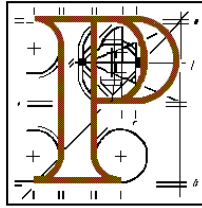


An Bord Pleanála



INSPECTOR'S REPORT

DEVELOPMENT: Demolition of outbuilding and construction of ancillary guest accommodation

LOCATION: No. 1 Dunleary, The Cove, Baltimore, Co. Cork.

PLANNING APPLICATION

Planning Authority: Cork County Council

Planning Authority Reg. Ref.: 15/447

Applicant: Peter O'Leary

Type of Application: Permission

Planning Authority Decision: Refuse

PLANNING APPEAL

Type of Appeal: First Party

Appellant(s): Peter O'Leary

Observers / Public Reps: None

DATE OF SITE INSPECTION: 7th January 2016

INSPECTOR: Mary Crowley

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site with a stated area of 0.098 ha is located on the south-western fringe of the village of Baltimore, on a site overlooking the sea in an area referred to as the Cove. The site comprises a storey and a half semi-detached dwelling with an ancillary grey / blue outbuilding positioned on an elevated portion of the site to the rear of the principle house. The area is characterised by residential housing.
- 1.2 A set of photographs of the site and its environs taken during the course of both site inspections is attached. I also refer the Board to the photographs of the appeal site and environs available to view throughout the appeal file.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development consists of the demolition of the existing outbuilding (46.95 sq.m) and its replacement with the construction of an ancillary guest accommodation building (57.17 sq.m) on the footprint of the existing outbuilding and all associated site works.
- 2.2 Water supply will be by means of an existing connection to the public mains. Wastewater management will be by means of an existing connection to the public sewer. Surface water disposal will be by means of soakpit as indicated on drawings submitted.
- 2.4 The application was accompanied by a Part V Exemption Certificate application form together with a cover letter prepared by Bertie Pope & Associates
- 2.5 **Unsolicited information** was submitted by Bertie Pope & Associates on behalf of the applicant in response to the observations made by Emer Olsen, The Cove, Baltimore, Co. Cork (see below) that may be summarised as follows:
- The applicant has entered into a binding commitment to sell No 2 Dunleary (adjoining property) in early 2016 and it will no longer be available to the applicant and his family to use as a holiday home.
 - The vast majority of the year the house is not rented out on short-term-lets as evidenced by the fact that there is no market for same.
 - Submitted that there are numerous examples where additional accommodation, ancillary to existing houses, have been created on sites throughout the village
 - The proposal will not be more visually obtrusive than the existing shed and it will not be any closer to adjoining properties than the existing shed

- It is not proposed to remove the existing border of trees which are located within the observers property.

3.0 OBJECTIONS / OBSERVATIONS / PUBLIC REPRESENTATION TO THE PLANNING AUTHORITY

3.1 There is one observation recorded on the planning file from Emer Olsen, The Cove, Baltimore, Co. Cork. The issues raised may be summarised as follows:

- The applicant owns No 1 & 2 Dunleary and so there is no shortage of space and it is considered that an “intention” to possibly sell on these houses in the future doesn’t alter the current situation.
- There is no objection to the applicant’s rental business. However to suggest that No 1 & 2 Dunleary are only rented form time to time is considered to be misleading.
- Observer not aware of other examples where ancillary dwelling space was applied for when the main accommodation was mainly used for rental purposes.
- The border trees are a shared property between both properties and there is no agreement to remove the trees.
- Public notice is not easily seen.
- The basis upon which it is asserted that this will be an “ancillary” dwelling is queried. Submitted that the applicant owns *“both No’s 1 & 2 Dunleary and have operated a year-round professional rental business there for at least the past 23 years”*. Observer is concerned that *“the purposes of the proposed development is to increase the rental possibilities”*.
- The proposed building is clearly much higher than the existing building. Requested that a pole is erected to show the finished height
- Scheme will create noise issues and will take a lot of light from the observers living room. The suggested opaque bathroom window in the north west gable when opened would be in clear sight line of the observers house
- Applying for an ancillary dwelling should not be a way to circumvent the Part V “exemption certificate”.

4.0 TECHNICAL REPORTS

4.1 The **Area Engineers** Report recommended that permission be granted subject to

two conditions relating to the adequate provision of sight lines and drainage.

- 4.2 **Irish Water** has no objection to the proposed scheme.
- 4.3 The **Executive Planners** (Case Officer) Report highlights their concern with regard to the nature of the proposed development (short term letting / holiday letting) and it is considered that *providing such cramped holiday accommodation at the rear of houses is not only highly undesirable and overdevelopment but would encourage an unacceptable precedent elsewhere in Baltimore for the future.* Refusal was recommended.
- 4.4 The **Liaison Officers** Report provides a brief summary of the Executive Planners report.
- 4.5 The **Senior Executive Planners** Report concurs with the Case Officers recommendation to refuse permission. The notification of decision to **refuse** planning permission issued by Cork County Council reflects the recommendation of the Executive Planner (Case Officer) and the Senior Executive Planner.

5.0 PLANNING AUTHORITY DECISION

- 5.1 Cork County Council issued notification of decision to **refuse** planning permission for the following reason as summarised:

The proposed development would be positioned on **restricted lands** at the **rear of a restrictive residential curtilage that is used for holiday letting accommodation and as a second home**, and for which, there is no local housing need. The proposed development, would result in **overdevelopment and backland development of the site** and would seriously **injure the amenities of adjacent properties** by reason of loss of privacy and would set an **undesirable precedent** for other such similar cramped development within Baltimore village

6.0 PLANNING HISTORY

- 6.1 There is no evidence of any previous appeal on this site. It is noted from the Executive Planners Report that there were two previous applications (Reg Ref 15/308 and Reg Ref 15/274 refers) on this site that were invalidated by reason of an inadequate / misleading description and that the site notice was not properly visible. Also noted that planning permission was granted at the adjoining property (No 2 Dunleary) for the formation of a pedestrian access (Reg Ref 11/106).
- 6.2 According to the Executive Planners Report the ancillary dwelling to the south east at the neighbouring property benefits from two permission(s) in 2005 (Ref 05/8412)

and 2009 (Ref 09/290). The report noted that a condition (Conditions 2) was imposed to restrict its use to immediate family who permanently reside at the property.

7.0 POLICY CONTEXT

7.1 The operative plan for the area is the **Cork County Development Plan 2014** and the **Skibbereen Electoral Area Local Area Plan 2011**. The appeal site lies within the designated settlement boundary of Baltimore. The general zoning objective for Baltimore is set out in **Objectives DB-01**.

8.0 GROUNDS OF APPEAL

8.1 The first party appeal has been prepared and submitted by Bertie Pope & Associates, Architects & Planning Consultants on behalf of the applicant Peter O'Leary against the decision of Cork County Council to refuse permission. The issues raised may be summarised as follows:

8.2 The proposed development is in accordance with the existing pattern of development in the area. Submitted that this development would not set an unacceptable precedent elsewhere in Baltimore as numerous planning applications for additional accommodation and stand-alone units have been permitted over recent years including Reg Ref 05/8412 and Reg Ref 09/290 on site adjoining this property (aerial photo attached with marked examples).

8.3 Submitted that this development is consistent with the Objective RCI 7-2 Holiday Accommodation.

8.5 The design approach is in accordance with existing patterns of development in the area and is in accordance with the Cork County Development Plan 2014 Holiday Home and Second Home Development, 4.7.4.

8.6 Submitted that the proposed development is also in accordance with the Cork County Development Plan Objective RCI 7-3: Small Scale Rural Business / Tourism Initiates.

8.7 The proposed building will replace an existing dilapidated outhouse that is not visually attractive or worthy of retention. Submitted that the proposed development is to replace an existing outbuilding on site and is carefully designed to avoid any infringement of privacy and does not increase the impact on the adjoining property as it is a replacement building on the same location, to the same scale with no additional openings other than a bathroom window on elevations adjoining adjacent properties.

- 8.8 The proposed development provides additional accommodation to No 1 Dunleavy on with existing access from the public road and with all services to be provided connected to the existing dwelling.
- 8.9 The validity of reference to the number plate registration in the planners report is questioned. It is submitted that the applicant drives a Dublin registered car and that there is no attempt to mislead the planning authority as to the intentions of the applicant.
- 8.10 The applicant submitted a photomontage of the proposed development to support the application and this clearly illustrates the proposed development in the context of the receiving environment and also demonstrates that the proposed development will not have a greater impact than the existing outbuilding on site.
- 8.11 The planning application documentation and public notices clearly state that this property will also “be available for short term / holiday letting” when not in use by the applicants family. It is not a single additional unit but an extension of the existing accommodation in No 1 Dunleary and it will not be used as a single independent unit. Submitted that a condition requiring that this single unit be used as additional accommodation to No 1 Dunleary only and not as a separate stand-alone unit could be attached.
- 8.12 Submitted that the Planning Authority has previously permitted development for “ancillary accommodation” on adjoining land Reg Ref 05/8412 and Reg Ref 09/290 refers.
- 8.13 The appeal was accompanied by the following:
- Copy of decision, site location maps, public notices, site and environs photos and copy of letter issued by Cork County Council requesting the development description be changed to “an ancillary guest building”
 - Letter from Colm A Houlihan & Co Solicitors confirming that the sale of property at No 1 Dunleary is progressing
 - Letter from the applicant. Additional comments may be summarised as follows:
 - (1) Family have holidayed in Baltimore for over 40 years. The site with shed was purchased in 1982. Two holiday homes were constructed in 1990 and have contributed to the economic and social development of the village in supplying high quality holiday accommodation to tourists when they were not occupied by the applicant.

- (2) As the adjoining house (No 2 Dunleary) is being sold an application was made to provide ancillary accommodation to No 1 Dunleary in order to provide additional guest accommodation and occasional rental accommodation when not occupied by family.
- (3) The applicant and his wife have recently retired and resulting from the sale of the adjoining house they will be in a position to spend more time in Baltimore.
- (4) The proposed building does not have a separate entrance from House No 1. It is not intended nor is it suitable to be used as an additional standalone unit – it is ancillary to No 1 Dunleary.
- (5) Applicant willing to give undertaking that the ancillary accommodation proposed (Barn Conversion) will be restricted to family use only, precluding holiday rental accommodation.
- (6) The application has not sought for permission for the proposed dwelling to be used independently of the main house. The application seeks “ancillary guest accommodation” and it was never intended to be used as a separate stand-alone unit.

9.0 RESPONSE OF THE PLANNING AUTHORITY

- 9.1 Cork County Council in their response to the first party appeal set out the following as summarised:
- 9.2 **Existing Pattern of Development** – The development of a back land and additional holiday unit is inconsistent with the development pattern of the area.
- 9.3 **Other permissions and precedent** – This application was considered on its own merits. The planning authority has not permitted a back land holiday unit elsewhere at Baltimore that completely overdevelops the site. Many of the approved permission cited in the planning history are for permanent residents and the indigenous population who reside in Baltimore on a permanent basis.
- 9.4 **Design Approach** – Reference to Para 4.7.4 of the Cork County Development Plan 2014 i.e. *utilisation of disused and derelict housing stock* is noted. Submitted that this is not relevant to the merits of this application as the existing building in situ is an ancillary domestic shed. Reference to Objective RCI 7-3 i.e. *farm diversification* is also noted. Submitted that this relates to renovation of barns, outhouses for owner run agriculture / tourism and rural business and that the applicant has no connection to the agricultural related tourism or any farm diversification. This objective is not relevant to the merits of this application and should not be applied within the village setting.

- 9.5 **Overdevelopment and back land development** – The scheme constitutes both overdevelopment and back land development. The proposed unit is quite clearly capable of being lived in separately from the existing holiday house on the site and is geared towards such use.
- 9.6 **Loss of Privacy** – The proposed unit is set to the rear of the two existing holiday units and directly overlooks and inter-looks the rear of such dwellings. Loss of privacy would result from this development.
- 9.7 **Short Term Letting** – The Planning Authority would have no control for what period of days or weeks the structure would be occupied. The appellant has requested a personal occupancy condition of use. Such a condition is considered wholly unenforceable.
- 9.8 **Other Matters** – Submitted that Baltimore this village is the second most unoccupied village in the entire country at the time of the last census in 2011 and that it is completely unbalanced and awash with second homes. Whilst Objective DB-01(i) of the Skibbereen Local Area Plan 2011 can, subject to normal proper planning and sustainable development planning consideration, allow for “managed holiday accommodation”, this development does not relate to “managed accommodation” but rather an additional unit geared primarily towards letting purposes for the sole benefit of the developer.
- 9.10 The response was accompanied by the following:
- Copy of application form and a letter dated 8th June 2015 (Reg Ref 15/308) where *there was no reference what so ever that the ancillary residential unit of accommodation was to be used for short term residential letting and for which permission has been sought*
 - Pre-planning Ref No PPW 15/297 where the details submitted by the agent refer to *“linked guest accommodation”*
 - Extracts from “homeaway.co.uk” and “baltimoreandtheislandsbaltimore.ie”

10.0 OBSERVATIONS TO AN BORD PLEANÁLA

10.1 None recorded on the appeal file

11.0 ASSESSMENT

11.1 I note the concerns raised in the appeal regarding the overall assessment of the scheme by the planning authority and the requirement that *An Bord Pleanála consider the unbalanced approach taken by the Planning Authority in the*

assessment of this Planning Application. In the interests of clarity I would point out that the current development before the Board is considered “de novo”. That is to say that the Board considers the proposal having regard to the same planning matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and inter departmental reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application.

- 12.1 Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:
- Principle / Policy Considerations
 - Vehicular Access
 - Other Issues

12.0 PRINCIPLE / POLICY CONSIDERATIONS

- 12.1 The development before the Board as set out in the public notices consists of the demolition of the existing outbuilding on site (46.95 sq.m) and its replacement with the construction of an ancillary guest accommodation building (57.17 sq.m) on the footprint of the existing outbuilding and all associated site works.
- 12.2 Cork County Council refused planning permission for the proposed scheme as it was considered inter alia that there was no local housing need for development on these restricted lands at the rear of a restrictive residential curtilage that is used for holiday letting accommodation and as a second home. It was further stated that the proposed development, would result in overdevelopment and backland development of the site and would seriously injure the amenities of adjacent properties by reason of loss of privacy.
- 12.3 The public notice states that the existing house and ancillary accommodation if permitted will be available for Short Term/Holiday Letting as a single unit when not occupied by Mr O’Leary (applicant) and his family as a holiday home. This proposal is further substantiated in the planning application form where it states that if permission is granted the applicant will let the house short term and / or use the houses as a second home / holiday home (Q17 refers). In the unsolicited information submitted to the Planning Authority the applicant reveals that they are the owners of the adjoining property at No 2 Dunleary (other half of semi-d) and that they have entered into a binding commitment to sell No 2 Dunleary in early 2016 and that it will no longer be available to the applicant and his family to use as a holiday home. It is further stated that the letting period only represents a fraction of the year

and that for the vast majority of the year the house is not rented out on short-term-lets as evidenced by the fact that there is no market for same.

- 12.4 In the grounds of appeal the applicant sets out that it is not proposed to use this additional accommodation as a separate unit and that it will provide additional accommodation for the applicant and his extended family to overcome the limited accommodation provided in No 1 Dunleavy which is used by the applicant and his family throughout the year. It is stated that it is not intended that the additional accommodation is to be used as a separate rental unit. According to the letter prepared by the applicant accompanying the appeal the adjoining house (No 2 Dunleary) is being sold an application was made to provide ancillary accommodation to No 1 Dunleavy in order to provide additional guest accommodation and occasional rental accommodation when not occupied by family
- 12.5 Under the provisions of the the Skibbereen Electoral Area Local Area Plan 2011 the appeal site lies within the designated settlement boundary of Baltimore. The general zoning objective for Baltimore is set out in Objectives DB-01. Objective DB-01(i) states inter alia *that limited provision may be made for managed holiday home accommodation within the village where a need has been demonstrated, subject to normal proper Planning and sustainable development considerations.*
- 12.5 The Skibbereen Local Plan 2011 also recognises just how imbalanced the village of Baltimore is and at paragraph 5.2.4 states that *“there is a high proportion of holiday homes.... and that in winter many of these holiday homes are vacant and the local population reduces significantly.* According to the Local Authority Planners report the 2011 Census has further demonstrated this imbalance, referencing a report dated 31st August 2012 that concluded:

*“Three in every four of houses in Baltimore are vacant, according to a Central Statistics Office (CSO) report. The Roof over our Heads, which is the fourth of 10 profile reports examining the results of Census 2011, revealed that the West Cork seaside location has the **second highest vacancy rates-** when including holiday homes, vacant houses and vacant apartments- in the country, with Mullaghmore in Sligo recording the highest with 78% of housing units in the town vacant on Census night, Sunday April 10th last year.”*

(The Cork News dated Friday 31st August 2012)

- 12.6 While I note the information outlined by the applicant in their planning application to the Planning Authority including the public notices together with the information outlined in their appeal submission I am concerned with the intended nature and use of the proposed development. Overall I agree with the Local Authority Planner that this unit may not just be an ancillary guest unit but may also be a unit that may be rented out independently and / or jointly with No 1 Dunleavy, possibly on a regular basis, with shared facilities for parking and open space and that in the event of No 2

Dunleary being sold that the proposed unit may simply be tantamount to a replacement rental unit. I also agree that reference to Para 4.7.4 of the Cork County Development Plan 2014 i.e. *utilisation of disused and derelict housing stock* and Objective RCI 7-3 i.e. *farm diversification* are not relevant in this instance as the existing building in situ is an ancillary domestic shed and the applicant has no connection to the agricultural related tourism or any farm diversification. Refusal is recommended.

12.7 With regard to the location of the proposed scheme at an elevated site to the rear of No 1 Dunleary and proximate to adjoining residential properties I am concerned that this backland development would result in an unacceptable loss of amenities to adjoining properties by reasons of overlooking. Refusal is recommended.

13.0 VEHICULAR ACCESS

13.1 The scheme before the Board provides for shared access and parking arrangements with the existing entrance and parking serving No 1 Dunleary (Drg No 1137/25 refers). As pointed out by the Area Engineer the sight visibility at the entrance is restricted on the left hand side (westwards) by an overgrown hedge (site photos refer) and that surface water flows from the site onto the public road. I agree with the Area Engineer that in an effort to reduce flooding on the public road, it would be prudent to require the applicant to install an interceptor, to prevent surface water from flowing onto the public road. Having regard to the recommendation of the Area Engineer it is recommended that should the Board be minded to grant permission that the following two conditions be attached:

- (1) *Vegetation (i.e. the ivy hedge) shall be set back to improve the sight distance to the left hand side of the entrance (west side). Details shall be agreed with the planning authority prior to commencement of work on site.*

Reason: *To provide improved sight distance for emerging traffic in the interests of road safety.*

- (2) *A drainage grating, along with a discharge pipe to a soakaway located within the site, shall be installed at the entrance to the site (between the gate pillars) to the satisfaction of the Planning Authority.*

Reason: *To prevent flooding of the public road.*

13.2 Given the location of the appeal site I am satisfied that the vehicular movements generated by the proposed scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area subject to the application of Condition No 1 above. Overall I consider the proposal for parking and access to be

acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard subject to the above conditions.

14.0 OTHER ISSUES

- 14.1 **Appropriate Assessment** – As set out in the Local Authority Planners report *the subject site lies around 25 metres to the north of Sheep’s Head to Toe Head SPA (Site Code 004156) whilst Roaring Water Bay and Islands SAC (Site Code 00101) lies opposite the entrance to the north east.* Having regard to the nature and scale of the proposed development (including the demolition of the existing outbuilding) located within the curtilage of an existing dwelling together with the availability of existing service infrastructure connections (water, sewerage and roads) which will service the site, the nature of the receiving environment and proximity to the nearest European 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.
- 14.2 **Development Contributions** – Cork County Council has adopted a Development Contribution scheme under **Section 48** of the Planning and Development Act 2000 (as amended). Having considered the exemptions listed in the “Reduced Contributions” Section of the scheme it is my view that the proposed development does not fall under the exemptions listed and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.
- 14.3 **Supplementary Development Contribution** - In relation to the Section 49 Supplementary Development Contribution Schemes (re-opening of an operation of suburban rail services on the Cork to Middleton line; provision of new rail services between Blarney and Cork and the upgrading of rolling stock and frequency on the Cobh rail line as demand increases) it is noted that the subject site is located outside the catchment area of these projects and therefore the Section 49 scheme is not applicable in this case.

15.0 RECOMMENDATION

- 15.1 Based on the above assessment I recommend that permission be refused for the proposed development for the reason and considerations set out below.

16.0 REASONS AND CONSIDERATIONS

1. Having regard to the restricted nature and prominent location of this back land site together with its relationship to adjoining property, it is considered that the proposed development of ancillary guest accommodation would represent

inappropriate back land development and would seriously injure the amenities of adjoining residential property. The proposed development would, therefore, set an undesirable precedent for other such similar developments within Baltimore village and accordingly, would be contrary to the proper planning and sustainable development of the area.

Mary Crowley
Senior Planning Inspector
10th February 2016

Report ends MC