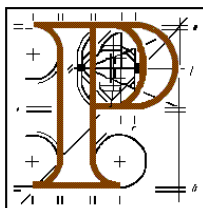


An Bord Pleanála



Inspector's Report

DEVELOPMENT: Permission for house, garage and all associated site works.
Tigh nua i stíl bungaló, garáiste agus bealach isteach mar aon le seirbhísíeile eile oibre láithreáin.

LOCATION: Barranastook, Old Parish, Co Waterford.
Barra na Stuac, An Sean Phobal, Dún Garbhán. Co Phort Láirge

PLANNING APPLICATION

Planning Authority: Waterford City and County Council.
Planning Authority Reg. No: 16/698
Applicant: Tomás Ó Gealbháin & Eimear Fahey.
Application Type: Permission.
Planning Authority Decision: Grant Permission subject to conditions.

APPEAL

Appellant: Anders & Avril Boock
Type of Appeal: Third Party v Permission
Observers: None

DATE OF SITE INSPECTION: 15th May 2016

INSPECTOR: Bríd Maxwell

1.0 SITE LOCATION AND DESCRIPTION

1.1 The appeal site which has a stated area of .4016 hectares is within the rural townland of Barranastook Old Parish Co Waterford approximately 5.2km to the southwest of Ring, approximately 9.5km south of Dungarvan and 9km to the northeast of Ardmore Co Waterford. The site is within Gaeltacht na nDéise area of Co Waterford. The site is accessed by way of a single carriageway cul de sac laneway which also serves as access to a number of other dwellings. The appeal site is located to the rear / north of two established dwellings one of which is the applicant's family home and the other the home of the third party appellants. Site levels fall generally from south to north with a spot level of 97m towards the southwestern boundary rising to 102m towards the north-eastern boundary.

2.0 PROPOSED DEVELOPMENT

2.1 The proposed development involves permission to construct a single storey dwelling 217 sq.m., a detached garage of 60 sq.m and associated site works. The proposed dwelling has two gable breakfronts with variable glazing particularly to front (southern) elevation. External finishes include plaster and natural stone. The proposed dwelling is to be served by way of connection to mains water supply and public sewer.

2.2 During the course of the application to the Council and in response to a request for additional information, the design of the dwelling was revised to provide for a reduced roof pitch resulting in a reduced overall ridge height from 6.8m to 5.6m. The siting of the proposed dwelling on the site was revised to a location at a setback circa 29m from the southern site boundary at a finished floor level of 100.2m relative to ridge heights of dwelling as to the south of 100.668m (family home) and 101.124m OD. (appellant's dwelling)

3.0 PLANNING HISTORY

- **PL93.246251 15/707** Previous application - The Board refused permission for development on the following grounds:

“Having regard to the location of the subject site in an area under Urban Pressure as designated in the Development Plan for Waterford City and County wherein it is the policy of the Planning Authority to direct urban generated development to areas zoned for housing in the adjoining service centres and settlement nodes, the Board considers that the proposed development would be an urban generated development by reason of the nature and place of the applicant’s employment and that the applicant furthermore fails to comply with the criteria for rural housing set out in section 4.10 of the Waterford City and County Development Plan. The proposed development would, therefore materially contravene an objective indicated in the Waterford City and County Development Plan and would be contrary to the proper planning and sustainable development of the area.

The proposed development represents haphazard and piecemeal backland development which would seriously injure the amenities, and depreciate the value, of property in the vicinity and which would present an undesirable precedent for future similar developments.

The proposed development is located in an area of the County which is identified in the Waterford City and County Development Plan as “sensitive” from a landscape perspective. It is considered that the proposed development would exacerbate the residential over development of the area, would tend to militate against the visual and other amenities of the rural environment and would, therefore be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector’s recommendation to grant permission the Board considers that the applicant fails to comply with the policies of the Development Plan with regard to rural housing need.”

- **09/135** Permission granted to Sinéad Ní Ghealbháin and Kevin Allen. Cead Pleanála tigh cónaithe agus garáiste (mar aon le bealach isteach, oibreacha comhshuíomh srl.) ...Permission for dwelling and detached garage. Subject to 14 conditions. Condition 14 required a Section 47 agreement sterilising the landholding from further development
- **08/516** Permission granted to Reamon De Paor chun tigh nua aon urlár go leith a thogáil chomh maith le garáiste, slí isteach, ionad leasuithe fuíol uisce le háit síothlaithe agus oibreacha teagmhasala riachtanacha tógála a chur i gcrích.
- **16/228** Permission granted 26/5/2016 for retention of location of existing house on site. That is a change from that granted permission under 08/961 consequent to Outline Permission 02/323.
- **02/859** Refusal of permission. J M Power and J F Ryan. Cead pleanála do tigh cónaithe coras coireal agus slí isteach.

4.0 PLANNING AUTHORITY'S DELIBERATIONS AND DECISION.

4.1 Submissions

4.1.1 Submission from the Third Party Appellant to the local authority reiterates previous ground of objection and appeal. Objection is on grounds of haphazard piecemeal development resulting in overlooking. Reference is made to Section 47 Agreement sterilising part of the site from further housing development entered into under previous planning application 09135. It is alleged that the site levels were altered during construction of 09/135 and reference is made to previous dumping on the site. Proposed dwelling will be elevated over that of the appellant. Concern that drainage from site will create ground instability with further potential for flooding and contamination of well. Negative impact on residential amenity arising from lighting and other disturbance. This rural area is overdeveloped and unsustainable for water supply / pressure and drainage. Location within a landscape described as sensitive.

Second submission following submission of additional information reiterates objection and notes that revised location results in a greater invasion of privacy. Inconsistencies in further information detail with regard to height reduction. Board's previous grounds for refusal remain valid.

Submissions from Cllr Thomas Cronin, Mary Butler TD. Supportive of the application refer to a genuine housing need and strong local connection.

4.2 Planning Authority Reports.

- Initial planner's report asserts that the applicant meets the relevant housing need criteria. On the basis of the Board's previous refusal on grounds of visual impact a request for a reduction in ridge height of the dwelling and relocation of the dwelling in line with the adjacent dwelling to the west.
- Second report indicates satisfaction with revised design and siting.

4.3 Planning Authority's Decision

4.3.1 By order dated 07/2/2017 The Planning Authority decided to grant permission subject to 10 conditions which included the following:

- Condition 2: Development Contribution of €9,000.
- Condition 6 Site levelling shall be done by excavation into the sloping ground to a level formation over the entire floor area of the dwelling. The finished floor level of the proposed dwelling shall be 100.2m and shall be relative to a defined temporary bench mark to be agreed.
- Condition 9. All new boundaries to be constructed of raised earthen berm measuring 1m in height. Tree planting along site boundaries. Retention of trees along southern and eastern site boundary.
- Condition 10. Occupancy condition.

5.0 APPEAL SUBMISSIONS

5.1 Third Party Appeal

5.1.1 The third party appeal is submitted by Peter Thomson, Planning Solutions on behalf of Anders and Avril Boock owners of the adjacent dwelling to the south of the appeal site. Grounds of appeal are summarised as follows:

- Board previously refused permission PL244251. Grounds remain valid. The only difference in the application is a number of additional letters of support and applicant confirms that he is living in rented accommodation in Waterford.
- Best practice in Planning require decisions to be consistent and fair.
- Applicants do not have a housing need and do not comply with Section 4.10. A commute 120km round trip to work is entirely unsustainable.
- The Board determined that the proposed development represented haphazard and piecemeal backland development which would seriously injure the amenities, depreciate the value of property in the vicinity and set an undesirable precedent for future similar developments.
- Revised detail in relation to height are conflicting. Site levels incorrect.
- Letter from auctioneer confirms that the development results in devaluation of the appellant's property.
- Concerns arise regarding representations by local authority members which were not acknowledged on the file.
- Applicant has alternative more sustainable options in terms of residential property purchase.
- Surface water discharge from the application site to the appellants site is a concern.
- Appellants wish to avail of the provisions of Section 145 of the Planning and Development Act 2000 and request the Board to direct the planning authority to pay appellant's expenses for having to bring the appeal.
- Given that the application mirrors the previous proposal the decision of the local authority which has necessitated the making of a further

appeal at considerable cost is grossly unfair and unreasonable. In these circumstances the Board is requested to award the appellants costs from the Planning Authority.

- The legitimacy of the Further information request under Article 33 (1) is questionable given the nature of changes invited more appropriately Article 34.

5.2 Response of Planning Authority to Grounds of Appeal

5.2.1 The Planning Authority's response to the appeal is summarised as follows:

- In the assessment of the application specific regard was given to the fact that the Board Inspector was of the opinion that permission should be granted.
- Regarding housing need it is the policy of the County Development Plan to cater for the housing requirements of the local rural community Policy SS3.
- The applicant is a native Irish speaker and has intrinsic links to An Rinn Gaeltacht.
- The proposed development is consistent with Policy CS 19 of the County Development Plan which seeks to promote and protect the linguistic heritage of the Gaeltacht area.
- Regarding the haphazard nature of the site, the site forms part of a cluster of dwellings, it is the only site available to the applicant on family lands and is located adjacent to his family home.

The ridge height of the dwelling has been reduced and the dwelling relocated to a lower contour level on the site, thereby minimising its impact on the landscaping.

- Submission regarding levels is noted.
- The Planning Authority would recommend that appropriate conditions regarding surface water attenuation be attached in the event of a permission.

- It is respectfully requested that An Bord Pleanála uphold the decision of the Planning Authority to grant permission.

5.3 First Party Response to the Appeal

5.3.1 The first party response to the appeal is accompanied by a number of submissions in support of the application from local and national sources including Scoil Náisiúnta na Rinne, Sliabh na Féile School of Traditional Performing Arts, Craobh Gaeltachta na nDéise CCÉ, Landlords. Coiste Forbartha na tSean Phobail, Oifigeach Teamga agus Cultúr, Údarás na Gaeltachta, Principal Wexford Presentation Secondary School, Runaí CLG An tSean Phobail. General Manager Goldstone Fitness Waterford, Neighbour Cait Ui Domhnaill. Priomhoide Gaelcholáiste Phort Láirge, Cathaoirleach Toinól Niocláis Tóibín, Bainnisteor Coláiste na Rinne, Priomhoide Meánscoil San Nioclás, Eagraí Ceol RTÉ Radio na Gaeltachta, Teachta Dála Mary Butler, Comhairleoir Tom Cronin. The response also includes a personal letter from the applicant and cover letter from agent Joe Moynihan Engineering. The response is summarised as follows:

- Evidence demonstrates that Tomás satisfies the local housing need criteria. He returns home every weekend and mid-week to partake in training teaching or other cultural activities and to be amongst his people.
- Given the extent of his involvement within the community it is reasonable to conclude that he has a local housing need.
- Site forms part of a cluster of development and is not haphazard.
- Reasons for refusal have been addressed. Amended siting and design results in overall height reduction of 2.043m
- There is a precedent for this pattern of housing. The appellant's dwelling is to the rear of the property to the south and the applicant's sibling's dwellings are similarly sited.

- The development is serviced by way of public sewer.
- The sensitivity of the location from a language perspective is a material consideration. The support for intergenerational Irish language transmission should be taken into account.
- On the basis of location within a sensitive landscape a bungalow type dwelling is proposed,
- The development complies with the Policies of the County Development Plan Roinn 9.9 An Gaeltacht and Streitéis 20 Blian Don Gaeilge 2010-2030.

5.4 Appellant's response to first party response to appeal.

5.4.1 The response is summarised as follows:

- Those writing in support of the applicant do not have knowledge of the implications of development on the appellant's family.
- The Board is requested to note the support for the application expressed by Cllr Tom Cronin, TD Mary Butler and Cllr Seamus O'Donnell (related to the applicant). On the basis of failure to engage in the application process through the correct channels as outlined in the Development Management Guidelines for Planning Authorities the appellant has been left with no option other than to lodge formal complaint.
- With regard to the ridge height and floor levels it is asserted that the ground level layout has not been corrected to reflect the correct levels following disposal of waste materials from neighbouring site.
- Relocation of the house position has severely increased the issue of privacy loss as the house and appellant's garden are closer together.
- Previous refusal reasons have not been addressed and cannot be rectified. Site remains piecemeal backland development and there have been no houses demolished in the area to address the issue of overdevelopment.

- Documents confirm that the applicant is fulltime employed outside the area and has no need to live in the area. Housing need criteria 4.10 have not been fulfilled.
- With regards to claim for precedent for haphazard housing in the area based on the existing pattern of housing, it is considered that the arguments put forward are flawed.
- Refute claims that the appellants house is built behind another house.
- The entrance to the site is through a neighbouring site and the site is landlocked.
- There is no impediment to the applicant moving to the area and buying a house or site on zoned lands. Evidence of available property accompanies the appeal submission. Also there is a site for sale in Old Parish less than 800m from the site on offer for €85,000.
- Appellant's family of 4 also engaged with the Irish language and will be forced to move if permission is granted.
- Previous decision of An Bord Pleanála acknowledged that the development would result in devaluation of property.
- Request the Board to refuse permission in line with PL93.246251.

6.0 PLANNING POLICY

6.1 RURAL HOUSING GUIDELINES.

6.1.1 The site is within a Stronger Rural Area as set out on Map 1.NSS Rural Area Types. The key development plan objective in relation Stronger Rural Areas is to consolidate and sustain the stability of the population and in particular to strike the appropriate balance between development activity in smaller towns and villages and wider rural areas. The development plan should aim to strike a reasonable balance between: (1) Accommodating proposals for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines, (2) Actively stimulating and facilitating new housing development in smaller towns and villages to provide for balanced urban and rural choices in the new

housing market and (3) Carefully monitoring development trends to avoid areas becoming overdeveloped in terms of leading, for example, to extensive ribbon development. The overall approach in this regard in such areas is to ensure these areas maintain a stable population base in both urban and rural parts.

6.2 DEVELOPMENT PLAN

6.2.1 The Waterford County Development Plan 2011 – 2017 refers.

6.2.2 The site is within an area identified as an area under urban pressure in the development plan. The key development objectives in this area, are on the one hand, to facilitate the housing requirements of the local community, subject to satisfying site suitability and technical considerations, whilst on the other hand directing urban generated development to areas zoned for housing in the adjoining service centres and settlement nodes.

Policy SS3 “To cater for the housing requirements of members of the local rural community who have a genuine local housing need in areas under urban pressure as set out in the Criteria in Section 4.10.”

Section 4.10 sets out the criteria to be satisfied in terms of demonstrating Genuine Local Housing Need and includes

“Persons who were born and lived for substantial parts of their lives (three years or more in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members or to retire.”

6.2.3 Section 9.9 An Gaeltacht, notes the Planning Authority’s commitment to developing policies to protect the Gaeltacht area from insensitive and unnecessary development.

Policy CS19 is *“to protect and sustain the linguistic and cultural heritage of the Gaeltacht area;”*

7.0 ASSESSMENT

- 7.1 I note that I acted as the reporting Inspector in the previous appeal case on the site (93.246251), essentially a mirror case of the current proposal¹, refused by the Board on 29th June 2016. Whilst I had recommended that permission be granted in that case, the Board in deciding not to accept my recommendation, considered that the applicant failed to comply with the policies of the Development Plan with regard to rural housing need and refused permission on three distinct grounds. From my review of the current file, and having regard to the planning history on the site, in particular the decision of the Board PL93.246251, I consider that the main issues for consideration in the Board's assessment of the appeal relate to the extent to which the current application can be considered to address and overcome the Board's previous reasons for refusal and this is therefore the focus of my assessment.
- 7.2 I note that the third party appellant has questioned the procedures adopted by the local authority including the validity of the request for additional information pursuant to Article 33 of the Planning and Development Regulations as opposed to Article 35. I note that any review of the administrative decisions of the local authority are beyond the remit of the appeal, such review being the preserve of the courts.
- 7.3 I note also that the third party appellant has requested that the Board direct the planning authority to pay the appellant's expenses pursuant to the provisions of Section 145 of the Planning and Development Act 2000 as amended. This is a matter for the Board to determine. In my view the appellant has made a compelling argument in terms of the case for such a direction on the basis that the current appeal essentially mirrors the previous proposal.

¹ Subject to modifications in relation to house ridge height and siting made during the course of the application to the local authority further to a request for additional information pursuant to Article 33 of the Planning and Development Regulations 2001, as amended.

- 7.4 In respect of the first ground for refusal, the Board determined that the proposed development “*would be an urban generated development by reason of the applicant’s nature and place of employment and that the applicant furthermore fails to comply with the criteria for rural housing set out in section 4.10 of the Waterford City and County Development Plan*” The current appeal reports the same circumstances as previously, save for clarification that the appellant is currently renting accommodation in Waterford City rather than enduring a daily commute to Waterford City, as suggested in the previous appeal. I further note the extent of documentation and discussion on the appeal file outlining the appellant’s strong local connection, involvement locally in terms of Irish language, local culture and heritage. This connection was also clearly elucidated within the previous appeal. The current appeal further outlines the significance of retaining native speakers within Gaeltacht na nDéise to enable intergenerational Irish language transmission to ensure that the use of Irish within the community is sustainable in compliance with Policy CS 19 of the County Development Plan which seeks to protect and sustain the linguistic and cultural heritage of the Gaeltacht area.”
- 7.5 As regards the issue of compliance with the criteria for rural housing in Section 4,10, the first party refers to bullet 6 “*Persons who were born and lived for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members or to retire,*” This criterion would appear to allow for an extensive range of persons who would comply however as noted the Board determined that the applicant does not comply with genuine local need criteria referring specifically to the applicant’s nature and place of employment. Having regard to the doctrine of *Res Judicata* this matter has not been overcome.
- 7.6 As regards the second reason for refusal which deemed the proposal to “*represent haphazard and piecemeal backland development which*

would seriously injure the amenities and depreciate the value, of property in the vicinity and which would present an undesirable precedent for future similar developments”, the detail of the current proposal is largely consistent with the previous proposal save for a revised siting forward on the site as a result of the Council’s request for additional information and reduction in ridge height to 5.62m. I do not consider that the revised siting and design is such that it would overcome the previous determination in respect of haphazard and piecemeal backland development. Furthermore, I would tend to concur with the third party appellant that the effect of the relocation of the dwelling southwards on the site increases the impact on the established amenities of the dwelling to the south.

- 7.7 As regards the third reason for refusal, this refers to location of the site “within an area of the county identified in the Waterford City and County Development Plan as “sensitive” from a landscape perspective. The decision of the Board determined that the “proposed development would exacerbate the residential overdevelopment of this area, would tend to militate against the visual and other amenities of the rural environment and would, therefore, be contrary to the proper planning and sustainable development of the area. In my view the proposed development is not in visual terms significantly transformed from that development refused under PL93.246251. On this basis it is judicious to conclude that the third reason for refusal has not been overcome.
- 7.8 As regards the issue of Appropriate Assessment having regard to the nature and scale of the proposed development and nature of the receiving environment and distance 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 project on a European site.

7.9 On the basis of the foregoing, I consider that the previous reasons for refusal remain valid therefore the decision of the Board to refuse as follows:

8.0 RECOMMENDATION

8.1 *It is considered that the proposed development should be refused for the reasons and considerations hereunder.*

REASONS AND CONSIDERATIONS

Having regard to the location of the subject site in an area under Urban Pressure as designated in the Development Plan for Waterford City and County wherein it is the policy of the Planning Authority to direct urban generated development to areas zoned for housing in the adjoining service centres and settlement nodes, the Board considers that the proposed development would be an urban generated development by reason of the nature and place of the applicant's employment and that the applicant furthermore fails to comply with the criteria for rural housing set out in section 4.10 of the Waterford City and County Development Plan. The proposed development would, therefore materially contravene an objective indicated in the Waterford City and County Development Plan and would be contrary to the proper planning and sustainable development of the area.

The proposed development represents haphazard and piecemeal backland development which would seriously injure the amenities, and depreciate the value, of property in the vicinity and which would present an undesirable precedent for future similar developments.

The proposed development is located in an area of the County which is identified in the Waterford City and County Development Plan as “sensitive” from a landscape perspective. It is considered that the proposed development would exacerbate the residential over development of the area, would tend to militate against the visual and other amenities of the rural environment and would, therefore be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector
3rd June 2017