



An
Bord
Pleanála

Inspector's Report ABP-301046-18

Development	Demolition of house and outbuildings, construction of a house, indoor swimming pool, an assisted-living family flat and garage. Decommissioning of septic tank and provision of new proprietary wastewater treatment system & percolation area and site works.
Location	Linden Lea, Dublin Road, Painstown, Drogheda, Co. Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	LB/171388
Applicant(s)	Orla Gregory.
Type of Application	Permission.
Planning Authority Decision	To grant with conditions.
Type of Appeal	Third Party
Appellant(s)	1. Kate and Darius Messayeh. 2. Joan and Tim Tully.
Observer(s)	None.
Date of Site Inspection	29 th August 2018.
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.688ha appeal site is situated to the south east of Drogheda town, c. 450m to the south of Southgate Shopping Centre. The site lies on the eastern side of the R132 (Dublin Road), in the townland of Painstown. This regional road connects Drogheda and Julianstown.
- 1.2. The appeal site comprises a large rectangular site, with an existing single storey residential property and associated outbuildings situated to the rear (east of the site). The property is substantially set back from the public road and the large garden area is bounded by mature hedgerow/trees. A tennis court lies to the front of the site.
- 1.3. To the north of the site are two residential dwellings (the appellants properties), also situated on large sites and sharing a similar building line to the property on the appeal site. To the south is another dwelling, but it is closer to the public road.

2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of the existing dwelling house and outbuildings and the construction of a new detached, two storey, four-bedroom residential property, which includes an indoor swimming pool and 2 bedroom assisted-living family flat and detached garage. The development also provides for the decommissioning of the existing septic tank and the provision of a new proprietary wastewater treatment system and percolation area. Water supply is from the public mains. Surface water will be disposed of into a soakpit.
- 2.2. The proposed dwelling is a mix of single and two storey components, structured around external courtyards. The principle structure is L-shaped, with the two perpendicular elements joined by a glazed, link corridor. The proposed family flat is to the rear of the principle structure. It is part single storey and part two storey and is joined to the main building at ground floor via the swimming pool block. Windows in the northern elevation of the development serve stairways, dressing rooms and ensuite bathrooms. Roof terraces are proposed at first floor, joining the master bedroom in the main property, and the guest bedroom in the family flat.
- 2.3. The application for the proposed development includes a Design Statement, 3-D visual images and Site Characterisation Report.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 31st May 2018 the planning authority decided to grant permission for the development subject to 17 conditions. Most are standard. Of note:

- Condition no. 3 requires revised proposals for the 4 no. first floor windows on the northern elevation of the dwelling (obscure glazing or alternative design).
- Condition no. 13 requires preservation of existing hedgerows, trees and shrubs on the site as indicated in the submitted landscape plan and sets out a timescale for the commencement of new planting.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 25th January 2018 – The report refers to the location of the appeal site, relevant development plan policies, pre-planning consultations, submissions and technical reports made. It assesses the application for the proposed development under a number of headings including appropriate assessment, planning policy, design, layout and siting, access and water services. It considers that no significant effects on European sites will arise, that the development is in principle in accordance with the policies of the County Development Plan (replacement of a habitable dwelling, provision of a family flat) and that the scale of development can be accommodated on the large site. It considers that an alternative proposal for the four windows facing north (towards the adjoining property) should be submitted. Other windows and terraced areas are considered to be sufficiently removed from the adjoining development, to prevent overlooking. The report recommends granting permission for the development subject to conditions.

3.2.2. Other Technical Reports

- Executive Engineer (23rd January 2018) – No objections.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

3.4.1. There are two third party observations on file by the residents of the two properties immediately north of the appeal site (Joan and Jim Tully and Kate and Darius Messayeh). Matters raised are as follows:

- Scale of the development and overlooking into habitable rooms and private rear garden from five north facing windows, glazed link corridor, north facing balcony to master bedroom and west facing openings onto covered terrace above assisted-living family flat.
- The development is located in a Rural Area Under Strong Urban Influence and policy RD POL 7 should be applied.
- Landscaping – Lack of clarity regarding planting to be conserved and removed.

4.0 Planning History

4.1. None.

5.0 Policy Context

5.1. Meath County Development Plan 2013 to 2019

5.1.1. The appeal site lies in a Rural Area under Strong Urban Influence to the south of Drogheda town.

5.1.2. Policy RD POL 31 of the Plan encourage and facilitate the appropriate refurbishment of existing housing stock in rural areas and in certain limited circumstances the replacement of existing dwellings, subject to development assessment criteria. Development assessment criteria is set out in section 10.15.1 of the Plan and includes:

- In the case of replacement dwellings to require that the original structure was last used as a dwelling and that its roof, internal and external walls are generally intact.
- That replacement dwellings are provided at locations where safe access and acceptable wastewater disposal arrangements can be put in place and where specific development objectives or other policies of the Plan are not compromised.
- That the replacement dwelling is designed to be of a size and scale appropriate to the site and to comply with the Meath Rural Design Guide.

5.1.3. Section 11.2.3 of the Plan deals with family flats and states that a family flat, to be occupied by a member of the occupant family, is generally acceptable provided it is not a separate detached unit and that direct access, if possible, is provided to the remainder of the house. The Plan also requires that there be no sub-division of the garden/private amenity space, that the family flat be retained as part of the overall property, reverting to being part of the original house, when no longer required.

5.2. Natural Heritage Designations

5.2.1. The appeal site lies c.3km north of the Laytown Dunes/Nanny Estuary pNHA (site code 000554) and River Nanny Estuary and Shore SPA (site code 004158) at Julianstown, and c.3.5km south of Boyne Estuary SPA (site code 004080), the River Boyne and River Blackwater SAC (site code 002299) and the Boyne Estuary SPA (site code 004080) to the east of Drogheda town (see attachments).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. There are two third party appellants. One occupies the dwelling to the north of the appeal site (Joan and Tim Tully) and the other (Kate and Darius Messayeh), the dwelling to north of this property. Similar issues are raised in each appeal and similar matters to those raised in observations on the application i.e.

- Scale of development and overlooking of properties to the north of the site.

- Loss of privacy – As a consequence of the above, for both internal rooms and external spaces.
- Condition no. 3 of the permission – Should omit north facing windows. Any obscure glazing, if permitted, could be replaced in the future.
- Veranda's and west facing openings – Should be designed out of the application to retain appellant's private use of their kitchen and living rooms and long established private use of perimeter patios and rear garden area.
- Occupancy condition.
- Landscaping – Applicant should clarify, by way of full and clear survey, what planting is being retained and what removed. The retention of the existing boundary hedge is of paramount importance to the appellant in maintaining private use of south facing external areas and private rear garden.

6.2. Applicant Response

6.2.1. The applicant responds as follows:

- Compliance with County Development Plan - The proposed development replaces an existing habitable house which is substandard in terms of its quality and rating and which does not meet modern living standards. The development is based on a courtyard type development which creates a sheltered entrance forecourt, private external spaces and good links between inside and outside spaces. The proposed development is contemporary in design based on vernacular building forms which respects its setting, context and tradition. The proposed development provides a granny flat for the applicant's parents and forms part of the house. The development is in accordance with the policies and objectives of the Meath County Development Plan.
- Scale of development – The development is designed to ensure that it will not interfere with the privacy of neighbouring properties. There is no requirement in planning to maintain a rear building line and there is no reason to do so.
- Overlooking:

- The five first floor windows do not serve any habitable rooms (two serve a hallway, one a master wardrobe, one an en-suite and one a stairway). These have been appropriately dealt with by condition, with two replaced by high level windows and the remainder opaque (revised drawings, as submitted to the planning authority attached to submission). In order to be authorised, the applicant is required to comply with condition no. 3 of the planning authority's decision i.e. the first-floor windows must remain opaque. The applicant has no objection to a condition requiring this.
- The applicant suggests that if the Board so wish, four Velux windows/rooflights may be more appropriate (side elevation).
- Proper planning and development requires that there be a separation distance of 22m between opposing windows to avoid overlooking. There are no opposing windows below this in the proposed site layout (see drawings attached to submission).
- The two verandas will not give rise to overlooking due to their configuration and distance from the property to the north. However, the applicant has no objection to a condition requiring an opaque glazed screen to above eye level, if the Board so require.
- The proposed glazed link is sufficiently removed (28m) from the appellant's property, and is orientated such that no overlooking will arise.
- Occupancy – This is only relevant to new houses in the countryside, not to replacement dwellings.
- Landscaping – The applicant has provided a sufficiently detailed landscaping plan to support the application. It is clear that the applicant intends to retain the existing mature hedgerow in order to maintain privacy between the neighbouring properties. The request for a detailed survey of trees etc. is unnecessary and unreasonable.

6.3. Planning Authority Response

6.3.1. The planning authority make the following comments on the appeal:

- Impact on residential amenity

- Darius and Kate Messayeh - Consider that the development would not impact on the residential amenity of property furthest north as it is sufficiently removed from the proposed development.
- Jim and Joan Tully – Accept that as proposed the development could give rise to overlooking. State that the revised elevations submitted with compliance documentation by the applicant (26th February 2018), which were considered to be acceptable, provide a high level horizontal window above a stairway which will remove the possibility of overlooking. Two vertical windows are proposed at an en-suite and walk in wardrobe and will be obscure glazing. It is considered that the glazed link and first floor terrace are sufficient distance from the neighbouring boundary and property and would not result in overlooking (terrace = 15m from northern boundary & 37m from neighbouring property; glazed link = 13m from neighbouring boundary and 27m from neighbouring property).
- Occupancy condition and family flat - It is not the policy of the planning authority to apply occupancy conditions for replacement dwellings. The family flat is restricted in terms of its use.
- Landscaping – A landscape plan was submitted with the application. The existing hedgerows around the boundaries are to be retained. Existing trees are to be retained, except for 4 no. apple trees in the rear garden. Additional planting is proposed throughout the site and the landscape plan illustrates this.

6.4. **Observations**

- None.

6.5. **Further Responses**

6.5.1. The applicant's response to the appeal was circulated to all parties. The following comments were made in further responses:

- Planning authority – No new comments.

- Appellants – The wrap around balcony provided over the front entrance door is not a traditional feature. The balcony gives rise to overlooking, is unnecessary and should be removed. There are six north facing windows at first floor (including the glazed section of the gallery/landing). Request that these are completely designed out of the first-floor elevation, with no provision for obscure glazing within window frames. The appellants would have no objections to roof lights in the north roof elevation. The north facing elements of the overlooking balconies and west facing openings should be designed out of the development and replaced with walls/solid screens. Request a condition that the northern hedgerow be retained in any grant of permission.

7.0 Assessment

7.1. Having regard to my inspection of the appeal site, the policy context for the development (replacement dwelling) and the nature, scale and form of the proposed development, I consider that the key issues for this appeal are to be confined to the matters raised in the appeals made, and relate to the following:

- Scale of development/overlooking and impact on privacy.
- Landscaping.
- Occupancy.

7.2. Scale of Development/Overlooking and Impact on Privacy

7.2.1. The proposed development is a large property, with a floor area of c.3 times that of the existing dwelling. Notwithstanding this, the development is proposed on a large site with substantial, mature vegetation forming its external boundaries. Further, the proposed part two storey, part single storey development is presented in smaller integrated blocks around landscaped courtyards. The development is situated on the location of the existing dwelling but extends back from it but towards the centre of the site and away from its external boundaries and the public road. Having regard to these factors, I consider that the scale of development can be accommodated on the site and is acceptable.

7.2.2. The appellants raise concerns regarding overlooking, and consequentially impacts on privacy, of the internal and external spaces, of the two dwellings to the north of the site. I comment on these in turn:

First floor windows

7.2.3. Five windows in the side elevation of the proposed development face north west towards the appellants properties, four in the main property and one in the family flat.

7.2.4. The four windows in the main property serve a void over the stairs, a landing/gallery, master wardrobe and master en suite. Recognising the potential for overlooking, the planning authority required, by condition, obscure glazing to these windows or an alternative design, to be agreed with the planning authority. On foot of the condition, the applicant submitted revised details showing, a high- level window at first floor to serve the stairs/landing/gallery area and two obscure windows to serve the wardrobe and en-suite. In response to the appeal the applicant also suggests the use of Velux windows in place of the four windows in the side elevation.

7.2.5. The north-western elevation of the proposed development faces towards the living room and kitchen of the existing dwelling to the north west of it and the private garden area associated with this (south west) aspect of the property. It is also evident from my inspection of the site, that at this location, the mature hedgerow bounding and separating the two sites is lower than elsewhere. The north-west elevation of the proposed development is approximately 9m from this shared boundary, and I would accept that this distance, the first-floor windows would overlook the private garden of the adjoining property and reduce the level of privacy traditionally enjoyed. I do not consider that the development would give rise to serious overlooking of the internal spaces of the appellant's property immediately adjoining the site due to the >24m separating the properties. With regard to the property further north of the appeal site, owned by the appellant's Kate and Darius Messayeh, due to the substantial separation between the appeal site and this property, the intervening property and mature vegetation on all sites, I do not consider that overlooking would arise, as a consequence of the development.

7.2.6. Having regard to the above, (potential impacts on Tully property), I would accept that the windows as originally proposed in the north-west elevation are unacceptable and would give rise to overlooking. However, the proposed arrangement of windows as

submitted by the applicant to the planning authority on the foot of condition no. 3, effectively remove the risk of overlooking from this elevation. In response to the appeal, the applicant proposes, as an alternative, Velux windows/rooflights, in place of the four windows proposed in this elevation. However, I consider this further alteration to be unnecessary. As articulated by the applicant, to be compliant with the terms of any permission granted, windows would have to remain obscure in perpetuity.

- 7.2.7. The first-floor window in the north-western elevation of the family flat, serves stairs (a non-habitable room). The window is again c.9m from the shared boundary with the property to the north, but is >35m from the appellant's property, is separated from it by more substantial vegetation than the main boundary vegetation and by mature trees within the appellant's site (see photograph no. 6). In view of these factors, I do not consider that overlooking will arise.

Glazed corridor

- 7.2.8. The glazed corridor, at first floor, linking the two, two storey components of the main property also has a north-western outlook. This corridor is c.13m from the north-western boundary of the appeal site and c.28m from the adjoining property. This corridor has a narrow outlook (c.2m) and views are contained by the vertical walls of the two components of the main property, which it runs between. Having regard to these factors, and the mature vegetation which separates the properties (precluding the nearest views of the private garden of the appellant's property), I do not consider that significant overlooking would arise. Given the more substantial distance between the appeal site and the Messayeh property, the intervening property and mature vegetation on all sites, I do not consider that this corridor would adversely overlook this residential property further north of the appeal site.

First floor terraces

- 7.2.9. Two first floor terraces are referred to by the appellants, that serving the master bedroom and that serving the guest accommodation in the family flat.
- 7.2.10. The terrace serving the master bedroom, principally faces south. However, part of it extends beyond the gable end wall of the master bedroom to provide a north westerly outlook. This area of the terrace is c.2m wide, is situated c.15m from the north-western boundary of the appeal site and >35m from the adjoining property.

Views from the terraces will be curtailed to the north west due to the gable of the main property, and to the north by a substantial mature tree within the appellant's garden. In practice, I do not consider, therefore that significant overlooking would arise from this terrace of either of the appellants properties to the north west of the site. However, I note that the applicant has indicated that an obscure screen to eye level could be provided, and in the interest of ensuring the protection of the established residential amenity of the adjoining property to the north, I would recommend that this required.

- 7.2.11. The terrace serving the guest bedroom in the family flat is covered, but is open to the south west. It lies c.15m from the shared boundary with the property to the north and over 40m from the property itself. Given this level of separation, the oblique views of the appellant's property from the terrace (and adjoining bedroom) and the mature vegetation separating the properties, I do not consider that serious overlooking would arise from this terrace (either of Tully or Messayeh properties). However, as stated above, the applicant has again indicated that opaque screens could be provided above eye level, and in the interest of ensuring the protection of the residential amenity of the adjoining property to the north, I would recommend that this be required.

Balcony to front of property

- 7.2.12. The appellants' object to the balcony at the front of the proposed property, sited over the main entrance and serving a landing area. I would accept that this is not a traditional feature of a farmhouse and the Board may wish to require its omission. Notwithstanding this, the balcony is at the front elevation of the property, c.14m from the shared boundary with the property to the north, separated from the adjoining dwelling by mature vegetation and would views from it would be forward to the established building line. I do not consider, therefore, that it would give rise to overlooking of the property immediately north of the appeal site, or for the same reasons, the Messayeh property further north.

7.3. Landscaping

- 7.3.1. The proposed Landscape Plan, Drawing no. PP-08, sets out proposals for the landscaping of the appeal site. These include retention of existing trees around the

perimeter of the site; hard and soft landscaping within the site and three oak trees to be planted the north west of the family flat. In response to the appeal, the applicant submitted a Sit Layout Plan (Drawing no. SU-01), indicating a small number of trees to be removed from within the site (one leylandii and four no. apple trees) and again retention of the existing boundary hedgerow, including tall trees.

- 7.3.2. Having regard to the above, it is clearly the applicant's intention to retain all boundary trees on the site. However, having regard to the importance of the mature boundary between the appeal site and the adjoining property to the north, in providing screening between the properties, I would recommend that on-going retention and maintenance of this hedgerow is specifically required by condition.

7.4. Occupancy

- 7.4.1. The Department of Environment's guidelines on Sustainable Rural Housing require occupancy conditions for new houses in the countryside that are under considerable urban pressure. The proposed development is a replacement dwelling. As such I would not regard it as a new dwelling I would, therefore, accept the planning authority's position that an occupancy condition is not required.

8.0 Environmental Impact Assessment: Screening

- 8.1. Having regard to the modest nature the proposed development (a replacement dwelling), the established use of the site for residential purposes and the distance of the site from nearby sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

9.0 Appropriate Assessment

- 9.1. The proposed development includes provision of a new proprietary waste water treatment plant to serve the property. The application for the development includes a Site Characterisation Report. Trial holes identified no water ingress at 2.1m and T and P tests indicated soils on site that can accommodate a package waste water treatment system and polishing filter, with discharge of treated waters to ground.

Having regard to the conclusions of the site characterisation exercise (which seem reasonable, given the flat site, observed dry conditions under foot and absence of nearby water bodies), and distance from European sites (see above), 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 projects on a European site.

10.0 Recommendation

10.1. Having regard to my assessment above, I recommend that permission for the development be granted subject to conditions and for the reasons and considerations set out below.

11.0 Reasons and Considerations

11.1. Having regard to the detailed design of the proposed development, which comprises a replacement dwelling, its orientation and distance relative to neighbouring residential property, and to the mature boundary vegetation separating the property from its neighbours, it is considered that the proposed development, subject to compliance with the conditions set out below, would be consistent with the policies of the Meath County Development Plan 2013 to 2019 and would not give rise to overlooking or detract from the amenity of property in the vicinity of the site . The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 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 received by An Bord Pleanála on the 29th day of March 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details

in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed family flat shall be used solely for that purpose, and shall revert to use as part of the main dwelling on the cessation of such use.

Reason: To protect the amenities of property in the vicinity and in order to comply with the objectives of the current development plan for the area.

3. Prior to the commencement of development, the applicant shall submit to the planning authority for written agreement, details of 1.85m high opaque screening to the terraces serving the master bedroom and the guest bedroom in the family flat, to prevent views of the property to the north west.

Reason: In the interest of residential amenity.

4. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

5. The construction of the development shall be managed in accordance with

a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, off-carriageway parking facilities, maintenance and repair of the public road in respect of any damage caused and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

6. The site shall be landscaped, in accordance with details lodged with the application, and the further particular received by An Bord Pleanála on the 29th day of March 2018. This shall include the retention and maintenance of all boundary trees and hedgerows. New planting shall commence not later than the first planting season following commencement of the development.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the

matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Deirdre MacGabhann
Senior Planning Inspector

10th September 2018