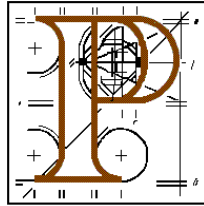


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# An Bord Pleanála



## Inspector's Report

**Appeal Reference No.:** PL04. 246589

**Development:** The construction of a single storey extension to the kitchen to the rear of existing dwelling house and a two storey side extension to incorporate a domestic garage at ground floor level and a bedroom at first floor level to house.

Ballynafarsid, Rostellan, Co. Cork.

### **PLANNING APPLICATION**

Planning Authority: Cork County Council

Planning Authority Ref.: 16/4419

Applicant: Stephen Conway

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

### **APPEAL**

Type of Appeal: Third Party v. Decision

Appellant(s): Mairin Ruthlidge

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Observers: None.

Date of Site Inspection: 19<sup>th</sup> August, 2016

INSPECTOR: Robert Speer

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## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The proposed development site is located to the east of Cork Harbour within the village of Rostellan, Co. Cork, approximately 8.0km south of Midleton and 5.2km east-southeast of Cloyne, where it is situated at the end of a cul-de-sac within a small scheme of detached dwelling houses of varying design. The site itself has a stated site area of 0.065 hectares, is irregularly shaped and is presently occupied by a conventionally designed dormer dwelling house. Whilst the immediate site surrounds are predominantly characterised by conventional dormer / two-storey dwelling houses, the adjacent lands to the north are occupied by a single storey bungalow which is located at a significantly lower elevation than the application site and in this respect it is notable that the intervening site boundary is defined by a combination of timber fencing and mature hedgerow in addition to a number of semi-mature trees. A timber garden shed presently occupies the position of the proposed side extension.

## **2.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

2.1 The proposed development consists of the construction of a single storey flat-roofed kitchen extension to the rear of an existing dwelling house and a further two-storey side extension to the north-facing gable of the property which will incorporate a domestic garage on the ground floor and a new bedroom at first floor level (Overall floor area: 42m<sup>2</sup>).

## **3.0 RELEVANT PLANNING HISTORY**

### **3.1 On Site:**

PA Ref. No. 99/3556. Was granted on 9<sup>th</sup> July, 2004 permitting Robert Rutledge permission for a residential development comprising 29 No. dwelling houses & on site treatment plant at Ballynafarsid, Co. Cork.

- PA Ref. No. 08/10379. Was granted on 16<sup>th</sup> April, 2009 permitting Robert Rutledge an 'Extension of Duration' of PA Ref. No. 99/3556.
- PA Ref. No. 11/4460. Was granted on 3<sup>rd</sup> May, 2011 permitting Robert Rutledge an 'Extension of Duration' of PA Ref. No. 99/3556.

PA Ref. No. 06/11903. Was granted on 31<sup>st</sup> January, 2007 permitting Steve Conway permission for alterations to dwelling to include installation of 1 No.

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window at ground floor level and 1 No. window at first floor level on northern gable elevation at Site No. 3, Radharc Na Mara, Ballynafarsid, Co. Cork.

3.2 On Adjacent Sites:

PA Ref. No. 08/4776. Was granted on 13<sup>th</sup> May, 2008 permitting Maurice & Gail Killeen permission for alterations to house design previously permitted under Planning Reg. No. 99/3556 to include conversion of attic and installation of 4 no. rooflights, 2 no. gable windows and solar panel and extension to rear and construction of domestic garage at Site No. 2, Radharc Na Mara, Ballynafarsid, Rostellan, Co. Cork.

**4.0 PLANNING AUTHORITY DECISION**

4.1 Planning and Technical Reports:

*Planner's Report:* Acknowledges the proximity of the proposed development to the shared site boundary and notes that any construction on the boundary line will require the consent of the adjacent property owner. It subsequently states that the proposal will not interfere with the residential amenity of neighbouring properties and considers the contents of further submissions / reports on file before ultimately recommending a grant of permission.

4.2 Objections / Observations:

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- The treatment of the northern site boundary
- The proximity of the proposed construction to the shared site boundary
- The potential for overshadowing of neighbouring property

4.3 Prescribed Bodies / Other Consultees:

*Irish Water:* No objection subject to conditions.

4.4 Planning Authority Decision:

On 19<sup>th</sup> April, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 1 No. condition which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

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## **5.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- Given the proximity of the proposed development to the northern site boundary, and the difference in ground levels between the subject site and the adjacent lands, it is unclear how the construction (and subsequent maintenance) of the proposed extension will be completed without encroaching into the appellant's property.
- There are concerns that the construction of the proposed side extension will undermine the existing tree-lined northern site boundary.
- It is the responsibility of the Planning Authority in its assessment of a planning application to consider the potential loss of amenity to adjoining properties and in this respect it is submitted that more detailed drawings should have been requested by way of further information in order to clarify the nature of the proposed boundary treatment and the separation distances between the proposed development, the site boundary and the appellant's dwelling house. In addition, a tree survey of the northern site boundary should have been undertaken.
- The northern site boundary is in common ownership and any works to same will require the consent of both parties.
- A condition should be included in any grant of permission whereby details of the treatment of the northern site boundary will be required to be agreed in writing with the Planning Authority prior to the commencement of development.
- The construction of the development as proposed will result in a loss of amenity to the appellant's property.

## **6.0 RESPONSE TO GROUNDS OF APPEAL**

### **6.1 Response of the Planning Authority:**

None received.

### **6.2 Response of the Applicant:**

- The proposed extension has been designed so as to allow for a soffit of 225mm whilst the footprint of the building will not encroach into the appellant's property.
- The proposed development will avail of a raft foundation (as detailed on Drg. No. SC/15/10) and will finish 300mm from the fence line. This foundation will be 400mm deep at its edge before reducing to 150mm for

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- the floor area. Given that the existing ground level is 150mm below that of the damp-proof course, it will only be necessary to excavate a further 250mm to the underside of the foundation.
- On the basis that the proposed development will not encroach into the adjacent property and will not be constructed within 300mm of the legal boundary, it was not deemed necessary to consider any boundary treatment.
  - It had been assumed by the applicant that he would be able to dismantle the existing fence line that he had previously erected in order to facilitate the construction of the proposed extension before subsequently re-erecting said fence. However, in view of the subject appeal, it is proposed to build the development 'overhand' and to use 'Forticrete Block' with a natural grey finish on the side elevation.
  - The proposed development is located within the boundaries of the application site and there is no encroachment of the appellant's land.
  - There is little chance of any damage to tree roots as the proposed foundation will be only 250mm below existing ground level and, therefore, no boundary treatment is considered to be necessary.
  - The materials to be used in the construction of the gable wall of the proposed extension will be maintenance-free.

## **7.0 POLICY CONTEXT**

### **Cork County Development Plan, 2014:-**

#### **Chapter 14: Zoning and Land Use:**

##### **Section 14.3: Land Use Zoning Categories**

###### ***Objective No. ZU 3-1:***

###### ***Existing Built Up Areas:***

Normally encourage through the Local Area Plans development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted.

### **Midleton Electoral Area Local Area Plan, 2011 (2<sup>nd</sup> Ed., Jan. 2015):**

#### **Section 2: Local Area Strategy**

**Section 3: Settlements and Other Locations: Key Village / Specialist Employment Centre: 5. Whitegate / Aghada**

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## **8.0 ASSESSMENT**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- Impact on residential amenity
- Appropriate assessment

These are assessed as follows:

### **8.1 Impact on Residential Amenity:**

8.1.1 With regard to the appellant's concerns that the construction of the proposed development may interfere with or undermine the property boundary and that the proposed extension may overhang or encroach into the neighbouring property to the immediate north, following a review of the submitted plans and particulars, in addition to the applicant's response to the grounds of appeal, I would advise the Board that it would appear that the proposed development will not physically encroach into the adjacent property on the basis that the applicant has specifically confirmed that all works will be carried out within the confines of the application site. In this respect it is of further relevance to note that the applicant has detailed that the proposed extension will avail of a raft foundation which will not be constructed within 300mm of the legal boundary whilst the eaves / soffit will only extend 225mm beyond the new gable wall. In any event, it is my opinion that any alleged encroachment or interference with the appellant's property (including any need for access to same in order to allow construction / maintenance of the proposed development) is essentially a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states *that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'* and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. However, if the Board were to deem it necessary, a condition could be included in any decision to grant permission which would expressly require the proposed construction to be set back 300mm from the northern site boundary in order to preserve the amenity of the neighbouring property.

8.1.2 Although I would concede that the proposed development may possibly necessitate the carrying out of some works to the existing northern site boundary

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(including the cutting back of existing vegetative growth), in view of the information submitted, and the difficulty in ascertaining the precise location of the legal boundary during the course of my site inspection, I would suggest that any new boundary treatment consequent on the proposed development can be agreed with the Planning Authority by way of an appropriate condition attached to any grant of permission.

8.1.3 With regard to the wider design of proposed development, I am satisfied that it is unlikely to give rise to any significant impact on the residential amenities of the appellant's property either by way of overlooking or overshadowing.

**8.2 Appropriate Assessment:**

8.2.1 Having regard to the nature and scale of the development proposed, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

**9.0 CONCLUSIONS AND RECOMMENDATION**

Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

**Reasons and Considerations:**

Having regard to the site location, the pattern of development in the area and the scale and design of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

**CONDITIONS**

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



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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.

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

2. The proposed development shall be amended as follows:

- a) The proposed side extension shall be set back a minimum of 300mm from the northern site boundary.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. The external finishes of the proposed extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture.

**Reason:** In the interest of visual amenity

4. Prior to commencement of development, details of the treatment of the northern site boundary shall be submitted to, and agreed in writing with, the planning authority.

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

5. The site and building works required to implement the development shall be carried out only between the hours of 08.00 to 18.00 Monday to Fridays, between 08.00 to 14.00 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 amenities of adjoining residential occupiers.

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6. 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.

Signed: \_\_\_\_\_

Robert Speer  
Inspectorate

Date: \_\_\_\_\_