



An
Bord
Pleanála

Inspector's Report ABP316295-23

Development

Construction of maisonette, connect to public services & all other associated site and ancillary works.

Location

Off Main Street & The Square,
Ennistymon, Co Clare

Planning Authority

Clare County Council.

Planning Authority Reg. Ref.

22945.

Applicant

Gabriel McCarthy.

Type of Application

Permission

Planning Authority Decision

Permission with conditions.

Type of Appeal

Third Party

Appellant

James Hill.

Observer(s)

None.

Date of Site Inspection

17th August 2023.

Inspector

Derek Daly.

1.0 Site Location and Description

- 1.1. The appeal site is located in the central area of the town of Ennistymon in County Clare. The site is an infill site located between a residential site to the south on which there is a two storey dwelling with a lower return on the side elevation adjoining the appeal site and a public library to the north. The site which fronts onto the public road which defines the site's eastern boundary has a frontage of 10 metres and a depth of approximately 5.2 metres. There is a low stone wall running across the site from the road side boundary to the rear of the site. Part of the boundary with the dwelling site to the north is defined by a timber fence and there is a gateway located in the boundary fence. The site it would appear was formerly the site of an old forge.
- 1.2. The site has a stated area of 0.005 hectares.

2.0 Proposed Development

- 2.1. The proposal provides for the construction of maisonette which is two storied in height with living accommodation on the ground floor and a bedroom on the first floor with a passageway through the structure at ground floor level with a height of 2500mm and a width of approximately 2500mm. The proposed development has a pitch roof with a height to ridge level of 6475mm and the external finish to the road has a stone finish. It is proposed to connect to public piped water services. The stated floor area of the proposed development is 76m².
- 2.2. Further information was submitted on the 22nd February 2023 in relation to title and the issue of a right of way.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission subject to six conditions.

Condition no.2 specifies the finished floor level of the development and that this level is not to be modified without prior consent of the planning authority.

The applicant was also notified that the grant of permission is subject to the provisions of section 34(13) of the Planning and Development Act 2002 as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 1st December 2022 refers to development plan provisions and submissions received. The principle of the development was considered acceptable and would not adversely impact on adjoining properties in relation to overlooking of adjoining properties. The report recommends further information in relation to the issue of ownership.

The planning report dated the 20th May 2023 refers to the further information submitted, to the provisions of the planning development guidelines in particular referencing that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land and permission was recommended.

4.0 Planning History

None relevant.

5.0 Policy and Context

5.1. Development Plan

The statutory development plan which relates to the site is the Clare County Development Plan 2023-2023.

Volume 1 is a written statement which outlines policy and guidance for development throughout the county. Appendix 1 outlines Development Management Guidelines for a range of development proposals.

Volume 3d is the West Clare Municipal District Settlement Plans and the town of Ennistymon is one of the settlements included.

Among the general objectives for the town is to safeguard the existing character of the town and village centres by permitting development that respects the existing

built heritage and encourages regeneration through appropriate renovation and redevelopment of, vacant, derelict and under-used buildings.

The site is located within an area zoned existing residential and within the town centre area. There is no specific objective relating to the site.

5.2. National Guidance

- 5.2.1. DEHLG 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007) and subsequent guidance documents outline the requirement to provide qualitative standards in the provision of residential accommodation.

5.3. Natural Heritage Designations

None relevant.

5.4. EIA Screening

- 5.5. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant grounds of appeal are summarised as follows,

- Reference is made to a right of way across the applicant's lands and a Circuit Court Order a copy of which is enclosed confirms the right of way.
- The right of way is defined as 9 feet (equivalent to 2.74 metres) with no height restriction. The proposal as submitted would reduce the width of the right of way and impose a height restriction.
- The appellant recognises that the applicant has sufficient legal interest to submit for planning permission on the site.

- The appellant who is the beneficiary of this right of way has not given consent to the right of way and the proposal as submitted cannot be executed.
- In relation to the proposal as submitted reference is made to the development covering the entire site and reference is made to issues of open space, bin storage, parking and general amenity.
- The issue of impacting on established windows on the library building which adjoin the proposal is raised.
- The submission includes maps and a Circuit Court Order.

6.2. Planning Authority Response

The planning authority indicate that the applicant was advised that the grant of permission is subject to the provision of Section 34(13) of the Act and that the developer must be certain in relation to all rights to the land to execute the grant of permission and they have no observation to make in relation to the appeal.

7.0 Assessment

- 7.1. The main issues in this appeal are those raised in the grounds of appeal. Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.

The issues are addressed under the following headings:

- Legal interest
- Assessment of the proposed development as applied for.

7.2. Legal interest

- 7.2.1. In relation to the issue of legal interest there is no dispute that the applicant has sufficient legal interest and ownership of the lands to submit a planning application and this is accepted by all parties.
- 7.2.2. The primary issue raised is in relation to the right of way on the site and the issue of a presence of a right of way is also not in dispute by all parties.

- 7.2.3. The planning authority did raise the issue and a response from the applicant did acknowledge that there was a right of way affecting the site in favour of the appellant in the response of further information and has no intention of interfering with the continued use of the right of way.
- 7.2.4. The appellant in the grounds of appeal has submitted documentation in support of his rights in relation to use of the right of way including the width of the right of way and this information would not appear to have presented in the initial submission to the planning authority. The applicant has not responded to the grounds of appeal and the information as submitted in the grounds of appeal.
- 7.2.5. I would note that the Development Plans Guidelines for Planning Authorities (DEHLG, 2007) in section 5.13 clearly state that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts and also in this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. The guidelines do refer that if the terms of the application itself, or a submission made by a third party raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations and only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis.
- 7.2.6. There is as indicated no dispute in relation to sufficient legal interest to submit a planning application. There would appear to be no consensus in relation to the actual extent of rights over the land enjoyed by the appellant and that the application as submitted interferes with a recognised right of way. Although there are grounds to question if the applicant has all rights in the land to execute the grant of permission for the development as applied for it is a matter for civil law and not planning law to determine this issue.
- 7.3. Assessment of the proposed development as applied for.
- 7.3.1. The principle of residential development in the context of the site's location and the zoning provisions of the development plan is accepted.
- 7.3.2. The site presents challenges given the small area of the site and standards which would normal apply would not necessarily be possible to achieve given the

constraints of the site. The proposal as submitted for a dwelling unit occupies virtually the entire site coverage. The development provides for no private amenity open space or bin storage or any other storage areas necessary in modern residential provision and this raises significant issues in relation to whether the development as proposed provides for sufficient qualitative standards for any future occupants of the proposed dwelling unit. In this regard national guidance and best practice guidelines for all forms of housing have emphasised the need for qualitative standards delivering and providing a high quality residential environment for the occupants of new residential units and the proposal as submitted does not I consider provide a satisfactory quality residential environment.

7.4. Appropriate Assessment Screening

7.5. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

8.1. I recommend that permission be refused.

9.0 Reasons and Considerations

9.1. Having regard to the nature of the proposed development it is considered that given the absence of the provision of any private amenity open space and the provision of other amenities for the future occupants of the residential unit as recommended in national guidance it is considered that the proposal constitutes a substandard form of development in the absence of providing a qualitative standard of residential accommodation. The development therefore would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Derek Daly
Planning Inspector

7th September 2023