

## Memorandum;

**To:** Board

**From:** Fiona Fair PI (Reporting Inspector on Case ABP 302403-18).

31<sup>st</sup> January 2017.

### **Re: Possible Dismissal of Appeal ABP-302403-18 on Invalid or Vexatious Grounds**

#### **1. Background**

On July 31st 2018 Cork County Council issued notification to grant planning permission for a caravan park consisting of 34 mobile standings, septic tank, filter system constructed on-site, polishing filter and associated site works to service these developments located at Garrylucas, Garrettstown, Kinsale, Co. Cork. Cork County Council granted permission subject to 19 conditions.

#### **2. Appeal**

The decision to issue notification to grant planning permission was the subject of a third-party appeal by Don Hurley Garrettstown, Kinsale, Co. Cork. The submission stated the full grounds of appeal, was accompanied by an appeal fee and an acknowledgement of the submission made (dated 12/9/2017). The contents of the grounds of appeal are briefly set out below.

- The proposal is not in line with the zoning objective for motorhome parking to include a mix of campervans and static caravans.
- Substandard road access
- Items as fundamental as access to the site have not been fully addressed.
- Ownership and right to carry out works to the access road have not been resolved.
- Negative Visual Impact

- Site is visible from both the Wild Atlantic Way and Old Head of Kinsale scenic routes.
- No visual impact assessment submitted
- Concern with respect to the capacity of the proposed wastewater treatment proposed, to cater for a commercial development of the scale proposed.
- Sensitivity of the site immediately adjacent to Garrylucas Marsh currently a pNHA formerly considered an SAC which drains to both Garrylucas Beach and Bullen's Bay
- A grant of permission would set a negative precedent for the surrounding area.

### **3. The Rebuttal**

A response to the grounds of appeal was submitted by McCutcheon Halley Consultants on behalf of Donal Lordan. In addition to addressing the issues raised in the grounds of appeal, the rebuttal contends that the appeal is invalid on the grounds that an appeal made under the provisions of Section 37(1) and Section 127(1)(b) must state the name and address of the applicant. It is contended that in the case of the current appeal, no person called Don Hurley could be found living in the Garrylucas East and Garrylucas West areas. That there is a very strong case for the appeal to be dismissed under section 138(1)(b)(i) of the Planning and Development Act, 2000 (as amended).

In support of this contention the following is submitted:

- Letter of objection and appeal unsigned
- An Post confirmed that the letter was returned to sender as the person was 'unknown at this address'
- In reviewing the register of electors, no person by the name of Don Hurley could be found for the Garrylucas East and Garrylucas West areas.
- Copy of a statement under oath from the local postman, Eric Johnson, confirming that he has no knowledge of who Don Hurley is.

The response was accompanied with:

- Registered notification letter returned to Cork County Council for Reg. Ref. 17/6064 (to Don Hurley)
- Extract from eReg: Register of Electors on-line Enquiry for Garrylucas, east, Garrylucas west and Garrettstown. (no Don Hurley listed)
- Registered copy of notification returned to Cork County for Reg. No. 17/7219 (to Don Hurley)
- Copy of an Affidavit by Eric Johnson, postman.

#### **4. Oral Hearing**

Upon receipt of the appeal the last page was sent back to the appellant for signature. This has been returned to the Board by An Post stating 'unknown at this address'. No signature has been received by the Board to date. In the applicant's response received on the 25<sup>th</sup> September 2018 an Oral Hearing was requested to determine the identity of the appellant.

A memorandum was sent to the Board highlighting the issue of the validity of the application on the basis of the bona fides of the appellant. The Inspector suggested that the matter could be dealt with by way of registered post. However, the Board directed on the 22<sup>nd</sup> October 2018 that an Oral hearing should be held.

The Board Direction states:

'Having regard to the content of the file, and the reasonable doubt arising in relation to the identity of the appellant, and therefore the nature of the appeal, the Board considered it appropriate to grant an Oral Hearing in this case in order to help resolve this matter.'

The hearing was scheduled for the offices of An Bord Pleanala.

Registered Board correspondence, letter dated 15<sup>th</sup> January 2019, informing the appellant Don Hurley of the Oral Hearing was returned to the Boards Offices by An Post stating 'unknown at this address'.

## **5. Proceedings of the Oral Hearing**

An oral hearing was held in the offices of An Bord Pleanala, 64 Marlborough Street, Dublin 1. It commenced on Thursday January 31<sup>st</sup> at 10.00am. In attendance were the following:

On behalf of the applicant:

- Tom Lordan – Applicant
- Barbara Lordan
- Tom Halley – Planning Consultant
- Andrea McAuliffe– Planning Consultant

On behalf of the Planning Authority:

- None

On behalf of the appellant

- None

Observers

- None

In the introductory statement the planning Inspector highlighted that the purpose of the hearing was to determine in the first instance the identity and bona fides of the appellant given that the Board direction specifically stated that the Oral Hearing was granted 'having regard to the reasonable doubt arising in relation to the identity of the appellant, and therefore the nature of the appeal'. Subject to this being established that in the interests of natural justice, the Inspector was happy to hear the wider planning arguments in respect of the application.

The Oral Hearing Agenda, dated 15<sup>th</sup> January 2019, sent to all parties clearly stated that the appellant Don Hurley of Garrettstown, Kinsale, County Cork was requested to attend the hearing in person and to provide proof of identity and address. In the

event of the appellant, Don Hurley, not attending in person, with clear proof of identity, the hearing would be closed.

The Inspector gave 10 minutes time grace to the Appellant, opened the hearing at 10:10 a.m, read the opening statement, checked who was in attendance, recorded attendance, noted the absence of the Planning authority and the Appellant and subsequently closed the Oral Hearing. It was specifically noted that the appellants failure to attend the Oral Hearing lead to the hearing being terminated as issues surrounding the validity of the appellant could not be addressed.

## **6. Preliminary Assessment and Recommendation**

I consider that there is significant evidence to suggest that there are queries arising in respect of the appellant's name and address. S127(1)(b) of the Act requires that under the provisions for making an appeal, the appeal shall,

- State the name and address of the appellant or person making the referral and of the person, if any acting on her behalf.

Section 127(2) states that "An appeal or referral which does not comply with the requirements of *subsection (1)* shall be invalid".

Section 138. (1) of the Planning and Development Act 2000, as amended states: 'The Board shall have an absolute discretion to dismiss an appeal or referral—

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,

or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

(2) A decision made under this section shall state the main reasons and considerations on which the decision is based.

(3) The Board may, in its absolute discretion, hold an oral hearing under section 134 to determine whether an appeal or referral is made with an intention referred to in subsection (1)(a)(ii).

S134 (1) 'The Board may, in its absolute discretion, hold an oral hearing of an appeal or of a referral under Section 5'.

(2)(a) 'A Party to an appeal or referral under Section 5 may request an oral hearing of the appeal or referral'.

The applicants in this instance have provided numerous pieces of evidence, which cast significant doubt with regard to the appellant's identity and address, set out in section 3 'Rebuttal' of this report above.

The appellant has not offered any rebuttal or counter evidence in respect of the contentions set out by the applicant. Upon receipt of the appeal the Board invited the appellant to sign the appeal. All registered correspondence from the Board has been returned by An Post stating 'not at this address'.

I note that in the case of Reg Ref PL07 249047 that the Board decided to dismiss this appeal under section 138 (1)(b)(i) of the Planning and Development Act, 2000.

The Board Direction states:

'Taking into consideration the overall legislative provisions of section 138 (1) of the Planning and Development Act, 2000 (as amended), the Board decided to dismiss this appeal under section 138 (1)(b)(i) of the Planning and Development Act, 2000 for the following reasons and considerations'.

'It is a requirement of the Planning and Development Act 2000 (as amended) that in order to make a 'third party' planning appeal to An Bord Pleanála, the appellant must

state their name and address. This is an important requirement for protecting the integrity of the planning system. In response to the appeal in this case, the applicant for development raised concerns as to whether the appellant was in fact a bona-fide person living at the address given. The appellant has been offered opportunities in writing and at an oral hearing to address these concerns but has failed to confirm his identity and address to the satisfaction of the Board. In these circumstances the Board considered that it would be inappropriate to continue to consider the appeal, and considered that the appeal ought to be dismissed’.

I recommend that the appeal be dismissed on the grounds that it is vexatious, frivolous or without substance or foundation in accordance with the provisions of S138(1) (a) (i) of the Planning and Development Act 2000 (as amended).

### **Reasons and Considerations**

It is a requirement of the Planning and Development Act 2000 (as amended) that in order to make a ‘third party’ planning appeal to An Bord Pleanála, the appellant must state their name and address. This is an important requirement for protecting the integrity of the planning system. In response to the appeal in this case, the applicant for development raised concerns as to whether the appellant was in fact a bona-fide person living at the address given. The appellant has been offered opportunities in writing and at an oral hearing to address these concerns but has failed to confirm his identity and address to the satisfaction of the Board. In these circumstances the Board considered that it would be inappropriate to continue to consider the appeal, and considered that the appeal ought to be dismissed.

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**Fiona Fair**

**Planning Inspector**

4<sup>th</sup> February 2019