolation system and hard cored area around the dwelling and driveway. The existing dwelling is accessed via the western side gable of the building.
- 1.4. The Third-Party Appellant's, dwelling is located adjacent to and west of the appeal site.

## **2.0 Proposed Development**

- 2.1. Retention permission;
  - Amended from flat roof to pitched roof to rear element (northern section) of the dwelling.
  - Removal of large window on northern rear elevation.
  - Retention of reduce height of window and additional window to the eastern side elevation.
  - Retention of access door in replacement of large window on western side elevation.
  - Retention of reduce height of window on western side elevation.
  - Internal layout reconfiguration.

2.2. Planning permission sought for the following modifications to planning permission 20/477:

- Removal of large corner window on front (southern) and side (western) elevation and replacement with a smaller window.
- Increased size of window on northern rear elevation.
- Additional window on eastern side elevation.
- Internal layout reconfiguration.

### 3.0 Planning Authority Decision

#### 3.1. Decision

On 11<sup>th</sup> April 2023 Kildare County Council issued of a decision to grant permission for the development subject to the following conditions.

1. The development shall be carried out in its entirety in accordance with the plans, particulars and specifications received by the planning authority on 15/02/2023, except as amended by the conditions of this permission.

**Reason:** To ensure that the development shall be in accordance with the permission and that effective control be maintained.

2. (a) The permission shall expire on the date of expiry of permission granted under Reg. Ref. 20/447. All works shall be carried out **prior to this date**.

(b) The conditions of Reg. Ref. 20/447 (the original permission for the development) shall apply to this development, except where altered or amended by conditions in this permission.

**Reason:** In the interest of clarity and orderly development, as the application was a modification to the previous permission.

3. (a) The grant of planning permission does not include any garage, outbuilding or shed.

(b) The site shall be used for domestic purposes only. The site shall not be used for any commercial use or carrying out of any trade beyond the definition of a home-based economic activity as defined under section 17.9.7 of the

Kildare County Development Plan 2017-2023 and shall be used only by Occupants of the main dwelling. Access by visiting members of the public for reasons relating to the economic use of the structure is not permitted.

**Reason:** In the interests of clarity and to regulate the use of the development in the interest of the proper planning and sustainable development of the area.

4. Within **two months of the date** of final grant of permission

- (a) A comprehensive planting and landscaping plan including boundary treatment to all boundaries and planting to entranceway (in lieu of post and rail fencing) shall be submitted for the written approval of the Planning Authority.
- (b) The planting plan shall include broad leaf deciduous hedgerow at 2 metre centres.
- (c) The planting and landscaping plan shall be carried out in full no later than the next available planting season. All trees and shrubs planted shall be from Table 15.1 (a) – Native Trees and Shrubs from the Kildare County Development Plan 2023-2029.
- (d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within three years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

**Reason:** In the interest of amenity and the provision, establishment and maintenance of a reasonable standard of landscape and the proper planning and sustainable development of the area.

5. The Applicant/Developer to pay to Kildare County Council the sum of **e11,966.00** being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19<sup>th</sup> 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 34 of the Development Contribution Scheme adopted by Kildare County Council on 19<sup>th</sup> December 2022.

**Note:** Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

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

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The Kildare County Council Planning Report forms the basis for this decision.

#### **3.2.2. Other Technical Reports**

- Environmental Health Officer – No response
- Area Engineer – No objection subject to conditions
- Roads Department – No objection subject to conditions
- Water Services – No objection subject to conditions
- Environment Section – No objection subject to conditions
- Enforcement Section – Base for a domestic garage has been infilled; Application appears to attempt to address the full nature and extent of unauthorised development on the site except for: The dwelling house is being used for habitable purposes by the applicant's father Peter Gorey.

### **3.3. Prescribed Bodies**

- Irish Water – no objection subject to conditions

### **3.4. Third Party Observations**

Objection received from Mr Sean and Mrs Margaret Crearer, highlighted the below concerns:

- Dwelling as constructed bears no resemblance to the dwelling for which planning permission was granted. Original dwelling was to be facing the main road and would not have hindered view or privacy.

- Windows and doors face directly into kitchen/living room and impacts greatly on privacy.
- The roof of the dwelling as constructed blocks the light coming into kitchen/living room and hinders view.
- The person occupying the dwelling is not the applicant Kevin Gorry.
- Enforcement notice (UD 7914) ongoing for the following reasons:
  - a) The dwelling is not as per planning permission 20/477
  - b) Non-payment of financial contribution – condition 16 of 20/477
  - c) No commencement notice has been served
  - d) A base for a domestic garage with a floor area of c.9.5m by 6m has been erected on the site.

#### **4.0 Planning History**

- PA ref. 23/136 - Modifications to partly constructed dwelling as granted planning ref. 20/477. Planning permission sought for competition of dwelling with modifications to that granted planning ref. 20/477 and completion of all associated site works in accordance with planning ref 20.477 – Granted subject to conditions – 11/04/2023
- PA ref. 20/1313 - New Bungalow, recessed entrance, effluent treatment plant and percolation area, screen planting and all associated site development works all on previously approved site 20/477 – Refused – 21/12/2020.
- PA Ref. 20/477 – New Bungalow, recessed entrance, effluent treatment plant and percolation area, screen planting and all associated site development works – Granted subject to conditions - 01/10/2020

## **5.0 Policy Context**

### **5.1. Development Plan**

The Kildare County Development Plan 2023-2029 (CDP) was adopted by the Kildare County Council on the 28 January 2023 is the operative Development Plan for the county.

- The site is located within Rural Housing Policy Zone 1.
- Chapter 15.4.12 Extensions to dwellings

### **5.2. Other Relevant Planning Policy**

- Sustainable Rural Housing Guidelines 2005
- Project Ireland 2040 - National Planning Framework (NPF)

### **5.3. Natural Heritage Designations**

The appeal site is not located on or within proximity to any designated Natura 2000 sites or Natural Heritage Areas. However, I note the site lies approximately 1.5 km southeast of a proposed natural heritage area: Grand Canal (site code 002104).

### **5.4. EIA Screening**

- 5.5. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A Third-Party Appeal has been received from Mr Sean and Mrs Margaret Crerar in relation to the Planning Authority's decision to grant permission. The grounds of appeal reiterate and expand on the matters raised in the Appellant's original observation lodged with the Planning Authority, notably –

- Disappointed that the Local Authority did not take objections and privacy concerns seriously.
- Permission originally granted to Kevin Gorry, however his father Peter Gorry occupies the dwelling despite already owning a property. Kevin Gorry lives in said property with his wife, children and mother.
- Dwelling bears no resemblance to original dwelling granted planning permission.
- House does not face road but is west facing on to the 3<sup>rd</sup> party's dwelling.
- Zero privacy due to the orientation of the dwelling.
- Base for a shed implemented without planning permission.
- Conditions attached to planning permission 20/477 not complied with.
- Claims conditions attached to 23/136 will not be adhered to.

Other matters raised are outside the scope of this planning appeal.

### **6.2. Applicant Response**

The applicant's response to the grounds of appeal can be summarised as follows:

- Current location of the dwelling is in substantial compliance with the location as granted under 20/477 and retention permission 23/136.
- The appellants are commenting in the uncompleted dwellings state and have not taken into account that permission has been granted for the retention and modifications and competition of the same.

- The current door is located approx. 10.5m from the appellants dwelling. The door was granted previously as a patio door into a kitchen. The current set up the door is used as the main access to a hallway.
- The large corner window on southwestern corner as previously approved has been replaced by smaller windows to the front and side elevation.
- The dwelling has not yet been completed. Condition 2 of permission 20/477 states that 'when completed' the dwelling shall be first occupied for a period of seven years by the applicant Kevin Gorry.
- The concrete hard standing is exempt from planning under S.I. No 600/2001 Planning and Development Regulations, 2001 Schedule 2 Class 6b (i).
- The western boundary hedge was allegedly removed by the appellant in September 2020 which was also to be replaced by the appellant.
- A landscape plan is being prepared in accordance with condition 4 of 23/136.
- New hedgerow has been planted along the eastern boundary consisting of beech, white thorn and horn beam hedging.
- The applicant's father has also offered to share the expense of erecting screen fencing/hedging between the appeal site and the appellants property – no response from the appellant received.
- The Gorry family have lived here since 1926.

### **6.3. Planning Authority Response**

Kildare County Council responded on the 31<sup>st</sup> May 2023, noting the contents of the appeal and referring to the Planning Reports, internal departmental reports and prescribed bodies reports in relation to the assessment of the planning application and have no further observations to make. The Kildare County Council Planning Report forms the basis for the decision. The report provides a description of the site and subject proposal, it sets out the planning history of the site and surrounds, summaries the observation on the planning file, 3<sup>rd</sup> party representation and sets out the policy that is relevant to the development proposal.

### **6.4. Observations**

- None

## 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:

- The western section of the dwelling constructed is not in accordance with originally approved plans 20/477.
- Impact on residential amenity due to the current orientation of the constructed section of the dwelling and the pitched roof element to the rear.

7.2. Concerns regarding the occupancy of the dwelling have been raised by the 3<sup>rd</sup> party appellant. However, the issue of principle is not being revisited through this appeal, the appeal is solely reserved to operational development. The breach of the occupancy condition is a matter for the Enforcement section of the Local Authority under the relevant legislation and does not form part of this appeal.

7.3. The proposal seeks to regularise those elements of the dwelling which have not been constructed in accordance with planning permission 20/477 and modify the eastern portion of the dwelling not yet constructed.

7.4. The 3<sup>rd</sup> party appellant has raised concern in respect of the door on the existing western portion of dwelling is on the western elevation facing their property. The proposal will provide a front door for access from the southern elevation as per planning permission 20/477. The door on the western elevation in its current form has the appearance of a regular door of solid construction with window lights at eye level and glazed side panels to both sides. In the original permission 20/477 this door was to be double fully glazed patio doors and the reduction in glazed areas can be considered to assist in perception of overlooking to the 3<sup>rd</sup> party appellants dwelling to the west. Therefore, the construction of the eastern portion of the dwelling and in doing so provide a front door access to the dwelling is in keeping with the original planning permission and will provide access via the principal elevation of the dwelling.

A back door is also proposed within the construction of the eastern portion of the dwelling, therefore further reducing reliance on the door on the western elevation.

- 7.5. The western site boundary hedge has been removed and replaced with a post and wire fence. The Planning Authority attached condition 4 to planning permission 23/136 in respect of the submission and implementation of a comprehensive planting and landscaping plan including boundary treatment to all boundaries and planting to the entrance way. I consider the condition sufficient to facilitate the reinstatement of the removed western boundary providing screening between the appeal site and the 3<sup>rd</sup> party appellants property ensuring the perception of overlooking and loss of privacy is addressed.
- 7.6. Speculation in regard to the future compliance of conditions, is a matter for the local authority to deal with through its enforcement team and relevant planning legislation in the event of non-compliance and is outside the remit of this appeal.
- 7.7. Concerns regarding the implementation of a pitched roof as opposed to a flat roof for the rear return element of the dwelling, were raised in respect of impact on natural light. I do not consider it to significantly impact on the natural light available to the adjacent western dwelling, due to sufficient separation distance and in consideration of the sun path moving from the east in the morning to the south and west in the mid and later stages of the day.
- 7.8. The existing western section and the proposed eastern section of the dwelling is largely in keeping with the footprint of the dwelling approved under 20/477. The alterations to be retained, I consider to be acceptable, and the proposal subject of this appeal will complete the dwelling and be in general accordance with the original approval.

## **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 be granted for all elements of the development for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

- The dwelling as a whole, when fully constructed will largely reflect the footprint of the dwelling approved under 20/477.
- The western elevation as constructed removes the large corner window and is replaced with a much smaller window, increasing the solid to void ratio on the western elevation and reducing the expanse of glazing and therefore the likely hood of overlooking to the neighbouring dwelling to the west belonging to the 3rd party appellant.
- The submission of a landscape plan and suitable boundary treatment along the western boundary to be agreed in writing by the Planning Authority is sufficient to ensure the boundary is replaced and to a standard to ensure the privacy of both neighbours is protected.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars submitted on the 15<sup>th</sup> day of February 2022, 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 in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>(a) The permission shall expire within two and a half years of the date of this decision. All works shall be carried out <b>prior to this date</b>.</p> <p>(b) The conditions of Reg. Ref. 20/447 (the original permission for the development) shall apply to this development, except where altered or amended by conditions in this permission.</p> <p><b>Reason:</b> In the interest of clarity and orderly development, as the application was a modification to the previous permission</p>

3.	<p>(a) The grant of planning permission does not include any garage, outbuilding or shed.</p> <p>(b) The site shall be used for domestic purposes only. The site shall not be used for any commercial use or carrying out of any trade beyond the definition of a home-based economic activity as defined under section 17.9.7 of the Kildare County Development Plan 2017-2023 and shall be used only by Occupants of the main dwelling. Access by visiting members of the public for reasons relating to the economic use of the structure is not permitted.</p> <p><b>Reason:</b> In the interests of clarity and to regulate the use of the development in the interest of the proper planning and sustainable development of the area.</p>
4.	<p>Within <b>two months of the date</b> of final grant of permission</p> <p>(a) A comprehensive planting and landscaping plan including boundary treatment to all boundaries and planting to entranceway (in lieu of post and rail fencing) shall be submitted for the written approval of the Planning Authority.</p> <p>(b) The planting plan shall include broad leaf deciduous hedgerow at 2 metre centres.</p> <p>(c) The planting and landscaping plan shall be carried out in full no later than the next available planting season. All trees and shrubs planted shall be from Table 15.1 (a) – Native Trees and Shrubs from the Kildare County Development Plan 2023-2029.</p> <p>(d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within three years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.</p> <p><b>Reason:</b> In the interest of amenity and the provision, establishment and maintenance of a reasonable standard of landscape and the proper planning and sustainable development of the area.</p>

5.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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.

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Louise Medland  
Planning Inspector

11<sup>th</sup> January 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	316996-23		
<b>Proposed Development Summary</b>	Modifications to partly constructed dwelling as granted planning ref. 20/477. Planning permission sought for competition of dwelling with modifications to that granted planning ref. 20/477 and completion of all associated site works in accordance with planning ref 20.477.		
<b>Development Address</b>	Tullylost, Rathangan, Co Kildare		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
No	X	N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	X	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** 11<sup>th</sup> January 2024