



An
Bord
Pleanála

Inspector's Report ABP 305654-19

Development	Construction of house, connect to existing services and all associated site works.
Location	Barrackfield, Clogherhead, Co Louth
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	19377
Applicant	Peter Byrne
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	First Party
Appellants	Joe and Teresa Halpin
Observer(s)	None
Date of Site Inspection	27 th February 2020
Inspector	Brendan Coyne.

1.0 Site Location and Description

1.1. This site (0.2 ha) is located on the eastern side of the Barrackfield Road in Clogherhead village and comprises part of a large open field, currently in agricultural use. The roadside boundary of the site is defined with a low-rise stone wall at its northern end, a raised embankment, hedge and an agricultural entrance at its southern end. A 1.5 storey detached dwelling is located on lands adjoining the site to the north and a row of single storey dwellings is located opposite, on the western side of the Barrackfield Road. The site has a road frontage of c.53m. The ground level of the site slopes gradually downwards in a southerly direction. The Barrackfield Road is subject to a 50 kph speed limit.

2.0 Proposed Development

2.1.1. Application as lodged on the 20/05/2019 – Permission sought for the construction of the following;

- A detached 1.5 storey 4-bedroom dwelling (265 sq.m.),
- New vehicular access and driveway from the public road,
- Connection to existing services,
- Associated site works.

2.1.2. Revised Proposal as submitted by way of Significant Further Information on the 19/09/2019;

- Revised site boundary, all located within the lands zoned 'Residential New'.
- Roof ridge height of proposed dwelling reduced from 8.5m to 7.5m
- Depth of southern elevation reduced from 14.6m to 14m.
- Design changes to proposed window opes.
- External chimneys removed.

2.1.3. Documentation submitted includes;

- Legal agreement authorising consent to the applicant for the reduction in the height of the roadside hedge to enable the provision of 45m sightlines at the proposed new entrance.
- Revised Site Plan showing sightlines at the entrance to the site.
- Landscape Plan.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. Louth County Council granted permission for the proposed development subject to 4 no. standard Conditions.

3.1.2. **Planning Reports (26th June 2019 and 03rd October 2019)**

3.1.3. Further information was requested in relation to the following;

- Revise the proposal to ensure the red line boundary of the site is located solely within lands zoned 'Residential New'.
- Reduce the roof ridge height of the proposed dwelling from 8.5m to 7.5m.
- Reduce the depth of the southern elevation of the proposed dwelling.
- Redesign the proposed chimneys and window apertures.
- Submit a legal agreement enabling the provision of sightlines at the entrance to the site.
- Clarify the intention of the existing agricultural entrance.
- Submit a landscape plan

3.1.4. The Significant Further Information received was considered acceptable.

3.1.5. **Other Technical Reports**

Infrastructure Section: No objection subject to Conditions.

Irish Water: No objection subject to Conditions.

4.0 Planning History

4.1.1. *Application Site*

None for subject site.

5.0 Policy and Context

5.1. Development Plan

Louth County Development Plan 2015-2021 is the statutory plan for the area.

Zoning objective: The site is zoned “Residential New” which seeks “To protect and/or enhance existing residential communities and provide for new residential communities”.

Lands adjoining the site to the east are zoned an “Area of Outstanding Natural Beauty”.

Policy SS 9 seeks “To promote and facilitate limited development within Level 3 Settlements that is commensurate with the nature and extent of the existing settlement, to support their role as local service centres and to implement the policies and objectives relative to each settlement as provided for in Appendix 2, Volume 2 (a)”.

Strategic Objective 1 seeks to “Protect and support Level 3 settlements as local Service centres in the rural area and facilitate limited development that is commensurate with the nature and extent of the existing settlement and the availability of public services and facilities”.

Policy CLOG 2: seeks to promote and facilitate limited residential development commensurate with the nature and scale of Clogherhead in the village core, utilising brownfield sites and infill opportunities in order to rejuvenate and consolidate the village, in compliance with the Core Strategy.

5.2. **Natural Heritage Designations:**

5.2.1. Clogherhead SAC (Site Code: 001459) is located 0.2km to the south of the site.

5.3. **EIA**

5.3.1. 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 at preliminary examination 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 Joe and Teresa Halpin, who resides at a house opposite the site, on the western side of the Barrackfield Road. The main grounds of appeal are summarised as follows;

- The appellants own part of the roadside bank/hedge of the application site.
- The proposed development provides for the creation of a new agricultural entrance along the roadside hedge, which would encroach upon the appellants property. The appellants have given no consent for this.
- The appellants request that the proposed development be revised to exclude their property.

6.1.2. Documentation submitted with the appeal includes the following;

- Land Registry map (folio no. LH11584) showing the appellants property outlined in red.
- Site layout plan showing the boundary of the application site outlined in red and the extent of appellants property demarcated.

6.2. Applicant Response

6.2.1. The Applicant's response is as follows;

- The extent of the boundary of folio no. LH11584 extends to the road edge of the application site. The roadside hedge in question forms part of the applicant's father's lands, contained in folio LH11800. The applicant believes that he is entitled to remove the hedge to achieve entrance sightlines required by Louth County Council.
- The road between both folios is a public road and is maintained and in the control of Louth County Council, who conditionally granted permission for the proposed development.

6.3. Planning Authority Response

6.3.1. The Planning Authority confirms that it has no further comment to make.

6.4. Observations

None received

7.0 Assessment

7.1. The development of a residential dwelling at this location is permitted in principle, in accordance with the "Residential New" zoning of the site. Having reviewed the drawings / documentation submitted, it is my view that the layout and design of the proposed development would not detract from the visual or residential amenity of the surrounding area and complies with Development Plan residential standards. The proposal is acceptable in terms of traffic safety and convenience.

7.2. Having regard to the Grounds of Appeal, the main issue for consideration is Land Ownership. This is addressed below.

7.3. Land Ownership

- 7.3.1. The site of the proposed development has a road frontage of c. 53 metres along the eastern side of the Barrackfield Road. The proposed dwelling would be accessed via an existing agricultural entrance and proposed works provide for the creation of a new agricultural entrance along the southern end of the site's roadside boundary, to serve the existing agricultural field.
- 7.3.2. The third-party appellants have appealed the grant of permission for the proposed development on the grounds that the proposed new agricultural entrance would involve works to the roadside hedge, which the appellants claim is within their ownership. The applicant contests the grounds of appeal, stating that the roadside hedge is within the applicant's father's ownership and that the applicant is entitled to remove the roadside hedge, to enable the provision of required sightlines.
- 7.3.3. In consideration of this issue, Section 5.13 of the Development Management Guidelines (2007) refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000 (as amended). Section 34(13) of the Planning and Development Act states that 'a person is not entitled solely by reason of permission to carry out any development'.
- 7.3.4. Having regard to the above, and notwithstanding the absence of absolute certainty that the applicant has sufficient legal interest to carry out proposed works to the roadside hedge, I consider it inappropriate to refuse permission for the proposed development on these grounds. I recommend, therefore, that the appeal should not be upheld in relation to this issue.

7.4. Screening for Appropriate Assessment

- 7.4.1. Having regard to the nature of the proposed development and its location within an existing village on serviced lands and the absence of a direct connection between the proposed works and the nearest European site, the Clogherhead SAC (Site Code

001459), I am of the opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

8.1. Having regard to the residential land use zoning of the site, the pattern of development in the area, the size of the site and the layout and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not adversely impact on the visual or residential amenity of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1.	<p>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 particulars submitted on the 20th May 2019 and the 17th September 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>

3.	<p>The applicant or developer shall enter into a water connection agreement with Irish Water prior to the commencement of this development.</p> <p>Reason: In the interest of public health.</p>
5.	<p>(i) Any entrance gates shall open inwards towards the site and not outwards onto the public road.</p> <p>(ii) No objects, structures or landscaping shall be placed or installed within the 45 metres sightlines at the entrance to the site, taken from a distance of 3 metres back from the edge of the road.</p> <p>(iii) All works shall be carried out at the developer's expense and to the requirements of the planning authority.</p> <p>Reason: To ensure a satisfactory standard of development and in the interest of traffic safety.</p>
7.	<p>All public service cables to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.</p> <p>Reason: In the interest of visual amenity.</p>
8.	<p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0800 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
10.	<p>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</p>

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.

Brendan Coyne
Planning Inspector

03rd March 2020