



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317613-23

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<b>Development</b>	Retention of a first floor level extension over a pre-existing ground floor kitchen to the rear of dwelling house together with associated site development works.
<b>Location</b>	39, The Quakers, Killeshin, Co Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	Reg Ref 23109
<b>Applicant(s)</b>	MB Holmes Ltd
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Michelle & Keith O'Rourke
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> September 2023
<b>Inspector</b>	Mary Crowley

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## 1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.1292 ha is located within a newly developed section of an existing housing estate at the southeastern end of Killeshin village, c. 4 kms north-west of Carlow. I note from the Case Planners report that the appeal site forms part of the overall "Quakers" village development which has been on-going for the past decade and to date includes c. 56 no. dwellings, a national school and recreational facilities. Adjoining land uses are residential including the earlier phases of the "Quakers" estate to the west and a number of individual dwellings to the south and agricultural land to the north and east. Part of the southern boundary also adjoins R430 Carlow-Castlecomer Strategic Regional Route.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view throughout the appeal file. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

- 2.1. Planning permission was sought on the 30<sup>th</sup> March 2023 to retain minor changes to the house and garage of house No 39 as built at Shruth na Gleanna, The Quakers, Killeshin, Co Laois. This is further to permitted development Reg Ref 16/475, 22/181 and 22/348
- 2.2. I note from the cover letter submitted with the application that the house has been extended to the rear by approximately 14.4 sq. m. which is stated as being within the 40 sq. m exempted allowance. Three windows have been added to the south elevation and the front door canopy and the bay window design has been amended. The garage plan has been amended and has been moved to the back boundary of the site and increased in size.
- 2.3. Further information was submitted on the 22<sup>nd</sup> June 2023 and summarised as follows:
  - Up to date accurate survey of the garage as built.
  - General height of garage is 4.35m and 5.0m where the ground has been dropped.
  - Detailed survey of house as built. Attic space is to be used for storage only.

- All windows facing neighbouring properties on both relevant elevations have been fitted with obscure glass.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Laois County Council issued a notification of a split decision as follows:

**REFUSAL** of permission for the retention of the garage for the following reason:

*The garage, by virtue of its scale, height and design would be out of character with the pattern of development in the vicinity, would constitute an unduly obtrusive feature within the Quakers residential development and would detract from the visual amenities of the area. As such, the garage contravenes the relevant policies and objectives as set out in the Laois County Development Plan 2021-2027 and would seriously injure the visual amenities of the area and lead to undesirable precedent for similar developments in urban residential areas contrary to the proper planning and sustainable development of the area.*

**GRANT** permission for retention for the alteration to the dwelling subject to 4 no conditions. Condition No 1(b) is of note in the appeal as follows:

- a) *Obscure glazing shall be retained in all first-floor level and second-floor level opes to both side elevations of the dwelling.*

**Reason:** *In the interest of the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report requested further information in relation to (1) revised drawings to a suitable scale which accurately reflects the garage as constructed and (2) accurate house elevation and floor plans, use proposed and (3) response to the third-party concerns raised. Further information was requested on 23<sup>rd</sup> May 2023.
- Having considered the further information submitted the Case Planner recommended a split decision, refusal of the garage and a grant of retention

permission for the alteration to the dwelling subject to conditions. The notification of split decision issued by Laois County Council reflects this recommendation.

### 3.2.2. Other Technical Reports

- **Road Design** – No objection subject to conditions as set out in the report.

### 3.3. Prescribed Bodies

- None

### 3.4. Third Party Observations

- 3.4.1. There is 2 no observations recorded on the planning file from (1) Keith & Michelle O'Rourke, Killeshin and (2) Sandra & Ger Westgate, Killeshin. The issues raised relate to overlooking, loss of privacy, devaluation of property and inaccurate drawings.

## 4.0 Planning History

- 4.1. I refer to the Case Planners Report. There have been numerous previous planning applications on this site and the overall site including the following. The Planning Authority submitted the following planning history and is available to view on the appeal file; Reg Ref 16/475, Reg Ref 21/751, Reg Ref 22/181 and Reg Ref 22/348.

- **Reg Ref 22/348** - Extend duration of time of planning permission reference 16/475. Unconditional
- **Reg Ref 22/181** - Construct a 99.6sqm garage to house no.39 at the Quakers, Killeshin, Co. Laois. This is further to permitted development register reference 16/475 and 21/571. Conditional (77.4sqm 4m high garage approved).
- **Reg Ref 21/751** - Change design of house no. 39 from a bungalow to a 2 storey, 4 bed house and to include on site a separate 169 sq.m. garage. This is further to permitted development register reference 16/475. Split Decision to grant permission for the change of house design and refusal of garage. The reason for the refusal was as follows:

*The proposed garage, by virtue of its scale, height, design and finish would be out of character with the pattern of development in the vicinity, would constitute*

*an unduly obtrusive feature within the Quakers residential development and would detract from the visual amenities of the area. As such the proposed development contravenes the policies and objectives as set out in the Laois County Development Plan 2017-2023. It is therefore considered that the proposed development would seriously injure the visual amenities of the area and lead to an undesirable precedent for similar developments in urban residential areas and would therefore be contrary to the proper planning and sustainable development of the area.*

- **Reg Ref 16/475** - Planning Permission sought to construct 50 house; 7 no. four bed bungalows, 19 o. four bed two storey detached, 10 no. four bed two storey semi detached and 14 no. three bed two storey semi detached; connected to existing services. This is further to previous permitted Planning Reg. Ref. 07/2010.
- **Reg Ref 16/236** - permission for a residential development comprising 6 no. dwellings on a site due north-west was granted by Laois County Council to Ian McDonald.
- **Reg Ref 15/37** - permission for a residential development comprising 11 no. dwellings on a site due north-west was refused by Laois County Council to Ian McDonald on grounds inter alia of deficient open space and wastewater provision.
- **Reg Ref 13/161** - permission for an extension of duration of planning permission granted under PI Ref 07/2010 was refused by Laois County Council to Ian McDonald on grounds inter alia of contravention of Section 28 Guidelines with regard to flood risk potential.
- **Reg Ref 08/1250** - permission for a residential and commercial development comprising 14 no. dwellings and 5 no. retail units and 5 no. office units on a site due north-west was granted by Laois County Council to Ian McDonald.
- **Reg Ref 07/2010** - permission for a residential development comprising 32 no. dwellings on the current site was granted by Laois County Council to Ian McDonald
- **Reg Ref 04/545** - Permission for a residential and commercial development comprising 11 no. dwellings, a guesthouse and a nursing home on the current site due north-west was granted by Laois County Council to Ian McDonald.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative Development Plan is the **Laois County Development Plan 2021-2027**. The appeal site is within the development envelope of Killeshin, a designated **rural village**.

### 5.2. Natural Heritage Designations

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

### 5.3. EIA Screening

- 5.3.1. 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 third-party appeal has been prepared and submitted by Michelle and Keith O'Rourke, Killeshin and may be summarised as follows:
- The original plans for this two storey house did not include windows on either side elevations. These would have preserved the appellants privacy. Concern is raised with regard to overlooking from the windows on the side elevation and subsequent loss of residential amenity. Not all of said windows are obscure and those that are not obscure should be replaced with obscure glass. Condition No 1 appears to indicate that these windows are already obscure. The windows will devalue the appellant's house. Requested that the windows are infilled.
  - There appears to be no requirement in the planning permission to remove the unauthorised garage structure which has the scale and characteristics of a separate house.



6.1.2. The appeal was accompanied by detailed site maps and photos.

## 6.2. Planning Authority Response

6.2.1. None

## 6.3. Observations

6.3.1. None

## 6.4. Further Responses

6.4.1. The **first party response to the appeal** has been prepared and submitted by Larkin Associates Architects on the 2<sup>nd</sup> August 2023 and may be summarised as follows:

- Enclosed is an *up-to-date accurate survey of the garage as built*. Submitted that the garage is slightly bigger than that permitted, and the change has no impact on any of the neighbors.
- The general height of the garage is 4.35m high with 5.0m where the ground has been dropped the result of which there is less of an impact on the neighbours than that which was permitted. Drawings enclosed.
- The garage as built is well-integrated into the site and the development. The garage is 106.2 sq. m which is 6.6 sq. m bigger in floor area than that permitted. The permitted garage left gaps between the garage and the boundary wall which would be an inaccessible location and gathering place for garbage and possibly rodents and as such the garage as built is a much better solution which eliminates these gaps. Photos attached.
- The further information includes a detailed digital survey of the house as built with plans, elevations and dimensions as requested. The top floor is an attic space. All windows facing neighbouring properties on both relevant elevations have been fitted with obscure glass resulting in no impact.
- The house owner is a carpenter and as such uses a van, a box trailer, and an open trailer for his work. He also has a caravan and a car for private use. This is the reason for the garage.

- Noted that the distance of the applicant's house which is considerably more than the 22m minimum distance from the opposing bedroom windows.
- Confirmed that the applicant has installed obscure glass in the windows and the garage as built is not unduly obtrusive.

6.4.2. The **first party response to the appeal** was cross circulated to relevant parties. Additional comments from the appellant may be summarised as follows:

- Board requested to inspect the internal layout and design of the applicants dwelling.
- There appears to be "gaps" where there is a possible film /store bought vinyl applied to the inside of the normal glass window panel. The relevant windows are not all obscure as stated in the applicant's letter.
- The appellant contacted two window designers/ manufacturer/ installers, to enquire as to the specification of "obscure windows" for both bathroom and landing areas of a house. They confirmed that obscure glass panel is on the outside. The inside panel is clear, unlike the applicants photograph. Confirmation emails from Senator Windows and Munster Joinery attached.
- The photos supplied by the applicant are misleading.
- Stated that the appellants had their entire house windows replaced last year. Their bathroom window has obscure glass where the inside glass panel is clear glass and the outside panel is obscure.
- The appellant's home has decreased in value, due to being overlooked on the front and back aspect of their house by the installation of these windows. Submitted that the windows were not necessary. Regarding item 7 in the applicants submission it is stated that the 22m rule is not a licence to build what you want.
- In response to items 1 and 2 submitted that the garage as built is 106.2sq m and is approx. 30sq m greater in floor area than that applied for, (77.4sq m), not the 6.6sq m that the applicant has applied for. Laois County Council will confirm that planning permission for a garage of 169sq m (21/751) was refused.
- The Board should also note that the finished garage has a window fitted with a domestic blind - not obscure glass. Applicants photo refers. There is also a pedestrian doorway. There is a concern that the garage is designed for future

habitable occupation, and the blinds would support this view. There is no justification for windows in a garage or increasing the footprint of same.

- The failings of the design and the applicant's disregard of the terms of the permission should not be rewarded with a grant of permission.

## 7.0 **Assessment**

7.1. This assessment is based on the plans and particulars submitted on 30<sup>th</sup> March 2023 as amended by plans and particulars submitted on 22<sup>nd</sup> June 2023 together with plans and particulars submitted in the course of the appeal.

7.2. 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
- Residential Amenity
- Garage
- Appropriate Assessment
- Other Issues

### 7.3. **Principle**

7.3.1. Retention permission is sought for minor changes to the existing house comprising side elevation windows, front door canopy and amendments to the bay window design together with the retention of the relocation of garage and increased floor area. Having regard to the location of the scheme within the development envelop of Killeshin and within an established and growing residential estate together with the nature of the works to be retained, it is not considered unreasonable that developments such as these would take place. Accordingly, I consider the principle of the works to be acceptable subject to compliance with the requirements of the current Development Plan.

#### **7.4. Residential Amenity**

- 7.4.1. I note the concerns raised by the appellants with regard to the negative impact of the side elevation windows at first floor level and attic level, on their residential amenity by reason of overlooking. Having regard to the location of the scheme within the development envelop of Killeshin where higher density development is to be encouraged it is not unreasonable that there may be some elements of overlooking as a consequence. However, this is based on very clear criteria in terms of set back and distances between properties and the nature of rooms / spaces served by any windows in order to alleviate such concerns.
- 7.4.2. While I consider that the distance between the appellants property and the appeal property taken together with the nature of the windows to be retained i.e., serving a bathroom and stairwell / landing whereby any overlooking would be minimal and not so unacceptable as to merit a refusal of permission. Notwithstanding the substantial distance between both properties, it was noted on day of site inspection that there was an element of obscure glazing on the inner glass of all three windows in the applicant's property. This has been substantiated by the information and photos available to view on file. I consider this to be an acceptable compromise in this instance. However to ensure that it remains in place it is therefore recommended that should the Board be minded to grant permission that a condition be attached, requiring that this obscure glazing be retained in all first-floor level and second-floor level opes to both side elevations of the dwelling.

#### **7.5. Garage**

- 7.5.1. Laois County Council in their reason to refuse the retention of the garage stated that by virtue of its scale, height and design it would be out of character with the pattern of development in the vicinity, would constitute an unduly obtrusive feature within the Quakers residential development and would detract from the visual amenities of the area.
- 7.5.2. I refer to the Case Planners report that provides a succinct summary of the planning history pertaining to the garage to be retained as follow:

*The applicant has provided revised drawings of the garage as built with the floor area now stated to be 106.175sqm. The proposed garage has been increased*

*in area from 77.4sqm (permitted under planning file reference 22/181) to 106.175sqm. As the applicant is aware, a 169sqm garage was previously refused on site under planning file reference 21/751 and a 99.6sqm submitted for consideration under planning file reference 22/181 was deemed unacceptable and reduced to 77.4sqm on foot of a request for further information where the applicant was advised that the floor area should be no more than 80sqm.*

- 7.5.3. The floor area of the garage to be retained is considered to be significant in absolute terms. However, it is noted from the plans and particulars that it has been “nestled” into the rear of a not insubstantial site (in relative terms to adjoining properties) where it occupies the rear portion of the site making full use of the rear wall. Site photos refer. While I note the Local Authority’s concerns regarding the scale, height and design of the garage to be retained I consider, given the size of the site and the location of the garage within the site that the scale, height and design are acceptable in this particular instance.
- 7.5.4. The pertinent concern to my mind is the use of the garage. Given the internal layout, design and size of the second opening on the northern side of the garage (adjoining House No 50) to be retained (site plans and site photos refer) I am concerned that the structure may be considered for another future use other than that of a domestic garage. Any uses other than a domestic garage would be unacceptable at this location. To this end I am satisfied that this matter can be dealt with by way of suitably worded condition restricting the use to those that are non-residential and ancillary to the main house only. It is therefore recommended that the reason for refusal in this regard is set aside.
- 7.5.5. I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

## 7.6. Appropriate Assessment

- 7.6.1. 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.

## 7.7. Other Issues

- 7.7.1. **Development Contributions** – I refer to the Laois County Council Development Contributions Scheme. 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 **GRANTED** for the following reason.

## 9.0 Reasons and Consideration

Having regard to the provisions of the Laois County Development Plan 2021-2027, it is considered that, subject to compliance with the conditions set out below, the alterations to the dwelling would not seriously injure the amenities of the area, would not be prejudicial to public health, would be acceptable in terms of traffic safety and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 30 <sup>th</sup> day of March 2023, as amended by the further plans and particulars submitted on the 22 <sup>nd</sup> day of June 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed
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	<p>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 attic area shall be used solely for storage purposes associated with the main residential accommodation.</p> <p>b) The existing obscure glazing shall be retained in all first-floor level and second-floor level opes to both side elevations of the dwelling.</p> <p><b>Reason:</b> In the interest of the protection of the residential amenities.</p>
3.	<p>The detached garage shall be used solely for purposes ancillary to the residential use of the dwelling and shall not be used for commercial purposes or human habitation, sublet, sold separately, otherwise transferred or conveyed, except in combination with the dwelling.</p> <p><b>Reason:</b> In the interest of the residential amenities of the area, clarity and the proper planning and sustainable development of the area.</p>
4.	<p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health and surface water management.</p>
5.	<p>Any external lighting shall be cowled and directed away from the public roadway and adjoining properties.</p> <p><b>Reason:</b> In the interests of traffic safety and residential amenity.</p>
6.	<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, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the</p>

<p>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 An Bord Pleanála 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, as amended, 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>
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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.

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**Mary Crowley**  
**Senior Planning Inspector**  
**14<sup>th</sup> November 2023**