



An
Bord
Pleanála

Inspector's Report ABP317170-23

Development

Retention Application in relation to (a) Height of extension to ridge height as constructed and (b) Garage as constructed with regard to orientation, position on site and finished ridge height.

Location

Cooleen, Charleville, County Cork

Planning Authority

Cork County Council.

Planning Authority Reg. Ref.

234376.

Applicants

PJ and Ciara Copse.

Type of Application

Retention Permission

Planning Authority Decision

Permission for height extension to dwelling and the refusal of retention of the garage.

Type of Appeal

First Party

Appellants

PJ and Ciara Copse

Observers

Gerard and Teresa Rea.

David and Lil O'Connor

Date of Site Inspection

17th August 2023.

Inspector

Derek Daly.

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area approximately 3 kilometres to the south east of the town of Charleville in the north of County Cork. The site fronts onto a public road which defines the western boundary. The site is one of a row of dwellings fronting onto this road and there are dwellings to the north and south of the site. There are also dwellings on the opposite (western) side of the road.
- 1.2. On the site itself is a dormer type dwelling with a detached garage to the rear of the dwelling adjoining the sites northern boundary with a garden area occupying the southern area of the site. To the north is a single storey dwelling and there is a fairfaced concrete block wall approximately 1.8 metres in height along part of the common boundary. The roadside boundary of the appeal site is a concrete wall plastered on both sites with piers along the entire section. This boundary wall projects forward of the roadside boundary wall of the adjoining site to the north.
- 1.3. It would appear that from an examination of the documentation there was a single storey cottage with a lean to annexe on the northern gable located in the north eastern corner of the site in close proximity to the northern and western (roadside) boundaries and a large extension single and one and half /two storied was constructed to the rear.
- 1.4. The site has a stated area of 0.22 hectares.

2.0 Proposed Development

- 2.1. The development as submitted is a retention application providing for (a) retention of height of extension to ridge height as constructed and (b) the retention of garage as constructed with regard to orientation, position on site and finished ridge height with reference to previous planning application 17/6589 granting permission for a dwelling on the site.
- 2.2. The floor area existing buildings is stated as 374m² and the floor area to be retained is 264m².

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was a split decision granting permission for the extension to the dwelling subject to seven conditions and a refusal of the retention of the garage as constructed in which one reason was stated which refers to the scale, height and positioning to the boundary with the adjoining residential property having an overbearing impact and seriously injuring residential amenities.

Of note in the conditions to permit the extension are conditions numbers 2, 3 and 7. Condition no.2 requires repositioning of the front boundary wall, condition no.3 requires windows on the northern elevation to have obscure glass on the original cottage and extended dwelling and condition no 7 requires that the length of the extension be reduced back to 4.6 metres.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated 27th April 2023 refers to the planning history and the application is part to regularise in part works carried out as constructed as distinct to works permitted under P.A. Ref. 17/6589 and relates solely to the dwelling roof height and the garage and refers to other modifications carried out. Reference is made to breaches in relation to an overall increase in finished floor level (FFL) and height of the extension and consequently higher windows relative to the adjoining residence and the repositioned garage within 1 metre of the boundary and the impact on residential amenities arising from this. The modifications result in a dwelling which is disproportionate to the existing dwelling. It is noted that the positioning of the dwelling is in accordance with the 2017 permission. The primary issue in relation to the dwelling is the window which results in overlooking and it is recommended that a condition to install opaque glazing be conditioned. The retention of the garage is not supported and a condition to amend the front boundary as recommended in area engineers report is also stated. Based on the assessment a split decision is recommended.

3.2.2. Other Technical Reports

Area engineer's report requires repositioning of the boundary wall to allow full sightlines to be restored to the neighbouring property.

4.0 Planning History

4.1. P.A. Ref. No. 17/6589.

Permission granted subject to 27 conditions to demolish shed (garage) at north side of dwellinghouse, install two roof lights, one on front of roof and the second on the rear of roof and replace front door with window to the existing dwellinghouse and to construct a two storey extension and single storey extensions to rear and side of dwelling house, to construct a domestic garage, upgrade existing roadside entrance and install a mechanised aeration treatment unit and polishing filter and all ancillary services.

4.2. EF 21/188

Enforcement proceedings in relation works carried out on the site.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The current statutory plan is the Cork County Development Plan 2022-2028 however given the nature of the development and grounds of appeal there are no specific provisions of the plan which apply in this appeal.

5.2. Natural Heritage Designations

None relevant.

5.3. EIA Screening

- 5.4. 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

The grounds of appeal indicate the appeal is in relation to condition Nos 2,3 and 7 of the planning authority decision to grant planning permission and also in relation to the refusal of the garage.

6.2. The grounds of appeal are summaries as follows;

- 6.2.1. The property was granted planning permission under 17/6589 and was constructed as per the conditions set out in the granted application.
- 6.2.2. Reference is made to the history of the site and the commencement of construction works in 2018.
- 6.2.3. Specifically in relation to condition no.2 it is indicated that condition nos. 11 and 13 of P.A. Ref. No. 17/6589 were fully adhered to
 - Condition no. 11 refers to Entrance shall be recessed a minimum of 3m behind new fence line and side walls shall be splayed at an angle of 45 degrees. And walls and piers shall not exceed a height of 1m over the level of the adjoining public road.
 - Condition no 13 refers to the existing entrance shall be permanently closed off by the erection of a fence/wall matching the existing fence/wall in height, design, construction and finish to the satisfaction of the Planning Authority, immediately following completion of the new entrance.

Photographs are submitted indicating the wall was positioned and built as per the site boundary layout, tied into the existing front boundary wall of the cottage built 100 years ago and does not need to be repositioned with photographs submitted indicating the boundary prior to construction works and works carried out. The wall as constructed is set back further than the original and provides a better sightline.

Reference is also made to made to the site boundary map as submitted in 2017 and that works carried out correspond to the site outlined.

- 6.2.4. Specifically in relation to condition no.3 it is indicated the building was constructed as per approved permission.

- Reference is made to the permission granted under 17/6589 with the windows outlined and there was no reference to obscure glass to the new extension and the cottage. There is no alterations to the original planning permission.
- The window in question is stairway window with minimal use. The neighbours built an extension without planning permission which has a window facing directly into our property.
- The window was constructed to allow lighting to a north facing hallway and obscuring the glazing poses a risk to stair access. It is reiterated that the window was permitted in 2017.
- In relation to the window on the first floor of the cottage the drawings submitted indicate that there was a window there when the cottage was originally built over a 100 years ago.

6.2.5. Specifically in relation to condition no.7, it is indicated the building was constructed as per approved permission.

- The footprint of the dwelling is in compliance with the 2017 drawings and it does not bear sense to amend the structure back 4.6m would be set on the 2023 application for retention of a ridge height which would undermine structurally to the fabric of the house.
- Both granted plans are identical and there is no visual amenity impact as the house was constructed as per plans from the 2017 application.
- The condition refers to a length of extension which is contradictory as no extension has been developed to the original building.
- No extension has been carried out and what is built is identical to the plans submitted in 2017.

6.2.6. In relation to the refusal of the garage the house and garage are in full compliance with the 2017 permission. It is also indicated that;

- Drawings indicating the site location map are submitted.
- The garage was reorientated to achieve maximum gain for solar panels.
- At the time there was a 15m high row of trees and it was decided to remove the trees and a new boundary was constructed.

- The works have increased the amount of sunlight into the neighbouring property and there is no impact on the neighbouring property.
- The garage as constructed correlates with the visual amenity of the appellants' house and does not overbear with any property.

6.3. Planning Authority Response

6.3.1. The planning authority in a response to the grounds of appeal refer to;

6.3.2. In relation to condition no 2 of 17/6589;

- This permitted a widening of the existing entrance with the closing of the existing gateway to match existing boundary (condition 5) and provision for 80 metre sightlines with details to be submitted for compliance and there is no record of such compliance received.

(Note the condition in question is condition no 15 and not 5 as stated in the submission).

- It is noted that in appeal documentation there was no wall adjoining the premises to the north.
- The wall in its current position and height has serious traffic implications.

6.3.3. In relation to condition no 3 the issue here relates to the net increase in height of the overall dwelling due to increased ground levels with the overall increase in the scale and height of the dwelling which introduces injuriously overlooking of the property to the north.

The 1st floor window in the cottage is a new element which was not granted planning permission.

6.3.4. Condition no 7 was a clerical error.

6.3.5. In relation to the refusal of the garage it has not been granted in accordance with the grant of planning permission under 17/6589 in relation to its location, positioning, height and overall scale. The garage is a 1.5 storey on what appears to raised ground levels immediately adjoining the party boundary and is considered particularly obtrusive and overbearing with injurious overshadowing implications.

6.4. Observations

6.4.1. Gerard and Teresa Rea in a submission refer to;

- The development has not been constructed in accordance with the approved application.
- The boundary wall as constructed severely obstructs the view of the road when exiting the site.
- The height of the wall exceeds the height of the original boundary wall of the cottage.
- With regard to the extension the height of the proposed extension in the 2017 application did not exceed the height of the cottage and what is constructed significantly stands over the ridge height of the cottage.

6.4.2. David and Lil O'Connor in a submission refer to;

- The complaint in relation to the front wall and garage were made to Cork County Council during the construction stage.
- All boundary vegetation was removed without their knowledge.
- Reference is made to filling of the land to raise the ground level and there is no reference to these works as being part of the development. Photographs are submitted in relation to the filling of the lands.
- The garage is in effect a two storey height building on an artificially raised site.
- The building is to the south and dominates and overshadows their garden.
- Raising the site and the ridge height of the dwelling also causes overlooking issues and ridge height of the extension was to be the ridge height of the existing cottage but is estimated to be 2 metres higher.
- The requirement for obscure glazing is welcomed.
- The front wall as constructed impacts on their sightlines and the wall should be in line with the existing wall on their property and the wall as constructed is not on the line of what previously existed.
- The height of pier at the new wall is 1.8 metres.

7.0 Assessment

- 7.1. The main issues in this appeal are those raised in the grounds of appeal to the planning authority's decision issue a split decision namely the three conditions of the decision to grant planning permission appealed by the appellant and the decision to refuse the garage also appealed by the appellant. Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.
- 7.1.1. I have inspected the site and reviewed the documentation submitted in the assessment of the application and documentation submitted in the course of the appeal and the documentation submitted in the previous planning application P.A. Ref. No. 17/6589.
- 7.1.2. Issues are raised which relate to matters of enforcement and disputes between parties which are not assessed in considering this appeal which considers solely the current planning application and the specific matters as appealed.
- 7.1.3. I would also wish to indicate although the appellant has questioned referencing extension in relation to the development as constructed the application applied for under P.A. Ref. No. 17/6589 did refer to construct a two storey extension and single storey extensions to rear and side of dwelling house.
- 7.1.4. Having reviewed the documentation submitted both in relation to the details submitted in the course of the assessment by the planning authority and the appeal submissions I am satisfied that no issues arise other than those presented in the grounds of appeal.
- 7.2. **Issues raised in the grounds of appeal.**
- 7.3. **Condition No 2**
- 7.3.1. In relation to this condition which requires repositioning of the front boundary wall, it is contended by the appellant that the in relation to condition no.2 that condition nos 11 and 13 of P.A. Ref. No. 17/6589 were fully adhered to, photographs are submitted indicating the wall was positioned and built as per the site boundary layout, tied into the existing front boundary wall of the cottage built 100 years ago and does not need to be repositioned with photographs submitted indicating the boundary prior to construction works and works carried out. The wall as constructed is set back further than the original and provides a better sightline.

- 7.3.2. The view of the planning authority in relation to condition no 2 is that the grant of permission under 17/6589 permitted a widening of the existing entrance with the closing of the existing gateway to match existing boundary (condition 5) and provision for 80 metre sightlines with details to be submitted for compliance and there is no record of such compliance received. It should be noted that the condition in question is condition no 15 and not 5 as stated in the submission.
- 7.3.3. The third parties have also questioned the grounds and refer to the restriction in sightline visibility arising from the roadside boundary as constructed.
- 7.3.4. Having reviewed the documentation, I note the decision granted under 17/6589 permitted the upgrade of the existing roadside entrance. The existing roadside boundary at the time of this permission has been removed and a new boundary constructed. The boundary would appear to have been in part a native stone wall and in a part a hedgerow/planting.
- 7.3.5. It is important to state that the documentation would appear to indicate that there may have been no wall adjoining the boundary of the site to the north and it is difficult to state with precision and certainty exactly the line of roadside boundary at this location.
- 7.3.6. The wall as constructed is in effect a straight linear section extending from the new entrance to the northwestern corner of the site. At that corner the new wall is in excess of a metre forward of the boundary wall of the adjoining property with a pier also constructed.
- 7.3.7. An examination of the drawings submitted with the current application/appeal specifically the site layout for retention scale 1:500 and the drawings submitted with 17/6589 indicate a red line boundary line which clearly does not indicate a straight line boundary and shows a setback line which follows southwards the roadside boundary line at the common boundary for a distance of approximately 5 metres before projected westwards.
- 7.3.8. The wall as constructed does impact on sightline visibility and if the wall had followed the boundary line as shown on the submitted drawings sightline visibility would have been less adversely impacted upon.
- 7.3.9. The concern expressed by the planning authority and the inclusion of condition no.2 is, I consider, reasonable as it required the positioning of a wall as was indicated in

the submitted drawings and the wall as constructed does not adhere to this positioning and the wall in its current position and height has, I consider serious traffic implications and the appeal in relation to this condition I recommend be not upheld.

7.4. Condition No 3

- 7.4.1. In relation to this condition which requires windows on the northern elevation to have obscure glass on the original cottage and extended dwelling the appellant in the grounds of appeal makes reference to the permission granted under 17/6589 with the windows outlined and there was no reference to obscure glass to the new extension and the cottage and there is no alterations to the original planning permission. It is also indicated that the window in question is stairway window and was constructed to allow lighting to a north facing hallway and obscuring the glazing poses a risk to stair access. In relation to the window on the first floor of the cottage the drawings submitted indicate that there was a window there when the cottage was originally built over a 100 years ago.
- 7.4.2. The planning authority in relation to condition no 3 contends that the issue here relates to the net increase in height of the overall dwelling due to increased ground levels with the overall increase in the scale and height of the dwelling which introduces injuriously overlooking of the property to the north and that the 1st floor window in the cottage is a new element which was not granted planning permission.
- 7.4.3. The initial observation I would make is that the elevation of the extension as constructed would appear to correspond with the elevation as applied for and granted permission and the location of the extension would also appear to correspond to the location indicated on the permitted development and drawings submitted in the current development under appeal. The conditions of the permission under 17/6589 did not require obscure glass.
- 7.4.4. There is no specific documentation submitted of any clarity in relation to increased ground levels. The documentation submitted does infer that site levels were raised. The level of increase cannot be verified. The drawing as submitted for the retention indicates finished floor levels which appear to be based on a temporary bench mark (TBM) with the cottage at a FFL of 100.16 and the extension at 99.60. The lands immediate to the house and garage indicate levels of above 99. The drawings

submitted with the planning application indicates finished floor levels and applied a TBM and the cottage FFL is indicated as 100.00 and the extension FFL as 100.94 with the lands immediate to the house and garage indicating a fall in level in an easterly direction and levels dropping from 100.00 to 97.63 at the location of the garage. It would certainly appear based on a temporary bench mark (TBM) levels submitted to infer that the extension was to be constructed at a higher level and that ground levels would be raised to build at this FFL. Visual observations during inspection of the site would indicate the FFL of the extension to be approximate or lower to the FFL of the cottage.

- 7.4.5. The question to be considered is what has materially changed between what was granted and what is constructed given the inference that the ground levels were proposed to be raised and the finished floor was accepted in the grant of permission. The window in question will overlook the property to the north and this was also the case when the development was granted and was at a first floor level. The window of the faces towards the garage and gable of the dwelling and toward the front section of the development. Overlooking will largely be orientate towards the front garden area which is also be visible from the public road and views of the rear garden will be at a more acute and more oblique angle.
- 7.4.6. The imposition of this condition is not I consider reasonable given it was permitted in largely similar circumstances without a requirement for opaque glass and the appeal in relation to this condition is upheld.
- 7.4.7. In relation to the window on the garage I note the view expressed by the planning authority that the 1st floor window in the cottage is a new element which was not granted planning permission. No window is indicated on the submitted drawings at upper floor level of the northern gable elevation of the cottage. The appellant in the grounds of appeal refers to that there was a window there when the cottage was originally built over a 100 years ago.
- 7.4.8. In the survey drawings submitted with 17/6589 there is a window indicated a first floor level though no window is indicated on the design drawings or the drawing submitted in the current retention application. The cottage as proposed has no upper floor accommodation the window will face over the front garden area which as

indicated is visible from the public road. I do not consider that the window will give rise to overlooking on a private realm.

The imposition of this condition for a requirement for opaque glass is not I consider reasonable and the appeal in relation to this condition is upheld.

7.5. Condition No 7

7.5.1. In relation to this condition. I note the response of the planning authority that this condition was a clerical error and the imposition of this condition is not I consider reasonable and the appeal in relation to this condition is upheld.

7.6. Refusal of the garage as constructed.

7.6.1. In relation to the refusal of the garage the appellant in the grounds of appeal indicates that the house and garage are in full compliance with the 2017 permission and that the garage was reorientated to achieve maximum gain for solar panels. Reference is made to removal of trees along the boundary and the works have increased the amount of sunlight into the neighbouring property and there is no impact on the neighbouring property.

7.6.2. The planning authority have contended that the garage it has not been granted in accordance with the grant of planning permission under 17/6589 in relation to its location, positioning, height and overall scale. The garage is a 1.5 storey on what appears to raised ground levels immediately adjoining the party boundary and is considered particularly obtrusive and overbearing with injurious overshadowing implications.

7.6.3. The observer submissions have raised concerns in relation to the garage which it is considered is in effect a two storey height building on an artificially raised site and the building is to the south and dominates and overshadows their garden.

7.6.4. In relation to the garage the initial observation is the garage as constructed retains a similar footprint to that permitted but the orientation of the garage has been altered by 90⁰ with the main axis facing north south rather than east west axis as originally applied for and permitted.

7.6.5. Additionally, the garage as permitted was approximately 4.71 and 5.01 metres from the northern boundary and it is proposed to retain the constructed garage which is now between 1.20 and 1.61 metres from the boundary.

- 7.6.6. I have already addressed matters relating to altered site levels and given the fall in level in an easterly direction the finished floor level of the permitted garage was indicated to be in excess of 2 metres above surveyed ground levels and the garage was permitted with these levels.
- 7.6.7. As indicated the permitted garage was approximately 4.71 and 5.01 metres from the northern boundary with the shorter axis facing this boundary. The current constructed garage with a longer axis facing the boundary and a maximum of 1.61 metres does I consider significantly impact on the neighbouring property and I consider is given its proximity to the common boundary is a particularly obtrusive, dominant and overbearing element with injurious overshadowing implications on the adjoining property.
- 7.6.8. I would recommend the refusal of the garage and the appeal in relation to the decision to refuse be not upheld.

7.7. Appropriate Assessment Screening

- 7.8. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

- 8.1. I recommend a split decision as follows.

Permission be granted in relation to the dwelling and that the decision in relation to the dwelling incorporate the following;

Condition no 2 of the planning authority decision be retained.

Condition no 3 of the planning authority decision be omitted.

Condition no 7 of the planning authority decision be omitted.

The garage as constructed with regard to orientation, position on site and finished ridge height be refused.

9.0 Reasons and Considerations

First Schedule

Having regard to the nature and scale of the development, the matters raised in the grounds of appeal, the planning history of the site it is considered subject to the following conditions as set out in the First Schedule the development accords with the proper planning and sustainable development of the area.

Specific to matters raised in this appeal

In relation to condition no 2 of the planning authority decision it is considered that the retention of the boundary wall as constructed which does not adhere with the positioning of a wall as was indicated in the submitted drawings would seriously impact on the sightline visibility on the entrance of the adjoining property would give rise to a traffic hazard and contrary to the proper planning and sustainable of the development.

In relation to condition no 3 of the planning authority decision it is considered that the retention of windows as constructed would not adversely impact on the visual amenities of the area or residential properties in the vicinity and would not be contrary to the proper planning and sustainable of the development.

In relation to condition no 7 of the planning authority decision it is considered that the retention as constructed would not adversely impact on the visual amenities of the area or residential properties in the vicinity and would not be contrary to the proper planning and sustainable of the development.

10.0 Conditions

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| 1. | The development shall be retained 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 in accordance with the agreed particulars. |
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| | Reason: In the interest of clarity. |
| 2. | The front boundary wall shall be repositioned with the front boundary wall repositioned and located along the boundary of the site as delineated on the drawing site outlined red submitted to the planning authority on the 3 rd March 2023. Reason: In the interest of clarity and in the interest of traffic safety. |
| 3. | Condition no 3 of the planning authority decision be omitted. Reason: In the interest of clarity. |
| 4. | Condition no 7 of the planning authority decision be omitted. Reason: In the interest of clarity. |

Second Schedule

In relation to the retention of the garage as constructed it is considered that the garage by reason of its scale, orientation and positioning in a relative close proximity the boundary of the adjoining property is a visually obtrusive, dominant and overbearing structure, is seriously injurious to the residential amenities of the adjoining property and is considered to be contrary to the proper planning and sustainable development of the area.

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.

Derek Daly
Planning Inspector

13th September 2023