



An
Bord
Pleanála

Inspector's Report PL04.248373

Development	Retention of dwellinghouse with permanent use and revised site boundaries which relates to amendments to condition no.4 reg.ref.W/00/1050 referring to caretaker's use.
Location	Ballylickey, Bantry, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/672.
Applicant(s)	Raymond Hennessy.
Type of Application	Retention.
Planning Authority Decision	Grant with 6no. conditions.
Type of Appeal	Third party
Appellant(s)	CPFM Ltd
Observer(s)	None
Date of Site Inspection	24/07/17
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site is located in Ballylickey, c.5km north of the centre of Bantry, c.65km west of Cork city. Ballylickey is a village (designated under the statutory local area plan) of low-density and dispersed character, centred on the estuary of the Owvane River flowing into Bantry Bay. The landscape is scenic, characterised by wooded rolling hills extending to the blanket-bog covered mountain backdrop and with an intricate coastline of bays and islands, attracting large numbers of tourists.
- 1.2. The application site is situated c.100m from the coast, accessed off a local road that joins with the coastal N71 (national secondary route) c.70m to the southwest. The application site originally formed part of a single development on an extended site of 0.6ha in total, accommodating a 3-storey block of tourist apartments (formerly a hostel). The application site shares a single site access with the apartment block, with a right of way over the site indicated as extending around the application site's southwest, south and southeast boundaries. The dwellinghouse is served by a treatment plant located outside the application site boundary, within the adjoining site, and which was exposed and apparently inoperable at time of inspection. The drawings indicate that the wastewater treatment plant has an outfall pipe to the sea. The balance of the holiday site is covered in scrub and weeds, apart from the surface car parking area surrounding the block. The lands adjoining the northeast, east and southeast of the original site are heavily wooded.
- 1.3. The existing single-storey house has a stated floor area of 110-sq.m and the application site 0.056ha. On inspection there were a number of indicators that the dwelling is currently occupied (clothes hanging on a rack inside the window, cigarette butts disposed outside the rear doorstep).
- 1.4. The dwelling is screened from the public road by mature vegetation typical of the wild greenery characterising the area. There is no vehicular entrance onto the site and no onsite parking is indicated on the submitted plans or evident on site. According to the site layout plans the front elevation of the dwelling faces the apartment block c.16m to the southeast and the east and north elevations are c.7.6m and c.7.9m, respectively, from the facing boundaries.

2.0 Proposed Development

- 2.1. It is proposed to retain the existing dwellinghouse for permanent use as a dwelling separate from the use of the tourist hostel (now short term let apartment block) on the wider site for which it granted planning permission for construction as a caretaker's lodge (reg.ref.W/00/1050) including amendment of condition no.4 of same.

3.0 Planning Authority Decision

3.1. Decision

GRANT permission (28/03/17) subject to 6no. conditions.

Condition no.2 removes exempted development provisions for any additional structures within the curtilage of the dwellinghouse.

Condition no.3 requires provision of 2no. on-site parking spaces to the satisfaction of the Planning Authority.

Condition no.4 requires retention and maintenance of existing trees and hedgerow.

Condition no.5 requires the developer to inspect the existing septic tank and percolation area and to ensure it is continuously maintained and functioning in a satisfactory manner.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Executive Planner (13/12/16) had no issue with the principle of the proposal having regard to the site location within the LAP development boundary and considered the main issues to be the absence of on-site parking and the right of way and permission to access the existing treatment plant and recommended that **FUTHER INFORMATION** be sought concerning same.

Two reports issued from the Executive Planner on 03/02/17. The first suggest that the issues raised in the further information request of 13/12/16 (control / ownership of treatment plant; legal evidence of indicated right of way) had not been resolved

but that the outstanding issues were a civil matter between the two parties and recommended that permission be granted subject to 6no. conditions consistent with the final decision of the Planning Authority. The second report of the same date considered the applicant's response to be insufficient and recommended **CLARIFICATION** be sought concerning legal right to maintain the treatment plant and concerning the legal right of way over the site for parking access.

The final report of the Executive Planner (28/03/17) considered the applicant had adequately addressed the Council's concerns regarding right of way surrounding the property and regarding right of way to inspect and maintain the existing treatment plan servicing the dwellinghouse, and recommended that permission be granted subject to 6no. conditions consistent with the decision of the Planning Authority.

3.2.2. Other Technical Reports

Area Engineer – The initial report of 06/12/16 raised no concerns and recommended permission be granted without condition. A subsequent report of 08/12/16 (following discussions with the Area Planner) recommended further information be sought concerning ownership / control of the existing treatment plant and right of way over site (principally concerning car parking).

The report of 31/01/17 recommended permission be granted subject to three non-standard conditions relating to parking, maintenance of existing trees and hedgerows and maintenance of treatment plant.

3.3. Prescribed Bodies

Irish Water – The report of 06/12/16 raised no objection subject to standard conditions.

3.4. Third Party Observations

An observation was received from CPFM Ltd c/o Brock McClure Planning and Development Consultants (06/12/16). The observer requests that permission be refused based on the following issues:

- The building was not designed or sited to provide for the needs as a private residence, with insufficient space for access and parking and inadequate information on private open space.
- The right of way is only to allow access and to pass over, not parking.
- Granting retention permission will negatively impact on the observer's property through unauthorised parking and turning manoeuvres.
- The applicant will not have ongoing control over the sewerage treatment plant serving the dwelling located on third party lands.

4.0 Planning History

On extended site including current appeal site

PL04.211260 / Reg.ref.04/9051 – Permission **REFUSED** by the Board (25/08/05), upholding the Planning Authority decision, for 8 no. holiday cottages on grounds of overdevelopment, inadequate public open space and serious injury to amenities of the property to the west by way of overlooking.

PL04.201775 / Reg.ref.W/02/3611 – Permission **GRANTED** by the Board (09/03/17), overturning the decision of the Planning Authority, for conversion of hostel to 12no. apartments for short term letting.

Reg.Ref.W01/1243 – Permission **REFUSED** by the Planning Authority conversion of hostel to apartments not for short-term letting on grounds of that it would reduce and diminish the level of tourism related facilities in an area where it is the stated objective to promote and stimulate tourism.

Reg.Ref.W/00/1050 – Permission **GRANTED** by the Planning Authority for a dwelling and domestic garage, subject to 10 conditions. Condition no.4 stated:

The proposed premises shall be used solely as a caretakers [sic] residence and a change of use shall not take place without the prior Permission / Approval of the Planning Authority, notwithstanding the Exempted Development provisions of the Local Government (Planning & Development) Regulations, 1994, as amended.

Before any development commences provision to this effect shall be embodied in an agreement between the Applicant and the Planning Authority pursuant to Section 38 of the Local Government (Planning and Development Regulations) Act, 1963.

Reason: To regulate the use of the development in the interests of orderly development.

Condition no.5 required the development to be connected to the existing effluent treatment plant.

Reg.Ref.W/96/2776 – Permission **GRANTED** by the Planning Authority for hostel type accommodation. Condition no.9 and 10 stated:

9. Foul drainage shall be by means of a proprietary small treatment system which shall meet the requirements of the Irish Agreement Board Certificate No.92/0033 (second Edition). Full details of this including location on site, design, structure, quality and means of disposal of final effluent shall be submitted and agreed before development commences. The capacity of the effluent treatment plant shall not be less than 70 persons equivalent. The exacted route of the sewage outfall pipe shall be agreed with the Planning Authority. Discharges of treated effluent shall take place within a period of one hour following high tide to four hours following high tide.

Reason: In the interest of public health.

10. The small treatment plant referred to in the above condition shall be operated and maintained in perpetuity to the to the satisfaction of the Planning Authority and before development commences, written evidence of a maintenance contract to ensure the continuous operation of the treatment plant shall be submitted and agreed with the Planning Authority.

Reason: In the interest of public health.

Reg.Ref.W/95/4403 – Permission **REFUSED** for hostel and treatment plant.

Reg.Ref.W/95/4402 – Outline permission **GRANTED** by the Planning Authority for a caretaker's lodge.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2014-2020

Within Development Boundary to Ballylickey – Defined as a village within the West Cork Municipal District Local Area Plan 2015 (Appendix G of the CDP).

Bantry Electoral Area Local Area Plan (Second Edition, 2015)

West Cork Municipal District Local Area Plan 2017 (comes into effect August 21st, 2017) – The final plan is not available on the Council's website.

5.2. Other Reference Documents

EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10).

5.3. Natural Heritage Designations

Derryclogher (Knockboy) Bog SAC site code 001873, c.5.4km north

Glengarriff Harbour and Woodland SAC site code 000090, c.5.4km west-northwest

Caha Mountains SAC site code 00093, c.8km west-northwest

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal submitted by CPFM Ltd (24/04/17) may be summarised as follows:

Nature of proposals within overall site context

- The structure is not suitably designed or sited to provide for the needs of a private residence;
- There is inadequate space for appropriate access, parking and private open space and the drawings are without detail in that respect;

- Questions the amenity value of the open space located between the house the public road, with minimal privacy and lacking in defensible space to the front, having regard to s.7.4 and s7.8 of the Guidelines on Sustainable Residential Development in Urban Areas referenced in the Cork CDP, in view of the site layout vis-à-vis the 4-storey building.

Existing rights of way

- The right of way access does not include a right to park or undertake turning movements within the wider site.
- It does not include a right to park within the ROW and the drawings do not illustrate how the applicant proposes to provide parking.
- Unauthorised parking turning manoeuvres may negatively impact on the appellant's property.
- As a standalone residential development, it should be required to provide parking (2no.) within the curtilage in the interest of orderly development and security.

Servicing and Access to Adequate Infrastructure

- Notwithstanding the right of way associated with the sewerage pipe access to the sewerage treatment plant, the plant is within 3rd party control and the applicant does not have ongoing control over its use.
- The treatment plant is primarily related to the hostel / apartment building and has not been in use in recent times, has not been maintained and is not connected to a functioning electricity supply, which has serious implications for the ongoing operation of the lodge sewerage system.
- The lodge should be required to provide and maintain their own system if it is to be an independent residential dwelling.
- The applicant should also be required to demonstrate how they can readily connect to a suitable water supply.

Residential Amenity

- Inadequate separation distance from hostel / apartment block (12m), with no opportunity to provide screening for privacy.

- The private open space adjacent the public road is more typical of a front garden and the validity of the space as private residential amenity space is questioned.

Legality of Local Authority Decision

- The decision was reached prior to receipt of all relevant information regarding rights of way and without meaningful analysis of the residential amenity to be afforded future occupants.
- Condition no. 4 concerning car parking provision is unenforceable and there is inadequate space to provide same having regard to the limitations of the right of way. There is no right to park within the right of way. This has implications for the operability of the hostel / apartment scheme. Permission should therefore be refused.
- Condition no.6 concerning access to and inspection of the sewerage treatment system is not enforceable. The applicant has a right of way for a sewer access pipe but does not have the right to access, inspect, or in respect of the ongoing operation of the tank. This constitutes sufficient grounds for refusal due to the potential public health caused by having no functional septic tank.

6.2. **Applicant Response**

None.

6.3. **Planning Authority Response**

No further comments.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 Assessment

I consider that the main issues arising in this appeal may be appropriately addressed under the following headings:

- 7.1 Policy /principle
- 7.2 Wastewater and water supply
- 7.3 Parking and access
- 7.4 Residential amenity
- 7.4 Appropriate Assessment

7.1. Policy / principle

- 7.1.1. The site is located within the development boundary of the village of Ballylickey as defined under the Bantry Electoral Area Local Area Plan 2015 and under the adopted West Cork Municipal Area LAP 2017 that comes into effect on 21st August 2017. The current plan provides for the development of up to 15 dwellings between 2015-2020 (objective DB-01(a)), or 7no. (DB-01(d)) served by onsite WWTPs in the absence of a public WWTP. The adopted LAP for the area is not available online, however it can reasonably be assumed that a similar objective will apply and that 15no. dwellings have not yet been permitted within the development boundary. As the subject structure pre-dated the two said LAPs, I see no material conflict with same and in principle the development is generally acceptable.
- 7.1.2. Permission was granted for a dwelling and domestic garage under reg.ref.W/00/1050, subject to a condition (no.4) limiting the use of same solely as a caretaker's residence. It is reasonable to assume that this condition referred to the use as a caretaker's residence associated with the hostel accommodation permitted under reg.ref.W/96/2276 given that the site plans indicate the proposed dwelling being located within the site boundary to same, although this does not appear to be stated anywhere within the application documents forward to the Board (attached to PL04.201775). The applicant explained in the further information submission that the hostel was not viable and had to be closed down and that the objector was aware when it bought the balance of the land from the AIB that the house was being used as a private residence.

7.1.3. The layout of the development carried out on site is discordant with that permitted under W/00/1050. No garage has been erected to the eastern side of the dwelling and it is uncertain that there is sufficient space to construct one – the line of the eastern boundary is not obvious on site due to the level of plant growth. The layout plans submitted with the application (reg.ref.16/672) subject of appeal indicates a separation distance of 7.6m between the eastern wall of the dwelling and the facing boundary. A comparison with the available copy of the site plan to reg.ref.W/00/1050 (which is without scale demarcated) with particular regard to the eastern line of dwelling and hostel / apartments block would indicate that the dwelling has been constructed further east, possibly by as much as 6m, relative to that permitted. As the development does not appear to be constructed as per the relevant permission, the question arises as to whether the Board may grant permission to amend a condition to same.

7.2. **Wastewater and water supply**

- 7.2.1. The dwellinghouse is currently connected to a wastewater treatment plant serving the holiday apartment building, as was required by condition no.5 of permission W/00/1050. The applicant has made no proposal to alter the wastewater provisions for the dwelling. The situation thereby results that the independent dwellinghouse would be served by a private wastewater treatment plant located offsite and serving a neighbouring short-let holiday apartments. I do not consider this to be desirable.
- 7.2.2. The appellant submits that notwithstanding the right of way associated with the sewerage pipe access to the sewerage treatment plant, the plant is within 3rd party control and the applicant does not have ongoing control over its use. It is further submitted that the treatment plant, which is primarily related to the hostel / apartment building, has not been in use in recent times, has not been maintained and is not connection to a functioning electricity supply, which has serious implications for the ongoing operation of the lodge sewerage system and the lodge should be required to provide and maintain their own system if it is to be an independent residential dwelling.
- 7.2.3. The applicant submitted as further information a copy of the property registration (plus map) pertaining to the application site and wider site, which grants the rights ‘to place, keep and maintain a sewer pipe over, through and along’ the line indicated, ‘to

connect up to the chamber and treatment plant and *'to inspect, repair and main the said pipe'*. The applicant's agents submit that the land registry document and letter from the applicant's solicitor (Hennessy & Co. received 16/03/17) is proof that the applicant has the right to access the existing treatment plant as well as the necessary right to inspect, repair and maintain the unit if required. It is my interpretation that the rights pertaining to the site under the land registry document (second schedule, point 2) provides the applicant with *'the right to inspect, repair and maintain'* the pipe connecting to the chamber and treatment plant and *'the right to connect up to'* same, but does not include any express right to inspect, repair and maintain the chamber and treatment plant itself. Furthermore, the wording of the letter from applicant's solicitor does not state to the contrary.

- 7.2.4. It is apparent that the dwellinghouse site is insufficient to accommodate an onsite wastewater treatment system for a single dwelling to the standard required by the *EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)* in terms of compliance (at least) with minimum separation distances. Ballylickey is not yet served by a public wastewater treatment plant and the Planning Authority has not indicated that provision of such a plant is proposed. There would seem to be no other option but for the dwelling to be served by the WWTP serving the holiday apartment development.
- 7.2.5. On inspecting the site, I noted drainage piping (c.100mm diameter) in a hole close to the eastern boundary. The purposed of same was not clear and I did not notice any noxious odours or other obvious evidence of pollution and I assume it carries surface water drainage.
- 7.2.6. I note that conditions attaching to the original permission for the hostel building (Reg.Ref.W/96/2776) required (no.9) the capacity of the effluent treatment plant to be not be less than 70 p.e. and (no.10) to be operated and maintained in perpetuity to the satisfaction of the Planning Authority (with written evidence of a maintenance contract to ensure the continuous operation). In theory this should ensure that the WWTP is maintained for the subject dwelling, however this clearly is not currently the case and the applicant does not have sufficient rights over the system to ensure that it is suitably operational and therefore the occupation of the dwellinghouse is clearly prejudicial to public health.

7.2.7. In the absence of the dwellinghouse having permanent access to a permanently operable wastewater treatment system, with sufficient rights to access, operate, maintain and take corrective action as necessary, I do not consider it consistent with the proper planning and sustainable development to grant permission for the dwellinghouse to be used independently from the amended hostel development of which it was permitted as a dependent part. The development would be prejudicial to public health, constitute substandard development and be contrary to the proper planning and sustainable development of the area.

7.3. **Parking and access**

- 7.3.1. The development would share access to the local road via the existing entrance to the hostel / apartments. The principle of a shared access is acceptable, although I note that there would appear to be no provision to accommodate surface water runoff from same within the site and that the loose surface of the access is currently flowing into the public road and will damage the surface of same if not adequately addressed. This is a matter for the Local Authority.
- 7.3.2. The provision of a separate access would be undesirable for the application site given its restricted size as it would remove limited open space as well as the lush roadside vegetation that is characteristic of this area and which visually screens the dwellinghouse.
- 7.3.3. The dwelling house has no onsite parking and the applicant has made no proposal to provide for onsite parking. Cork County Development Plan 2014 standards require 2no. parking spaces and therefore the proposed development is substandard. Condition no.3 of the Planning Authority's decision requires the applicant to provide 2no. parking spaces on site. The appellant objects to the use of the right of way for parking associated with dwellinghouse and notes that the applicant has no right to do so. The appellant also submits that condition no.3 is not enforceable. It may be possible to provide 2no. cap parking spaces within the site. A space provided to the west of the dwelling would reduce the limited area of private amenity space, whereas it may not be possible to egress a space provided the east within the confines of the applicant's right of way. The appellants submit that unauthorised parking turning manoeuvres may negatively impact on their property.

7.3.4. The proposed development, which makes no provision for car parking is substandard development contrary to the requirements of the Cork County Development Plan 2014.

7.4. **Residential amenity**

7.4.1. In theory the dwellinghouse has c.250-sq.m private open space available behind the front building line. Whilst this is an overestimation as the nature of the roadside boundary ditches removes much of the rear of site from use, the vegetated ditches provide a certain level amenity on and offsite in themselves. The open space includes a deck to the side. On balance I consider the level of amenities available to the dwellinghouse to be acceptable.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature of the development proposed, being a change of use from a dwellinghouse used in conjunction with a hostel / holiday apartment development to use as an independent dwelling, and the distance to the nearest relevant European sites - Derryclogher (Knockboy) Bog SAC site code 001873, c.5.4km north; Glengarriff Harbour and Woodland SAC site code 000090, c.5.4km west-northwest; and Caha Mountains SAC site code 00093, c.8km west-northwest – no Appropriate Assessment issues arise and it is not considered the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. I recommend that permission be **REFUSED** for the reasons and considerations set out under section 9.0

9.0 **Reasons and Considerations**

1. The development is located in a village which does not have a public wastewater treatment plant and does not have access to a suitable private wastewater treatment system over which it has sufficient rights to access,

operate, maintain and take corrective action as necessary. The development is currently served by wastewater treatment system located off-site, which is allegedly not operable and over which it does not have control. The development cannot provide an onsite wastewater treatment system to comply with the EPA *Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)*. The proposed development is therefore prejudicial to public health and contrary to the proper planning and sustainable development of the area.

2. The proposed development does not provide off-street car parking to the standard required under the Cork County Development Plan 2014 and therefore constitutes a substandard form of development that is contrary to the proper planning and sustainable development of the area.

John Desmond
Senior Planning Inspector

28th July 2017