



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304439-19

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<b>Development</b>	Demolition of existing detached domestic garage, construction of a house, revised communal entrance and ancillary site works
<b>Location</b>	Casino, Ardbrack, Kinsale, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	18/6375
<b>Applicant(s)</b>	Catherine Wilson
<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>	Diana Good
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> July 2019.
<b>Inspector</b>	Elaine Power

## 1.0 Site Location and Description

- 1.1. The subject site is located in Ardrack, approx. 1km east of Kinsale town centre. The general area is suburban in nature and characterised by one-off houses and low-density housing estates. It is elevated and has extensive views over Kinsale Harbour.
- 1.2. The site has a stated area of approx. 0.12 ha and forms part of a larger landholding which currently accommodates a 2-storey detached dwelling, outdoor swimming pool and an detached garage. The site slopes away from the public road with a significant elevational difference at the rear of the site. The site boundaries consist of a mature vegetation and trees.
- 1.3. Access to the existing house is from High Road.

## 2.0 Proposed Development

- 2.1. The proposed works comprise the demolition of an existing detached garage with a gross floor area 30sqm and the construction of a new house with a gross floor area 209sqm. The overall site would be subdivided with the proposed house located in the south east section of the overall site. The house is a contemporary design with a flat roof and large windows. Due to the level difference on site the front elevation of the house presents as a single storey and the rear elevation presents as two-storey. The house has a maximum height of 7.2m.
- 2.2. The existing swimming pool would be located in the rear garden of the proposed house.
- 2.3. A shared access arrangement is proposed for both the existing and the proposed house via the existing vehicular entrance on High Road.
- 2.4. ***Further Information lodged 26<sup>th</sup> February 2019***

In response to a further information requested the height of the proposed house was reduced by 0.7m. The house was relocated away from the south eastern boundary of the site to provide a separation distance of 2.2m.

## 2.5. ***Unsolicited Further Information lodged 11th March 2019***

Details of retaining walls were submitted.

2.6. Revised public notices were published on the 30<sup>th</sup> March 2019.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

Permission was granted subject to 4 no. standard conditions.

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

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

The initial Area Planners report raised some concerns regarding the proposed development and recommended that further information be sought regarding the following: -

- The loss of views of Kinsale Harbour from High Road, which is a designated scenic route.
- Proximity of the proposed house to the adjoining property 'Tree Tops'
- The dwelling should be set back from the south east boundary and the ridge height lowered. Photomontages should be submitted.
- Clarity regarding the extent of the proposed retaining walls.
- Up to date plans and elevations of the current situation on site.

The final report considered that the response to further information adequately addressed the concerns raised and recommended that permission be granted subject to conditions.

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

***Area Engineer's*** final report raised concerns regarding the retaining walls and the available sightlines.

### 3.3. Prescribed Bodies

Irish Water: No objection

### 3.4. Third Party Observations

- 3.4.1. There is a letter of support on file from the adjoining neighbour, Aine Kelly and a letter from Jim Daly TD – Minister for Mental Health and Older People.
- 3.4.2. 3 no. objections were received from local residents (1) Gary and Susan Horgan, (2) Tony Cournane and (3) Frank and Margie Hill. Gary and Susan Horgan and Frank and Margie Hill submitted additional objections to the revised proposal submitted by way of further information. An additional submission was received from Diana Good in relation to the revised proposal submitted by way of further information. The concerns raised in the objections are similar to those in the third-party appeal submission.

## 4.0 Planning History

### ***Subject Site***

***Reg. Ref. 11/6141*** outline permission granted in 2011 to demolish an existing garage and construct a single storey house over basement.

***PL04.24467, Reg. Ref. 14/6181***: Permission was refused in 2014 for the demolition of the existing garage and the construction of a granny flat. The reasons for refusal related to (1) the impact of the development on the designated scenic route (S61) and (2) the development would result in overlooking and have an overbearing impact.

***PL04.246971, Reg. Ref. 16/5065***: Permission was granted in 2016 to the demolition of the existing garage and the construction of a granny flat.

### ***Surrounding Sites***

***Reg. Ref. 09/7681***: Permission was granted in 2010 to retain a granny flat, garden room, shed and associated works at a site to the rear of the subject site.

**Reg. Ref. 16/5203:** Permission was granted in 2016 for the construction of a house on a site approx. 70m south east of the subject site.

## 5.0 Policy Context

### 5.1. Bandon Kinsale Municipal District Local Area Plan 2017

The subject site is located within the existing 'built up' area of Kinsale. Kinsale is identified as a main town in the Plan. The aims for Kinsale is to provide for additional residential and employment development which reinforces the towns compact form. There is spare capacity in the wastewater treatment system. At present the Inishannon water supply has limited spare capacity and there is an issue concerning the availability of adequate reservoir storage. Upgrading of water supply is required and provision of adequate reservoir storage is required.

### 5.2. Cork County Development Plan, 2014

5.2.1. The Development Plan does not set out any specific guidance for the provision of houses in inside gardens. 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'. Relevant policies of the Plan are set out below.

- HOU 3-2: Urban Design.
- SC 5-8: Private Open Space Provision
- ZU 2-1: Development and Land Use Zoning
- ZU 3-2: Appropriate Uses in Residential Areas

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.

5.2.3. The site is located on a scenic route (ref. S61), which is the road between Kinsale and Clonleigh via Summercover Policies GI 7-2 Scenic Routes and GI 7-3 Development on Scenic Routes relate to the protection of the character of scenic routes.

5.2.4. Cork County Councils 'Making Places: A Design Guide for Residential Estate Development' is also considered relevant.

### 5.3. **National Planning Framework (2018)**

5.3.1. The relevant policies of the National Planning Framework which relate to creating high quality urban places and increasing residential densities in appropriate locations are set out below.

- Policy Objective 4
- Policy Objective 6
- Policy Objective 10
- Policy Objective 11
- Policy Objective 33
- Policy Objective 35

### 5.4. **Natural Heritage Designations**

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

### 5.5. **EIA Screening**

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 Diana Good, whose property is located to the rear of the subject site. The issues raised in the appeal are summarised below: -

- The rear portion of the site, shown within the red line boundary, is not within the applicant's legal ownership. This error is misleading and implies that the applicant's landholding is much larger than it actually is. This land is within the appellants ownership. A copy of legal documentation has been submitted with regard to the appellants landholding.
- The proposed development would have a negative impact on the appellants house, which is located directly below the subject site at the base of a steep hill.
- Major excavation of the site is required to facilitate the development. There are serious concerns regarding the structural stability of the site and how the appellants site would be protected during the construction phase.
- No drainage details have been submitted. Concerns regarding run off into the appellants site, which is located down slope of the subject site.
- The concerns of the Planning Authorities Area Engineer, regarding car parking, vehicular movements and sightlines.
- No details have been provided regarding how the proposed development would be constructed.
- The proposed sub-division of the site would set an undesirable precedent for similar development in this scenic area.
- Procedural concerns have also been raised regarding the processing of the application. It is considered that the application form has not been completed correctly and as appellants house and associated ancillary family accommodation are not shown on the submitted drawings. The application should be invalidated.

## 6.2. Applicant Response

The applicant's response is summarised below:

- The applicants consulted with their neighbours. The proposed house has been designed to ensure it does not negatively impact on the existing residential amenities of adjoining properties.
- The site boundary is correct and within the ownership of the applicant's mother. There are on-going legal procedures by the appellant regarding her legal landholding.
- The appellants does not have a genuine concern regarding the subdivision or overdevelopment of the subject site. Permission was granted on the appellants site in 2009 to subdivide their site and convert an existing garage to a residential unit. There is a current application (19/4342) on the appellants site to retain the conversion of a domestic garage to a studio apartment for short term letting and retain the short term letting of the existing granny flat and yurt.
- The proposed house can be accommodated on the subject site. There are a variety of house types and density on High Road. The subject site has an area of 0.397 and a substantial frontage onto High Road. Permission was granted in the vicinity of the site, under Reg. Ref. 16/05203, for a similar development.
- A number of houses in the immediate vicinity of the subject site have been demolished and rebuilt with no evidence of structural instability or drainage run off into adjoining sites. It is also noted that the appellants house is not located directly below the subject site.

## 6.3. Planning Authority Response

None.



## 7.0 **Assessment**

7.1. As indicated the appeal refers to the layout and design of the house as submitted by way of further information on the 11<sup>th</sup> March 2019. The main concerns raised in this appeal relate to the ground of the appeal. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Principle of Development
- Residential and Visual Amenity.
- Legal Issues
- Health and Safety
- Drainage
- Traffic
- Appropriate Assessment

### 7.2. ***Principle of Development***

7.2.1. The site is located within the 'existing built-up area' of Kinsale. Concerns have been raised regarding the subdivision of the site and the provision of an additional house. The site has a stated area of 0.12ha. It is approx. 15.5m in width by 80m in length. A minimum width of 26m and a length of approx. 80m would be retained for the existing house. It is noted that permission was granted (PL04.246971) for a granny flat on the subject site with a stated gross floor area of 146sqm.

7.2.2. It is an objective of the National Planning Framework to increase residential densities in appropriate locations to avoid the trend towards predominantly low-density commuter-driven developments. Having regard to the location of the site within a serviced urban area and the existing pattern of development along High Road and its immediate environs, it is my view that the subdivision of the site and the provision of an additional house is acceptable in this instance.

### 7.3. ***Residential Amenity***

- 7.3.1. Concerns have been raised in the appeal regarding the impact of the development on the existing residential amenities of the area. The proposed house has a gross floor area of 209sqm. It is a contemporary design with large windows on the front and rear elevations. It has a flat roof with a maximum height of 6.6m.
- 7.3.2. The proposed house would be located a minimum of approx. 12m from the north east (front) boundary with the public road and approx. 56m from the south west (rear) boundary. A separation distance of approx. 4.3m is proposed between the existing house and the proposed house. On the adjoining site, to the south east, there is existing house 'Treetops'. The proposed house is located approx. 2.2m from the boundary with the adjoining site and approx. 8m from the house. It is noted that the existing garage is located a minimum of approx. 1m from the south east boundary. The rear building line of the proposed house matches the established rear building line of both the existing house on site and the adjoining house 'Treetops'.
- 7.3.3. Having regard to the height of the development and the distance from site boundaries, it is my opinion that the proposed development would not result in undue overshadowing or have an overbearing impact on adjoining properties.
- 7.3.4. It is proposed to provide a window on the north west (side) elevation to serve the proposed kitchen. Notwithstanding the familial relationship with the existing house, I would have concerns that this window could potentially result in undue overlooking of the adjoining residential property. If permission is being contemplated it is recommended that the window be omitted by way of condition.
- 7.3.5. It is proposed to provide a first-floor rear balcony. It is noted that the existing house and the adjoining house 'Treetops' have similar rear balconies. While I have no objection in principle to the provision of a balcony at this location, I would have concerns regarding undue overlooking of the existing house. It is recommended that a condition be attached to any grant of permission that the details of an appropriate screening material along the western boundary of the balcony be agreed with the planning authority.
- 7.3.6. Having regard to the location of the site within the settlement boundary for Kinsale, the pattern of development in the immediate area and the high-quality contemporary

design of the house, it is considered that it would not be out of character with the surrounding area or negatively impact on existing residential amenities.

#### **7.4. Visual Amenity**

- 7.4.1. High Road is a scenic route (S61) with extensive views over Kinsale Harbour. The general area is identified as Indented Estuarine Coast with a very high landscape value, very high landscape sensitivity and are of national importance. These areas are likely to be fragile and susceptible to change.
- 7.4.2. The subject site slopes downwards, away from the public road. Drawing no. PL 303 shows an elevational difference of approx. 9m between the rear of the proposed house and the public road. It is noted that there is a significant elevational change at the rear of the site, which is currently accessed via steps, however, no contextual section or elevational drawing has been provided.
- 7.4.3. Concerns were raised that the proposed development would negatively impact on the scenic route. The proposed house has a maximum height of 6.6m, which is a similar to adjoining properties. Drawing no. PL302 submitted by way of further information shows the proposed house in context with adjoining properties, when viewed from the middle of the road (High Road).
- 7.4.4. It is considered that due to the limited height of the house and the elevational differences, the proposed development would not have a significant impact on views of Kinsale Harbour and would not impact on the designated scenic route (S61). In addition, having regard to the site's location within a serviced urban area within the settlement boundary for Kinsale, it is my view that, it would not have a significant negative impact on the visual amenities of the area.

#### **7.5. Legal Issues**

- 7.5.1. Concerns were raised in the appeal that the rear (south western) portion of the subject site is outside of the applicant's ownership. In response the applicant has stated that there are on-going legal proceedings with an adjoining neighbour and that the site as outlined on the submitted drawings is fully within the ownership of the applicant's mother. 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 rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states, 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.

## **7.6. Health and Safety**

- 7.6.1. The appellants site is located to the rear of the subject site. There is a significant level difference between the two sites. Concerns were raised in the appeal regarding the impact the construction work, and associated excavation of the subject site, would have on the structural integrity of the adjoining site.
- 7.6.2. It is noted that the planning authority raised concerns regarding the retaining walls. Unsolicited further information was submitted on 11<sup>th</sup> March 2019 indicting the existing and proposed sections of the site boundaries. This drawing clarified the height and positioning of the proposed retaining walls along the north east (front) and south east (side) site boundaries.
- 7.6.3. In my opinion, the construction methods 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.
- 7.6.4. 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.

## **7.7. Drainage**

- 7.7.1. Having regard to the level difference between the subject site and the appellants site concerns were raised regarding the potential for surface water run-off. It is noted from the application form submitted to the planning authority that it is proposed to provide a soakpit on site. However, the location of the soakpit has not been indicated.
- 7.7.2. By reference to the OPW Flood Maps the subject site is not located in an area liable to flooding. It is noted that the Area Engineer raised no objection to surface water disposal. In my view the issues of surface water run-off can be dealt with by way of condition.

## 7.8. **Traffic**

- 7.8.1. High Road is approx. 6m in width with no footpath. There is an existing splayed 7m wide splayed entrance to the site from High Road. It is noted that the existing driveway slopes away from the public road. It is proposed to retain this access and provide a shared access for both the existing and the proposed house. The internal layout of the site has been altered to provide 2 no. off street car parking spaces per house with associated turning areas. The car parking spaces are delineated and located along the north east (front) boundary of the site. There is an elevational difference of approx. 2m between the public road and the proposed car parking area.
- 7.8.2. Concerns were raised in the appeal regarding the potential for a traffic hazard and it is noted that the planning authority's Area Engineer raised concerns regarding available sightlines. In my view an additional dwelling, served by the existing access would not generate a significant number of additional vehicular movements to generate a traffic hazard. In addition, it is noted that sufficient circulation space has been provided within the site to ensure vehicles can manoeuvre and exit in a forward motion.

## 7.9. **Appropriate Assessment**

Having regard to the nature and 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

Having regard to the location of the site within the 'existing built-up area' of Kinsale, 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. 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 further plans and particulars submitted on the 26<sup>th</sup> February 2019, 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. The first-floor kitchen window on the north west (side) elevation of the proposed house shall be permanently omitted. The first-floor bathroom window on south east elevation shall be permanently obscured with opaque glazing.

**Reason:** In the interest of privacy.

3. Prior to commencement of development the applicant shall agree in writing with the Planning Authority details of the following: -

(a) The proposed boundary treatment between the existing house and the proposed house; and

(b) The proposed screening along the western boundary of the proposed rear balcony.

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

4. 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.

5. 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

6. 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

23<sup>rd</sup> August 2019