



An  
Bord  
Pleanála

## Inspector's Report

ABP-319746-24

<b>Development</b>	Works comprising the demolition of ground floor extension (16.9m <sup>2</sup> gross floor area approx.) and the erection of new two-storey extension (31.6m <sup>2</sup> nett area) comprising at ground floor kitchen/dining and first floor bedroom and bathroom to rear of existing house to include all associated site and drainage works, and including new entrance porch to front entrance, on overall site comprising (93m <sup>2</sup> ) 0.0093 hectares approximately.		
<b>Location</b>	12, Templemills Cottages, Templemills, Celbridge, Co. Kildare.		
<b>Planning Authority Ref.</b>	2460184.		
<b>Applicant(s)</b>	Fergus Cooper.		
<b>Type of Application</b>	Permission for Retention	<b>PA Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party	<b>Appellant</b>	Sinead O'Reilly.
<b>Observer(s)</b>	None		
<b>Date of Site Inspection</b>	21.10.2024	<b>Inspector</b>	Des Johnson

## Context

### 1. Site Location/ and Description.

1.1 Templemills Cottages are located in the southern outskirts of Celbridge town, to the west side of Newtown Road. There are two rows of terraced houses back-to-

back; the houses adjoining to the north front on to Temple Place. Templemills Cottages is a cul de sac, and the appeal premises (No.12) is the second last in a terrace of two storey houses fronting to the south on to the cul de sac.

1.2 The appeal premises has a single storey porch to the front, and is two storeys to the rear. I was unable to gain access to the premises at the time of inspection, but gained access to the adjoining property to the west (No.13).

## **2. Description of development.**

2.1 The proposal is for the retention of works comprising the demolition of ground floor extension (16.9m<sup>2</sup> gross floor area approx.) and the erection of new two-storey extension (31.6m<sup>2</sup> nett area) comprising at ground floor kitchen/dining and first floor bedroom and bathroom to rear of existing house to include all associated site and drainage works, and including new entrance porch to front entrance on overall site comprising (93m<sup>2</sup>) 0.0093 hectares approximately.

2.2 The public newspaper notice was published in 'The Nationalist' on 27<sup>th</sup> February 2024. (Note the cover letter with the application states 27<sup>th</sup> February 2023 in error). The Site Notice is dated 27<sup>th</sup> February 2024. (Note the cover letter with the application states 27<sup>th</sup> February 2023 in error).

2.3 The application form records the applicant as the 'owner'.

## **3. Planning History.**

3.1 None recent relevant on file.

3.2 Reference UD4404 relates to the appeal site. This enforcement file is recorded as closed.

## **4. Planning Policy**

### **4.1 The Kildare County Development Plan 2023-2029.**

The site lies within a designated Architectural Conservation Area.

Objective AH 065 – ensure that any development, modifications, alterations, or extensions within an ACA are sited and designed appropriately and are not detrimental to the character of the structure or its siting or the general character of the ACA.

### **4.2 Celbridge Local Area Plan 2017-2023.**

The site is in an area zoned Existing Residential.

The site is within a proposed Architectural Conservation Area.

Objective BH 03.1 – to initiate a process to designate two ACAs that encompass ... the Templemill building and associated workers cottages.

Objective BH 03.3 – to ensure that new development, including infill development, extensions and renovation works within or adjacent to the ACAs preserve and enhance the special character and visual setting of the ACA, including views and vistas, streetscapes, building lines, fenestration patterns and architectural features.

## **5. Natural Heritage Designations**

Ballynafagh Bog SAC & pNHA – c. 15km to the WSW.

Glenasmole SAC & pNHA – c. 14.8km to the SE.

## **Development, Decision and Grounds of Appeal**

### **6. PA Decision.**

6.1 By Order dated 23<sup>rd</sup> April 2024, the Planning Authority decided to grant permission subject to 3 conditions. Schedule 1 relates to Reasons & Considerations, with regard given to Kildare CDP 2023-2029, Celbridge LAP 2017-2023, and the location and design of the development, and conclusion that the proposal would not seriously injure the amenities of the area, and, subject to compliance with conditions, would accord with the proper planning and sustainable development of the area.

6.2 Condition 1 relates to compliance with the plans, particulars and specifications lodged (except as amended by other conditions), Condition 2 requires the existing dwelling and extensions approved to be used as a single housing unit and for domestic-related purposes only, and Condition 3 relates to a financial contribution.

6.3 The Planners report dated 18<sup>th</sup> April 2024 states that the site was inspected on 12<sup>th</sup> April 2024. The Site Notice was not inspected by the Planning Authority within the public submission period, but was observed in place at the time of inspection. The applicant is considered to have sufficient legal interest in the site. The site forms part of the Celbridge ACA, but the subject dwelling is of little or no heritage value. PVC fenestration is proposed and this is not sympathetic to the ACA, but the contribution of the overall structure to the character of the ACA is minimal. The site forms part of the Celbridge ACA, but the subject dwelling is of little or no heritage value. The proposed development 'levels-up' with the neighbours either side. No overbearing or loss of light issues are apparent, and there would be no negative impact on neighbouring residential amenity. One submission was received.

### **7. Third Party Appeal.**

7.1 The grounds of appeal are submitted by the freehold owner of 13, Templemills Cottages and may be summarised as follows:

- Unauthorised development works were carried out shortly after August 2005. A shared structural support to the party wall with the appellant's dwelling was significantly removed. Structural and criminal damage occurred to the appellant's property without notice or consent. Subsequent to the unauthorised works, cracks appeared in the appellant's dwelling in the party wall.
- The Site Notice and submitted drawings did not comply with the Planning & Development Regulations 2001. Site notices were not erected or fixed until 6 days after the application was received by the planning authority and 3 days after validation of the application. The notices were not maintained in place for 5 weeks after the date of receipt of the application by the planning authority.
- Works to be retained are not wholly on lands in the control of the applicant. There is encroachment on the property of No. 13 without consent. The application was incomplete with regard to development within an Architectural Conservation Area.
- Adequate reasons are not given for the grant of permission. No adequate reasons were given for not having regard to submissions and observations made, or to why they were not accepted. Further Information could have been requested.
- There was no site inspection prior to validating the application. The application was not properly assessed in light of observations made. Conditions attached to the permission are insufficient, inappropriate, and contrary to Building Regulations.
- The applicant has no legal authority to make the application for permission. The applicant is not the legal owner, has no legal interest, and has never occupied the subject property. The property has been occupied by others since the unauthorised development was carried out.
- The Planning Authority failed to publish a Planners Report addressing all relevant considerations. The late publication of documents prejudices the appellant.
- Condition 1 requires the development to be retained in accordance with the plans, particulars and specifications lodged with the application. The effect of this is to regularise defective and non-conforming works with the Building Regulations; it prohibits the rectification of defects.
- This is not exempted development. Kildare County Council acknowledged unauthorised development had taken place Ref UD4404.
- The application documentation shows a previously demolished extension. There was no such extension, only a small lean-to extension to the kitchen. The unauthorised structures erected at the appeal site were fixed through the gable wall of the appellant's dwelling without consent. The extension to the front of the appeal property is defective and not tied into existing structures. The front extension is constructed across the legal boundary.
- If the Board is minded to grant permission for retention, it should add additional conditions and/or amend existing conditions requiring the

development to be in compliance with minimum standards applicable at the time of the unauthorised development, or to be brought in line with current standards.

The grounds of appeal include a copy of the objection submitted to the planning authority, CCTV images, copy of Water Services report with recommended conditions, and Architects Opinion on Work Defects (the author is an occupant of No. 13 Templemills Cottages). The Architects Opinion concludes that the method of construction and workmanship of the extension development works at No. 12 is poor and lacks appropriate methods and materials. The method of construction is potentially unsafe. The method of construction of extensions front and rear do not comply with Building Regulations in operation at the time of construction, particularly Parts A, B and E.

## **8. Responses**

8.1 The Planning Authority confirms its decision and refers the Board to the Planning Reports, internal departmental reports, and prescribed bodies reports.

8.2 The First Party response may be summarised as follows:

- Kildare County Council issued a letter, dated 4<sup>th</sup> August 2006 confirming that the matter related to Reference UD4404 was deemed resolved. This is noted in the Planner's Report relating to the current application. The front porch was erected by the previous owner and pre-dates the subject extension works, and structural cracks had previously existed/been repaired on the party wall, previous to the subject extension works.
- It is understood that the site notice was erected in accordance with correct procedure and approved/validated by KCC.
- The front porch is understood to be exempted from planning permission. The porch structure gable wall is shown substantially within the tolerances/accuracies reasonably required for planning drawings.
- There was previously open access to the rear gardens to Templemills Cottages but this has now been extinguished. The Land Registry Portal does not depict any registered right of way, and adjoining owners confirm the extinguishment of the right of way.
- Building Regulation matters are dealt with under separate legislation. KCC indicated that it had sufficient information to consider the application in an ACA. Internal reports noted that no additional documentation was necessary.
- KCC decision includes Schedule 1 – considerations and reasons. Conditions were attached.
- KCC internal planning report records that the site notice was inspected and found to be in compliance.
- The application to KCC did not seek to claim exempted status for the development.

- The new internal extension party wall is 215mm solid concrete wall laid on concrete strip foundations. The joists to bear the upper floor run from front to rear of the structure bearing on the external and intermediate walls.
- Movement occurred to the gable wall of No.13 bounding No.12, prior to works carried out on No.12. The work to extend No.13 was carried out post 1968 and required planning consent, but no planning file can be found for the property.
- The structural integrity of the front porch has not been compromised, despite the appearance of a visible crack.

The submission includes a letter from KCC, dated August 2006 stating that further enforcement action at No.12 Templemills Cottages is not required at this time, photograph of the front porch, letter from Field Solicitors, dated June 2024 in respect of the use of CCTV images, signed statement from two residents Nos. 7 and 2) confirming that the laneway that gave access to the rear gardens has been extinguished, internal photograph of the rear of No.12 and side wall of No.13, letter from Field Solicitors, dated May 2024 confirming the applicant as the registered owner of No.12 Templemills Cottages, photographs, and letter from the applicant to ABP relating to the appeal.

## **Environmental Screening**

### **9. EIA Screening**

Having regard to the nature and scale of development in an existing residential setting, and the absence of any significant environmental sensitivity in the vicinity of the site likely to be affected, 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 nature and scale of development, location in an established residential area, connection to existing services and separation from 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.

## **11. Assessment**

11.1 I have read the file, inspected the site and surrounds, and considered the grounds of appeal and all submitted documentation contained on the file. I consider that the documentation on file is adequate to enable an assessment of the development in the context of proper planning and sustainable development.

11.2 The proposal is for retention of works comprising the demolition of a ground floor extension, erection of new two-storey extension comprising at ground floor kitchen/dining and first floor bedroom and bathroom to rear of existing house, to include all associated site and drainage works, and including new entrance porch to front entrance.

I consider that the key issues in this appeal can be addressed under the following headings:

- Context for assessment
- Public Notices
- Principle of development and design
- Other issues
- Environmental assessments

### **Context for assessment**

11.3 I submit that the key consideration in this assessment is the proper planning and sustainable development of the area, based on the information and submissions contained on the file, and the policy context as set out in the Kildare County Development Plan 2023-2029, and Celbridge Local Area Plan 2017-2023.

11.4 Having regard to issues raised in the grounds of appeal, I draw the Boards attention to the following:

- Section 34(13) of the Planning and Development Act 2000, as amended (the Act), which states that *A person shall not be entitled solely by reason of a permission under this section to carry out any development.*
- Section 7.8 of the Development Management Guidelines for Planning Authorities, 2007, issued under Section 28 of the Act, which refers to 'Conditions relating to other codes'. This states that it is inappropriate in development management to deal with matters which are the subject of other controls, unless there are particular circumstances, e.g. the matters are relevant to proper planning and sustainable development, and there is good reason to believe that they cannot be dealt with effectively by other means. It is entirely wrong to use the development management process to attempt to force a developer to apply for some other licence, approval, consent, etc. It should be remembered that the Building Regulations require certification by the design team.

### **Public Notices**

11.5 The grounds of appeal contend that the Site Notice was not erected in the correct timeframe. The Planning Authority state that the Site Notice was not inspected within the public submission period, but was observed in place at the time of inspection. The 1<sup>st</sup> Party states that it is understood that the site notice was erected in accordance with

correct procedure and approved/validated by Kildare County Council. I note that the public newspaper notice was published on 27<sup>th</sup> February 2024, and that the Site Notice is also dated 27<sup>th</sup> February 2024. It is not now possible to determine precisely the date on which the Site Notice was erected. I submit that there is no convincing evidence submitted to indicate that the public were not given adequate notification of the proposed retention development.

### **Principle of development and design**

11.6 The site lies within an area zoned Existing Residential in the Celbridge Local Area Plan 2017-2023. It also lies within a designated Architectural Conservation Area (ACA) in the Kildare County Development Plan 2023-2029. Other dwellings in the vicinity have been extended in similar fashion. I submit that the proposed development for retention is acceptable in principle within the zoning objective, and that it is not detrimental to the character of the structure or the general character or visual setting of the ACA.

### **Other issues**

11.7 The grounds of appeal contend that the applicant does not have legal authority to make the application. The Planning Authority validated the application. In response to the grounds of appeal, the 1<sup>st</sup> Party has submitted a Solicitors letter confirming the applicant as the registered owner of No.12 Templemills Cottages. Based on the information submitted, I conclude that the applicant has legal authority to make the application.

11.8 The grounds of appeal contend that part of the proposed development for retention is on lands not within the applicant's control. In this context I draw the Board's attention to the provisions of Section 34(13) of the Act. In the event of legal dispute on this issue, the matter is one to be resolved in the Courts.

11.9 The grounds of appeal argue that the development does not comply with Building Regulations. On this issue, I draw the Board's attention to Section 7.8 of the Development Management Guidelines 2007, and submit that the matter of certification is one for consideration of another Code.

11.10. The grounds of appeal contend that the development was carried out as unauthorised works. The Act provides for the regularisation by way of an application for retention, and that is what is applied for in this case. The Board does not have any enforcement function under the Planning or any other Codes.

11.11 The grounds of appeal contend that the subject development gave rise to structural and criminal damage to their property. I submit that this is a civil matter, properly resolved through the Courts.

11.12 I submit that the proposed development for retention is acceptable in terms of the protection of the residential amenities of property in the vicinity.



## **Environmental assessments**

11.12 Having regard to the nature and scale of development in an existing residential setting, and the absence of any significant environmental sensitivity in the vicinity of the site likely to be affected, 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.

11.13 Having regard to the nature and scale of development, location in an established residential area, connection to existing services, and separation from 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.

## **Recommendation**

I recommend that permission for retention be granted.

## **Reasons & Considerations**

Having regard to the nature, design and scale of development proposed for retention, the established pattern of development in the area, and the provisions of the Kildare County Development Plan 2023-2029, and the Celbridge Local Area Plan 2017-2023, it is considered that the development, subject to compliance with the following conditions, is not seriously injurious to the character of the Architectural Conservation Area, or property in the vicinity, and is in accordance with the proper planning and sustainable development of the area.

## **Conditions**

1. The development shall be in accordance with the plans and particulars submitted to the Planning Authority on 3<sup>rd</sup> March 2024.

**Reason:** In the interest of clarity.

2. The entire premises shall be used as a single residential unit, and shall not be subdivided by way of sale or letting or otherwise.

**Reason:** In the interest of residential amenity.

3. The Applicant/Developer shall pay to Kildare County Council a financial contribution of E582.80 in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19<sup>th</sup> December 2022 in accordance with Section 48 of the Planning and Development Act 2000, as amended. The payment shall be made within 3 months of the date of this permission,

**Reason:** It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.

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Des Johnson

Planning Inspector

24<sup>th</sup> October 2024.

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.