



An
Bord
Pleanála

Inspector's Report PL88.246657

Development	Retention of extension to garage/store and permission for new entrance and roadside boundary
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/157
Applicant(s)	Tony and Nora Hall
Type of Application	Permission
Planning Authority Decision	Grant subject to Conditions
Appellant(s)	Eileen and Michael O'Neill
Observer(s)	None
Date of Site Inspection	19 th August 2016
Inspector	Mary Crowley

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.2767 ha is located on the outskirts of the village of Rerrin on Bere Island in west County Cork. It is about 6.5 kilometers south-east of Castletownbere and 100 kilometers west of the center of Cork City. The site is that of an existing two storey stone built detached house derived from a former national school building dating from the 1930s. The site is irregular in shape and is bisected northeast - southwest by a public road which separates it into a seaward part to the northwest and landward side to the southeast. The area is characterised as rural agricultural.
- 1.2. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I also refer the Board to the photos available to view on the appeal file.

2.0 Proposed Development

- 2.1. This is an application for permission for retention of a single storey extension to the west side of an existing domestic garage/store, including a new hipped roof; together with permission for the construction of a new entrance on to the public road, permission for construction of new roadside boundary and all associated site works at Rerrin, Bere Island, Beara, Co. Cork

3.0 Planning Authority Decision

3.1. Decision

Cork County Council issued notification of decision to **grant** planning permission subject to 16 general standard conditions. **Condition No 2** requires the procurement of a legal right of way from the new entrance at the public road to the development site. **Condition No 3** requires that the garage to be used solely for use incidental to the enjoyment of the house.

3.2. **Planning Authority Reports**

3.3 The **Local Authority Planner** noted that this was a re-visit of Reg Ref 14/703 where the garage extension was refused due to road safety concerns. The Planner raises *no objection as long as suitable sightlines are available and that there is no interference with surface water drainage*. Further stated that the application relates mainly to engineering issues of road safety and sight distances and that in principle from a planning policy perspective the proposed development is acceptable. The Planner recommended that planning permission be granted subject to conditions. The notification of decision to grant planning permission issued by Cork County Council reflects this recommendation.

3.4 The **Area Engineer** has *no objection as long as suitable sightlines are available and that there is no interference with surface water drainage* subject to conditions set out in the report.

3.3. **Other Technical Reports**

3.4 **Irish Water** has no objection to the scheme.

3.4. **Third Party Observations**

3.5 There is one observation / objection recorded on the appeal file from Eileen and Michael O'Neill. The issues raised relate to misappropriation of public property, public safety concerns, legal interest, proof of ownership, several applications for retention of unauthorised building, restricted sightlines, danger to both motorists and pedestrians, negative visual aspect, contravenes Council policy, future slipway will require planning permission and foreshore license / lack of jurisdiction

4.0 **Planning History**

4.1 There was a previous appeal on this site that may be summarised as follows:

PL04.244561 (Reg Ref 14/00703) – Cork County Council issued a **split decision** granting permission for the boathouse and existing entrances serving the existing house and refusing permission for the single storey extension to the west side of the existing domestic garage/store and its entrance. The decision was appealed by a third party. The Board granted permission for the construction of a new single storey domestic boathouse to replace an existing 20-foot shipping container to be removed and the retention of the entrance to serve the proposed boathouse and the existing entrances serving the existing dwelling house and all associated site works and refused permission for the retention of the single storey extension to the west side of an existing domestic garage/store, including a new hipped roof and entrance for the following reason:

The extension of the domestic garage which it is proposed to retain entails the creation of a new vehicular access onto the public road at a point where visibility in an easterly direction is virtually non-existent. The retention of this development would, therefore, endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

5.0 **Development Plan**

- 5.1 The operative plan for the area is the **Cork County Development Plan 2014**. Relevant policies/ Objectives are as follows
- 5.2 Volume 1 contains the main policy material. Volume 2 is on heritage and amenity. Volume 3 consists of an SEA Statement and Natura Impact report. Volume 4 consists of maps.
- 5.3 Chapter 4 of Volume 1 of the development plan is on “Rural,. Coastal and Islands”. Section 4.10 is on the islands. Policy RCI10-1 is to support the inhabited islands of County Cork and to recognise the special planning and development needs of the

islands and island communities, particularly access, infrastructure and services. Policy RCI10-3 relates to development proposals on the islands.

5.4 Chapter 12 of Volume 1 is on heritage. Objective HE4-6 is on the design and landscaping of new buildings.

5.5 Chapter 13 of Volume 1 of the Development Plan is on Green Infrastructure and Environment. Objective GI7-1 is on General Views and Prospects. The objective is to preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty, as recognised in the draft landscape strategy. Objective GI7-4 relates to development on the approaches to towns and villages. The objective is to ensure that the approach roads to towns and villages are protected from inappropriate development, which would detract from the setting and historic character of these settlements.

6.0 **Natural Heritage Designations**

6.1 The nearest Natura 2000 site is identified is the Beara Peninsula Special Protection Area (Site Code: 004155) at a distance of 600 metres.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The third party appeal has been prepared and submitted by Eileen and Michael O'Neill and may be summarised as follows:

- Submitted that the applicants' do not own the land on which they constructed the garage extension. It forms part of the public roads system which is the main artery from East to West of the island and is outside the boundary of their property. The applicants' and their agent altered the OS map included

with their application, to give the impression that they did own the land, thereby submitting “incorrect or misleading information” thus rendering their application invalid according to the County Council’s own guidelines.

- Submitted that the building itself is a danger to public safety because of the removal of the layby and the sightline which previously existed on the bend at that location. The proposed alterations involve the further destruction of public property and further narrowing of the road by the removal of more of the margin and the erection of a new boundary wall.
- Submitted that this development was initially commenced without any planning whatsoever but as a result of objections raised on several grounds, it has subsequently been the subject of five planning applications; two of these were withdrawn by the developers and a third was rejected as incomplete. This development has also been subject to a previous decision by An Bord Pleanála which upheld the decision to refuse permission for retention of the development.
- Submitted that upon reviewing the documentation received from An Bord Pleanála in relation to this decision, it is clear that the planning authority did not make available all relevant information regarding the history of this development. It is of grave concern that An Bord Pleanála Inspector was not given the full picture regarding the decision, particularly the photographs that clearly show the topography of the site prior to the illegal development.
- Submitted that the island population are witness to residents of the United States who spend less than three months of any year in a holiday home, being given permission to build anywhere they want even when they don’t own the land, while Bere Island residents have time and again been refused permission to build permanent homes on their own land. The developers in this instance have been given every assistance to do so, being rewarded with

retention permission for an illegal development on land they don't own by the public.

- It is considered inconceivable that this illegal development has been allowed to continue for almost four years, facilitated by the inaction of the local planning department who have abdicated their statutory duty by granting planning permission on an invalid application for construction on land to owned by the developers.

7.2. **Planning Authority Response**

7.3 Cork County Council state that they have no further observations to be made.

7.3. **Observations**

7.4 There is one observation recorded on the appeal file from Sharon O'Mahony, Donoughmore, Co Cork. The issues raised relate to land ownership, invalid application and concerns regarding the planning and local authority decision making process.

7.4. **Further Responses**

7.5 The first party response to the appeal has been prepared and submitted by John J O'Sullivan & Associates on behalf of the applicant. The submission may be summarised as follows:

- **Planning History** - The applicant and his family have expended huge sums of money on refurbishing, renovating and extending the old schoolhouse and have at all times sought to do their work in a professional and sympathetic manner. In recent times they undertook refurbishment works to the old store in front of the schoolhouse however these works were not exempted and an application was lodged with Cork County Council under planning register reference 14/703 to regularise matters. This culminated in Cork County Council issuing a split decision that was appealed to the Board. The Board's

decision upheld the earlier decision of Cork County Council to grant planning permission for the boathouse but refused permission for the retention of the extension to the garage and adjoining entrance.

- **Nature and Extent of Proposed Development** – This current application sought permission to retain the extension on to the store in front of the schoolhouse and also permission for the construction of a new roadside boundary. Prior to the lodgement of this application an informal submission was made to the County Council engineer outlining the proposals for the new entrance where it was agreed to extend the roadside boundary to ensure that there would not be any vehicular access to and from the applicants' property onto the public road near the store.
- **Design** - This store is a very modest structure with an overall floor area of only 20.13 m² and a ridge height of 4.29 m. Were this to be located to the rear of the dwelling house it would only be just outside the exempted development limit of 4m to ridge height.
- **Layby** - Reference to the clearing of an existing layby on the margin of the public road is incorrect. The area to the west of the schoolhouse store was not used as a layby it, was unfortunately used for the disposal of refuse from time to time.
- **Occupancy** - Stated that the appellants are not full-time residents on the island and were not born on the Island. Further stated that the applicants house (former Schoolhouse) is now occupied more or less on a year round basis. Nora Hall was born and raised on Bere Island, within metres of the old schoolhouse and her husband Tony's people originally came from Kilgarvan in County Kerry. They and their family have very strong ties with the island and would very much like to continue the enjoyment of the property there.
- **OS Maps / Land Ownership** - When the current application was lodged it was acknowledged that the applicants did not have title to the full area

outlined in the application. Permission was sought from applicants' brother and the necessary evidence and paperwork was submitted with the application clearly confirming the applicants' brother's co-operation. A formal right-of-way is to be put in place as stipulated in the planning conditions attached to 16/157.

- **Vexatious Appeal** - The Board is asked to treat the appeal lodged as vexatious and dismiss it.

- **Traffic Safety** - Reference to the attached photograph of the extended school store will clearly show that the northern elevation of the store is not parallel to the centreline of the road. By constructing the new stone wall to the west of the store in line with the roadside elevation of the store, the Halls will in fact be increasing the width of the roadway adjoining the property thereby enhancing traffic safety. Stated that the entrance area adjoining the Western elevation of the extended schoolhouse store was always part of the schoolhouse grounds and is within the registry of deeds title held by Mr. and Mrs. Hall.

8.0 **Assessment**

8.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle

- Traffic Safety

- Appropriate Assessment

- Other Issues

9.0 Principle

9.1 This is an application for permission for retention of a single storey extension to the west side of an existing domestic garage/store, including a new hipped roof; together with permission for the construction of a new entrance on to the public road, permission for construction of new roadside boundary and all associated site works adjoining the applicants house. Having regard to the site rural location, scale and elevational treatment of the proposed garage / store to be retained I am satisfied that the principle of the proposed scheme is acceptable. Traffic safety is discussed separately below. In the interests of clarity and the protection of adjoining amenities it is recommended that should the Board be minded to grant permission that a condition be attached restricting the use of the garage / store for purposes ancillary to the enjoyment of the main dwelling only.

10.0 Traffic Safety

10.1 The Board in its previous split decision on this site (PL04.244561 (Reg Ref 14/00703) refers) refused permission for the retention of the single storey extension to the west side of an existing domestic garage/store, including a new hipped roof and entrance adjoining the garage / store as the proposal entailed the creation of a new vehicular access onto the public road at a point where visibility in an easterly direction is virtually non-existent and would, therefore, endanger public safety by reason of traffic hazard. Essentially therefore the key consideration in this appeal is whether the applicant has put forward satisfactory proposals to address this previous reasons for refusal i.e. traffic safety.

10.2 The new scheme before the Board is proposing to close off the entrance adjoining the extended garage and construct a completely new entrance to the west of the property at a location that appears to be the site of an existing agricultural entrance. It is my view that this new location together with splayed entrance provides a

significant improvement on the previous application before the Board and addresses the concerns raised regarding restricted sightlines. I am satisfied that the scheme before the Board is acceptable from a traffic safety perspective.

10.3 As can be seen from the details attached with the planning application there is a proposal to construct a natural stone wall from the retained garage to the new entrance. In the interest of clarity and safety it is recommended that should the Board be minded to grant permission that a condition be attached stating that no pedestrian access is to be provided within this new roadside boundary.

11.0 **Appropriate Assessment**

11.1 The site is within c 600 metres of the nearest point of the Beara Peninsula Special Protection Area (Site code 004155). The qualifying interests include a number of bird species (Fulmar (*Fulmarus glacialis*) and Chough (*Pyrrhocorax pyrrhocorax*). To date generic conservation objectives, apply, namely maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

11.2 Taking into consideration the small scale nature of the development as proposed, the absence of any direct pathway via a watercourse and the relative separation between the sites, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and in particular specific site number 004155 in view of the site's conservation objectives. An appropriate assessment (and submission of a NIS) is not therefore required.

12.0 **Other Issues**

21.1 The concerns the appellants raised regarding the validity of the application, due process and procedure are noted. However, I do not consider these issues in this context to be material to the consideration of this appeal and therefore I do not propose to deal with these matters in this assessment. It is not for An Bord Pleanála in this instance to determine whether the application was in breach of the Planning and Development Regulations. Further I am satisfied that the appellants raise valid planning concerns which cannot be dismissed as vexatious.

21.2 The concerns raised regarding land ownership are noted. 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. Should planning permission be granted and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant. I note the approach taken by the planning authority whereby Condition No 2 required the procurement of a legal right of way from the new entrance at the public road to the development site. I recommend that a similar condition be attached in this instance should the Board be minded to grant permission.

13.0 **Recommendation**

13.1. Having considered the contents of the application, the provisions of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below

14.0 **Reasons and Considerations**

23.1 Having regard to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development and the

development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development and the development proposed for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 Conditions

1. The development shall be carried out, completed and retained 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. 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, completed and retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The entrance gate shall open inwards, only, from the public road.

(b) The new 1-metre-high roadside boundary comprising sod and stone fencing and indicated on Dwg No P00011601-00-090316 shall run from the western roadside corner of the garage to be retained to the new entrance. No pedestrian access is permitted within this new roadside boundary.

Reason: In the interest of traffic safety owing to the lack of visibility at this location

3. A legal right of way from the new entrance at the public road to the development site shall be procured prior to the commencement of work on site. This right of way shall attach to the development site and not the developer.

Reason: in the interests of orderly development.

4. The permitted garage / store shall be used solely for purposes ancillary to the enjoyment of the main dwelling and shall not be used for commercial, trade or business purposes.

Reason: in the interest of proper planning and sustainable development and to protect the amenities of property in the vicinity

Mary Crowley

Senior Planning Inspector

16th September 2016