



An
Bord
Pleanála

Inspector's Report PL 03 248031.

Development	Construction of a Dwelling House, site works and connection to services. Previously permitted foundations and rising walls under P.A. Reg. Ref. 04/1980)
Location	9 Riverside Court, Clonroad More Ennis, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	P16/678
Applicant	Michael O'Dea
Type of Application	Permission
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Sean Carroll, Bill Walsh and others.
Date of Inspection	5 th May, 2017.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site has a stated area of 400 square metres and is at the western end of a row of detached houses at the south-western end of Riverside a residential development of twenty-nine houses. It is in the southern suburbs of Ennis with access onto Clobnroadmore to the west of Springfield at the southern end of Ennis a short distance to the north of the N85 by-pass. The site is rectangular in shape and overlooks a small communal carpark and open space. At the time of inspection 'For Sale' notices were displayed at two vacant plots a short distance to the east overlooking the communal open space.
- 1.2. The appeal site is roughly rectangular in space and is fenced off from the public road. Foundations for a dwelling are in place on the site which otherwise is undeveloped flat scrubland. A wall is located along the rear boundary and hedging along the west boundary. The east boundary adjoins the site of a two storey detached dwelling.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for construction of a dwelling with a stated floor area of 165 square metres, connections to the sewer network and site development works.
- 2.2. The planning authority issued a request for further information comprising (1) a request for written consent of the current owner of the water supply network as the estate had not been taken in charge. This was provided in the further information submission and (2) in order to address concerns about the house type and its impact on adjoining dwellings to the east a request for a revised house design to which a response was made in which it is stated that the developer considers that negative impact would not arise and that the rear section could be constructed as exempt development with minor changes at upper level.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 26th January, 2017, the planning authority decided to grant permission for the development subject to conditions which include the following requirements:

Condition No 2 (a) Development shall not take place pending upgrade works to the storm water sewer network to the satisfaction of the planning authority being undertaken.

Condition No 2 (b) All surface water collected within the site and disposed to the surface water drainage system and not to the public sewer.

Condition 3: Amendment to design for the dwelling providing for a single story rear return not in excess of four metres in height. A compliance submission is required.

Condition No 5: the finished floor level to be as specified on the site layout submitted on 5th September 2016 and not varied without prior written consent of the planning authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer having considered the information and recommendations in the technical reports and the view expressed on behalf of the applicant, (in the further information submission) that modifications to the rear return of the proposed dwelling were not required concluded that permission could be granted for the development subject to conditions

3.2.2. Other Technical Reports

The report of the **Municipal Engineer** indicates that the Riverside development was in part taken in charge in 2016. There is no recommendation for the taking in charge of the roads and storm water system. Significant upgrades to the foul and storm

sewer are required, including works to the pumping station for the foul sewer and it is noted that these works have commenced

An application connection to the storm sewer network is required. Permission for connection would not be forthcoming until upgrade work on the storm sewer network at Riverside is complete and a condition would be required.

Additional requirements are provision for an extension to the drop kerb at the site frontage to allow for appropriate access and on-site parking which should be at the applicant's expense. Clarification for boundary treatment at the site.

The report of Irish Water of 25th January, 2017 indicates requirements for a connection agreement and notes that capacity requirements and proposed connections are subject to the constraints of the capital investment programme.

3.2.3. **Third Party Observations.**

An objection was received from the Appellant Party in which similar issues to those raised in the appeal are expressed. They relate to enforcement and legal proceedings between the planning authority and the applicant and lack of compliance with conditions attached to the prior grant of permission.

4.0 **Planning History**

4.1. P.A. Reg. Ref. 97/1488: Permission was granted for construction of 24 houses. The grant of permission expired in 2003.

4.2. P. L. 03 214681 / P. A. Reg. Ref. 04/1980: Permission was granted for nine houses site works drainage connections. An appeal was withdrawn prior to determination of a decision.

4.3. P. A. Reg. Ref. 11/167: Permission for extension of the duration of the grant permission under P. A. Reg. Re.fo4/1980 was granted. It expired on 4th June, 2013.

The site has been subject of an enforcement file in connection with this grant of permission. (UD 12/067 refers)

5.0 Policy Context

5.1. Development Plan

The operative county development plan is the Clare County Development Plan, 2017-2023. The location comes within the area of the Ennis and Environs Development Plan, as varied according to which the site is zoned for residential development appropriate to the settlement. Multiple units of houses and apartments are not usually permitted.

6.0 The Appeal

6.1. An appeal was received from residents of Riverside on 13th February, 2017 in which the appellant claims that continuous victimisation by the local authority has been experienced by the residents. Attached are copies of several documents comprising correspondence with the local authority, Ombudsman's office, Dail Eireann, the European Commission and European Ombudsman's office.

6.2. It is stated that:

- the developer has a combined ownership of eight properties and five sites within Riverside and wishes to maintain ownership and control over the estate by applying for permission or an additional house on the site.
- The developer has convictions for previous breaches of planning conditions. (P. 04/1980 and P 11/167 refer) and the planning authority has effectively decided to grant permission for a development for which the developer was previously prosecuted and that the development is therefore contrary to section 35 of the Planning and Development Act.
- The developer breached drainage and wastewater and building regulations and planning law by combining the foul water and surface water systems which is contrary to Condition No 2.

- The present drainage infrastructure would not support the development.
Permission cannot be technically granted in that combined system is involved.

The appeal content also relates to contentions as to collusion between parties, and to gain by parties which is also referred to in the attached documentation. The appellant party states that a request that the estate be taken in charge in 2012 was unsuccessful and that taking in charge takes precedence over any grant of further planning permissions.

6.3. Planning Authority Response

- 6.3.1. A submission was received from the planning authority on 14th March, 2017 in which consideration of the planning officer report on the application and to the report of the Municipal District Engineer is recommended. It is also recommended that the views of Irish Water regarding the foul sewer arrangements be requested. It is requested that the planning authority decision be upheld.

7.0 Assessment

- 7.1.1. The objection to the decision to grant permission in appeal primarily relates to contentions about past failures to comply with conditions attached to a prior grant of permission which was implemented. In this regard, the appellant refers to the provisions of Section 35 of the Planning and Development Acts, as amended and contends that the planning authority should have decided to refuse permission, having regard to Condition No. 2 of the prior grant of permission under P. A. Reg. Ref. 2004/1980. The provisions of section 35 lie outside the remit of An Bord Pleanála in considering and determining decisions on appeals. No further comment is made in this regard as this would be a matter for resolution through the legal system.
- 7.1.2. In the appeal concerns are expressed about the capacity of the existing foul and storm water drainage infrastructure serving the development and to this end I would consider that there are separate issues within the appeal that come within remit of

An Bord Pleanála. According to the available details, the drainage network is under the control of Hilltop Development Ltd. which has confirmed in writing agreement to the existing network.

7.1.3. Having reviewed the report of the Municipal District Engineer in which it is stated that the necessary significant upgrading works to the foul and storm sewers and pumping station are understood to have commenced and that an application by the applicant for connection would also be necessary a favourable decision is considered reasonable subject to attachment of appropriate conditions. The conditions can provide for restriction the development cannot be commenced unless there is prior confirmation and agreement that satisfactory sewer network upgrade works are complete.

7.1.4. Separately, on the basis of *de novo* review, the modifications to the rear return of the proposed dwelling, reducing it to one floor and a maximum height of four metres under Condition No 3 attached to its decision to grant permission is supported. This adjustment would address any concerns as to overlooking and adverse impact on residential amenity. It is otherwise agreed it is considered that the proposed dwelling, site formation and configuration, access arrangements and boundary treatment are acceptable, bearing in mind the recommendations in the technical reports regarding services and access arrangements.

7.2. Appropriate Assessment.

7.2.1. Having regard to the location of the proposed development which is for a single dwelling unit adjacent to existing residential development on zoned lands in an area which is serviced. it is considered that no appropriate assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.3. In view of the foregoing, it is recommended that the decision to grant permission be upheld. Draft Reasons and Considerations and Conditions are set out below.

8.0 Recommendation

- 8.1. It is recommended that the planning authority decision be upheld and that permission granted on the basis of the reasons and consideration and subject to the conditions provided below.

9.0 Reasons and Considerations

Having regard to the planning history and to the extent and nature of the proposed development, it is considered that subject to the conditions set out hereunder, the proposed development would not be prejudicial to public health, would not be seriously injurious to the residential amenities of properties in the vicinity, would constitute satisfactorily integrate with the existing established development at Riverside, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on 22nd December, 2016, 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. Prior to the commencement of development on the site, unless the written agreement of the planning authority has been obtained to confirm that upgrade works to the sewer network serving the development has been

carried out to the satisfaction of the planning authority. No surface water emanating within the site is to be discharged to the foul sewer.

Reason: In the interest of clarity, orderly development and public health.

3. The rear return of the proposed dwelling shall be modified to provide solely for a ground floor return which does not exceed four metres in height. The finished floor levels of the proposed dwelling shall be in accordance with the details shown on the site layout plan submitted to the planning authority. Prior to the commencement of development, the applicant shall submit revised plan, section and elevation drawings to the planning authority for written agreement.

Reason: In the interest of the visual amenities of the area and the residential amenities of properties in the vicinity.

4. Details of the proposed boundary treatment including materials and finishes and for hard and soft landscaping within the perimeter of the site shall be submitted to and agreed with the planning authority prior to the commencement of the development.

Reason: In the interest of the visual amenities of the area and the residential amenities of properties in the vicinity.

5. Details of colours and textures of all the external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity

- 6 Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of the amenities of the area and clarity.

- 7 A drop kerb shall be provided along the entirety of the site frontage in accordance with the requirements of the planning authority at the applicant's own expense.

Reason: In the interest of public safety and amenity.

- 8 Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

- 9 The developer shall pay to the planning authority a financial contribution of 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 in respect of the retail unit only and 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. The application of any indexation required by this condition 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.

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.

Jane Dennehy
Senior Planning Inspector
8th May, 2017.