



An
Bord
Pleanála

Inspector's Report

ABP-317357-23

Development	Retention for change of use from garage to accommodation and permission for link to main house
Location	14 Stephenstown Court, Two Mile house, Naas, Co Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	Reg Ref 23354
Applicant(s)	Karla Moran
Type of Application	Retention Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Karla Moran
Observer(s)	Ann Guiden
Date of Site Inspection	4 th September 2023
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.213 ha is located within an existing low density residential development within the development envelop of Two Mile House and comprises a substantial existing 2 storey dwelling and converted garage. The site is bounded by low wall and gate to the front and mature trees and hedging to the side boundaries. The area is characterised by dwellings of similar style and size on large sites. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Retention permission is sought for the change of use from a domestic garage building into habitable family accommodation ancillary to the main dwelling site and comprising a w.c., kitchen, dining and living room spaces at ground floor level with a landing, bedroom and en-suite bathroom at first floor level. The retention includes windows to front elevation and roof windows to the side. In addition planning permission is sought for a single storey ground floor glazed link between the garage conversion and main dwelling to the rear elevation. The application was accompanied by the following:

- Letter for consent from the owners to make application.
- Cover letter that setting out that the current scheme is materially different to the previous application in that the applicant is the landowners daughter and that the applicant has a particular requirement for on-site ancillary accommodation (special needs). The personal need of the applicant together with letters of support is provided with the application and has been noted.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Kildare County Council issued a notification of decision to refuse permission for the following reason:

Having regard to the scale of the development and to Section 15.4.14 of the Kildare County Development Plan 2023-2029, which describes a family flat as a temporary subdivision or extension of an existing dwelling unit to accommodate an immediate family member, it is considered that the structure, at a distance of c.20m from the main dwelling and the proposed c20m glazed link fails to address the "temporary" nature of such arrangements and future re-integration into the main dwelling when no longer required, furthermore, the proposed glazed link would have a significant impact on the rear amenity open space and visual amenity. To permit the proposed development would be contrary to the provisions of Section 15.4.14 of the Kildare County Plan 2023-2029. The retention of the development would set an undesirable precedent for similar types of development in the vicinity and throughout the county and would seriously injure the residential amenities and depreciate the value of properties in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** recommended that permission be refused. The notification of decision to refuse permission issued by Kildare County Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Heritage Officer** – No objection
- **Roads, Transportation & Public Safety** – No objection
- **Environment Section** – No objection subject to conditions as set out in their report.
- **Water Services** – No objection subject to conditions as set out in their report.
- **Kildare Area Office** - No objection subject to conditions as set out in their report.

3.3. Prescribed Bodies

- **Irish Water** – No objection

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1. No planning history has been made available with the appeal file. The following is noted from the Case Planners report.

- **Reg Ref 21/1022** – Planning permission refused for retention of the change of use from a domestic garage building into habitable guest accommodation ancillary to the dwelling for 2 no reasons relating to (1) considered to be an independent family living unit that would constitute a haphazard, piecemeal development that would result in an undesirable precedent and (2) development would be contrary to Section 17.4.9 of the Kildare County Development Plan 2017 – 2023.
- **Reg Ref 05/998** – Planning permission granted for the construction of dormer style home, detached domestic garage, entrance gates and all associated site works.
- **UD/6800** – Warning letter issued stating that the unit is being advertised for the rental market.

5.0 Policy Context

5.1. Development Plan

5.2. The operative Development Plan is the **Kildare County Development Plan 2023-2029**. Section 15.4.14 Family Flat states that:

Family flats (often known as granny flats) refer to a temporary subdivision or extension of an existing dwelling unit. They are a way of providing additional accommodation with a level of semi-independence for an immediate family member (dependent on the main occupants of the dwelling). Applications for a family flat shall have regard to the following requirements:

- *The applicant shall be required to demonstrate that there is a genuine need for the family flat.*
- *An occupancy condition may be applied.*

- *The proposed unit should be linked directly to the main dwelling by a connecting door.*
- *Accommodation must be subsidiary to the main dwelling in scale and only in exceptional cases will more than one bedroom be permitted where a need has been demonstrated.*
- *The design standards for house extensions shall be applied to the family flat. Any external doors permitted (to provide access to private / shared open space or for escape from fire) shall be limited to the side or rear of the house.*
- *Where required, it will be necessary to demonstrate that the existing on-site wastewater treatment system serving the main dwelling can facilitate the additional loading from the family flat. Where this cannot be demonstrated, it will be necessary for the on-site wastewater treatment system to be upgraded as part of the development proposal.*

It is normal procedure to include conditions in any grant of permission that the family flat cannot be sold, conveyed or leased separately from the main residence, and that when the need for the family flat no longer exists the dwelling must be returned to a single dwelling unit.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within a designated Natura 2000 site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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

6.1.1. The first party appeal against the decision to refuse permission has been prepared and submitted by Farry Town Planning Ltd and may be summarised as follows:

- Due to a somewhat artificial requirement for a link between a principal dwelling and a family flat, which has not always been adhered to within the planning code (PL06F.121766, PL06F.231127, PL29S.205685, PL17.232042 and PL09.243417 refer), the proposal includes a new connection, in the nature of a glazed corridor, between this dwelling and the garage building.
- The development seeks to facilitate the relocation of a young woman from her family home into ancillary accommodation on the same site, with the extent of the new works being limited to a visually light-weight building, most of which would satisfy the space and height pre-requisites for exempted development status and which is otherwise screened from public view by hardwood gates and a boundary wall.
- The appellant's mother, who is the registered carer for her daughter, aims to provide a family-flat in which Ms. Moran can address the challenges of her medical conditions, in a way which allows her to acquire all of the skills needed for self-sufficiency. This is not in dispute.
- Given that the family home occupies a relatively large tract, in suburban terms, the applicant cannot identify any particular reason as to why such a separation is objectionable.
- Applicant does not agree that this proposal in terms of its height, width, position, or overall size is excessive and we do not agree with the suggestion, in the reason for refusal in this case, that the proposed glazed link would have a significant impact on the rear amenity open space and visual amenity.
- Considered difficult to conclude that a grant of planning permission in the current case would make it more difficult for planning authorities or the Board to resist other cases which are unmeritorious.

- The Council's assessment of this application does not query the fact that the appellant's mother lives in the adjacent home, that she is the registered carer for her daughter, or that the applicant needs special attention and will hopefully progress to acquire the skills needed to live independently in the future.
- The Board is asked to consider who would be harmed by this proposal and how a loss of amenity would arise. In line with the absence of any objection from local occupiers, from community groups, from amenity organisations, from government departments or from the technical divisions of the Planning Authority, no-one would be affected by this proposal.
- To the degree that the Council's sole reason for refusal is predicated on non-compliance with the terms of the County Development Plan, it is considered that this issue can easily be resolved through the imposition of a planning condition which limits the duration of any planning permission and we suggest that a period of five years could apply, following which the situation would be reconsidered.

6.1.2. The appeal was accompanied by the cover letter and report submitted with the application that included photographs, a letter from Social Welfare Services Offices, Letter from HSE and Letter from Prof M. Fitzgerald.

6.2. **Planning Authority Response**

6.2.1. Kildare County Council notes the content of the appeal. The Planning Authority confirms its decision.

6.3. **Observations**

6.3.1. There is one observation recorded on the appeal file from Ann Guiden who owns the appeal site and raises no objection. Reference is made to appeal PL09.315309 where the Board permitted the use of a detached outbuilding as a family flat without requiring a link to be created between this structure and the dwelling even though the Development Plan required such a connection.

6.4. **Further Responses**

6.4.1. None

7.0 **Assessment**

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings.

- Principle
- Development Plan Requirements
- Appropriate Assessment
- Other Issues

7.2. **Principle**

7.3. Retention permission is sought for the change of use from a domestic garage building into habitable family accommodation. I have noted the applicant's particular circumstances and consider that the provision of a family flat at this location is acceptable in principle subject to compliance with the requirements of the current Development Plan.

7.4. **Development Plan Requirements**

7.4.1. Kildare County Council refused planning permission as the structure to be retained, at c.20m from the main dwelling together with the proposed c20m glazed link fails to address the "temporary" nature of such arrangements and future re-integration into the main dwelling when no longer required and that the proposed glazed link would have a significant impact on the rear amenity open space and visual amenity. It was considered that to permit the proposed development would be contrary to the provisions of Section 15.4.14 of the Kildare County Plan 2023-2029.

7.4.2. I refer to Section 15.4.14 of the Kildare County Plan 2023-2029 as set out full in Section 5.0 above. Essentially this section of the Development Plan provides detailed requirements that any application for a family flat shall have regard to. Further a family flat is defined as a temporary subdivision or extension of an existing dwelling. This section of the Development Plan is considered clear, reasonable and appropriate.

- 7.4.3. As stated above I am satisfied that the applicant has demonstrated a genuine need for the family flat. However, the scheme to be retained is a stand-alone structure that is removed from the existing dwelling and is not directly linked to the main dwelling by a connecting corridor. The proposed 20m glazed link is unacceptable and of itself is symptomatic of the unsuitable nature of the proposal before the Board. The scheme cannot be considered subsidiary to the main building as it is a stand-alone structure. The design of the unit is acceptable, and I am satisfied that it will not detract from the amenities of the main building. However, this of itself is not sufficient to set aside the foregoing concerns. No issues pertaining to wastewater treatment have been raised.
- 7.4.4. Overall, I agree with the Case Planner that in the case of family flats, the rationale is that when the need for the family flat no longer exists, it would be fully integrated with the main dwelling house to be occupied as a single dwelling. Having regard to the distance of the existing dwelling to the detached structure, this would not be possible.
- 7.4.5. It is considered the proposed development does not satisfactorily meet the requirements of a family flat, as stated in the County Development Plan 2023-2029. Refusal is recommended.
- 7.4.6. I note that the applicant has put forward other similar schemes which have not always adhered to the planning code. However, the scheme before the Board is considered de novo.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development and its distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. **Other Issues**

- 7.6.1. **Development Contributions** – I refer to the Kildare County Council Development Contributions Scheme 2017. It is recommended that should the Board be minded to grant permission that a Section 48 Development Contribution condition is attached.

8.0 Recommendation

- 8.1. Having considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the following reason.

9.0 Reasons and Considerations

1. Having regard to the scale of the development and to Section 15.4.14 of the Kildare County Development Plan 2023-2029, which describes a family flat as a temporary subdivision or extension of an existing dwelling unit to accommodate an immediate family member, it is considered that the structure, at a distance of c.20m from the main dwelling and the proposed c20m glazed link fails to address the "temporary" nature of such arrangements and future re-integration into the main dwelling when no longer required, furthermore, the proposed glazed link would have a significant impact on the rear amenity open space and visual amenity. To permit the proposed development would be contrary to the provisions of Section 15.4.14 of the Kildare County Plan 2023-2029. The retention of the development would set an undesirable precedent for similar types of development in the vicinity and throughout the county and would seriously injure the residential amenities and depreciate the value of properties in the vicinity and would therefore 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.

Mary Crowley

Senior Planning Inspector

4th September 2022