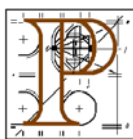


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL 21.246942

Development: Development consisting of the erection of a single storey extension to side of dwelling, creation of a new entrance onto public road and erection of a domestic garage to rear of dwelling at No. 29 The Drive, Ocean Links, Strandhill, Co. Sligo.

Planning Application

Planning Authority: Sligo Co. Co.

Planning Authority Reg. Ref.: 16/176

Applicant: Tom Caffery

Planning Authority Decision: Grant Permission with Conditions

Planning Appeal

Appellant(s): Seamus & Gráinne Hennesberry

Type of Appeal: Third Party – V - Grant

Date of Site Inspection: 19th September 2016

Inspector: Tom Rabbette

1.0 SITE LOCATION AND DESCRIPTION

The application site is located in a residential estate in Strandhill in Co. Sligo. The application site is an end-of-row site accommodating a two-storey detached dwelling. The dwelling faces an area of communal green space to its east. The main access road serving the site is located along its eastern boundary, there is a short cul-de-sac located to the south of the application site. There is a turning head at the western end of this cul-de-sac. There are four detached two-storey dwellings located on the southern side of this cul-de-sac that face towards the side of the dwelling on the application site.

2.0 PROPOSED DEVELOPMENT

The applicant is seeking permission to construct a single-storey extension to the southern side of the existing two-storey dwelling on the site. The southern wall of the proposed extension will be constructed in part over the site's existing boundary wall. There is an area of communal open space immediately to the south of this boundary wall. The applicant is also seeking permission to construct a detached domestic garage in the south-west corner of the site. As with the side extension, the southern wall of this proposed garage will run, in part, over the existing southern site boundary wall. It is also proposed to create a vehicular entrance to this garage off the turning head located at the end of the cul-de-sac that runs along the southern side of the site.

3.0 PLANNING HISTORY

I am not aware of any directly relevant planning history pertaining to the site.

PL 01/717 and PL 03/311 relate to the parent permissions for a residential scheme at this location, those Orders are on file.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Planner's Report dated 17/06/16:

- Permission recommended subject to conditions.

Area Engineer Report dated 16/05/16:

- No objection, conditions recommended.

PP3086: Pre-planning consultation 19/04/16 issues raised include: advised to consult with IW/Water Services; no objection in principle; existing boundary wall to be retained; access off turning head has no

objection subject to Roads' approval, and permission would be required for new entrance, extension and garage.

Objections/observations: Objections on file addressed to the p.a. make reference to the following issues: the road is a cul-de-sac which serves the communal parking overflow; traffic hazard; turning area currently provides a safe environment for kids to play in; property devaluation; subject site already has a vehicular entrance; proposed garage would generate extra traffic; development not in-keeping with the estate; object to the demolition of existing wall to facilitate side extension; direct impact on communal area; applicant has sufficient parking to the front of the dwelling; proposed garage directly visible from neighbouring properties; violation of estate planning; loss of parking spaces; traffic turning movements generated in the turning head as a result of the development; rights of neighbours ignored, and garage not aesthetically pleasing.

4.2 Planning Authority Decision

By Order dated 23rd June 2016, the planning authority decided to grant permission subject to 6 conditions.

5.0 GROUNDS OF APPEAL

Seamus & Gráinne Hennesberry, The Waves, Ocean Links, Carrowbunnaun, Strandhill, Co. Sligo.

The contents of the third party grounds of appeal from the above can be summarised as follows:

- The development 'Ocean Links' comprises 54 dwellings.
- This development is a family orientated environment comprising of detached and semi-detached homes.
- Condition No. 8 of the original parent permission for the development states "All boundaries between rear gardens and open space or road shall consist of a 1.8 m high plastered and capped walls, painted suitably."
- This condition does not provide for any possibility of a property owner breaching the boundary between the rear garden of a dwelling house and the open space.
- It is proposed to construct a new entrance, through a boundary wall, onto the public road, which is clearly in breach of the parent permission.
- The proposed new entrance is incorporated into the boundary wall.
- The entrance is opening onto the public road at the turning head on the adjacent cul-de-sac.
- The proposed garage will increase the height of the boundary wall to 2.4 m (from 1.8 m).

- The proposed side extension to the property is also intended to be fully incorporated into the boundary wall along the full length of the new development.
- Neighbouring dwellings enjoy unobstructed sea views over the boundary wall at the end of the cul-de-sac which will not be possible once the garage structure is erected.
- Whilst the appellants accept that a property owner does not have a legal right to a view, the view was a primary consideration in their acquisition of home and had the proposed development been envisaged at that time, the appellants would not have purchased their home.
- The area within which the applicant proposes to access the new entrance which he proposes to construct is, in fact, on communal road and is not intended to provide a private access into a dwelling house.
- It is the opinion of the appellants that the applicant does not as a matter of law, have an entitlement to interfere with the boundary wall, which in effect, is a common area in circumstances where the applicant owns only 50% of this wall and permission to proceed as outlined in the application has not been sought or given by the management company.
- The applicant has no legal connection to the property subject of the application.
- The written consent of the legal owners is required to validate the application.
- The Planning Report Memo on file refers to a different property, this calls into question the validity of the planning decision.
- It is clear that the proposal to construct a new entrance through a boundary wall onto a common area is a safety hazard particularly as the development is populated with young families who regularly play in the environs of the hammer head.
- The appellants refer to a number of photographs submitted with the appeal.
- If this development proceeds the turning head will be rendered unusable as the occupants of the dwelling on the application site may park outside the entrance of the garage structure.
- The proposed new garage will deny children from adjacent houses the unobstructed play area they currently enjoy.
- It is considered bad practice to permit an entrance to open onto a turning head in a residential cul-de-sac as the intention is not to create a private driveway/parking area which would obstruct its intended purpose.
- No property has dual access and large garages are not in-keeping with the character of the housing development.
- The proposed development is out-of-character with the building form of the housing estate and would be detrimental to the established character of the area.

- Adjacent properties will be affected negatively as traffic volume in the cul-de-sac will increase, vehicles will no longer be able to use the turning head facility, and children will be denied an established play area and safety concerns arise.
- The Board is urged to refuse permission.

6.0 RESPONSES TO GROUNDS OF APPEAL

6.1 Planning Authority response

The contents of the planning authority's response to the grounds of appeal can be summarised as follows:

- Regarding the conditions that apply to the parent permissions, this is always open to alteration by way of a new planning application.
- The current application seeks to alter this original boundary requirement which is considered the legal manner in which to do so.
- Neighbouring properties are not entitled to the protection of views and in any case it is not considered that the proposed development would be excessive in scale and detract from the visual amenities of the area.
- It was considered that the applicant demonstrated sufficient legal interest to make the planning application.
- The reference to the No. 21 in the Planner's Report is simply a typographical error, it is clear that the report does indeed refer to the application site.
- The subject cul-de-sac serves only 3 existing houses and accordingly there is very little traffic.
- It is a very short section of road where excessive speed is extremely unlikely.
- The proposed development would not interfere with the safety and free flow of traffic and/or pedestrians at this location.
- The proposed development would not be considered a traffic hazard.

6.2 First party response

The contents of the first party's response to the grounds of appeal can be summarised as follows:

- Planning law does allow for the making of changes to a previously permitted development.
- The applicant refers to possible developments that could be accommodated pursuant to exempted development regulation.
- Sligo Co. Co. have taken the road in charge.

- The southern boundary wall in total forms part of the property known as No. 29 The Drive.
- The proposed entrance from private onto public road is a matter between property owners of No. 29 The Drive and Sligo Co. Co. and as such the Management Company have no authority to grant any permission in relation to a planning application.
- The applicant is aware that any grant of permission does not imply/confirm parking rights on the existing turning head and also is aware that the new garage entrance would be incorporated into the boundary wall and would not interfere with the turning head.
- The periodic use of the proposed garage especially by drivers that are aware of children at play will have little or no impact on the present situation.
- The proposed entrance does not obstruct the turning head.

7.0 POLICY CONTEXT

The Strandhill Mini-Plan was incorporated into the Sligo County Development Plan 2011-2017 by Variation No. 1 in 2013. As per 'Map 1 – Zoning' of that variation, the application site is located in an area zoned 'residential uses'.

8.0 ASSESSMENT

I have examined all the plans, particulars and documentation on file. I have carried out a site inspection. I have had regard to relevant provisions of the statutory plan for the area. In my opinion the main issues arising are:

- Traffic Impacts
- Legal Interests
- Conditions on Parent Permissions
- Impact on Views and the Established Character of the Area
- Appropriate Assessment

Traffic Impacts

The applicant is proposing to create a vehicular entrance off the turning head at the end of the cul-de-sac that runs to the south of the application site. Concerns have been raised on file in relation to potential traffic hazard and impact on parking. Reference is made on file to loss of communal/overflow car parking serving the estate. Reference is also made to children using the area to play. Concerns raised in relation to the potential impact on the communal green area to the south of the application site.

While the turning head of the cul-de-sac may be used on occasion as an overflow parking area, that is not the intended purpose of this turning bay. Such unauthorised use would interfere with traffic turning movements at this turning head. The applicant is not proposing to use this area for car parking. In fact, creating a vehicular entrance at this location should impede/prohibit such unauthorised parking. The p.a. Area Engineer's Report dated 16/05/16 under 'General Comments' states that the turning area shall not be used for parking.

In relation to a potential traffic hazard, I would note that this is a relatively short cul-de-sac. The geometry and layout of the cul-de-sac, turning head and the proposed vehicular entrance is such that excessive speeds cannot be accommodated here. The trip generation along this cul-de-sac is currently low given the small number of dwellings that are accessed off it. Adding an additional domestic garage entrance will not create an excessive amount of trips along this cul-de-sac. The Area Engineer's Report does not raise concerns in relation to traffic, the report recommends that permission be granted for the development. The applicant is not proposing works to the communal green area immediately south of the site.

I am of the opinion that, given the nature and scale of the proposal and also having regard to the receiving environment, the proposed garage and associated entrance off the turning bay does not pose an unacceptable risk to vehicular or pedestrian safety and would not result in the obstruction of other road users. I therefore would not recommend a refusal of permission on the grounds of traffic impacts.

Legal Interests

The appellants question whether the applicant has sufficient legal interests to make the application and carry out the works if permission is granted. The appellants refer to the name given in the application documentation (Caffery) and the name on the Land Registry (Cafferkey) concerning the subject site. They also hold that the applicant has no entitlement to interfere with the southern site boundary wall required to facilitate the development and that no consent was sought from, or given by, the estate Management Company to carry out the works to this wall.

The application documentation claims that the applicant is the owner of the subject site. In the response to the grounds of appeal the applicant's agent has submitted documentation that appears to claim that the applicant owns the entire southern boundary wall and not just to the centre of the wall. The response to the grounds of appeal also indicates that the road, including the turning bay, has been taken in charge by the local Roads Authority. That turning head abuts the

boundary wall, it therefore does not appear that works are being proposed on another party's lands.

In their response to the grounds of appeal the p.a. hold that it was considered that the applicant demonstrated sufficient legal interest to make the planning application.

I draw the Boards attention to section 5.13 of the 'Development Management Guidelines for Planning Authorities (DoE H&LG 2007) which states, *inter alia*, the following: "...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. 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...."

Having regard to the foregoing, I would not recommend refusal in relation to these matters.

Conditions on Parent Permissions

The appellants cite conditions that were applied to the parent permissions concerning boundary walls to communal areas and use of communal roads. They hold that the cited conditions demonstrate that the proposed entrance was never envisaged or allowed for as part of the original development.

Notwithstanding the appellants' arguments in this regard, the applicant is entitled to apply for permission to carry out the works. The planning system does allow for the terms and conditions of a permission to be altered/amended by subsequent permissions.

Impact on Views and the Established Character of the Area

Objections to the p.a. at application stage, and in the appellants' grounds of appeal, raise concerns about the impact the proposed development will have on existing views from neighbouring dwellings in the estate. It is also held by some that the proposed development will be out of character with the existing residential estate and that the proposal would be thus detrimental to this established character.

There are no protected views being interfered with by the proposed development. The appellants are not entitled to the preservation of a view in the circumstances. In any event, the scale, height and massing of both the proposed garage and side extension are such that any impacts on views are minimal. The western end of the southern boundary wall is only being raised by c. 400 mm to incorporate the front

façade of the proposed domestic garage, this cannot be considered excessive. Currently there is a garden shed existing at this location and the roof of this shed is visible above the boundary wall when viewed from the public road, the height of the existing shed is similar to the proposed domestic garage, the shed will have to be removed from this location to facilitate the proposed garage. The side extension is an appropriate design response in the context of the existing dwelling on the site. The application drawings indicate that the external finish of the proposed extension will match that of the existing dwelling. I do not consider that the proposed development would be out of character with this residential estate. It will not adversely impact on the visual amenities of the area. I would recommend a condition requiring that the southern elevations of both the proposed garage and side extension visually tie-in with the existing southern site boundary at this location.

Having regard to the foregoing, I would not recommend refusal on the grounds of impact on views or in relation to the impact on the visual amenities of the area.

Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

9.0 CONCLUSIONS AND RECOMMENDATION

I recommend that planning permission be granted for the proposed development subject to the conditions as indicated below.

REASONS AND CONSIDERATIONS

Having regard to the residential zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of traffic safety and convenience. The proposed development 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. 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 external finishes of the proposed side extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture, save for the southern elevation. The external finish of the southern elevations of the domestic garage and side extension shall be the same as that of the existing southern site boundary wall at this location and shall be visually integrated with this existing boundary wall.

Reason: In the interest of visual amenity.

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.

4. Works to the turning head to accommodate the entrance to the domestic garage shall comply with the requirements of the planning authority for such works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be

subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Tom Rabbette
Senior Planning Inspector
20th September 2016