



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317366-23

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<b>Development</b>	Retention of temporary dwelling until construction of adjoining dwelling is complete.
<b>Location</b>	Alliganstown, Ballymore Eustace, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	23322
<b>Applicant</b>	James Kelly
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Refuse Retention Permission
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant</b>	James Kelly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	2 <sup>nd</sup> September 2023
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located on the southern side of a local access road in the townland of Alliganstown, c. 3km south-west of Ballymore Eustace, Co. Kildare. The appeal site accommodates a two recently constructed single storey houses. The appeal site is located outside of a settlement, within a rural area.

## 2.0 Proposed Development

- 2.1. The proposed development, as per the development description contained in the public notices, comprises retention permission of a dwelling as constructed for a temporary period until the completion of the adjoining main dwelling, which was granted under planning Ref. 18/1355.
- 2.2. By way of background, under PA. Ref. 18/1355 the appellant was granted planning permission for the construction of a house and a garage. The garage has been constructed at variance with the permission, specifically in terms of its size, internal layout and elevational detail, and the structure is used as a residence by the appellant. The permitted dwelling is substantially complete, with only internal works remaining. The proposed development entails the retention of the structure (which was permitted as a detached garage under PA. Ref. 18/1355) as a dwelling until such a time as the house (also permitted under PA. Ref. 18/1355) is complete.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Retention Permission on the 22<sup>nd</sup> May 2023 for 1 no. reason which can be summarised as follows;

Having regard to the house permitted under PL 18/1355, which is near completion, it is considered that the applicant's housing need has been appropriately met. Due to the high standard of construction of the subject development and lack of clarity in the description of development in public notices and the planning application, the development as proposed fails to

address the temporary nature of such arrangements and future re-instatement of the garage permitted under PL 18/1355. Furthermore, having regard to Condition 11 of PL 18/1355 which states the 'proposed garage shall not be used for human habitation', the subject dwelling as constructed and occupied, would contravene materially Condition 11 of PL 18/1355, would set an undesirable precedent for similar development 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 report of the Planning Officer includes the following comments;

- PA. Ref. 18/1355 will expire after the 4<sup>th</sup> September 2024.
- The permitted garage had a floor area of 52 sqm and a height of 4.8 sqm. whereas the structure constructed has a floor area of 60 sqm and a height of 4.7 metres. All elevations have been altered compared to that as permitted and the structure has been constructed to a dwelling standard.
- The position of the dwelling and the garage differ compared to that as permitted under PA. Ref. 18/1355.
- The permitted dwelling on the site is almost complete.
- The description of development in the public notices does not adequately describe the permitted use of the structure as a garage, or that the current temporary residential use and alterations will revert back to the ancillary garage use once the main dwelling is fully complete. In the absence of a clear indication of works to re-instate the dwelling as a garage, to permit temporary use may set an undesirable precedent for same, when it is clear that the existing dwelling is substantially complete.
- The description of development is misleading and omits the use of the garage once the main dwelling can be occupied.
- As the dwelling permitted under PA. Ref 18/1355 is substantially complete the applicant's requirement for an additional dwelling has already been satisfied

and to permit same would set an undesirable precedent for similar development.

### 3.2.2. Other Technical Reports

Area Engineer – report recommends standard conditions.

Environment Department – report recommends that a condition is attached stipulating that foul waste and soiled water discharge to the wastewater treatment system from the garage be disconnected when the dwelling is complete.

Water Services – report recommends standard conditions.

Roads, Transportation, and Public Safety Department – no objection.

Environmental Health Officer – no objection.

### 3.3. Prescribed Bodies

Irish Water (now Uisce Éireann) – report recommends standard conditions.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

PA. Ref. 18/1355 – Permission GRANTED for a dwelling, garage and waste water treatment system.

Condition no. 11 states –

*‘The proposed garage shall not be used for human habitation or any commercial use or for the keeping of pigs, poultry, pigeons, ponies or horses, or any other purpose other than a purpose incidental to the enjoyment of the house.*

*Reason: In the interests of public health and to ensure proper development’.*

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The Kildare County Development Plan 2023-2029 is the relevant Development Plan. The appeal site is not subject to any specific land-use zoning under the Kildare County Development Plan 2023-2029. The provisions of the Kildare County Development Plan 2023 - 2029 relevant to this assessment are as follows:

- Objective HO 034

### **5.2. Natural Heritage Designations**

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

### **5.3. EIA Screening**

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, 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**

This is a first-party appeal against the decision to refuse retention permission. The grounds for appeal can be summarised as follows;

- The appellant runs a gym business and after commencing construction on the house and garage suffered a loss of income due to Covid, when his business had to close. The appellant, who had been living in the family home at this time, decided to convert the garage to a house as other family members were working from the family home. Continuing the construction of the house was

not financially possible at this time. Living on the site also provided a degree of security. After Covid, construction costs increased and the appellant needed a mortgage top-up, and whilst his business had picked up, the appellant required two years of goods accounts.

- It is the appellant's intention to return the temporary dwelling to a garage when the main dwelling is complete, a period of c. 9-12 months.
- Significant works remain to be completed inside the house

The appeal submission is accompanied by a letter from the appellant's accountant attesting to the appellant's financial situation during the Covid crisis, and stating that his income only began to increase in 2022.

## 6.2. Planning Authority Response

A submission has been received from the Planning Authority confirming its decision.

## 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
- Rural Housing Policy (New Issue)
- Waste Water (New Issue)
- Appropriate Assessment

## 7.2. Refusal Reason 1

7.2.1. The Planning Authority refused permission for the proposed development, that being the retention of a dwelling for a temporary period until the completion of the adjoining main dwelling, on the basis that the dwelling permitted under PA Ref. 18/1355 is near completion, with the applicant's housing need being met by this house, and that information in respect of the reinstatement of the subject structure back to a garage is

unclear. The Planning Authority also note that the proposal would contravene Condition no. 11 of the parent permission, which stipulates that the garage shall not be used for habitation, and that the proposal if permitted would set a precedent for similar development.

7.2.2. From reviewing the parent permission (i.e. PA. Ref. 18/1355), the plans and particulars submitted with the current planning application/appeal, and based on my site inspection I note that the permitted garage structure, which is being used as a dwelling/residence, differs significantly compared to the structure which was permitted under PA. Ref. 18/1355<sup>1</sup>. Additionally, the position of two structures on the site differ compared to the parent permission. The current planning application/appeal seeks to retain the 'dwelling as constructed' on a temporary basis. No information has been submitted in relation to the reinstatement of the structure from a dwelling to a garage. While I note that the appellant states that it is his intention to revert the use of the subject structure back to a garage the appellant has not outlined the works which would be required to facilitate this change. In the absence of information in respect of same I recommend that the Planning Authorities refusal is upheld.

### 7.3. **Rural Housing Policy (New Issue)**

7.3.1. The appeal site is located within Rural Housing Policy Zone 1/Area Under Strong Urban Influence (see Map Ref. V1-3.1, Kildare County Development Plan 2023-2029). While the applicant is seeking a temporary permission, and indicates that he intends to revert the subject structure back to a garage on completion of the dwelling, it remains that the proposed development comprises a dwelling in a rural area and therefore is required to be assessed with reference to the Kildare County Development Plan's rural policy requirements. Objective HO 034 requires applicants to demonstrate that they do not own or have not been previously granted permission for a one-off rural dwelling in Kildare. The development to be retained would be in conflict with this objective because, when taken in conjunction with existing dwelling on the site which was granted to the current applicant and which is substantially complete, would give rise to a second dwelling on the site. The proposal would therefore conflict with

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<sup>1</sup> The subject structure has a larger floor area (i.e. 60 sqm) versus the garage structure permitted under PA. Ref. 18/1355 (i.e. 52 sqm) and fenestration detail to all elevations differ compared to that as permitted under PA. Ref. 18/1355. The internal layout also differs.

Objective HO 034 of the Kildare County Development Plan 2023-2029. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reason for refusal, it may not be considered necessary to pursue the matter.

#### **7.4. Waste Water (New Issue)**

7.4.1. From reviewing the site layout plan submitted with the current planning application/appeal I note that the location of the waste water treatment system as indicated in not commensurate with the location permitted under PA. Ref. 18/1355. The current planning application/appeal does not address this issue. As the subject structure is served by a waste water treatment system which is in place on the site, and which based on the information submitted has not been constructed in accordance with the parent permission, consideration of the use of the subject structure as a residence served by this system cannot be fully considered. Consideration of the use of the subject structure, notwithstanding the temporary duration proposed, requires an assessment of the suitability of the proposal to treat effluent with reference to the EPA Code of Practice, 2021. On the basis of the information submitted I am not satisfied that effluent arising from the proposal can be adequately treated within the site in accordance with the EPA Code of Practice, 2021. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reason for refusal, it may not be considered necessary to pursue the matter.

#### **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 be refused for the proposed development based on the following reasons and considerations.



## 9.0 Reasons and Considerations

1. Having regard to the significant difference between the structure which was permitted as a garage and the structure which was constructed, and its use as a dwelling, it is considered that in the absence of detail of the works to facilitate the change of the dwelling back to a garage as permitted under PA. Ref. 18/1355, the exact nature and scope of the proposed development is unclear, and the proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. Objective HO 034 of the Kildare County Development Plan 2023-2029 requires applicants to demonstrate that they do not own, or have not been previously granted permission for a one-off rural dwelling in Kildare. Notwithstanding the temporary nature of the permission, the proposed development, if permitted, would conflict with this objective because, when taken in conjunction with the existing dwelling on the site which was granted to the current applicant and which is substantially complete, it would give rise to a second dwelling on the site. The proposal would therefore conflict with Objective HO 034 of the Kildare County Development Plan 2023-2029, and would be contrary to the proper planning and sustainable development of the area.
3. The waste water treatment system serving the subject structure is not commensurate with the location permitted under PA. Ref. 18/1355. Consideration of the use of the subject structure as a residence served by this system cannot therefore be fully considered based on the information submitted, which does not address this issue. On the basis of the information submitted the Board is not satisfied that foul effluent arising from the use of the subject structure as a dwelling can be effectively treated and considers that the method of foul water disposal could increase the risk of serious water pollution. Accordingly, the proposed development would be prejudicial to public health and would 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.

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Ian Campbell  
Planning Inspector

5<sup>th</sup> September 2023