



An  
Bord  
Pleanála

## Inspector's Report ABP-303823-19

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<b>Development</b>	Retention of as-built existing bungalow type dwelling and extensions.
<b>Location</b>	Lavally Upper, Mallow, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	18/6695
<b>Applicant(s)</b>	Thomas Healy as Executor of the Estate of Joan Healy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party v. Grant
<b>Appellant(s)</b>	Frank and Claire Sweeny
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> May 2019.
<b>Inspector</b>	Elaine Power

## 1.0 Site Location and Description

- 1.1. The subject site is located approx. 4km east of Mallow and 26km north of Cork City. Lavally Upper is a rural area characterised by ribbon development and agricultural lands with associated farm buildings. The subject site is located behind a row of one-off dwellings, which front onto the L-1223).
- 1.2. The site has a stated area of approx. 0.106 ha and accommodates an existing single storey dwelling and a detached store. It is located approx. 30m from the junction of 2 no. local roads (L-12221 and L-1223). It is bound to the north by an existing two-storey dwelling, to the south by a private access road and a single-storey dwelling, to the east by the L-12221 and to the west by a vacant, overgrown site.

## 2.0 Proposed Development

- 2.1. It is proposed to retain an existing house with a gross floor area of approx. 93sqm, an existing detached store with a gross floor area of approx. 10sqm.
- 2.2. The existing single storey house is a traditional design with a rendered finish and a hipped roof. It is irregular in shape with a maximum width of approx. 16m and a maximum length of approx. 9.5m. It has a maximum height of 5m. The house to be retained is located in the north west corner of the site approx. 1.2m from the northern boundary with the adjacent house and approx. 1m from the western boundary with a vacant site.
- 2.3. The store is approx. 4m in width by 3.1m in length with mono-pitched roof with a maximum height of approx. 2.5m. It is located approx. 0.8m north of the house and sits at the boundary with the adjacent house.
- 2.4. It is also proposed to install a treatment system and polishing filter to serve the house.
- 2.5. ***Further Information lodged on 17<sup>th</sup> January 2019.***

In response to the further information request details of the legal interest in the land and details of surface water drainage were provided. The design of the waste water treatment system was also revised to ensure it had sufficient capacity.

- 2.6. ***Unsolicited Further Information lodged on 18th January 2019***

The unsolicited Further Information related to surface water proposals for the site.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Permission was granted subject to 10 no. conditions. The relevant conditions are noted below: -

**Condition 1** Clarified that permission was granted for the development as modified by way of further information.

**Condition 3** Required a 2m high boundary wall to be provided along the northern boundary of the site.

**Condition 5** Ensured the garage be incidental to the main house.

**Condition 7 and 8** Required the existing septic tank to be decommissioned and the installation of a proprietary waste water treatment system as proposed.

**Conditions 9 and 10** Related to surface water arrangements for the site.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. **Planning Reports**

The final Area Planners report recommended that permission be granted subject to conditions.

##### 3.2.2. **Other Technical Reports**

Area Engineers Report recommended that further information be sought regarding the following: -

- The waste water treatment system should have sufficient capacity for a 3-bed house.

- Confirmation whether the sewer pipe is crossing through an area outside of the applicant's ownership.
- Land registry map should be provided for area where the treatment plant and polishing filter are proposed.
- Details of surface water management.

The final report considered that these issues had been addressed and recommended that permission be granted.

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

A third-party objection was received from Frank and Claire Sweeny, whose house is located to the north of the subject site. Plan, elevation and section drawings have been submitted with the appeal. The appeal includes a history of the site. The concerns raised are similar to those in the third-party appeal submission with additional concerns summarised below.

- The existing unauthorised house has been extended over time and the levels have been raised which resulted in an unacceptable level of overlooking of the adjoining property.
- The proposed waste water treatment system is located on lands outside of the applicant's ownership.
- Details of surface water proposals are required.
- Insufficient details have submitted to fully assess the application.

## 4.0 **Planning History**

### 4.1. **Subject Site**

None

#### 4.2. **Surrounding Sites.**

**Reg. Ref. 10/6310:** Permission granted in 2011 for a waste water treatment systems and polishing filter, and extension and alterations to an existing house to the east of the subject site.

### 5.0 **Policy and Context**

#### 5.1. **Cork County Development Plan, 2014**

The site is located in an area of unzoned land. Figure 4.1 of the Plan '*Rural Housing Policy Area Types*' identifies the site as being located in a 'Rural Area Under Strong Urban Influence'. Policy RCI 4-2 notes that these areas are under significant pressure for rural housing. Therefore, applicants are required to demonstrate that their proposal complies with a genuine housing need.

5.1.1. With regard to the provision of rural dwellings. The following policies are also relevant.

RCI 6-1: Design and Landscaping of New Dwelling Houses in Rural Areas

RCI 6-2: Servicing Individual Houses in Rural Areas: '

RCI 6-4: Occupancy Conditions

RCI 2-1: Urban Generated Housing

RCI 2-2: Rural Generated Housing

#### 5.2. **National Planning Framework**

Policy Objective 19: '*Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*

- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements’.*

### 5.3. **Natural Heritage Designations**

The site is located approx. 800m south of Blackwater River (Cork / Waterford) SAC (site code 002170).

### 5.4. **EIA Screening**

- 5.5. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

- 6.1.1. A third-party appeal was received from Frank and Claire Sweeny whose property adjoins the appeal site to the north. The issues raised relate to Condition No 3 and No. 5 and are summarised below: -

- Condition No. 3 relates to the provision of a 2m high wall along the northern boundary. This condition is too vague. It is intended to sell the house therefore the condition may never be fully implemented.
- Condition No. 5 refers to the store as a garage. This structure has an overbearing impact on the adjoining property and the unplastered northern elevation has a negative visual impact for the residents of the adjoining property.

## 6.2. Applicant Response

None

## 6.3. Planning Authority Response

The Planning Authority reiterated the reasons for recommending a grant of permission.

## 6.4. Further Responses

None

## 7.0 Assessment

7.1. Having regard to the circumstances of this case, the site context and to the nature of the conditions under appeal, which relate to the northern boundary treatment and the existing store, I am satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. I consider, therefore, that the appeal should be dealt with in accordance with Section 139 of the Planning and Development Act 2000 (as amended).

### 7.2. *Condition No. 3*

7.2.1. The existing single storey house is located in the north west corner of the site. The house is irregular in shape and is located a minimum of approx. 1.2m from the northern boundary of the site, with an existing house. The existing northern boundary of the site comprises a low block work wall within the subject site, and a timber fence within the neighbouring site. It is noted that the subject site is approx. 0.5m higher than the adjoining site.

7.2.2. Condition No 3 states that a 2m high boundary wall or other agreed durable material shall be erected within the subject site along the northern boundary. Concerns were raised in the appeal that the condition is too vague, and the works will not be completed by the applicant.

7.2.3. Having regard to the siting of the house, it is my opinion that the provision of a 2m high wall is appropriate at this location.

7.2.4. I have assessed the impact of the retention of the house on the adjoining residential amenity, and I consider that the retention of Condition No 3 is appropriate to protect those residential amenities.

### 7.3. **Condition No 5**

7.3.1. The existing store is located approx. 0.8m north of the house and sits at the northern boundary of the site, with the adjoining house. The store is approx. 4m in width by 3.1m in length with mono-pitched roof with a maximum height of approx. 2.5m.

7.3.2. Condition No 5 states that the garage shall be ancillary to the main house. Concerns are raised in the appeal that condition incorrectly refers to a garage and not a store and that the siting of the existing store results in an overbearing impact on the adjoining property.

7.3.3. While it is acknowledged that the store sits at the northern boundary wall, with the adjoining property, it is my view that due to the limited height of the store, approx. 2.5m, it does not result in an overbearing impact.

7.3.4. Concerns were also raised regarding the external finish of the store and the negative visual impact that it has on the adjoining property. The northern elevation of the store is unplastered. To protect the visual amenities of the adjoining property it is recommended that the external finish of the northern elevation of the store be agreed with the Planning Authority.

7.3.5. I have assessed the impact of the retention of the store on the adjoining residential property, and I consider that Condition no 5 be amended to protect the visual amenities of the adjoining property.

### 7.4. **Appropriate Assessment**

7.1. The appeal site is located approx. 800m south of Blackwater River (Cork / Waterford) SAC (site code 002170). Having regard to the nature and scale of development proposed and to the nature of the receiving environment, 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.



## 8.0 Recommendation

8.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to Retain Condition 3, and to AMEND Condition 5 as follows:

3. The boundary wall along the northern site boundary shall be raised to 2m in height from the existing ground level of the subject site or a screen or other agreed durable material, shall be provided at a height of 2m from the existing ground level of the subject site along the northern boundary, or otherwise agreed in writing with the Planning Authority. Full details shall be submitted to and agreed in writing with the Planning Authority within a period of two months from the date of grant of permission. This work shall be carried out within a period of four months from the date of grant of permission, or as otherwise agreed in writing with the Planning Authority.

**Reason:** In the interest of residential amenity

5. The store shall be incidental to the enjoyment of the dwelling house only. The external finish of the northern elevation of the store shall be agreed in writing with the Planning Authority.

**Reason:** In the interest of residential and visual amenity.

## 9.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the Cork County Development Plan 2014,
- (c) the nature, scale and orientation of the development to be retained, and
- (d) the pattern of development in the area,

The Board considered that the inclusion of those amendments required in condition no. 5 are necessary for the protection of the residential amenities of the neighbouring properties and the proper planning and sustainable development of the area.

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Elaine Power  
Planning Inspector

6<sup>th</sup> June 2019