



An
Bord
Pleanála

Inspector's Report ABP-303404-19

Development	Construction of a house.
Location	The Cottage, Clermont, Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18275
Applicant(s)	Marcin Skupski and Anna Starzewska Skupski.
Type of Application	Permission.
Planning Authority Decision	To grant.
Type of Appeal	Third Party
Appellant(s)	Belfield View Residents.
Observer(s)	None
Date of Site Inspection	7 th April 2019.
Inspector	Deirdre MacGabhann

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	6
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy and Context.....	7
5.1. National Planning Framework	7
5.2. Dundalk And Environs Development Plan 2009-2015	7
5.3. Natural Heritage Designations	8
5.4. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	10
6.3. Planning Authority Response	10
6.4. Observations/Further Responses.....	10
7.0 Assessment.....	10
7.2. Legal entitlement/validity of permission.....	11
7.3. Consistency with policy context.....	12
7.4. Traffic safety.....	13
7.5. Conditions of the permission.....	14
8.0 Appropriate Assessment.....	14

9.0 Recommendation..... 15

10.0 Reasons and Considerations 15

1.0 Site Location and Description

- 1.1. The 0.169ha appeal site is situated to the west of Blackrock village, south of Dundalk town, in the townland of Clermont, Co. Louth. It lies to the west of the R132 and north of the county road, Clermont Road, to the rear of an existing single storey semi-detached property, The Cottage. It comprises a narrow rectangular site that falls gradually to the north.
- 1.2. To the west of the site, facing Clermont Road, is Bellfield View a small residential development of 10 semi-detached properties. It is served by an internal access road off Clermont Road. The access road runs parallel to the public road and ends in a cul-de-sac to the west of the appeal site. To the north west of this estate is Clooneevan, a larger residential estate. It is served by an internal estate road which, in part, runs parallel to Bellfield View and which also ends, to the west of the appeal site, in a cul-de-sac. To the east of the appeal site is a single storey residential property, constructed to the rear of the semi-detached property adjoining the appeal site. New residential development is currently under construction to the north west of the appeal site, north of Bellfield View and Clooneevan.

2.0 Proposed Development

- 2.1. The proposed development, as revised by further information (26th November 2018) comprises the construction of a single storey dwelling (243.80m²), with bedroom accommodation at ground and first floor. The dwelling has a narrow floor plan and a ridge height of 7.1m. Water supply is proposed from the public mains and foul water will be discharged into the public sewer. Roof water will be directed to the existing surface water network located within the Clermont Estate (due to the high-water table on site) and a permeable surface installed on the driveway as a SUDS measure. Vehicular and pedestrian access to the site is proposed from Clermont Road via a new entrance (with timber/steel sliding gate) in the shared boundary wall with the Bellfield View development. The new entrance will comprise a ramped footpath/entrance and lowered boundary wall (height = 0.9m) on each side of the entrance (over a width of c.7.4m in total).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 13th December 2018 the planning authority decided to grant permission for the development subject to 4 standard conditions (development to be in accordance with plans/details submitted, entrance details, construction hours and development contribution).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 31st May 2018 – This report refers to the planning history of the site, the policy context for the development and submissions/observations made. It considers the merits of the application under a number of headings including principle, design, impact on neighbouring occupiers, access and traffic safety, internal and external amenity space and Part V, impact on Natura 2000 sites and flooding. The development is generally considered to be acceptable, but the report recommends further information in respect of entrance details (from Bellfield View) and arrangements for the disposal of surface water.
- 10th December 2018 – This report refers to the further information submitted and considers that the proposed arrangements are acceptable. It recommends that permission for the development is granted subject to condition.

3.2.2. Other Technical Reports

- Infrastructure (15th May 2018) – Recommends further information in respect of sightlines at the existing site entrance (L7162), 75m at 3m back from road edge, and arrangements for the disposal of surface water to incorporate Sustainable Urban Drainage Systems. The subsequent report (4th December 2018), after the submission of further information, raises no objections to the proposed development subject to conditions.

3.3. Prescribed Bodies

- Irish Water (28th May 2018) – No objections.

3.4. Third Party Observations

3.4.1. On file is one observation by the residents of Bellfield View. It raises the following issues:

- No objection to the principle of the development. Oppose new vehicular entrance to the site via Bellfield View. No reference to entrance in application documentation/public notices. No evidence of entitlement to carry out works (e.g. to wall, dished footpath, new entrance).
- Insufficient details regarding the proposed entrance.
- Dangerous location of entrance, proximity to No. 10 Bellfield and inadequate sight lines.
- Impact on setting and amenities of Bellfield View and safety of residents, pedestrians and children at play.
- Significant alterations to The Cottage without planning permission.
- Impact of construction phase of the development on the safety of residents, users of road/footpath and impact on residential amenities (e.g. noise, dust, dirt, disturbance).
- Alternative options for entrance to site e.g. via Clooneevan estate or applicant's existing driveway.

4.0 Planning History

4.1. On file is PA ref. 18/676 in respect of The Cottage, Clermont, Dundalk. It refers to an application for retention of a rear gable structure which was granted by the planning authority in October 2018.

5.0 Policy and Context

5.1. National Planning Framework

- 5.1.1. In the interest of securing compact and sustainable growth, Objective 3a of the National Planning Framework seeks to deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

5.2. Dundalk And Environs Development Plan 2009-2015

- 5.2.1. The appeal site falls within the administrative area of the Dundalk and Environs Development Plan 2009 to 2015:
- The appeal site is zoned Residential 1 lands, the objective of which is '*To protect and improve existing residential communities and to provide for infill and new residential developments*'.
 - Infill/backland development (Section 6.6.7) – Development should match existing surrounding development in terms of design, scale, height and building line and should not be detrimental to the existing residential amenities. Outside the town centre, higher densities will be at the discretion of the planning authority and if considered to be appropriate to the character of the area. Piecemeal or ad-hoc development will not be permitted where it would jeopardise the comprehensive and integrated development of adjoining backland areas. Access to backland development shall be by way of a separate designated access and shall not interfere with the existing accesses to residences. Proposed developments shall provide for access to surrounding lands which have potential for backland development and proposed arrangements.
 - Private amenity space (section 6.7.2) – All new residential development shall have access to an area of private amenity space. For 3 plus bedrooms in greenfield/suburban sites 80m² and for brownfield sites 50m² (Policy HC 19).

5.3. Natural Heritage Designations

5.3.1. Dundalk Bay is designated as a Special Area of Conservation and Special Protection Area (site codes 000455 and 004024 respectively). It lies c. 1km to the east of the appeal site.

5.4. EIA Screening

5.4.1. The proposed development comprises a 'project' for the purposes of environmental impact assessment and falls within a class set out in Part 2, Schedule 5 of the Planning and Development Regulations 2001 (as amended), Infrastructure Projects, construction of more than 500 dwelling units.

5.4.2. The appeal site lies in reasonable proximity to two European sites, Dundalk Bay SAC and SPA. However, it is a modest development, is situated within an existing urban area and will tie into existing services for the discharge of surface and foul water. Having regard to the above, 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The third-party appeal is made by the residents of Bellfield View. It sets out the following grounds of appeal:

- Application invalid - The application is invalid as the applicant does not have the permission of the owner of Bellfield View to provide a new entrance to the site through the estate (still in the ownership of the original developer – see Appendix 3 of appeal).
- Zoning/protection of residential amenities - The proposed development conflicts with the zoning objective for the site, to protect and improve existing residential amenities. The development will impact on the setting, residential amenity and safety of residents, pedestrians and children at play. Sightlines at

the entrance to the site are restricted. The entrance is located too close to no. 10 Bellfield View. Development will give rise to noise, dust, dirt and general disturbance and disruption. It is inappropriate that construction and domestic traffic should be allowed to enter and exit via Bellfield View when other means of accessing the site exist.

- Conditions - Conditions of the permission are inadequate and imprecise and do not give effective reassurance. Several of the conditions are *ultra vires*. Condition no. 2(e) refers to the estate road as a public road, but it is a private road, does not compel the developer to prevent or clean up any spillages on the estate road/footpath and makes no provision for dirt etc. that may enter neighbouring property during construction. The condition is unfit for purpose, imprecise and contrary to the Guidelines. Condition no. 3 is inadequate and does not provide safeguard against diminution or damage to amenities during construction (e.g. from excessive noise, vibrations, fumes, delivery lorries and workers vehicles). All of the above will depreciate the value of the appellants properties (loss of character of the estate and residential amenity).
- Defunct permission and *ultra vires* planning conditions – Development works (to boundary wall and footpath) are outside of the application site and control of the applicant. Planning conditions that relate to these works are *ultra vires*, contrary to the government’s Development Management Guidelines and unenforceable. Condition no. 1 requires the development to be carried out in accordance with the plans submitted. These include, in Site Plan No. S179 PP02 and Entrance Layout Drawing No. PP07, a section of footpath outside of the site boundary. Condition no. 2(a) requires the new entrance to be constructed as indicated on Entrance Layout Plan, Drawing No. PP07. This plan provides inadequate details of the ramped footpath/entrance and renders it imprecise and inadequate to ensure that the footpath/entrance will be built to a satisfactory standard.
- More viable alternative – The appeal site can be more safely accessed from a new entrance on to the turning head in the adjoining Clooneevan estate to the north. Such an entrance would also allow access to other rear gardens/backland plots (subject to a right of access). Alternatively, it could be accessed via the applicant’s existing driveway.

6.2. Applicant Response

- 6.2.1. In response to the appeal, the applicant states that it is their understanding that Bellfield View was taken in charge by the Louth County Council in May 2017 (attaches email from LCC to this effect).

6.3. Planning Authority Response

- 6.3.1. The planning authority respond to the appeal (29th January 2019) as follows:
- Direct the Board to the Planning Reports on file.
 - State that the development is in accordance with the National Planning Framework which targets a significant proportion of future urban development on infill/brownfield sites (Objective 3a).
 - The third-party appeal is substantially formed on landownership. The initial submission from third parties made no reference to land ownership. The Development Management Guidelines state that the planning system is not designed as a mechanism for resolving disputes over title. Infrastructure Services did not object to the application but at the outset clearly stated that the permission to create a new opening in this wall to permit access to Bellfield View must be resolved between the owners on either side of the wall. Section 34(13) of the Planning and Development Act 2000 (as amended) does not entitle a person to carry out a development solely by reason of a permission.

6.4. Observations/Further Responses

- None.

7.0 Assessment

- 7.1. The appeal site lies on land zoned for residential development. No issues have been raised regarding the principle of the development. Having regard to this and my inspection of the appeal site and submission on file, I consider that my assessment can be confined to the following matters:

- Legal entitlement/validity of permission.
- Consistency with policy context.
- Traffic safety.
- Conditions of the permission.

7.2. Legal entitlement/validity of permission.

- 7.2.1. There are conflicting claims on file regarding the ownership of lands outside the appeal site which are required in order to carry out the development (provision of site access via Bellfield View). These are set out in appendix 3 of the appeal and as an attachment to the applicant's response to the appeal. As set out in the Government's Development Management Guidelines, the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land. As the applicant has given reasonable evidence of sufficient interest in the adjoining landholding, the matter lies outside the scope of this appeal.
- 7.2.2. With regard to the validity of the permission granted (lands outside of red line boundary), article 22 of the Planning and Development Regulations 2001 (as amended) requires the applicant to identify (i) the land or structures to which the application relates and the boundaries thereof in red, (ii) any land which adjoins, abuts or is adjacent to the land to be developed which is under the control of the applicant, or the person who owns the land which is the subject of the application.
- 7.2.3. I would accept that the applicant has not indicated the proposed alterations to the existing Bellfield View road/footpath, external to the proposed entrance to the development on the Site Layout Plan. If the Board are minded to grant permission for the development, this matter could be addressed by the provision of a revised Site Layout Plan.
- 7.2.4. With regard to site notices, I consider the description of the development in site notices should reasonably have included reference to the new entrance via Bellfield View, as it has clearly raised significant issues for third parties. Notwithstanding this, the purpose of the public notice has been served and a valid planning appeal by the residents group has been submitted to the Board which specifically addresses this matter (means of access).

7.3. Consistency with policy context.

- 7.3.1. As stated, the objective RES 1 zoning of the appeal site is to protect and improve existing residential amenities and to provide for infill and new residential development. In addition, policies of the Dundalk Development Plan in respect of infill/backland development state that development should not be detrimental to the existing residential amenities and that development shall provide for access to surrounding lands which have potential for backland development.
- 7.3.2. The appeal site lies to the rear of an existing residential property. The property, like others to the east of it, has a long linear rear garden and the principle of residential development within these rear gardens has been established (see residential property to the east of the appeal site). In this instance, a single storey residential dwelling is proposed, and no issues arise regarding proximity to other dwellings or overlooking. Regarding the effect of the proposed development on the residential amenity of Bellfield View, I would comment as follows:
- The proposed dwelling will add one additional residential unit to the properties accessed off the existing estate road to Bellfield View. I do not consider that the scale of the development, in the context of the existing properties, is therefore excessive or likely to add significant noise, disturbance or traffic to the detriment of residential amenity of the estate (traffic safety issues are considered below).
 - The development will be largely screened by existing properties, with views into the site only from the lowered boundary wall (to 0.9m) and gate at the entrance to the site (shown in the revised drawings submitted to the planning authority in November 2018, drawing no. PP07). Whilst, I would accept that the new entrance would make an incursion into the boundary wall of the estate, subject to appropriate detailing, I do not consider that the proposed arrangements are unattractive or likely to detract from the visual amenity of the estate.
- 7.3.3. In addition to the above, I note that the access to the appeal site truncates the existing garden of the property to the south, The Cottage, affecting its residential amenity. This matter has already been dealt with by the planning authority in their decision to grant permission for the retention of works to the property under PA ref.

18/676 (see file) and the proposed arrangements have been considered acceptable, with the reduced garden size in accordance with development plan policy.

7.3.4. Notwithstanding this, the proposed arrangements for access compromise the residential amenity of this property and result in a large site (or garden) to the rear of the proposed dwelling to which there is no identified access. This site lies immediately east of Clooneevan and it is not clear what the applicant's intentions are regarding this (labelled 'grass surface' in the Site Plan). I would be concerned therefore, that a piecemeal and *ad hoc* approach to the development of the overall landholding is proposed. For example, with no development taking place on the remaining backland site because it becomes landlocked (assuming no access from Clooneevan) or the access from Bellfield View is unnecessary (assuming access is possible from Clooneevan). If the Board are minded to grant permission for the development, I consider that this matter should be addressed.

7.3.5. The appellant also proposes an alternative access from the property to the south of the appeal site. The existing access driveway to The Cottage is quite narrow and runs close to the existing property. Any use of this to access land to the rear of the site, whilst possible, could quite significantly impact on the residential amenity of the existing property and is not ideal.

7.4. **Traffic safety.**

7.4.1. The appellants raise concerns regarding the risk of traffic hazard/accidents during construction and from use of the proposed new entrance, in particular, due to its proximity to no. 10 Bellfield View.

7.4.2. I would accept that during construction the proposed development would introduce construction traffic to the residential estate and give rise to a greater risk of traffic hazard. However, this impact would be short term and could be addressed by condition requiring a Construction Traffic Management Plan with detailed and specific measures to minimise risk e.g. the active management of delivery vehicles.

7.4.3. On completion, I note that the applicant proposes reducing the height of the boundary wall with Bellfield to 0.9m and providing a sliding gate (of the same height) across the entrance and a ramped footpath across the entrance. Subject to these arrangements, I consider that visibility at the entrance/exit will not be impeded

(despite its proximity to no. 10 Bellfield) and that, with proposals for a ramped footpath, traffic speeds would also be low. Further, the number of vehicle trips likely to be generated by a single dwelling are also likely to be low. I do not consider, therefore, that the proposed development would give rise to any significant risk of traffic hazard.

7.5. Conditions of the permission.

- 7.5.1. The appellant raises concerns regarding condition nos. 1, 2(a), 2(e) and 3. It is argued that condition no. 1 is *ultra vires*, as it refers to works outside of the site boundary. This matter is dealt with above.
- 7.5.2. It is argued that condition no. 2(a) is imprecise as inadequate details of the proposed footpath/entrance to the site are provided. Having regard to the details on file, I would accept this point. However, the matter is one of detail, not principle, and could be addressed by condition.
- 7.5.3. The appellant argues that condition nos. 2(e) and 3 are inadequate to protect the private road and private lands within Bellfield and residential amenity. The conditions refer to the prevention of the deposition of clay, rubble or other debris on the public road and construction hours respectively. Both are standard conditions and, in principle, appropriate. However, having regard to the disputed claims over ownership of Bellfield View and the proximity of the appeal site to the estate, if the Board are minded to grant permission for the development I would recommend that the condition be re-phrased and that construction impacts be dealt with via a detailed Construction Management Plan to be agreed with the planning authority.

8.0 Appropriate Assessment

- 8.1. Having regard to modest nature of the proposed development, its location on a brownfield site within an established residential area and the proposed means to connect the site to existing services, 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.

9.0 Recommendation

- 9.1. In summary, I consider that the proposed development is appropriate in principle on the appeal site and that no issues arise with the design of the proposed dwelling. However, I have concerns that the arrangements for the development of the backland site, including access from Bellfield View, are *ad hoc* and piecemeal and do not adequately provide for the overall development of adjoining land. I would recommend that the Board therefore (a) seek further information from the applicant regarding the plans for the entire landholding, including the potential for alternative arrangements to access the site from Clooneevan, or (b) refuse permission for the development for the reasons and considerations set out below.

10.0 Reasons and Considerations

The proposed development comprises the development of a backland site. Having regard to the policies of the Dundalk and Environs Development Plan 2009 to 2015, which seek to provide a comprehensive approach to backland development and safeguard existing residential amenity in backland development, it is considered that the proposed development, including its arrangements for access, provides an *ad hoc* and piecemeal approach to development and would seriously injure the amenities of property in the vicinity, and accordingly would be contrary to the proper planning and sustainable development of the area.

Deirdre MacGabhann

Planning Inspector

23rd April 2019