



An
Bord
Pleanála

Inspector's Report ABP-302957-18

Development	Construction of a dwelling house and all associated site works.
Location	Inchydoney, Clonakilty, Co Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/364
Applicant(s)	Leopold and Elizabeth Von Raesfeldt
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	1. Frank and Orla O'Sullivan 2. Aideen O'Leary
Observer(s)	None
Date of Site Inspection	17 th January 2019
Inspector	Elaine Power

1.0 Site Location and Description

- 1.1. The appeal site is located on the south side of Inchydoney Island, approx. 2.5km south-east of Clonakilty. It has a stated area of 630sqm, is irregular in shape and is currently covered in rough vegetation and sand. The site is located at the junction of Inchydoney public road (L-4013-30) and a private access road. It is elevated from the public road and overlooks Muckruss Strand. There is a walkway / right of way located to the west of the site.
- 1.2. There a number of one-off dwellings located along the public road, including 3 no. timber chalet type dwellings located to the east of the site. There is also a recently constructed one-off holiday home located to the north east of the site and a development of 13 no. holiday homes 'The Island' located to the north west of the site.
- 1.3. Access to the site is proposed via the private access road located to the north of the site. The public road (L-4013-30) to the south of the site is approx. 5m in width with no footpath and double yellow lines on both sides.

2.0 Proposed Development

- 2.1. It is proposed to construct a contemporary single storey house, with a gross floor area of 125sqm. The house is irregular in shape and designed around two separate blocks, each with a mono-pitched roof and linked in the centre with a flat roof. The external materials include smooth plaster walls and weatherboarding with a metal roof with standing seam.
- 2.2. Vehicular access is proposed via a right of way which currently serves 3 no. timber chalets and 1 no recently constructed holiday home.

2.3. Further information was sought requiring clarity on the boundary treatments / retaining walls, vehicular access arrangements, surface water disposal and ownership details. The response did not result in any alterations to the development.

3.0 Planning Authority Decision

3.1 Decision

The decision to grant permission was subject to 17 no. conditions.

- Condition 1 clarified that permission was granted for the development as modified by way of further information.
- Condition 2 required the details of the eastern boundary fence to be agreed with the Planning Authority.
- Condition 4 ensured that no vegetation or structure exceeding 1m in height be provided within the sightline triangle.
- Condition 5 ensured that surface water would be disposed of within the site.
- Condition 6 required the vehicular access to be set back 2.4m from the road with 30m sightlines in both directions.
- Condition 7 required that the external materials be agreed with the Planning Authority.
- Condition 8 required a legal agreement to be put in place with relevant parties regarding the private sewer.
- Condition 9 ensured the private access road be maintained by the applicant.
- Condition 11 ensured the integrity of the proposed new link road is protected.
- Condition 14 required measures to be put in place to minimise surface water run-off.
- Condition 15 required soakpits be provided on site to cater for surface water run-off.

3.2 Planning Authority Reports

3.2.1 Planning Reports

The initial Area Planners report (10th August 2018) noted that the development was acceptable in principle subject to a clarification of a number of engineering and legal issues. Further Information was requested regarding the following: -

- Clarification of boundary treatments.
- Clarification of proposed surface finishes to footpaths and parking areas.
- Clarification of size of the soakaway and its capacity to cater for surface water run-off.
- Clarification of the width of the access road, the width of the right of way.
- Clarification of the of ownership of the site.
- Additional drawings required showing a section of the development in the context of adjoining properties.

A final report was prepared by the Area Planner (15th October 2018). It concluded that concerns raised in the further information request were adequately addressed and recommended that permission be granted subject to 16 no. conditions.

3.2.2 Other Technical Reports

The initial Area Engineers report (9th August 2018) noted that water and wastewater services are available however some concerns were raised. These issues were reflected in the request for further information.

The final report (12th October 2018) recommended that permission be granted subject to 13 no. conditions. These conditions are reflected in the final grant of permission.

3.3 Prescribed Bodies

None

3.4 Third Party Observations

2 No. objections were received from (1) Orla and Frank O'Sullivan owners of Chalet No 2 and (2) Aideen O' Leary owner of Chalet No 1, located to the east of the site. The following concerns were raised:-

- The proposed development is located in an area with a very high value landscape and is on a scenic route. The development will have a negative impact on the visual amenity of the area.
- The height of the proposed house would result in overlooking of adjoining properties and the loss of views.
- Insufficient details have been submitted regarding boundary treatments.
- Concerns raised over the requirement for a retaining wall and potential for structural instability.
- No landscaping plan has been submitted for the site.
- Insufficient details regarding vehicular access arrangements.
- Applicants do not have a local need and there are unoccupied houses in the area.
- The area has been significantly developed in recent years and the proposal would set an undesirable precedent.
- The ownership of the site is unclear. Title deeds for the site should be submitted.

4 Planning History

4.1 Subject Site

Reg. Ref. 17/776: Application withdrawn in 2017 for the construction of a house.

4.2 Surrounding Sites

There are a large number of planning applications on the surrounding sites. Applications which are considered to be of relevance are listed below:

PL04.219772 / Reg. Ref. 05/9526: Permission was granted in 2008 for 45 no. houses, a sewage treatment plant and a new road on the northern side of the island, approx. 300m north of the subject site. This development was not constructed.

PL. 04.218585 / Reg. Ref. 05/6937: Permission was granted in 2006 for a dwelling for short term holiday letting to the north east of the site. An extension of duration of permission was granted in 2010 (Reg. Ref. 10/672). This house was recently completed and access is provided from the private road which serves the subject site.

PL04.206764 / Reg. Ref. 03/2630: Permission was granted in 2004 for the construction of 13no holiday homes (The Island). These houses have been completed and are located to the north west of the subject site.

5 Policy Context

5.1 West Cork Municipal District Local Area Plan, 2017

The site is located within the Inchydoney development boundary and is zoned for residential use. It is located adjacent to an indicative road layout for a new link road.

The vision for Inchydoney is *'to promote sympathetic development having regard to the tourism function of the existing settlement, to improve public amenity and recreation facilities and to protect the unique natural heritage, ecology and landscape within and surrounding the settlement and its coastline'*.

Objective DB-01: - *'Encourage development to be compatible with existing development and in particular, to be consistent with the vernacular architecture and scale of the holiday resort. The resort is located in a high value landscape area and all new development should take this into consideration'*.

Objective U-01: *‘Indicative route for proposed roadway (incorporating existing road) to include provision for pedestrian and cycleway access’.*

5.2 Cork County Development Plan, 2014

Policy ZU 2-2 – Development Boundaries states *‘for any settlement, it is a general objective to locate new development within the development boundary, identified in the relevant Local Area Plan that defines the extent to which the settlement may grow during the lifetime of the plan’*

The site is located in an area identified as Indented Estuarine Coast in Appendix E of the Plan. These locations are designated as area of very high landscape value, very high landscape sensitivity and are of national importance. Section 13.6 – *Landscape Character Assessment of County Cork* states that *‘very high sensitivity landscapes (e.g. seascape area with national importance) which are likely to be fragile and susceptible to change.’* Policies GI 6-1: Landscape and GI 6-2: Draft Landscape Strategy relate to the protection of the landscape of County Cork and ensure that any new development meets high standards in terms of siting and design.

The site is located on a scenic route (ref. S74) which consists of the coastal road from Clonakilty to Inchydoney and Ardfield. Policies GI 7-2 Scenic Routes and GI 7-3 Development on Scenic Routes relate to the protection of the character of scenic routes.

Policy RCI 6-1: Design and Landscaping of New Dwelling Houses in Rural Areas, is also relevant.

5.3 Natural Heritage Designations

The site is located approx 140m north of Clonakilty Bay SPA (site code 004081) and Clonakilty Bay SAC (000091).

6 The Appeal

6.1 Grounds of Appeal

- 6.1.1 This is a third-party appeal by (1) Orla and Frank O’Sullivan owners of Chalet No 2 and (2) Aideen O’ Leary owner of Chalet No 1, against the Planning Authorities decision to grant permission subject to conditions. The issues raised are detailed below.
- 6.1.2 It is acknowledged that the site is located within the development boundary for Inchydoney however concerns are raised that every ‘infill’ site within the boundary will be developed over time.
- 6.1.3 The development will have a negative impact on a sensitive landscape. The site is located in an area designated as a ‘very high value landscape’ and a ‘very high sensitivity landscape’ and is located on a scenic route. The proposed house and associated walls will not enhance the natural amenity of the area. The Planning Authority gave insufficient weight to Policy Objectives GI 7-1 and GI 7-2 and the development will contravene Policy Objective GI 7-3 (a) and (b) - Development on Scenic Routes. In addition, the Planning Authority have not considered the cumulative impact of the recent residential developments on the landscape of Inchydoney.
- 6.1.4 The site is too small, and the development is too close to the public road. It will have an overbearing impact on the public road and the adjoining chalet. The height of the development will result in a loss of privacy for the adjoining chalet and will result in a loss of views for existing properties.
- 6.1.5 There is no local need for this house and the applicants to do comply with the restrictive policy requirements for eligibility for a rural house. There are available properties in Inchydoney and Clonakilty.
- 6.1.6 Concerns are also raised that vehicular movements to and from the site cannot be accommodated due to the narrow width of the access road.

6.1.7 The hardstanding areas comprise 50 percent of the site. The site does not have the capacity to cater for surface water run-off. Therefore, water will run off onto the private road. Condition no 14 attached to the grant of permission which required permeable paving to be provide is ambiguous.

6.1.8 Clarification should be provided regarding the ownership of the site.

6.1.9 It is also noted that an existing timber chalet (chalet no. 2) has been omitted from the drawings submitted with the application.

6.2 Applicant Response

6.2.1 A detailed response was submitted by DB Architects on behalf of the applicants which details their links to the area and their requirement for a family home.

6.2.2 The response acknowledges that the site is located in a designated High Value Landscape and is visible from two designated scenic routes however the contemporary design of the house was considered acceptable by the Planning Authority. The ridge height of the proposed house is 1.3m below that of the adjoining chalet. The house is set back 12.5m from the public road, the existing chalets are 15m from the public road. The house has been designed to minimise any impact on the adjoining property, chalet no 1. The proposed development will not result in the loss of views to the south west for chalet no 2 as any infringement of views would already be caused by chalet no 1.

6.2.3 It is proposed to substitute the retaining wall with an embankment planted with indigenous species along the south western, western and part of the northern boundaries of the site. A revised drawing (4084-P-03 rev. D) has been submitted showing the proposed embankment. As the embankment is on lands outside of the redline boundary a letter of consent from the land owner has been submitted. The

embankment does not impact on the footpath / walking route or the line of the existing pumped foul sewer and its associated wayleave.

6.2.4 The recently completed developments adjacent to the subject site are of no relevance and any outstanding landscaping works is an enforcement issue for the Planning Authority. The applicant intends to fully landscape the site. The landscape proposals are part of the overall design approach.

6.2.5 In response to concerns raised by third party objectors to the boundary treatments and the potential loss of views it is suggested that a condition be attached to any grant of permission regarding the details of the boundary treatments.

6.2.6 With regard to local need it is noted that the site is located within the development boundary for Inchydoney and as such the restrictive requirements of eligibility for rural housing need do not apply. The tourism function of Inchydoney is acknowledged in the Local Area Plan and a high percentage of homes within the settlement boundary are holiday homes. The house will be the applicant's main home and is not a holiday home.

6.2.7 Access is provided via the private laneway which also serves existing houses. It is considered that any concerns regarding vehicular access arrangements were addressed fully in the further information submission and Condition 4 and Condition 6 attached to the grant of permission which ensures that sightlines of 30m are provided in in both directions with no obstructions.

6.2.8 Written confirmation of the ownership of the subject site and an associated land ownership map has been submitted.

6.3 Planning Authority Response

No further comments

6.4 Further Responses

Both third party appellant's Aideen O' Leary and Orla and Frank O'Sullivan made further submissions. The submissions reiterated concerns raised in the grounds of the appeal and raised the following additional concerns: -

- The chalets are existing structures and their impact on the landscape is irrelevant. The chalets and gardens are maintained to a high standard and regularly in use.
- The site is inappropriate due to its small size, elevated nature and location in a 'very high value landscape'. The development would contravene Policy DB – 01 'to protect and enhance the attractive coastal setting and landscape character of the settlement'.
- The recently constructed residential developments are relevant to the overall sustainability of the Island of Inchydoney. Inchydoney should be left as an unspoiled amenity.
- There are other sites and locations which would be more suitable to the applicant's needs.

7 Assessment

7.1 The main issues in this appeal are those which were raised in the grounds of appeal. Appropriate Assessment and Environmental Impact Assessment requirements are also considered. I am satisfied that no other substantial issues arise. The main planning issues can be dealt with under the following headings:

- Visual and Residential Amenity.
- Traffic.
- Rural Housing Need.
- Water Services.

- Legal Issues.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.2 Visual and Residential Amenity

7.2.1 It is proposed to construct a 125sqm (gross floor area) house. The house is irregular in shape and designed around two separate blocks, each with a mono-pitched roof and linked in the centre with a flat roof. It is single storey with a maximum height of approx. 5m. The external materials include smooth plaster walls and weatherboarding which are similar materials to those used in existing houses. It is considered that the design of the house harmonises with surrounding properties and is in accordance with the design principles set out in Policy Objective DB-01 of the West Cork Municipal District Local Area Plan, 2017.

7.2.2 The site is elevated from the public road and on a scenic route (ref. S74) with views over Muckruss Strand. It is located in an Indented Estuarine Coast with the associated landscape designation of very high value, very high sensitivity and of national importance. To reduce the impact of the development on the landscape it is proposed to provide an embankment planted with indigenous species in lieu of a retaining wall. As the embankment is located outside of the red line boundary a letter of consent from the landowner has been submitted. It is considered that the proposed embankment and associated planting is more appropriate in this location than the previously proposed retaining wall.

7.2.3 It is acknowledged that the house is located in a landscape designated as very high value, very high sensitivity and of national importance and is located on a scenic route. However, having regard to the location of the site in an area zoned for residential use and adjacent to a proposed new link road, the high-quality contemporary design and layout of the house, it is considered that the proposed house and associated landscaping would not significantly alter the appearance or character of the area.

7.2.4 Concerns have been raised that due to the limited size (approx. 630sqm) of the site it will result in undue overlooking and will have an overbearing impact on adjoining properties. The house is located a minimum of approx. 3m from the western site boundary with a walkway and a minimum of approx. 13m from the public road. It is located a minimum of approx. 10m from the adjoining chalet and is 1.3m lower than the adjoining property. Having regard to the size, siting and design of the house it is considered that it will not result in undue overlooking or have an overbearing impact on adjoining properties.

7.2.5 Concerns are also raised regarding overdevelopment of the site and the loss of views of Muckruss Strand. Site coverage is a tool to prevent the adverse effects of overdevelopment. The proposed development has a site coverage of 20%. Having regard to the distance of the proposed house to the site boundaries and the boundary with the public and private road it is considered that it will not result in over-development of the site. In addition, as the house is set back behind the established building line of the 3 no chalets it will not result in the loss of existing views of Muckruss Bay.

7.2.6 It is therefore considered that the proposed development will not have a negative impact on the existing residential and visual amenities of the area.

7.3 Traffic

7.3.1 Access to the site is proposed from a private road accessed via a public road (L-4013-30). The public road is approx. 5m in width with no footpath and double yellow lines on both sides. The private road is circuitous and slopes upwards, with a 4m elevational difference from the public road to the site. The road varies in width from 3m to 13m. The majority of the road is approx. 3m – 4m in width and therefore one-way. A pull in bay, approx. 13m in width, has been provided to allow two cars to pass. The private road provides access to 4no existing holiday homes. It is considered that the vehicular movements generated by the proposed development can be accommodated on the existing access route.

7.3.2 The junction of the private road with the public road is splayed with a maximum width of approx. 10m. Therefore, allowing two vehicles to pass. It is a Policy Objective in the West Cork Municipal Local Area Plan, 2017 to construct a new north - south link road on the island. The indicative route for the new road is located in close proximity to the western boundary of the subject site and links with the public road L-4013-30. Detailed drawings of the proposed link road which were included in a previous application (*PL04.219772 / Reg. Ref. 05/9526*) have been submitted. The proposed road traverses the private road and would improve access to the site. The proposed development does not impinge of the proposed route. It is considered that the provision of the new link road would improve access arrangements to the subject site and the adjoining 3 no. properties.

7.3.3 Concerns were raised that vehicular turning movements cannot be accommodated to / from the site due to the narrow width of the access road. The access road adjacent to the proposed entrance is approx. 3m. The vehicular access is approx. 4m in width. Having regard to the width of the private road and the width of the vehicular access there is no obstruction to a standard vehicle accessing and egressing the site safely and efficiently.

7.3.4 It is considered that the proposed development would not result in a traffic hazard. It is also noted that the final report by the Area Engineer had no objection to the proposed development and recommended that permission be granted subject to 13 no. conditions which required the access to be set back 2.4m from the road with minimum 30m sightlines in both directions.

7.4 Rural Housing Need

7.4.1 The site is located within the Inchydoney development boundary and is zoned for residential use as indicated in the West Cork Municipal District Local Area Plan, 2017. Concerns have been raised that the applicant's do not have a genuine rural housing need and do not comply with rural housing policy as set out in the Cork County Development Plan, 2014. However, Section 4.4 of the Development Plan notes that the policies only apply to rural parts of the county, which are located outside of the defined development boundaries. As the site is located within the

development boundary for Inchydoney there is no requirement for the applicants to comply with rural housing policies. The rural housing need, therefore, does not arise.

7.5 Water Services

7.5.1 Concerns have been raised that the site does not have capacity to cater for surface water run-off. In response to the further information request it was clarified that permeable paving would be used in the areas of hardstanding to assist infiltration of water into the ground over as large an area as possible rather than connect to soak ways.

7.5.2 The site is not subject to flooding and it is noted that the final report by the Area Engineer had no objection to the proposed development and recommended that permission be granted subject to 13 no. conditions which required that surface water be disposed of within the site, that measures be put in place to minimise surface water run-off and that soakpits be provided on site. It is recommended that a condition be attached to any grant of permission to ensure that the surface water can be managed and disposed of within the site.

7.5.3 It is proposed that the site will be connected to the existing water main which runs under the public road.

7.5.4 There is a public pumped foul sewer located to the west of the site. It is proposed to connect the site to a private sewer located under the eastern part of the site that serves a recently constructed house to the north-east of the site.

7.5.5 It is noted that the Area Engineer raised no objection to the proposed water supply and sewerage disposal proposals.

7.6 Legal Issues

7.6.1 Concerns were raised that ownership of the land has not been satisfactorily established. Correspondence from R. Neville & Co Solicitors and a copy of the land

registry deed has been submitted. This clarifies that the property is in the joint ownership of Denis and Colette Murphy. A letter of consent to the application is provided by Colette Murphy.

7.6.2 Notwithstanding this information which clarifies the ownership of the site Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land and that these are ultimately matters for resolution in the Courts. The guidelines advise that only where it is clear that the applicant does not have sufficient legal interest should permission be refused on that basis, and that if some doubt still remains, the Planning Authority may decide to grant permission. It notes that such a grant of permission is subject to the provisions of section 34(13) of the Planning and Development Act 2000, as amended, which states that, 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.

7.6.3 As issues relating to title of land are ultimately civil / legal issues it is considered that this issue should not form the basis of a refusal of permission.

7.7 Appropriate Assessment

7.7.1 The appeal site is approx. 120m north of Clonakilty Bay SPA (site code 004081) and Clonakilty Bay SAC (000091). Clonakilty Bay is an intertidal expanse that stretches from Clonakilty to the open sea. It comprises two small estuaries separated by Inchydoney Island. The bay also includes adjacent sand dunes and inland marshes and has a good diversity of habitats.

7.7.2 The planning authority carried out an Appropriate Assessment Screening and considered that the proposed development would not have a significant effect on those or other designated sites. I am satisfied that the proposal is served by adequate infrastructure capacity to ensure that there will not be any contaminated foul or surface water entering Clonakilty Bay. Therefore, having regard to the nature and scale of the proposed development, the nature of the receiving environment,

and the distance to the nearest Natura 2000 sites, 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.

7.8 Environmental Impact Assessment

7.8.1 Having regard to the nature and scale of the proposed development and the location of the site, it is concluded that 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.

8 Recommendation

It is recommended that permission be granted subject to conditions.

9 Reasons and Considerations

Having regard to the location of the site within the development boundary for Inchydoney, the high-quality contemporary design, the size and siting of the house and the existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

10 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 submitted on the 21st day of June 2018 by way of further information, 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 Details of the boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

- 3 Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

- 4 The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of 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 landscape, in the interest of visual amenity

- 5 The formation of the vehicular access to the site shall be constructed in accordance with the requirements of the planning authority.

Reason: In the interest of orderly development and traffic safety

- 6 Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity

- 7 Water supply arrangements shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

- 8 Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

- 9 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

Elaine Power
Planning Inspector

12th February 2019