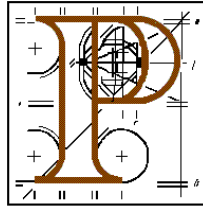


# An Bord Pleanála



## Inspector's Report

**Development:** Construction of two extensions to existing dwelling house and associated site works at Ardogeena, Durrus, Bantry, Co. Cork.

### Planning Application

Planning Authority: Cork County Council  
Planning Authority Reg. Ref.: 15/00339  
Applicant: David & Claire Dukelow  
Type of Application: Permission  
Planning Authority Decision: Grant Permission

### Planning Appeal

Appellant(s): Peter & Anne Gallagher  
Type of Appeal: Third Party V Grant  
Observers: None  
Date of Site Inspection: 11<sup>th</sup> November 2015

**Inspector: Kenneth Moloney**

## **1.0 SITE DESCRIPTION**

The appeal site is located in a rural area situated approximately 10 km (as the crow flies) south-west of the Bantry. The local area is characterised by agricultural land and also sporadic rural housing. The access to the appeal site is from a local rural road which is accessed from the R591. There is a large driveway serving the site.

The site comprises of a single storey house and a detached double-storey garage. The size of the site is approximately 1.940 ha (0.78 acres) and the shape of the site is irregular.

A characteristic feature of the appeal site is that the gradient of the site rises gently upwards from the front (west) of the site to the rear (east) of the site.

There is a neighbouring property situated to the immediate north of the appeal site. A timber fence, with an approximate height of 1.8m, acts as the boundary between these two properties.

## **2.0 PROPOSED DEVELOPMENT**

The proposed development is for the construction of two extensions to the existing dwelling house. There is an existing single storey house on the appeal site and it is proposed to construct a single storey extension in a western direction and in a northern direction.

The total floor area of the proposed single storey extension is 58 sq. metres. The floor plan comprises of a sunroom and a dining area. The western extension is the proposed sunroom and the northern extension is the proposed dining area.

The southern elevation of the proposed sunroom is to comprise of folding doors, a window and four velux roof windows. The western elevation of the proposed sunroom is comprised entirely in glazing with a zinc roof. The proposed dining room extension will have a window on its western elevation. The northern elevation of the dining area is to comprise of folding doors providing access to the dining room.

It is proposed that the existing house and the proposed extension will be finished in timber cladding.

The overall height of the proposed single storey extension is approximately 4.3 metres above ground level.

## **3.0 PLANNING AUTHORITY'S DECISION**

The Planning Authority decided to **grant** planning permission subject to three conditions. The conditions are all standard.

<u>Internal Reports:</u>	There are no internal reports on the file:
<u>Objections:</u>	There is one third party objection on the planning file and the issues raised have been noted and considered.
<u>Submissions:</u>	There is a submission from Irish Water who has no objections.

#### **4.0 PLANNING HISTORY**

- L.A. Ref. 05/8453 – Retention of alterations to garage / store.
- L.A. Ref. 05/3091 – Retention of sewage treatment plant and relocated percolation area serving existing dwelling.
- L.A. Ref. 03/3629 – Permission granted for extension to dwelling, installation of dormer window and construction of domestic store / garage.
- L.A. Ref. 98/1252 – Permission granted for alterations and extensions to dwellings, double garage, new septic tank and percolation area and relocation of entrance and driveway.

#### **5.0 DEVELOPMENT PLAN**

The operational development plan is the Cork County Development Plan, 2014 – 2020.

#### **6.0 GROUNDS OF APPEAL**

DMCA Consultants, Engineering, Surveyors, Planning Consultants, lodged an appeal on behalf of the appellants Peter & Anne Gallagher. The main grounds of appeal are summarised as relating to the following; -

- It is submitted that the local authority completely ignored the appellants objection to the proposed development.
- It is acknowledged that this appeal relates to a legal issue as well as a planning issue.
- The appellants have commenced the legal procedure necessary to have their boundary maps rectified.
- In addition the appellants wish to ensure that planning permission for the adjoining property does not overlap their private property.
- There is no objection in principle to the proposed extensions.
- It is contended that the submitted planning maps include a strip of land within the ownership of the neighbouring property.
- This strip is about 60m in length and the width varies from 10m to 13m.

- This strip takes in the private entrance and the driveway of the appellant's property.
- It is submitted that the applicants are incorrectly basing their site maps / property ownership on a recently digitalised P.R.A. map for the area.
- An updated registry map is attached. This map indicates that the applicant's property is labelled as '7' and '2TED'. However the boundary line is indicated in black.
- It is submitted that these maps are not exact and that some of these maps are incorrect.
- The physical boundary on the ground has always existed, as indicated by the black line of the P.R.A. map.
- The applicants have occupied their property for a considerable number of years and never claimed ownership of the disputed strip of ground.
- There is a very mature line of trees / physical boundary developed over the years by the applicants around their original site boundaries.
- The submitted aerial photograph indicates that the actual site boundary is in accordance with '2TED'.
- This boundary was the long established boundary line between the two neighbouring parties.
- The trees around the perimeter have been removed and a substantial timber fence has been erected.
- Planning permission was obtained in year 2000 by the appellant for a second dwelling house on his landholding. This application clearly indicates the black line as the property line. This planning application also indicates that the private entrance and driveway into the appellant's property. This driveway and entrance is now included in the planning application.
- This entrance and driveway has been in existence for 12 years.
- The temporary timber fence was actually constructed by the applicants and is illustrated on the submitted photograph.
- It is submitted that the P.R.A. map is unreliable as the red line runs through the appellant's property.
- It is submitted that the planning application should be modified accordingly with the legal misrepresentation.

## **7.0 RESPONSES**

### **Second Party Response**

The local authority submitted a response stating that they had no further comments.

### **First Party Response**

The following is the summary of a response submitted by Peter Mabey on behalf of the applicant's David and Claire Dukelow;

- The submission includes certified copies and title documents in relation to the dispute.

- The applicants would be willing to exclude the disputed strip of land and take the boundary as the temporary timber fence as indicated in the site layout map.

### **Third Party Response**

The appellant's agent responded and their response is supported by a submission from O'Mahony Farrelly O'Callaghan, Solicitors. The following is a summary of the overall response;

- The appellants are registered owners of lands and premises being all lands in Folio 55762 County Cork.
- The strip of land owned by the appellants but included in the neighbouring planning application has been in the exclusive occupation and possession and control of the appellants for 30 years. The strip has long been separated from the adjoining Dukelow property by permanent party boundary divisions.
- It is submitted that by virtue of the appellant's non-exclusive occupation possession and control of the subject strip the appellants have long since acquired title by Long Possession to the strip of ground concerned.
- The land registry operates a non-conclusive boundary system. In their maps they always refer to the fact that boundary lines are not conclusive as to title.
- The local authority overlooked a valid objection. Therefore planning permission granted by Cork County Council (L.A Ref. 15/00339) is technically incorrect.
- The local authority granted permission on the incorrect premise that no third party submission has been filed.

## **8.0 ASSESSMENT**

The main issues to be considered in this case are: -

- Principle of Development
- Impact on Adjoining Residential Amenities
- Boundary

### **Principle of Development**

The proposed development comprises of two extensions to an existing single storey house. In terms of assessing the impact of the proposed extensions the context of the proposed development is relevant. The established house is located in a rural area and the neighbouring house is situated to the north-west of the appeal property. The neighbouring property is located approximately 60 metres from the proposed extension.

Therefore having regard to the location of the proposed development I would consider that the principle of a residential extension to an existing

single storey house would be acceptable provided that the proposal adequately safeguards the residential amenities of the adjoining properties.

### **Impact on Adjoining Residential Amenities**

The proposed extensions are to provide for a sunroom and a dining room. The primary elevation of the proposed single storey extension is south and west facing. These orientations are away from the appellant's property and therefore I would not anticipate any overlooking from the proposed sunroom to the neighbouring property to the north. I would acknowledge that the dining room extension looks northwards however given the separation distance and its orientation away from the adjacent house I would not consider there are any adverse overlooking issues.

In my view, based on a visual observation of the area, the proposed house is sufficiently separated from the neighbouring property to the north. As such I would not consider that the proposal would give rise to any concerns in relation overshadowing or visual impacts.

Overall I would not consider that the proposed extensions, based on the submitted plans and a visual observation of the area, would adversely impact on any established residential amenities.

### **Boundary**

I noted from my site inspection that there is a timber boundary fence situated immediately north of the appeal property. The timber fence is indicated as 'temporary timber fence' in the submitted site layout plan (1:500).

This timber boundary fence provides the boundary between the appeal property and the property to the north. However the submitted site layout plan which accompanied the planning application indicates that there will be a new site boundary for the appeal site and this revised boundary is situated approximately 10 – 13 metres north of the aforementioned timber boundary. This proposed or revised boundary is approximately 62 metres in length and therefore there is a strip of land measuring approximately 700 sq. metres which currently lies in the neighbouring property to the north but is now within the proposed site boundary of the applicant's site.

This revised site boundary therefore has implications for the neighbouring property to the north. The proposed boundary revision would impact on an existing access and driveway. I would note that the access is not in use and the driveway is unfinished.

The appellants, as outlined in their appeal submission, are strongly opposed to any boundary revision and claim that they have full title for the relevant strip of land. In response the applicant submits that they have full

title to the strip of land and submit a certified copy folio with register maps indicating their full ownership.

However the applicant states in their response submission on the 29<sup>th</sup> October 2015 that they would be willing to exclude the disputed strip of land and take the boundary as the 'temporary timber fence' as indicated on the site layout map (scale 1:500).

This is a legal dispute in relation to land ownership and it is not an issue that the Board can determine under the current provisions of the Planning and Development Act, 2000, as amended. Overall I would consider that any arguments in relation to actual landownership are beyond the remit of this appeal. In relation to ownership issues it is important to note Section 34(13) of the Planning and Development Act 2006, which states '*A person shall not be entitled solely by reason of permission under this section to carry out any development*'. Nonetheless the issue does involve the red line on the submitted site layout plan. In this instance I would recommend a condition to the Board, should they favour granting permission. The condition, that I would recommend, shall state that all existing site boundaries are maintained in their current locations. This recommended condition would relate to this permission and any changes to this condition would require a separate planning application.

## **9.0 RECOMMENDATION**

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be **GRANTED** for the reasons set out below.

### **REASONS AND CONSIDERATIONS**

Having regard to the established pattern of development in the area and the extent of the proposed development, it is considered that subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity

2. The proposed development shall be modified as follows:

- (a) The temporary boundary fence to the immediate north of the applicant's house shall be retained in its current position, and shall not be altered without a prior grant of planning permission.

Revised drawings showing compliance with the above requirement shall be submitted to the planning authority for written agreement prior to the commencement of development.

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

3. 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.

**Reason:** In the interest of public health and to ensure a proper standard of development.

4. Prior to commencement of development, details of the materials, colours and textures of all the external finishes shall be submitted to the planning authority for agreement.

**Reason:** In the interest of orderly development and the visual amenities of the area.

5. The house to be used as a single dwelling unit.

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

6. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

7. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interest of amenities and public safety.

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Kenneth Moloney  
Planning Inspector  
16<sup>th</sup> December 2015