



An
Bord
Pleanála

Inspector's Report ABP-317800-23

Development	<i>Detached Flat located within the Michael Street/Wolfe Tone Street ACA.</i>		
Location	<i>43 Michael Street, Kilkenny City.</i>		
Planning Authority Ref.	<i>23/136.</i>		
Applicant(s)	<i>P.J. Norton.</i>		
Type of Application	<i>Retention.</i>	PA Decision	<i>Refuse.</i>
Type of Appeal	<i>First Party</i>	Appellant	<i>P.J. Norton</i>
Observer(s)	<i>None</i>		
Date of Site Inspection	<i>04-03-2024</i>	Inspector	<i>Adam Kearney</i>

Context

1. Site Location/ and Description

The Flat for which retention is being sought is located to the rear of 43 Michael Street, Kilkenny. Michael Street is c.400m northwest of the city centre overlooking the east bank of the river Nore. The terraced property extends to circa 60m in depth. All of the properties on Michael Street are served by a common pedestrian lane which effectively bisects the properties. The laneway is accessed by secure metal sheet gates with inset doorways at two different locations along Michael Street.

2. Description of development

The application sought to retain a single storey residential flat constructed to the rear of the terrace building and east of the access laneway. The flat is stated as the family residence of the appellant. No. 43 Michael Street as stated in the application/appeal is also partially occupied by the appellant, but the majority is given over to use as a B&B.

3. Planning History

Subject Property

07/990138 modifications and extension carried out to detached building at rear of dwelling house (Deemed Withdrawn)

13/990015 Retention for a single storey detached extension to the rear of dwelling house (Deemed Withdrawn)

01 /990080 - Permission granted to Patrick Geoghan to erect a Bed and Breakfast sign.

Sites in the vicinity

01 /990089 - Permission granted to retain existing granny flat at the rear of 32 Michael Street to Francis and Ellen Coyne.

02/990033 - Permission granted to Billy and Rose Lanigan to construct a granny flat to the rear of 35 Michael Street.

4. National/Local Planning Policy

National Planning Framework

- National Policy Objective 11- In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
- National Policy Objective 35 - Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

Section 2.2

- Compact Growth - Targeting a greater proportion (40%) of future housing development to be within and close to the existing 'footprint' of built-up areas. Making better use of under-utilised land and buildings, including 'infill', 'brownfield' and publicly owned sites and vacant and under-occupied buildings, with higher housing and jobs densities, better serviced by existing facilities and public transport.

Kilkenny City and County Development Plan 2021 - 2027

The site is zoned Existing Residential as per the Kilkenny City and County Development Plan 2021 - 2027 with the objective to protect, provide and improve residential amenities.

Section 13.15 of the development plan sets out the Council policy regarding family flats, and states as follows:

A 'family flat' refers to a sub-division or extension of a single dwelling unit to accommodate a member of the immediate family and is generally acceptable, provided it is not a separate detached unit and that it is possible to provide direct access to the remainder of the house. There shall be no permanent subdivision of

the garden. The family 'flat shall not be let or sold, other than as part of the overall property and shall revert to being part of the original house when no longer occupied by a family member. The design should ensure that the flat forms an integral part of the main dwelling unit capable of reintegration for single family use. The principal requirement for any proposed family flat extension is that the family flat shall generally be less than 50% of the floor area of the main dwelling. In the case of a two-storey family flat, an internal connecting door will normally be required at both levels. External doors will normally only be permitted to the side and rear of the house, with the presumption against an independent front door. Access shall be either from an internal door or by side door well screened from the front elevation. The design should have regard to the need for light and privacy of adjoining properties. The form and design of the existing building should be followed, and the extension should integrate fully with the existing building by using similar detailing and window proportions, materials and finishes.

2.4.1 Core strategy

One of the key Strategic Outcomes of the NPF is the achievement of compact growth. Compact and sustainable growth focuses on reusing previously developed “brownfield sites” and building up infill sites which may not have been built on before, particularly in well serviced urban locations served by good transport links and in close proximity to employment opportunities.

13.5 Infill Development

The Council will also have regard to the Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities (DEHLG, 2009) Infill development: “Infill” residential development may range from small gap infill, unused or derelict land and “backland” areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. Subdivision of sites can be achieved where large houses on relatively extensive sites can accommodate new residential development without unduly impacting the existing residential amenity. “Backlands” development generally refers to lands to the rear of existing dwellings which may, with the appropriate coordinated access and service

interventions, give rise to opportunities for new development. New developments, particularly in established built up areas.

13.5.1.1 Development Management Requirements for Urban Infill

Development:

Smaller single unit infill sites: For single unit infill developments (permanent subdivision), the following requirements should be met;

- normal plot ratio and site coverage requirements
- in the case of development proposals with access from communal access roads (back lanes), such communal access roads shall be improved to comply with DMURS standards, or such relaxation as determined by the Planning Authority;

5. Natural Heritage Designations

- The site is within 50metres of the River Nore SAC

Development, Decision and Grounds of Appeal

6. PA Decision

Refuse Permission for Retention

1. As per the application documents submitted the development to be retained is stated as a "detached family flat" in which the applicant resides as they operate a B&B in the main dwelling. Having regard to (a) the detached nature of the structure, (b) the use of the structure by the applicant to accommodate commercial use of the main dwelling, and (c) the scale of the development which is in excess of 50% of the stated floor area of the main dwelling, the subject development does not comply with the policy for family flats as set out in section 13 .15 of the *Kilkenny City and County Development Plan 2021-2027*. The proposed development is contrary to the proper planning and sustainable development of the area.

2. Having regard to the layout and design of the structure for retention which includes for four windows serving habitable space within the wall of the flat which has been constructed along the north site boundary, the development is considered to detract from the residential amenities and privacy of the adjoining property to the north of the site. Furthermore, the design and layout of the development creates a substandard layout in terms of residential amenity, for the existing dwelling and unit for retention. The development is contrary to the proper planning and sustainable development of the area, and the provisions of the Kilkenny City and County Development Plan 2021-2027, and contravenes the zoning objective to protect, provide and improve residential amenities

7. First Party Appeal.

Grounds:

- 43 Michael Street is not wholly commercial, and appellants still operates same as a B&B whereby up to 4 bedrooms are allowable in a dwelling as guest accommodation.
- Family Flat is occupied by the B&B owner and not by extended family.
- Acknowledges that the proposal does not strictly correspond with the CDP definition of 'family flat' but it remains that it is the retention of a single dwelling unit.
- As with a 'Family Flat' the accommodation to be retained is an extension of the existing dwelling unit.
- It is not a separate detached unit from the single dwelling unit and direct access is provided to the main part of the house from within the planning unit.
- Garden area is reduced but not subdivided.
- Flat represent a 59% increase on the existing dwelling surpassing the 50% general requirement in the CDP
- Configuration of the property on Michael Street would not allow for a 'Family Flat' as set out under section 13.15 of the CDP (attached to the main building)
- Folio maps demonstrating the segregation of the property are shown.
- Precedent for similar type development established to the rear of 41 Michael Street (Ref 17/160) and although not technically a Family Flat represented a 66% increase in floor area.

- With regard to the design of the flat the layout, it is not dissimilar to many other structures to the rear.
- No objections were received from neighbours and the conservation officer had no objection.
- 2 No. precedents were raised by the architect namely Planning Ref 01/990089 and 02/990033
- Planner acknowledged these detached units that exist to the rear of Michael Street.
- These units contribute to the existing character of the area.
- Without the accommodation provided in the extension the B&B business will not survive.
- Kilkenny is a prominent tourist location that has seen a reduction in bed spaces as a result of the provision of refugee accommodation

8. PA Response

The Planning Authority considered the retention having regard to the application within the Michael Street context which it is well familiar and the provisions of the Kilkenny City and County Development Plan 2021 – 2027

Permissions quoted from the early 2000s were considered under the development plan provisions in force at the time which have since changed.

With regard to the occupancy the PA refers to the cover letter submitted with the application which states as follows “My clients operate a B&B within the main dwelling at No. 43 Michael Street and currently resides within the family flat for which retention is now sought.”

The Planning Authority Considers that the requirements of the Kilkenny City and County Development Plan 2021 – 2027 are not met and hence that the retention would be contrary to the proper planning and development of the area.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development (retention of existing single storey dwelling) and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening

Having regard to the modest nature and scale of development (retention existing single storey dwelling), location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Having reviewed the file and the appeal documents and having visited the site I believe the pertinent planning issues that present are as follows;

- Principle for a dwelling on the site
- Quality of design
- Residential amenity

2.2. *Principle for a dwelling on the site*

I note that the appellant has identified the dwelling as a 'family flat' in the description and that the argument in support of this typology is based on the CDP section that pertains to 'Family Flats'. The Local Authority decision to refuse permission is based almost solely on the development management constraints afforded to this type of development under Section 13.15.

I have sympathy with the Planning Authority assessment. The application, albeit put forward as a structure that is ancillary to the main dwelling, '*a family flat*' does not meet the criteria as set out for a *family flat* in that it is *inter alia*;

- *not attached to the main dwelling*
- *is larger than 50% of the primary dwelling floor area.*
- *and is stated in the cover letter as being occupied by the primary property owners.*

Michael Street as part of on ACA, undoubtedly dates back to a period prior to the first planning and development act in 1963 where rear lane access was utilised for deliveries etc. The existing configuration is of a primary dwelling with no open space separated from the remainder of the property by a common lane/path that has direct access onto the public road/footpath by way of dedicated gates.

Following my site visit and review of the application I am of the view that the dwelling to be retained does not actually fall under the 'family flat' designation and should instead be assessed as an infill development in the context of Kilkenny City and the existing residential zoning of the area.

The infill dwelling was constructed circa 20 years ago and so I assume is now statute barred from enforcement action. The dwelling was the subject of 2 no. regularisation applications both of which were deemed withdrawn. It is the case that both of these retention applications were the subject of FI requests and were submitted under previous iterations of the development plan when residential units were permitted to the rear.

I am satisfied that the dwelling for retention sited on an independently accessed lane can be considered as an infill development under Section 13.5 of the Kilkenny City and County Development Plan 2021 - 2027

2.3. Quality of design/siting

The dwelling is single storey on a narrow plot to the rear of No. 43. It is detached with much of the north boundary built on the common boundary and with fenestration overlooking the neighbouring plot. The southern boundary consists of a narrow path to a small area of open space and a garden shed to the rear of the flat.

Although compact, and much of it built on the boundary, the dwelling is not incongruous with its setting. I note that much of the lane to the rear of Michael Street

is built upon with various structures ranging from elaborate garden studios to stand alone single storey dwellings. It is a confused yet attractive setting. I did not observe any vehicles on the lane and indeed there is insufficient width in parts for a vehicle to pass. It is manifestly a pedestrian path/lane owing to an irregular building line that creates pinch points at certain locations.

Internally the flat is an attractive living space with good natural light. The layout is linear, dictated by the narrow site parameters.

The laneway/path is only for the use of residents and as pointed out there are metal sheet gates with inset locked doors at 2 points on the terrace. As such I would assume that there are properties occupied to the rear that are accessed exclusively from these gates and entirely separate from their primary Michael Street fronting properties.

I am satisfied that the design is of sufficient quality in terms of layout minimum room size and private open space given the site constraints.

2.4. ***Residential Amenity***

As already noted, the residence is the product of a constrained site and there are windows overlooking the neighbouring property which is not an ideal situation. It is noteworthy however that the application did not attract 3rd party submissions. Should the board be minded to grant retention permission it may be an option to condition obscure glass for the openings overlooking the neighbouring property unless consent from the neighbouring property is forthcoming to waive such a requirement.

The primary dwelling at 43 Michael Street currently does not benefit from dedicated private open space (POS), however, the applicant as stated, operates this as a short term let B&B and as such there is no necessity for No. 43 to have POS. In the event of a permanent subdivision and disposal, No.43 will be without any private open space. However, given the terraced nature and established character of the area in close proximity to the city centre and a multitude of amenities and services I feel this is an acceptable outcome.

3.0 **Recommendation**

3.1. I recommend that permission for the development be Granted.

4.0 Reasons & Considerations

Having regard to NPO 11 and NPO 35 of the NPF, Section 13.5 of the Kilkenny City and County Development Plan 2021 – 2027 and the established pattern of development in the area, it is considered that the proposed development, involving the retention of an existing residential flat on an infill city centre site, zoned ‘existing residential’ would not seriously injure the amenities of the area or depreciate the value of property in the vicinity. The retention would accord with the referenced objectives of the NPF and CDP and would, subject to the following conditions, be in accordance with the proper planning and sustainable development of the area.

Conditions:

1.	<p>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 retained and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>
3.	<p>The applicant shall agree a name or numbering system for the dwelling in writing with the Local Authority and arrange for a dedicated Eircode.</p> <p>Reason: In the interests of Clarity and Orderly development</p>
4.	<p>North facing window openings that are part of the common boundary shall be retrofitted with obscure glass unless consent in writing furnished to the Planning Authority for the existing arrangement is forthcoming from the</p>

	<p>affected neighbouring property owner, and whereby they choose to waive the requirement for the imposition of the condition.</p> <p>Reason: In the interest of orderly development and residential amenity</p>
5.	<p>The applicant shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting the 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the applicant 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>Reason: 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>

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.

Name: Adam Kearney

Planning Inspector

Date 06/03/2024