



An
Bord
Pleanála

Inspector's Report ABP 305066-19

Development	Construction of a dwelling house, an entrance, connection to water and sewage system and ancillary site works.
Location	Fort Road, Cappagh, Kilrush, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	18/825
Applicant	Stephen Heffernan
Type of Application	Permission.
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Sean and Mary Killeen.
Date of Site Inspection	1 st October, 2019.
Inspector	Jane Dennehy

1.0 Site Location and Description

1.1. The site has a stated area of 1,136 square metres and is located between two plots on which houses have been constructed on a cul de sac, off the Fort Road at Cappagh, to the south of Kilrush. It is roughly rectangular in shape with a depth of circa fifty metres and a width at the road frontage of twenty-one metres. It is steeply sloped away from the front frontage. It is adjoined to the south west by detached houses on Cappa Cove facing onto Fort Road overlooking the sea.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for construction of a two-storey detached house with a stated floor are of 194.5 square metres on the site along with vehicular access from the cul de sac and connection to services. The house as proposed has a double height, two storey bay feature at the rear.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 8th July, 2019, further to the receipt and review of a further information from the applicant on 30th May, 2019, the planning authority decided to grant permission subject to conditions.

Under Condition No 2 there is a requirement for dwelling to be occupied on a permanent basis and, not used for short term letting/tourist accommodation.

Under Condition No 3 there is a requirement for the finished floor level to accord with the details shown on the site layout plan with changes to the levels within the site not being permitted other than as required to facilitate construction of the driveway.

Under Condition No 8 exempt development entitlements are withdrawn and construction of a boundary wall on the south west boundary is not permitted.

3.2. Planning Authority Reports.

3.2.1. Planning Reports

Further to receipt of clarification in relation to the proposed arrangements for servicing of the site and in respect of Part V commitments, the planning office concluded that the proposed development was satisfactory. In view of the separation distance of twenty-four metres from the rear boundary and thirty-eight metres from the rear wall of the adjoining properties, down slope to the rear, it was stated that overlooking, overshadowing and loss of privacy are avoided. Attachment of a condition prohibiting alterations to the ground levels was also recommended.

3.3. Third Party Observations

- 3.3.1. In one objection issues raised include that of public open space provision deficiencies in the vicinity, visual impact and adverse impact on adjoining properties, drainage arrangements and potential for the development to be used as a holiday home and left unoccupied for periods of time.
- 3.3.2. In the other objection, (from the appellant party) indicates concerns about height, design and layout, impact on residential amenities of adjoining properties due to the variation in ground levels and potential interference with ground levels.

4.0 Planning History

- 4.1.1. According to the planning officer report permission was granted for development of a house on the site under P. A. Reg. Ref. 08/31024. The grant of permission was not taken up and an extension to the duration of the grant of permission was agreed under P. A. Reg. Ref 14/31003.

5.0 Policy Context

5.1. Development Plan

The operative county development plan is the Clare County Development Plan, 2017-2023. The site location comes within the area of the Kilrush and Cappa

Settlement Plan provided for in Volume 3D, West Clare Municipal District. The site come within an area subject to the zoning objective: Existing residential”

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from Mary and Sean Killeen on their own behalf on 6th August, 2019 according to which there is no objection in principle to development of the site but that the current proposal is unacceptable on the following issues.

- The two-storey bay window should be omitted, or redesigned because it is incongruous and incompatible with the house.
- The proposed development would seriously injure the amenities of the rear garden of their property. The variation on ground levels should have been taken into account in consideration of the separation distances by the planning authority.
- The rear dormer element is oversized and would have a towering impact on their property. The window has excessive glazing at first floor level and would overlook their property.
- The site layout is not based on an adequately detailed site survey. The levels shown at the rear boundary are inaccurate.
- A condition should have been attached with a requirement for the dwelling to be occupied as a place of permanent residence for a period of seven years in accordance with the CDP. There is no verification that it is intended that the applicant will reside in the dwelling as a permanent place of residence.

6.2. Applicant Response

6.2.1. A submission was received from the applicant on 3rd September, 2019. Attached are drawings and photographs. According to the submission:

- Permission was originally granted for development on the site in 2009 and the grant of permission was extended. The current proposal is unchanged. The

appellant party would have been aware of this and the two dwellings to either side of the site when they purchased their property in 2014.

- The proposed bay window element is fully acceptable and is important to the applicant because it provides for a sea view. Properties at Cappagh benefit from these views and natural scenery. There are potential views from the two properties which adjoin the rear boundary of the site. Overlooking is unavoidable especially where there is a steep slope. The applicant is willing to implement street hardy planting on the boundary with the adjoining property if required.
- It is not accepted that the planning authority did not satisfactorily process the application and, the proposed development also accords with the CDP.

6.3. Planning Authority Response

- 6.3.1. In a letter from the planning authority received on 5th September, 2011 it is stated that there are no additional observations to those within the planning officer report.

7.0 Assessment

- 7.1.1. With regard to the double height bay element and upper floor glazing for a rear bedroom window, it is agreed with the planning officer that the separation distances from the rear boundary at twenty four metres and from the adjoining property in the ownership of the appellant party at thirty eight metres is sufficient to allow for an acceptable attainable standards with regard to potential for overlooking. It is also agreed that the wrap around bay window glazing at the first-floor level for the bedroom is extensive and could give rise to perceptions of overlooking but an undue degree overlooking would not arise owing to the aforementioned separation distances, notwithstanding the variation in levels. These standards are reasonable for zoned lands characterised by suburban residential development such as the site location within Cappa in the area of the Kilrush Cappagh Settlement Plan included in the Clare CDP.
- 7.1.2. On review of the application drawings, it is not apparent that details provided are inaccurate as contended in the appeal. Condition No 8 attached to the planning authority decision provides for clarity in that there is no scope for alterations to the

levels within the site as this would not be authorised in the grant of permission. Minor adjustment to provide for appropriate gradients for the driveway and entrance is to be expected and is reasonable and it is noted that this is provided for within the condition.

- 7.1.3. It is also considered necessary, as is provided for among the conditions attached to the planning authority decision, for exempt development entitlements to be removed, to allow for further planning review in the event of possible future plans for further development on the site the given the variation in ground levels.
- 7.1.4. The view in the appeal that the dwelling should be occupied as a permanent place of residence and not rented out as tourist accommodation or used as a second (holiday) home is fully supported. It is reasonable that development on zoned land within the cul de sac and surrounding area be functional to creating and sustainable permanent residential communities. Condition No 3 attached to the planning authority decision addresses this matter and the concerns of the appellant party.
- 7.1.5. With regard to the visual impact of the overall dwelling form and design it is noted that generally, the plots have been developed on an individual basis and that there is no strongly defined homogenous dwelling typology. Nevertheless, the footprint of the proposed dwelling relates appropriately to the front and rear building lines of the adjoining properties on the cul de sac and, relative the proposed dwelling is not excessive in mass, scale and height or incompatible with the surrounding development by reason of the with regard to selection of materials, colours and finishes.

7.2. **Environmental Impact Assessment.**

Having regard to the minor nature of the proposed development and its location in a serviced inner urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.3. **Appropriate Assessment.**

Having regard to the scale and nature of the proposed development and to the serviced inner urban location, no Appropriate Assessment issues arise. The

proposed development would not 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. In view of the foregoing it is recommended that the planning authority decision be upheld and, that permission be granted, based on the draft reasons and consideration and conditions set out below.

9.0 Reasons and Considerations

Having regard to the zoning objective for the site, “existing residential” according to the Kilrush and Cappagh Settlement Plan, incorporated within the Clare County Development Plan, 2017-2023, to the site configuration the footprint of the proposed dwelling and the separation distances from boundaries and development on adjoining lands, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of adjoining properties by reason of overlooking or overshadowing, would not be visually incongruous or out of character with existing development, and, would 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 application as amended by the further plans and, lodged with the planning authority 30th May, 2019, except as may otherwise be required 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 following requirements shall be provided for and adhered to in the development:

- Finished floor levels shall correspond to the levels shown on the site layout plan lodged with the planning authority on 18th October, 2018 and shall not be modified without a prior grant of planning permission.
- Ground levels as shown on the site layout plan lodged with the planning authority on 18th October, 2018 shall not be altered to facilitate the construction of the proposed development other than to provide for the proposals for the construction of the driveway and hardstanding adjacent to the proposed dwelling.

Reason In the interest of clarity and the protection of the amenities of the area and adjoining properties.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, as amended, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: To allow for further planning review in the interests of the protection of the residential amenities of the area.

4. The applicant shall obtain water and waste water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

5. Details of materials, colours and textures of all external finishes which shall include the provision of samples for the proposed new roof shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

6. Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of the residential amenities of the area.

7. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with, "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interests of sustainable waste management.

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.

Jane Dennehy
Senior Planning Inspector

10th October, 2019.