



An  
Bord  
Pleanála

## Inspector's Report ABP-303824-19

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<b>Development</b>	Construction of a house and the installation of a wastewater treatment system.
<b>Location</b>	Kilcolta, Fennells Bay, Crosshaven, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	18/7338
<b>Applicant(s)</b>	Elizabeth and Robert Jeffreys
<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>	Patrick and Gillian O'Donovan
<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 site is located in Fennell's Bay approx. 1.5km south of Crosshaven and 17km south east of Cork City. The Fennell's Bay area is characterised by a haphazard pattern of residential development, on substandard roads and laneways.
- 1.2. The site has a stated area of 0.163ha. It is rectangular in shape and is currently a greenfield. The site is elevated with views to the south over Myrtleville beach.
- 1.3. Access to the site is from Fennell's Bay (public road) via a 3m – 5m wide private cul-de-sac. The road is circuitous and approx. 150m in length. It serves approx. 12 no. existing houses.

## 2.0 Proposed Development

- 2.1.1. It is proposed to construct a contemporary, single storey house with an attached car port. The house has a gross floor area of 145sqm. It is irregular in shape with a flat roof with a height of approx. 3.4m. The external materials include a substantial element of glazing (doors / windows), coloured render and elements of stone, metal and timber.
- 2.1.2. Access to the house is proposed via the existing private access road. A 2m wide potential amenity walkway is proposed along the southern boundary of the site to link with the existing private road.
- 2.1.3. A wastewater treatment system and percolation area is proposed. There is a mains water supply available to serve the development.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 7 no. conditions. Conditions 2-7 relate to water and wastewater services for the site.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

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

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

Area Engineer report. No objection subject to conditions.

### 3.3. **Prescribed Bodies**

Irish Water: No objection

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

2 no. third-party objections were received from (1) R. Fishbourne whose property is located to the west of the site and (2) Gillian and Patrick O'Donovan whose property is located to the south of the site. The concerns raised are similar to those in the third-party appeal submission. Additional items raised are summarised below: -

- Additional vehicular movements will result in a traffic hazard
- Potential overlooking of adjoining properties.
- The height of the house would negatively impact on the high value landscape.
- Legal issues raised over land ownership.

## 4.0 **Planning History**

**Reg. Ref. 13/04659 / PL 04.242068** Permission was granted in 2013 for a house and wastewater treatment unit.

**Reg. Ref. 12/04721 / PL 04.241232** Permission was refused in 2013 for a house and wastewater treatment unit for the following reasons.

1. The development provides for a new access road which will create a new junction with an existing cul de sac which serves a number of constructed houses and permitted houses. This junction will be at a point where sightlines along the cul de sac are inadequate. Furthermore, the proposed access road would create a further junction with a narrow public road close to the existing

junction of the cul de sac with that public road and at a point where there is no median line, footpaths or cycle paths on the public road. The proposed development would give rise to additional traffic movements on this inadequate road network and would, therefore, endanger public safety by reason of traffic hazard.

2. The proposed development includes the provision of a new access roadway along the rear boundary of houses with short rear gardens which comprise the private open space available to these houses. The proposed development would give rise to noise and general disturbance in proximity to these rear gardens, would seriously injure the residential amenity and deprecate the value of these properties and would, therefore, be contrary to the proper planning and sustainable development of the area.

The Board direction made the following comment: “Given the location of the site at the end of a cul-de-sac and within a recognised settlement boundary, the board considered that the possibility of a dwelling accessed using the existing shared entrance onto the public road might be open for consideration but considered that this was not the proposal before it for assessment”.

## 5.0 Policy and Context

### 5.1. Bandon Kinsale Municipal Area Plan, 2017

- 5.1.1. The subject site is located within the settlement boundary of Crosshaven and the Bays which is identified as a ‘Key Village’ within the Local Area Plan. The Plan states that there is limited scope for further housing at Fennell’s Bay and any future development will need to be sensitively designed to ensure it does not detract from the ‘High Value Landscape’ designation afforded to this attractive coastal bay.

**Policy DB-01:** ‘within the development boundary of Crosshaven and Bays encourage the development of up to 286 additional dwelling units during the plan period’.

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

- 5.2.1. 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’
- 5.2.2. 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.

## 5.3. **Natural Heritage Designations**

- 5.3.1. There are no designated areas in the immediate vicinity of the site.

## 5.4. **EIA Screening**

- 5.4.1. 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**

A third-party appeal was received from Patrick and Gillian O’Donovan whose property is located to the south of the appeal site. The issues raised are summarised below.

- Due to the level difference between the appeal site and the adjoining site, to the south, there are serious concerns regarding the potential for subsidence during the construction phase. An Engineering report was submitted with the appeal which notes that construction works would most likely cause further distress and possible collapse to the existing retaining wall between the properties.
- The proposed development will impact on existing car parking arrangements on the access road.
- The drawings submitted do not show existing boundary treatments. When the existing boundary treatments are taken into consideration the proposed walkway is only 0.7m in width.
- Works have been carried out on site which have altered the access arrangements.

## **6.2. Applicant Response**

### **6.2.1. The Applicants submission is summarised below: -**

- The Appellants originally requested that car parking for their site be accommodated within the subject site. This is not feasible as it would impact on vehicular access to the site and on the potential amenity walkway.
- It is proposed to provide a 2m wide walkway along the southern boundary of the site.
- There is no right of way over the subject site.
- The proposed vehicular access is located as far north as possible to lessen the impact on the existing embankment and the potential walkway.
- The applicants have recently purchased the site and are not aware of any works being carried out under the previously approved application PL 04.242068.
- Construction practices will ensure there is no damage to the embankment and it is noted that the embankment was unstable prior to the applicants purchasing the land. An Engineers report is included which notes that any instability on the

adjoining site was caused by the development of that site and is not related to any works on the subject site.

### 6.3. **Planning Authority Response**

None

## 7.0 **Assessment**

7.1. The site is located within the settlement boundary for Crosshaven and the Bays. Having regard to the siting and high-quality contemporary design of the house, it is considered that the proposed development would not be out of character with the surrounding area or negatively impact on existing residential amenities in terms of overlooking, overshadowing or have an overbearing impact.

7.2. The main concerns raised in this appeal relate to the impact the proposed development would have on car parking for existing properties on the private access road and health and safety concerns. Issues relating to access and Appropriate Assessment are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Car Parking and Access
- Health and Safety
- Appropriate Assessment

### 7.3. ***Car Parking and Access***

7.3.1. Access to the site is from Fennell's Bay (public road) via a 3m – 5m wide private access road. The road is circuitous and approx. 150m in length, with no footpath. It provides access to approx. 12 no. existing houses. The subject site forms the end of the private road and is the only remaining vacant plot along the road.

7.3.2. It was noted during a site visit on the 9<sup>th</sup> May 2019 that a number of houses, accessed from the private road, do not have designated off-street car parking and therefore park

on the road. Concerns have been raised in the appeal that the proposed development would impact on existing parking arrangements. In response to the appeal, the applicant has stated that vehicles are currently being parked on their private property. It is considered that the disputes between the parties in relation to matters of access and legal rights of way over the road, that may or may not arise, are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

7.3.3. With regard to access arrangements to the site, it is acknowledged that the private road is substandard in width, however, it is also noted that the subject site is the only remaining vacant plot access from the road and that permission was previously granted for a house on the site. Therefore, it is considered that 1 no. additional house would not generate a significant number of vehicular movements on the laneway to result in a traffic hazard.

7.3.4. It is also proposed to provide a 2m wayleave along the southern boundary of the site to facilitate the development of a potential amenity walkway. There is no objective in the Bandon Kinsale Municipal District Local Area Plan, 2014 to provide a walkway at this location, however, in my opinion the provision of such an amenity in a high value landscape would be welcomed.

#### **7.4. *Health and Safety***

7.4.1. The Appellants raised health and safety concerns regarding the structural stability of the southern boundary wall of the subject site, which adjoins their property. There is a level difference of approx. 2m between the sites. The Appellants Engineering report notes that the existing retaining bank is not stable and indicates evidence of partial collapse. This is attributed to recent works on site, to create a vehicular access. The report concludes that any construction works would most likely cause further distress and possible collapse to the existing retaining wall between the properties.

7.4.2. In response to the appeal the applicant submitted an Engineers report which notes that a substandard retaining structure was put in place when the adjoining site was developed, any subsidence is due to this inadequate structure, and not a result of vehicles accessing the applicant's property. The applicant has also stated that it is intended to appoint a suitable contractor to carry out the works and all works will be carried out in accordance with Building Regulations.



7.4.3. In my opinion, the structural adequacy of the wall and its foundations are not matters that would be appropriate for the Board to adjudicate on. It is considered that the onus is on the applicants and their contractors, to ensure that the construction phase is undertaken in a safe manner, in accordance with their obligations under separate codes, and I further note that the granting of permission would not relieve the applicants of their responsibilities in this regard. It should be noted that under section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development.

7.4.4. In conclusion, I consider that the disputes between the parties in relation to matters of structural integrity, construction methods and resultant health and safety risks that may or may not arise are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

#### 7.5. ***Appropriate Assessment***

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, 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. I recommend that permission be granted subject to conditions.

### 9.0 **Reasons and Considerations**

9.1. Having regard to the location of the site within the 'settlement boundary' for Crosshaven and the Bays, the provisions of the Cork County Development Plan, 2014, the existing pattern of development in the area, and the nature and scale of the proposed development, 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 and would be acceptable in terms of traffic safety. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Prior to commencement of development proposals to provide a public amenity walkway along the southern boundary of the site shall be submitted to and agreed in writing with the Planning Authority.

**Reason:** In the interest of amenity

3. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority 18<sup>th</sup> December 2018 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. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) 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 and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

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.

All planting shall be adequately protected from damage until established. 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 the interest of residential and visual amenity.

5. Water supply and 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.

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. 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 noise management measures and off-site disposal of construction/demolition waste.

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

8. 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

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Elaine Power  
Planning Inspector

10<sup>th</sup> June 2019