



An
Bord
Pleanála

Inspector's Report ABP 304368-19

Development	Dwelling and wastewater treatment system, decommission septic tank serving existing dwelling and replacement with wastewater treatment system, new entrance and ancillary works.
Location	Seaview, O'Regan's Field, Myrtleville, Ballinluska, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/7177
Applicant	Jovita Dennehy
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Bertie O'Brien & Kathy Soo-O'Brien
Observer(s)	None
Date of Site Inspection	24/07/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site subject of the appeal comprises the side garden of a detached dormer dwelling accessed via a cul-de-sac lane within the area known as O'Regan's Field in Myrtleville, which is c. 2km to the south of Crosshaven and c.7.5 km to the south-east of Carrigaline. The vicinity of the site is characterised by extensive one off housing of varying designs and layouts, many availing of the panoramic views of the coast to the south. The overall site area is stated as being 0.3041 hectares.

The site slopes up from the lane in a northerly direction with the boundary onto same bounded by a timber fence. The rear boundary of the site is delineated by a hedgerow and stone wall. A two storey dwelling bounds the site to the east which has a setback of in the region of 30 metres from the shared boundary which is delineated by a fence backed with planting.

The existing entrance is in the south-eastern most corner of the site off a hammerhead.

2.0 Proposed Development

The application was lodged with the planning authority on the 04/12/18 with further plans and details submitted 20/03/19 following a request for further information dated 05/02/19.

As amended, the proposal entails the subdivision of the site and construction of a split level dwelling which would present as two storey to the lane (south) with a height of 7.945 metres. The floor area of the new dwelling is stated as being 185 sq.m. The house is contemporary in design with extensive glazing at 1st floor level.

The dwelling is to be served by a wastewater treatment system discharging to a raised soil polishing filter.

The septic tank and percolation area serving the existing dwelling on the site is to be decommissioned with a new wastewater treatment system, also served by a raised soil polishing filter, to be installed.

Water supply is to be from public mains with a wayleave agreement in place to facilitate same.

The existing site access is to be closed and a new entrance in the centre of the roadside boundary opened to serve the two dwellings.

As per the Site Suitability Assessments accompanying the application rock was encountered in the trial hole at a depth of 0.6 metres. Due to the shallow rock T tests were not carried out. P values of 10.22 and 13.22, respectively, were recorded.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 9 conditions including:

Condition 2: Sight distances of 50 metres to be provided in each direction at the new access.

Condition 3: Removal of septic tank prior to 1st occupation of dwelling.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Executive Planner's report dated 05/02/19 considers that the existing plot is large in comparison to the majority in the vicinity. He expresses concerns about the density of individual wastewater treatment plants but states that the Council has created these circumstances as the Bays is within the settlement boundary in the LAP which establishes the principle subject to details. 31 metres is proposed between the proposed upper level kitchen window and the adjoining property. Adequate levels of privacy will be maintained. The dwelling will be prominent but no more so than the existing dwelling. Issues of connection to water supply and surface water disposal queried. A request for further information recommended. The 2nd report dated 10/04/19 following further information recommends a grant of permission subject to conditions.

3.2.2. Other Technical Reports

Area Engineer in a report dated 04/02/19 details requirements in terms of sight lines at proposed entrance, surface water and sewage disposal requirements. The 2nd report dated 02/04/19 following further information has no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water in a report dated 24/01/19 has no objection subject to conditions.

3.4. Third Party Observations

An objection to the proposal received by the planning authority is on file for the Board's information. The issues raised pertain to proximity to site boundary, impact on amenities of adjoining property, access, density of development, surface water runoff and planning history.

4.0 Planning History

I am not aware of any previous planning applications on the site.

PL04.244507 – permission granted on appeal in July 2015 for a dwelling and effluent treatment system on a site to the east of the site.

5.0 Policy and Context

5.1. Development Plan

5.1.1. *Bandon Kinsale Municipal District Local Area Plan*

The site is within the development boundary of Crosshaven and Bays.

Section 4.5.15 notes that in Myrtleville the development boundary offers some various options for limited housing expansion.

Section 4.5.27– Any new development in the Bays area will be restricted to low density, infill development or the appropriate redevelopment or refurbishment of

existing dwellings and brownfield sites subject to satisfactory sewage disposal arrangements.

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.

5.1.2. ***Cork County Development Plan, 2014***

Policy ZU 2-2 – 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. **Natural Heritage Designations**

The site is c.1.2km to the nearest point of Cork Harbour SPA to the south-west.

5.3. **Environmental Impact Assessment**

Having regard to the nature and scale of the development 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**

The appellants own the dwelling to the east of the appeal site. The grounds of appeal can be summarised as follows:

- As sited the dwelling is extremely close to their western boundary. The extent of excavation required would be to their detriment. It would leave no room for footpaths, access and screen planting. The dwelling should be set back from the boundary the same distance as their dwelling is set back from it.
- A large window in the eastern gable wall will overlook their garden and dwelling and will result in loss of privacy.

- Any outdoor or security lighting mounted on the gable wall should be angled appropriately and timed to avoid any problems.
- Assurance is required that the hammerhead, which was a condition of the original permission, is retained on the closure of the existing entrance and that the drive used by several residents returned to good order on completion of any building works.
- The density arising would appear not to provide for sufficient parking which could result in parking along the lane.
- There is the potential for surface water runoff from increased hard surfaced areas to flood their site.
- A house of a more modest scale would be acceptable.
- The grant of permission is totally at odds with the planning authority's decision to refuse permission for a dwelling on their site under ref. 07/10309.

6.2. Applicant Response

The submission by HW Planning on behalf of the applicant can be summarised as follows:

- The proposal is a low density infill development located within the Bay area and complies with the policies and objectives of the LAP.
- The house design has full regard to the requirement to protect the residential amenities of adjoining dwellings. The site sections illustrate that the dwelling will integrate well with the landscape and will not be injurious to residential amenities by reason of overlooking.
- Given the separation distances between the proposed dwelling and the appellants' dwelling and the fact there is tree planting on the boundary it is considered that there will be no impact on residential amenities arising from overlooking.
- Planning policy has changed since the refusal of permission on the appellants' site in 2007.

6.3. **Planning Authority Response**

No response

6.4. **Observations**

None

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with LAP policies and objectives
- Amenities of Adjoining Property
- Other Issues

7.1. **Compliance with LAP policies and objectives**

The site in question is within the development boundary of Crosshaven and Bays in the Kinsale and Municipal District Local Area Plan 2017 wherein section 4.5.27 requires that any new development in the Bays Area will be restricted to low density, infill development or the appropriate redevelopment or refurbishment of existing dwellings and brownfield sites subject to satisfactory sewage disposal arrangements. In this context the principle of the proposal which entails the sub-division of an existing large residential plot for what could be considered to be infill development is acceptable.

7.2. **Amenities of Adjoining Property**

The proposal entails the development of what is the side garden area of the existing dwelling. The appellants' two storey dwelling bounds the site to the east. In view of the existing topography and site gradient a certain level of cut and fill is proposed to facilitate the construction of the dwelling. By reason of the dwelling layout a setback of between 2.462 and 4.504 metres is to be maintained to the eastern site boundary. Appropriate construction methods would ensure that such excavation works can be undertaken without adversely impacting on the site boundary or the

appellants' site and I recommend that a construction management plan be sought by way of condition to ensure same.

The house design is contemporary in execution entailing a split level design working with the site levels. The dwelling, with a finished floor level of 48.00mOD would be 1.96 metres lower than the existing dwelling on the site. Whilst no details are provided in support of the application the prevailing site levels, as noted on day of inspection, would suggest that the dwelling would have a finished floor level that would be higher than the appellants' dwelling to the east. Taking into consideration the proposed ridge height of 7.945 metres and the separation distance of over 32 metres to be retained between the dwellings this is not a material concern.

Extensive glazing is proposed in the southern elevation so as to avail of the sea views to the south. Of material concern to the appellants is the large window opening proposed in the eastern elevation facing the shared boundary. As noted above a separation distance of approx. 32 metres is to be maintained between opposing windows and, as such, issues of privacy would not be a material concern. Notwithstanding, the window opening is in close proximity to the shared boundary and perceived overlooking of the private garden space of the appellant's is relevant. In view of the extensive glazing proposed along the southern elevation serving the kitchen/dining area its replacement with a high level window opening is, in my opinion, a more appropriate response in this elevation. I recommend that this be secured by way of condition should the Board be disposed to a favourable decision.

The relocation of the site entrance to provide for a shared access serving the existing and proposed dwellings is acceptable. The existing hammerhead is to be retained on the closure of the existing entrance in the south-eastern corner.

Adequate off street parking is to be provided for both dwellings.

By way of further information, a soil infiltration assessment was submitted detailing the disposal of surface water from the hard surfaced areas within the site.

The dwelling is to be served by a wastewater treatment system served by a raised polishing filter. To facilitate same the septic tank serving the existing dwelling is to be replaced and is also to be served by a wastewater treatment system served by a raised soil polishing filter. I consider that sufficient detail accompanies the application in terms of the adequacy of the proposed arrangements. Water supply is

to be via public mains with a wayleave to access same secured, evidence of which was submitted by way of further information.

In terms of visual amenities I consider the design of the dwelling to be acceptable and its scale and extent can be accommodated on the site. Whilst it will be visible in views from the south it will be seen in the context of the existing pattern of development and the large house designs in the immediate vicinity.

I note reference by the appellants to a refusal of permission on their site in 2007. The said proposal would have been assessed in the context of the relevant development plan policies and objectives prevailing at that time. I note that the current LAP was adopted in 2017.

7.3. Other Issues

Appropriate Assessment

Having regard to the nature and scale of the proposed development within Myrtleville within the development boundary of Crosshaven and Bays, the nature of the receiving environment and the distance to 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

Having regard to the documentation on file, the grounds of appeal the responses thereto, a site inspection and the assessment above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

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 and the Bandon Kinsale Municipal District Local Area Plan 2017, 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 or of property in the vicinity, would be acceptable in terms of traffic safety and would not be prejudicial to public health. 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 as amended by the further plans and details submitted on the 20th day of March, 2019, following 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 materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The 1st floor window in the east elevation of the proposed dwelling shall be replaced by a high level window ope. Revised plans with the necessary alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interest of amenities of adjoining property.

4. (a) The treatment plants and polishing filters shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 4th day of 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 systems have 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 systems shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the proposed dwellinghouse and five years from the connection to the existing dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contracts shall be submitted to, and agreed in writing with, the planning authority.
- (d) Surface water soakaways shall be located such that the drainage from the dwellings 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 proposed dwelling and within three months of the connection to the existing dwellinghouse, the developer shall submit reports from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment systems have been installed and commissioned in accordance with the approved details and are working in a satisfactory manner and that the polishing filters are constructed in accordance with the standards set out in the Environmental Protection Agency document.

Reason: In the interest of public health.

5. The septic tank serving the existing dwelling shall be decommissioned and removed from the site prior to the first occupation of the proposed dwelling.

Reason: In the interest of public health.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Surface water from the site shall not be permitted to drain onto the adjoining lane or adjoining property.

Reason: In the interest of public health.

7. The site shall be landscaped in accordance with a scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority before development commences. The scheme shall include a timescale for its implementation.

Reason: In the interest of visual amenity.

8. 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.

9. 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.

10. 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 the 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.

Pauline Fitzpatrick
Senior Planning Inspector

July, 2019