



An  
Bord  
Pleanála

## Inspector's Report

**ABP-318407-23**

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### Development

Retention and change of use of  
garage to dwelling and extended  
carport (Protected Structure)

### Location

14 Upper Cottages, Borris, Co. Carlow

### Planning Authority

Carlow County Council

### Planning Authority Reg. Ref.

2360182

### Applicant(s)

Christy Ward

### Type of Application

Permission and retention permission

### Planning Authority Decision

Split decision

### Type of Appeal

First Party

### Appellant(s)

Christy Ward

### Observer(s)

None

### Date of Site Inspection

15<sup>th</sup> April 2024

### Inspector

Bernard Dee

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the town of Borris, Co. Carlow on the western approach road to the town, the R702. The appeal site is one of a number of estate cottages lining the R702 of 19<sup>th</sup> Century date. The cottages are single storey (with attic accommodation) with very long rear garden areas.
- 1.2. The main house has been extended by a conservatory style structure on foot of Ref. 08444 and the converted garage is located approximately 7m from the rear of this extension to the main house. The area between the house and the garage is used as an outdoor amenity area.
- 1.3. The carport is located further along the rear garden to the NE of the converted garage and in between the two structures is a garden area with outdoor furniture and gazebo.

## 2.0 Proposed Development

- 2.1. The development for which permission is sought is the retention of the change of use from garage to residential use for the applicant's daughter and also retention of a carport which was constructed larger than the structure permitted by Ref. 1994.
- 2.2. Permission is also sought for a narrow single storey link structure between the main house which is a Protected Structure.

## 3.0 Planning Authority Decision

### 3.1. Decision

Retention permission for the enlarged carport was granted on 11<sup>th</sup> October 2023 subject to 6 no. conditions.

Retention permission for the converted garage and permission for the link structure were refused for 2 no. reasons:

1. *Section 3.15 and Section 16.8.14 of the Carlow County Development Plan 2022-2028 applies to the provision of ancillary family flats and requires that (a) such accommodation is not a separate detached unit, (b) that it is possible to provide direct internal access to the remainder of the original dwelling on*

*the site, and (c) that the design forms an integral part of the original dwelling unit capable of reintegration for single family use once the requirement for a granny flat ceases. The development for retention comprises a residential unit (Granny Flat) designed to operate as a separate unit being located over 7m from the main dwelling, which is not appropriately integrated with the existing dwelling unit and cannot be reintegrated as part of the existing dwelling unit when the requirement for the granny flat unit no longer exists. The retention of the change of use and permission for link corridor is therefore contrary to the requirements of Policy FF P1 set out in Section 3.15 and to the Development Management Standards set out in Section 16.8.14 of the Carlow County Development Plan 2022-2028, and would if permitted, set an undesirable precedent for further such development in the area, and is therefore contrary to the proper planning and sustainable development of the area.*

- 2. No. 14 Upper Cottages is a Protected Structure of Regional Importance which requires An Architectural Heritage Impact Assessment to be carried out by a person suitably qualified in Conservation in accordance with the Architectural Heritage Protection Guidelines for Planning Authorities. Subsequently there is insufficient information in the application to enable the planning authority to make an informed decision on the potential impact of the granny flat for retention and the proposed link corridor on the architectural heritage of the existing cottage. The development if permitted would therefore be contrary to Policy PS. P4 of the County Development Plan 2022-2028 which 'Requires development proposals involving protected structures or proposed protected structures, to be subject to an Architectural Heritage Impact Assessment as described in Appendix B of Department of Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection: Guidelines for Planning Authorities' (2011).*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planner's Report, in summary, raises the following points:

- No. 14 Upper Cottages is a Protected Structure and many of these estate workers cottages have been modified over the years.
- Policy in the County Development Plan 2022-2028 in relation to family flats is set down in Sections 3.15 and 16 where such development is seen as a way of accommodating the densification of urban areas in a sustainable manner.
- Policy FF P1 of the Development Plan requires that a family flat be integrated with the original dwelling on site while Section 16.8.14 sets down 7 no. criteria for family flats to meet in order to obtain planning permission.
- As the converted garage is not integrated into the main house and is incapable of being integrated with the main house it does not qualify as a family flat. The proposed link corridor is not deemed to fulfil an integration role given that there is a 7m gap between the main house (as extended) and the converted garage.
- As 14 Upper Cottages is a Protected Structure an Architectural Heritage Impact Assessment should have been carried out regarding by a suitably qualified person regarding the impact which the retained garage and proposed link structure may have on the Protected Structure as per Policy PS P4 of the Development Plan. The Conservation Report submitted with the application does not meet the standard required by the Development Plan policy.
- The expansion of the carport permitted by Ref. 19/94 from 34m<sup>2</sup> (8.7m x 4m) to 54m<sup>2</sup> (6m x 9m) is considered acceptable as the carport is located towards the rear of the site and is not visually obtrusive.
- The Planner's Report notes that neither AA nor EIA is required in respect of the proposed development.

### 3.2.2. Other Technical Reports

- Environment Section - had no objection subject to conditions being applied.
- Municipal District Engineer - had no objection subject to conditions being applied.
- Water Services Department – new connections required to the mains water and sewage infrastructure.

### 3.2.3. Prescribed Bodies

- Irish Water - had no objection subject to a connection agreement being obtained.

### 3.2.4. Observations

- There is one submission on file from a neighbour disputing the applicant's right of way over the access lane, the inappropriate nature of the garage conversion and the undesirable precedent that would be set if the retention of the use of the garage for residential use were permitted.

## 4.0 Planning History

### 4.1. On the Appeal Site

- Ref. 1994 – a grant of permission on 3<sup>rd</sup> May 2019 for the construction of the carport for the expansion of which retention permission is sought.
- Ref. 08444 – a grant of permission on 29<sup>th</sup> October 2008 for the construction of an extension to the rear of the main house.
- Ref. UD. 22/54 – relates to an enforcement notice in relation to the garage conversion which is the subject of this appeal.

### 4.2. In the Vicinity of the Site

- Ref. 21499 – permission granted on 6<sup>th</sup> July 2022 for a two storey extension to rear and alterations to existing dwelling and associated site works at 16 Upper Cottages to the east of the current appeal site.

- Ref. 21352 – permission refused on 8<sup>th</sup> November 2021 for a two storey extension to rear and alterations to existing dwelling and associated site works at 16 Upper Cottages to the east of the current appeal site.
- Ref. 2170 – permission refused on 27<sup>th</sup> April 2021 for extension to rear and alterations to existing dwelling and associated site works at 16 Upper Cottages to the east of the current appeal site.

## 5.0 Policy and Context

### 5.1. Development Plan

Carlow County Development Plan 2022-2028 is the statutory plan for the area within which the appeal site is situated. 14 Upper Cottages along with this row of cottages is listed as a Protected Structure in Appendix VIII of the Development Plan – Ref. CW213.

#### Chapter 3: Housing

##### 3.12.2 Housing for People with Disabilities

The Council will support the provision of housing to cater for the needs of persons with special needs, such as persons with physical disabilities and/or learning disabilities. This accommodation should generally be appropriately located close to facilities and services.

#### Housing for People with Disabilities - Policies

It is the policy of the Council to:

- HD P1: Support independent and / or assisted living, respite and / residential care facilities for those with a disability in appropriate locations including provision for live-in care where required, when designing adapted housing units.
- HD P2: Require development to be in accordance with the Principles of Universal Design and the National Disability Authority's publication 'Building for Everyone: A Universal Design Approach' and shall have regard to the Government's 'National Disability Inclusion Strategy 2017- 2021'.

### 3.15 Other Residential Development in Urban Areas

Sustainable intensification of existing residential areas in urban areas can be achieved through infill development, development of large corner sites, the subdivision of larger houses, co-ordinated backland development, family flats.

#### Family Flat

Family flats are a way of providing additional accommodation with a level of independence for an undefined temporary period of time. Applications for family flats will be considered subject to site suitability and to criteria set out in Chapter 16 of this Plan.

#### Family Flat - Policy

It is the policy of the Council to:

- FF P1: Facilitate the provision of an integrated family flat in circumstances where the planning authority is satisfied that the site is of an appropriate size to accommodate the development, where the development would not impact residential amenities of adjoining properties and where the proposal complies with the development management standards contained in Chapter 16.

### Chapter 10: Natural and Built Heritage

#### 10.14 Protected Structures

##### Protected Structures - Policies

- PS P4: Require development proposals involving protected structures or proposed protected structures, to be subject to an Architectural Heritage Impact Assessment as described in Appendix B of Department of Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection: Guidelines for Planning Authorities' (2011).

### Chapter 16: Development Management Standards

#### 16.8.14 Family Flats

All applications for family flat development shall comply with the following criteria:

- (i) A bona-fide need is demonstrated for the unit by an immediate family member;

- (ii) The flat shall form an integral part of the structure of the main house with provision for direct internal access to the remainder of the house.
- (iii) The flat shall be modest in size (not exceeding 50m<sup>2</sup> ).
- (iv) There shall be no permanent subdivision of the garden.
- (v) The unit shall not be sold or let as an independent unit and shall remain in the same ownership as the main dwelling on site.
- (vi) The design shall ensure that the flat can easily fully revert to being part of the original house when no longer occupied by family member(s).
- (vii) If the property is serviced by an individual on-site wastewater treatment system this system must have the capacity to accommodate any additional loading in accordance with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses 2021. This may result in the requirement for existing systems to be upgraded to the current standards.

## **5.2. Natural Heritage Designations**

The following European site is located in the vicinity of the appeal site.

- River Barrow and River Nore SAC (002162) is located approximately 700m to the SW of the appeal site.

## **5.3. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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. The grounds of the First Party appeal are, in summary, as follows:

- The family flat in the converted garage is for the use of the appellant's daughter who had medical conditions that require her to be close to her family home where medical and other support can be provided.
- The family flat was only assessed in the Planner's Report against criterion (ii) of the 7 no. criteria contained in Section 16.8.14 of the Development Plan which relates to the integration of the family flat into the main dwelling.
- The proposed retention of the garage conversion satisfies the other criteria set down in Section 16.8.14 of the Development Plan in addition to satisfying criterion (ii):
  - (i) - The daughter of the appellant is a bona fide immediate family member.
  - (ii) – The proposed link structure does integrate the garage living space with the main family home and provides an internal link with the main structure and the rooms in this structure. Refer to Ref. 19/367 where a similar link structure to a family flat was permitted by the Planning Authority [Inspector's Note: Ref. 19/367 is located in Johnduffswood, Old Leighlin, Co. Carlow approximately 20km north of the current appeal site].
  - (iii) – The converted garage measuring 35m<sup>2</sup> in area is under the maximum space specified for a family flat of 50m<sup>2</sup>.
  - (iv) – No permanent sub-division of the garden is proposed.
  - (v) – The garage shall not be let or sold as a separate unit and the appellant is happy to accept a condition to this effect.
  - (vi) – When the family flat is no longer required then the garage can revert to garage use.
  - (vii) – The converted garage is already connected to all necessary utilities for residential use.

- Given the site specific and personal circumstances related to this case no precedent would be established by granting retention permission for the garage conversion and each case should be decided on its own merits.
- The second reason for refusal relating to the failure to submit an Architectural Heritage Impact Assessment (AHIA) as required by Policy PS P4 of the Development Plan, has been addressed with the submission of an AHIA with this First Party appeal which demonstrates that the impact of the link structure on the heritage value of the Protected Structure will not be affected by the proposed works in aesthetic or physical terms.
- Policy HD P1 of the Development Plan states that the Council will support disable people, such as the appellant's daughter, to find appropriate independent/assisted living homes which is precisely the role the converted garage fulfils for the appellant's family and this fact should have weighed more heavily in the Planning Authority assessment of the retention application.
- There is an explanatory letter from the First Party appended to the appeal outlining the family circumstances in relation to this case to which I direct the Board's attention.

## 6.2. Planning Authority

The Planning Authority response makes the following points:

- The appellant is seeking to retrospectively to satisfy Development Plan requirements with respect to family flats (Policy FF P1 in Section 3.15 And Section 16.8.14) by the introduction of a poorly designed link structure between the main building and the converted garage.
- The converted garage is not integrated with the main dwelling and is not capable of reverting to being an integral part of the main dwelling when the use of the garage for residential purposes is no longer required and may result in an unacceptable situation of two residential units on one site.

## 6.3. Observations

- None received.

## 7.0 Assessment

Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

The main issues for assessment, therefore, are as follows:

- Family flat criteria.
- Architectural heritage.
- The carport
- AA Screening.

### 7.1. Family Flat Criteria

- 7.1.1. The appellant states that converted garage does qualify as a family flat as per Section 16.8.14 of the Development Plan as it is intended for use by an immediate family member and the link structure integrates it with the main dwelling on site. Further, the converted garage meets the other family flat criteria in terms of size and connection to utilities and is capable of either being integrated into the family home or reverting to garage use when it is no longer required to fulfil the role of family flat.
- 7.1.2. The Planning Authority view is that the garage, due to the 7m separation from the main dwelling and the corridor like link structure being a poor design attempt to bridge this separation of the two buildings. As the garage is not integrated with the main house and is not capable of proper integration in the future, the garage conversion does not qualify as a family flat.
- 7.1.3. Having visited the site and reviewed the drawings submitted with the application, I am of the opinion that the proposed link structure, which is 1.33m in width and glazed on the east side facing the amenity area between the house and garage, does indeed fulfil the requirement for a family flat to be integrated with the main dwelling on site.

- 7.1.4. The link structure leads from the rear door of the main house to the only door of the converted garage allowing access to all internal spaces in both structures. I believe that the Planning Authority has taken an over strict interpretation of the qualifying criteria in Section 16.8.14 of the Development Plan in this instance.
- 7.1.5. In addition, I believe that the garage is capable of reintegration with the main house when the use of the garage as a family flat is no longer required. As such I do not believe that a sterilisation agreement is required in this case.
- 7.1.6. I also note the specific circumstances and the family needs with respect to the occupier of the garage who is a member of the immediate family and who needs parental support to live an independent life which is supported by Policy HD P1 of the Development Plan.
- 7.1.7. I conclude therefore that the retention of the garage for use as a family flat and permission for the link structure should be granted by the Board and that such a grant would not set an undesirable precedent in the area due to the nature of the special circumstances outlined in this case.

## 7.2. Architectural Heritage

- 7.2.1. The issue of whether the quality of the Conservation Report submitted with the original application was of sufficient quality to fulfil the requirement of Policy PS P4 that an Architectural Heritage Impact Assessment (AHIA) be submitted where an application relates to a Protected Structure is a somewhat moot point as an AHIA has been submitted with the First party appeal.
- 7.2.2. Notwithstanding this issue, I note the relatively marginal architectural merit of the cottages fronting the R702 and would think that these houses are on the Record of Protected Structures more for their interest as elements in the social history of Borris rather than their intrinsic architectural and aesthetic merits.
- 7.2.3. The link structure is modest in scale and sympathetic in materials to the main building. The extension permitted by Ref. 08444, when 14 Upper Cottages was a Protected Structure, has effectively eroded the heritage value of the Protected Structure to a degree that the addition of the proposed link structure should not worsen the heritage value attached to an already low grade Protected Structure.

7.2.4. I conclude therefore that the proposed link structure would not have any discernible negative impact on the setting or integrity of the Protected Structure to which it will be affixed.

### 7.3. The Carport

7.3.1. Given the location of the carport to the rear of the main house and dwelling it is effectively fully screened from view from the R702. I note that the Planning Authority concluded that the increase in area of the carport from 34m<sup>2</sup> to 54m<sup>2</sup> did not have any adverse impacts connected with the larger size of carport and I would concur with this view.

### 7.4. AA Screening

Having regard to the relatively minor development proposed within an existing housing estate and the fact that there are no European sites in the vicinity of the appeal 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.

## 8.0 Recommendation

I recommend that retention permission for the converted garage and the carport and planning permission for the link structure be granted for the reasons and considerations set out below and subject to the conditions set down hereunder.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Carlow County Development Plan 2022-2028, including the Protected Structure status of the main house, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in compliance with the family flat requirements contained in section 16.8.14 of the Development Plan and would not seriously injure the heritage or residential amenities of the area, or create an undesirable precedent for similar development in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 21<sup>st</sup> August 2023 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The converted garage shall be jointly occupied as a single integrated residential unit with the main dwelling and the family flat shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.</p> <p>Reason: To restrict the use of the converted garage in the interest of residential amenity.</p>
3.	<p>Details of the materials, colours and textures of all the external finishes of the proposed link structure shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: In the interest of traffic safety.</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority. Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

6.	<p>The developer shall pay to the planning authority a financial contribution of 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 commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition 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.</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>
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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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**Bernard Dee**  
**Planning Inspector**

**17<sup>th</sup> April 2024**