



An  
Bord  
Pleanála

## Inspector's Report PL04.248303

### Development

(i) The demolition of existing garage and outbuildings, (ii) the construction of a 126m<sup>2</sup> two storey extension to the East, (iii) alterations to North, South and West elevations of the existing dwelling, (iv) internal alterations to suit, (v) a new waste water treatment system inc. percolation area to the north, (vi) a new double entrance and driveway to the site in lieu of existing entrance, (vii) a 25m<sup>2</sup> garden store along eastern boundary to the north of the existing dwelling, and all associated site development works.

### Location

Lisduff, Farranastig, Whitechurch, Co. Cork.

### Planning Authority

Cork County Council.

### Planning Authority Reg. Ref.

16/06623

### Applicant(s)

Marie & Sheila Kelleher

### Type of Application

Permission

### Planning Authority Decision

Grant subject to conditions

**Type of Appeal** First Party v. Condition

**Observer(s)** None.

**Date of Site Inspection** 27<sup>th</sup> June, 2017

**Inspector** Robert Speer

## 1.0 Introduction

This is an appeal by the applicants against the inclusion of Condition No. 14 in the notification of the decision to grant permission.

## 2.0 Site Location and Description

The proposed development site is located in the rural townland of Farranastig, Co. Cork, approximately 4.5km northeast of Blarney and 1.9km southwest of the village of Whitechurch, at the junction of Local Road No. L-6963 with Local Road No. L-6964. The surrounding area is typically rural in character with intermittent instances of one-off housing and agricultural outbuildings whilst the prevailing topography generally falls in a southwards direction. The site itself has a stated site area of 0.425 hectares, is rectangular in shape, and is presently occupied by a detached single storey, cottage style dwelling house / bungalow and associated outbuildings / sheds. It broadly follows a north-south alignment and is bounded by local secondary roads to the north and west, by agricultural lands to the east, and by a single storey dwelling house to the immediate south. The subject dwelling house is located within the southernmost part of the site area and is positioned perpendicularly to the adjacent roadway whilst the garden space associated with same is separated from the northern extent of the site, which essentially comprises undeveloped agricultural / greenfield lands, by a line of conifers.

## 3.0 Proposed Development

3.1. The proposed development, as initially submitted to the Planning Authority, consists of the following:

- The demolition of an existing garage structure and related outbuildings (total floor area: 69.2m<sup>2</sup>).
- The construction of a substantial, contemporarily designed, flat-roofed, two-storey extension to the eastern gable of an existing single storey, cottage-style dwelling house / bungalow (proposed floor area: 126m<sup>2</sup>; ridge height: 5.85m).

- The carrying out of alterations to the northern, southern and western elevations of the existing dwelling house, primarily comprising revisions to the design and positioning of fenestration.
- Associated alternations to the internal layout of the existing dwelling house.
- The installation of a new wastewater treatment system, including a percolation area.
- The provision of a new double entrance and driveway in lieu of the existing site entrance arrangement.
- The construction of a new garden store with a roof-top open seating / balcony area overhead (floor area: 25m<sup>2</sup>) alongside the eastern site boundary to the north of the existing dwelling.
- All associated site development works.

In response to a request for further information, amended proposals were received by the Planning Authority on 13<sup>th</sup> February, 2017 which revised the proposed entrance design in order to provide for a single site entrance arrangement.

## **4.0 Planning Authority Decision**

### **4.1. Decision**

Following the receipt of a response to a request for further information, on 13<sup>th</sup> March, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 14 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, water services and development contributions, however, in the context of the subject appeal, I would suggest that the following conditions are of particular note:

Condition No. 10 – Prohibits surface water from being allowed to flow onto the public road and requires same to be disposed of by means of on-site soakaways.

Condition No. 11 – Requires a drainage grating with an associated discharge pipe to an on-site soakaway to be installed at the site entrance to the satisfaction of the Planning Authority.

Condition No. 14 – Requires a concrete channel to be provided along the entirety of the site frontage onto the roadway in order to accommodate roadside drainage to the satisfaction of the Planning Authority.

## 4.2. Planning Authority Reports

### 4.2.1. Planning Reports:

An initial report raised various concerns, including the visual impact of the proposed extension and the potential for same to result in excessive overlooking of the neighbouring property to the immediate south with an associated loss of privacy / amenity. Concerns were also expressed with regard to the proposed double entrance arrangement in addition to the considerable extent of roadside hedgerow which would require removal in order to facilitate same. It was also considered that further clarity would be required as regards any future proposals for the existing site access. Accordingly, the report concluded by recommending that further information should be sought in respect of the foregoing issues.

Following the receipt of a response to a request for further information, a final report was prepared which noted that the specific design of the proposed extension sought to limit the potential for overlooking as the windows within the southern elevation would serve a double height room (whilst correspondence was also provided by the neighbouring property owner to confirm that they had no objection to the proposal on the basis of overlooking). It was also accepted that the additional landscaping / screening measures proposed would serve to soften the visual impact of the proposed extension on being viewed from the public road. With regard to the entrance detail, it was noted that this had been amended to a single access arrangement and that the existing site entrance was to be closed. This report subsequently concluded that the proposed development would not be unduly overbearing relative to neighbouring properties and recommended a grant of permission subject to conditions.

#### 4.2.2. Other Technical Reports:

*Area Engineer / Engineering:* An initial report recommended that further information should be sought as regards the revision of the proposed entrance design, details of the boundary treatment proposed along the public road, the provision of an 'Aco'-drain at the site entrance, and the submission of a revised site layout plan detailing the necessary separation distances between the proposed wastewater treatment system, the bored well, and the existing dwelling house.

Following the receipt of a response to a request for further information, a further report was prepared which stated that there was no objection to the proposed development subject to conditions.

#### 4.3. **Prescribed Bodies**

None.

#### 4.4. **Third Party Observations**

None.

### 5.0 **Planning History**

#### On Site:

PA Ref. No. 012306. Application by Shelia Kelleher for permission to construct a dwelling house, garage and Biocycle type treatment unit. No decision issued.

#### On Adjacent Sites:

Pas Ref. No. 114106. Was granted on 13<sup>th</sup> May, 2011 permitting James M. McAuliffe permission for alterations and extensions to dwelling comprising a conservatory, family room and rear porch at Lisduff, Farranastig, Whitechurch, Co. Cork.

### 6.0 **Policy Context**

#### 6.1. **Development Plan**

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

### **Chapter 4: Rural, Coastal and Islands:**

#### **Section 4.6: General Planning Considerations:**

##### **RCI 6-2: Servicing Individual Houses in Rural Areas:**

Ensure that proposals for development incorporating septic tanks or proprietary treatment systems comply with the EPA Code of Practice: Wastewater Treatment and Disposal Systems serving Single Houses (p.e. < 10) or any requirements as may be amended by future national legislation, guidance, or Codes of Practice.

## **6.2. Natural Heritage Designations**

None.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

This is a first party appeal by the applicants against the inclusion of Condition No. 14 and the grounds of appeal are summarised as follows:

- There are numerous concerns with regard to the works necessary to comply with the requirements of Condition No. 14. Notwithstanding the monetary cost arising from the said works, there is also an implied responsibility going forward to maintain and repair the concrete drainage channel. In this respect it is unclear if the applicants will be held fully responsible for the completion and future maintenance of the concrete channel or if the Local Authority will ultimately assume the responsibility for same as part of the public roadway.
- Given that the concrete channel required by Condition No. 14 will form part of the public roadway, there are concerns that the applicants will be held liable for any potential injuries sustained by members of the public as a consequence of the drain. The proposed works involve the introduction of a smooth concrete channel along the edge of the roadway and thus concerns

arise, for example, if a pedestrian were to trip or fall on the channel, particularly during icy road conditions.

- There has never been an issue with flooding along this section of roadway, which is understandable given the 7m drop in road level from the top of the site to the bottom i.e. rainwater simply runs downhill.
- It is evident from the accompanying photographs that the roadside edge of the northern extent of the site area is defined by a grass verge in a manner similar to all other neighbouring lands.
- The inclusion of Condition No. 14 imposes an unreasonable level of expense and public liability on the applicants in the absence of any obvious benefit to the drainage of the public roadway. Accordingly, the necessity for the concrete channel is unclear.
- The imposition of Condition No. 14 is unreasonable given the nature of the proposed development / grant of permission.
- The condition requiring the provision of the new concrete roadside boundary is excessive and unnecessary. In this respect the Board is advised that the subject boundary measures c. 165m in length and that the existing roadway falls in a north-south direction with no history of flooding. In fact, the roadway falls a total of 7m over the length of the boundary in question.
- In the event that the drainage channel in question is required to be constructed, it will be necessary to undertake a full audit in order to determine the safety of the construction which will likely also require partial road closure, the use of banksman, and the provision of traffic control lights. The cost of any such construction could exceed €10,000.
- It is considered that the proposed roadside drainage channel, if constructed, will be ineffective given the fall in the road from north to south. It is further suggested that the concrete drain should only be laid across the new entrance in a manner similar to the existing site access as this would control surface water flow from the new driveway onto the public road and vice versa.



## 7.2. Planning Authority's Response

- During periods of heavy rainfall, surface water has been witnessed flowing onto the public road from the applicants' land (which is located at a higher elevation than the roadway). This surface water runoff has a tendency to flow onto the L-6963 and L-6964 local secondary roads whilst stormwater has also been recorded as ponding on the L-6964 i.e. the public road along the northern boundary of the application site.
- In an effort to prevent the erosion of the road edge, and in the interests of road safety, there are a number of means by which to control the runoff of water, namely:
  - The laying of a storm sewer and road gullies to collect and convey the stormwater.
  - The construction of a dished concrete channel along the side of the roadway where the stormwater flows.
- The least expensive option for the applicant would be to construct a dished concrete channel which would ultimately marry in with the existing channel located towards the south-western end of the site.

The only acceptable alternative would be if the applicant were to construct and maintain an open drain inside the ditch i.e. within the application site. In this regard it would be necessary to provide inlets from the public road into the drain whilst the drain itself would have to extend so as to tie in with the existing drainage channel or an extension of same.

- The Roads Act, 1993 requires landowners to take all necessary steps to ensure that water runoff from their land is not directed onto the public road. Therefore, it is submitted that runoff from the applicants' property must be directed away from the public road and thus the need for the inclusion of Condition No. 14

### 7.3. Further Responses

#### Response of Applicants to Circulation of Planning Authority's Submission:

- It should be noted that there is an existing drainage shore located to the northwest of the site along the roadside boundary and that this was blocked following an inspection on 14<sup>th</sup> June, 2017. Therefore, this blockage is possibly causing water to flow onto the public road during incidences of heavy rainfall. It is clear that this gully has not been maintained and it is submitted that it is the responsibility of the Local Authority to maintain existing drainage along the public road and not the applicant.
- The lands to the north of Local Road No. L-6964 are located at a higher elevation and thus any flooding of the roadway results from water flowing from those lands as opposed to the subject site which is situated at a lower level.
- The requirement to provide a new dished channel for 160m along the public road is excessive and unnecessary. Any such works will require partial closure of the roadway, the implementation of costly health and safety precautionary measures, and will be of considerable cost to the landowner.
- It is clear that no effort has been made to maintain the existing gully. If maintenance works were to be undertaken, then the identified measure may not be required.
- It has been stated by the Planning Authority that the dished channel is required in order to collect surface water from the applicants' lands. In this respect it is considered to be unlikely that any surface water flows from said lands onto the public road as there is a relatively impermeable grass embankment at this location.
- In the event that the Board is of the opinion that drainage is required from the applicants' lands, it is suggested that this should take the form of a french drain as detailed on the accompanying drawing (Drg. No. 17069-1000).

Response of Planning Authority to Circulation of Applicants' Submission:

None.

## 8.0 Assessment

8.1. 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 issue raised by the appeal relates to the inclusion of Condition No. 14. Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the inclusion of the aforementioned condition and thus I propose to assess same accordingly.

### 8.2. Condition No. 14;

This condition states the following:

*'A concrete channel shall be constructed along the entire road frontage of the site to accommodate roadside drainage to the satisfaction of the Planning Authority.*

*Reason: To maintain proper roadside drainage and to prevent the flooding of the public road'.*

Having conducted a site inspection, and following a review of the available information, it is of relevance in the first instance to note that Section 7.3 of the *'Development Management, Guidelines for Planning Authorities, 2007'* published by the Department of the Environment, Heritage and Local Government sets out certain basic criteria which have often been suggested as a guide for deciding whether or not to impose a condition. These include whether the condition is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable. Accordingly, I propose to assess the merits of the inclusion of Condition No. 14 having regard to the aforementioned criteria, where relevant.

With regard to the necessity for the imposition of Condition No. 14, it is appropriate to consider the totality of the terms and conditions of the notification of the decision to grant permission and in this respect I would refer the Board to the following conditions in particular:

Condition No. 10:

*'Surface water shall be disposed of within the site by means of soakaways and shall not be allowed to flow onto [the] public road.'*

*Reason: To prevent the flooding of the public road'.*

Condition No. 11:

*'A drainage grating, along with a discharge pipe to a soakaway located within the site, shall be installed at the entrance to the site to the satisfaction of the Planning Authority.'*

*Reason: To prevent flooding of the public road'.*

In my opinion, it would appear that the inclusion of Condition No. 10 serves to prohibit all additional surface water runoff consequent on the proposed development from discharging onto the public road by requiring any such runoff to be disposed of within the confines of the application site by means of soakaways. This would seem to be corroborated by the site layout plans provided with both the initial planning application and the response to the request for further information which detail the installation of a dedicated surface water drainage system on site with any such runoff to be directed towards identified soakaways for disposal to ground. In addition, it is of relevance to note that Condition No. 10 refers to surface water emanating from within the application site as a whole as distinct from that generated by the proposed development works. Therefore, on the basis of the foregoing, it would appear that the inclusion of Condition No. 10 would negate any requirement for the applicant to undertake any further drainage works external to the site as have been specified by Condition No. 14.

With regard to Condition No. 11, I am similarly inclined to conclude that the express requirement set out in same for the applicant to install a drainage grating at the site entrance with associated pipework discharging to a soakaway located within the site boundary obviates any concerns as regards the potential for surface water runoff emanating from the new site entrance (and the more northerly extent of the proposed driveway) to contribute to flooding of the public road.

Therefore, having established that the inclusion of Condition No. 14 of the notification of the decision to grant permission would not appear to be necessary in

light of other conditions imposed by the Planning Authority, I propose to consider the overall reasonableness of Condition No. 14. In applying the test of 'reasonableness', it is a fundamental requirement that any condition be expedient for the purposes of the development in question. In this regard, it is necessary to consider the specifics of the proposed development and the wider the site context, including the topographical characteristics of the area.

It has already been outlined in the description of the proposed development site as set out elsewhere in this report that the lands in question can essentially be divided into two principle component parts with the existing dwelling house and the various development works limited to the southernmost half of the property whilst the remainder of the site area comprises greenfield lands. More notably, the northernmost undeveloped section of the site area is located up-gradient of the proposed works and in this respect I would suggest that the drainage works required by Condition No. 14 along that section of the public road to the north of the proposed new site entrance cannot be held to be directly related to the proposed development. Whilst I would accept that there is perhaps a stronger case for the installation of a concrete drainage channel alongside that section of the roadside site boundary down-gradient of the new entrance, given that the proposed development already includes for certain drainage works which will serve to avoid the discharge of surface water runoff onto the public road, and as the imposition of Condition Nos. 10 & 11 will further serve to negate any requirement for a new drainage channel alongside the carriageway, it would seem unnecessary to impose the additional works required by Condition No. 14.

Therefore, it is my opinion that the works sought by Condition No. 14 exceed what which could be considered to be either directly related to, or expedient for the purposes of, the development in question and thus cannot be held to be reasonable, particularly in light of the limited scale of development proposed. Furthermore, whilst I am not in a position to provide definitive comment as regards the extent or severity of any flooding issues that may occur along this section of roadway, I would suggest that the development as approved is unlikely to give rise to any significant exacerbation of same and that the works required by Condition No. 14 would appear to be intended to address a problem which is unrelated to the subject proposal.

By way of closing comments, it is also notable that the initial report prepared by the Area Engineer did not raise any specific concerns or requirements as regards the need to provide a concrete drainage channel along the entirety of site boundary and it instead focused on the provision of a suitable drainage system at the site entrance whilst also referencing the need to avoid surface water runoff from discharging onto the public road. Indeed, both of these latter issues were expressly addressed in the notification of the decision to grant permission. In addition, I note the applicants' reference to an alleged failure by the Local Authority to adequately maintain the existing drainage infrastructure in the locality which may have served to contribute to instances of flooding in the locality.

On the basis of the foregoing, it is my opinion that the imposition of Condition No. 14 is neither necessary or reasonable in this instance and thus I would recommend the omission of same from any decision to grant permission for the proposed development.

### 8.3. **Appropriate Assessment:**

Having regard to the nature and scale of the proposed development, 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 **Recommendation**

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and based on the reasons and considerations set out below, directs the Council, under sub-section (1) of Section 139 of the Planning and Development Act, 2000 to **REMOVE** Condition No. 14 and the reason therefore as follows:

## 10.0 Reasons and Considerations

Having regard to the inclusion of condition numbers 10 & 11 in the notification of the decision to grant permission, and in light of the details provided on the submitted plans and particulars with regard to the surface water drainage arrangements to be provided on site, it is considered that the attachment of condition number 14 is not necessary as regards the prevention of flooding of the public road.

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Robert Speer  
Planning Inspector

19<sup>th</sup> July, 2017