



An
Bord
Pleanála

Inspector's Report ABP-305759-19

Development

To retain the existing dwelling house on site within revised boundaries, and to construct a dwelling house on the newly created plot, including a connection to the public sewer and all necessary site works.

Location

Murreagh, Ballydavid, Dingle, Co. Kerry.

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

19/625

Applicant(s)

Brian O'Shea & Grainne Twomey

Type of Application

Retention permission & permission

Planning Authority Decision

Grant, subject to 14 conditions

Type of Appeal

Third Party -v- Decision

Appellant(s)

Noel Russell

Observer(s)

None

Date of Site Inspection

6th December 2019

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in Ballydavid, a small village 1 km to the north of Murreagh, another village on the eastern shoreline of Smerwick Bay, which is towards the foot of the Dingle Peninsula. The latter village is on the R559, which links it to Dingle Town, some 8 km to the SE. These two villages are in turn linked by the local road network. The site is accessed off this network and a driveway serves the existing bungalow.
- 1.2. The site itself is of regular shape and it extends over an area of 0.267 hectares. This area disaggregates between the existing house plot that would be retained in a smaller form (0.139 hectares) and a proposed house plot to the rear (0.128 hectares). The existing bungalow on the former plot faces NW/SE. It is accessed off the adjoining local road to the NW and this bungalow is served by front and rear gardens that are down to grass. Earthen mounds denoted the site's boundaries.
- 1.3. The site is at the edge of the recognised village. It is accompanied by other dwellings to the SE and the SW, the majority of which appear to be holiday homes. These dwellings typically have road frontage, although one to the SW, one house plot removed from the site, occupies a back-land position. The aforementioned local road extends to the SW to serve a pier.

2.0 Proposed Development

- 2.1. The proposal would entail the following two elements:
 - The retention of the existing four-bedroomed bungalow (129 sqm) on a smaller house plot, i.e. it would be truncated mainly to the rear, and
 - The construction of a new three-bedroomed bungalow with a first floor in the roof space (162 sqm) on a SW/NE axis. This bungalow would be accessed by means of a new driveway, which would pass to the SW of the existing bungalow and lap around the NW side of the proposed one to serve its rear elevation.
- 2.2. The proposed bungalow would be served by the public water mains and foul water sewerage system. Surface water would discharge to a soak pit. The existing earthen mounds would be retained to the exposed boundaries of this house plot and one

would be added along the new internal common boundary that would be created by means of the sub-division of the site. Likewise, a timber post and rail fence would separate the two parallel driveways.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission granted subject to 14 conditions, including an occupancy one, one forbidding use as a holiday home or a second home, and one requiring that the dwelling house be re-sited a further 5m from the south western boundary of the site, "To integrate the development into the surrounding area and in the interest of protecting the residential amenities of adjoining properties.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was sought with respect to the following:

- Clarify when the existing dwelling house was built,
- Clarify if the applicant's mother was the applicant/original occupier of this dwelling house,
- Clarify which is the planning permission for it, and
- Revisions to the siting/orientation invited.

3.2.2. Other Technical Reports

- Irish Water: No objection, subject to standard advice.

4.0 Planning History

- 01/1342: Dwelling house: Permitted, subject to 14 conditions, the third of which stated the following:

Only one dwelling house shall be erected on the site as shown outlined in red on the site map received on 11th May 2001.

Reason: To regulate and control the layout of the development.

- Pre-planning consultation 4th June 2019

5.0 Policy and Context

5.1. Development Plan

Under the Dingle Functional Area Local Area Plan 2012 – 2018 (LAP), the site is shown as lying within the development boundary around Ballydavid and a pedestrian pathway is shown as being proposed along the local road from the village centre to, effectively, the site.

5.2. Natural Heritage Designations

Dingle Peninsula SPA (004153)

5.3. EIA Screening

Under Items 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, where more than 500 dwelling units would be constructed, the need for a mandatory EIA arises. The proposal is for the development of a single dwelling house. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall so far below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Noel Russell of Kilcooly, Ballydavid

- The proposal would entail the provision of a new access off a local road, which is subject to an 80 kmph speed limit. This road passes through a bend

to the NE of this access and so the requisite 120m sightline would not be available. Use of this access would thus be hazardous.

- Use of the local road is hazardous, as it has a width of only 3m and so vehicles cannot pass one another in opposite directions.
- The proposed dwelling house would be sited to the rear of an existing one and so it would constitute disorderly back land development. This dwelling house would lead to overlooking of neighbouring residential properties and thus a loss of privacy and depreciation of their value.
- The sub-division of the existing housing plot would establish an adverse precedent.
- The proposal would contravene condition 3 attached to the permission granted to application 01/1342 for the existing dwelling house.

6.2. Applicant Response

None

6.3. Planning Authority Response

- Objectives OO-48 & 49 of the LAP are cited, which, variously, refer to the siting of new development within development boundaries and the encouragement of compact and sustainable villages by “ensuring that new development is contiguous with existing development and makes effective use of back land and infill sites.”
- The proposal would be sited within a village and on a serviced site. Its back land position would be preferable to that of development on a site outside the village, which would add to ribbon development and thereby be unsustainable.
- The proposal would be compatible with residential amenity and road safety.

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the LAP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this proposal should be assessed under the following headings:

- (i) Land use,
- (ii) Amenity,
- (iii) Traffic and access,
- (iv) Water, and
- (v) Stage 1 Screening for AA.

(i) Land use

- 7.2. Under the LAP, the site is shown as lying within the development boundary around the village of Ballydavid and in an area that is unzoned. The site presently accommodates a single dwelling and, under the proposal, an additional dwelling would be added. Thus, an intensification of the existing residential use would occur. Adjoining lands to the SE and the SW have been developed to provide dwellings/holiday cottages/second homes.
- 7.3. Overall Objective OO-46 of the LAP undertakes to “Ensure that all residential units are permanent places of residence.” The applicants would reside permanently in the proposed dwelling and so this Objective would be met. Condition 5 attached to the draft permission reflects its provisions.
- 7.4. The appellant has drawn attention to condition 3, which was attached to the permission (01/1342) for the existing dwelling on the site. This condition made clear that only one dwelling was to be built on the site, in order “To regulate and control the layout of the development.”
- 7.5. The Planning Authority has responded by citing Overall Objectives OO-48 & 49. The former seeks to ensure that all new development occurs within the development

boundary and the latter seeks to encourage a compact village structure by ensuring that “new development is contiguous with existing development and makes effective use of backland and infill sites.” An example of such an approach exists to the rear of the dwelling “two doors down” from the site to the SW, where a second dwelling has been constructed to the rear of the original one on the site. Accordingly, there appears to have been a change in policy and approach since the said condition 3 was attached and so a material change in planning circumstances has transpired such that this condition need no longer be considered as binding.

- 7.6. The appellant has also drawn attention to the risk that an adverse precedent may be established. However, as noted above, there is a comparable dwelling nearby in a backland position and, in practise, there would be only one other directly comparable site within the development boundary, i.e. the adjoining site to the SW.
- 7.7. I conclude that, subject to the dwelling being conditioned for use as a place of permanent residence, there is no in principle land use objection to it.

(ii) Amenity

- 7.8. The proposal would entail a contraction in the extent of garden area that would accompany the existing dwelling on the site. Such contraction would affect mainly the existing rear garden, which has, at present, an area of c. 1518 sqm and which would have an area of c. 448 sqm.
- 7.9. The proposed house plot would comprise the SE and central portions of the said rear garden with the NW portion being retained for the use of the existing dwelling, in which the applicant Brian O’Shea’s mother resides. An earthen mound would denote the common boundary between the retained and the proposed house plots. This mound would effectively screen the rear elevation of the existing dwelling from the front elevation of the proposed dwelling.
- 7.10. Notwithstanding the foregoing paragraph, the Planning Authority requested, under further information, that the proposed dwelling be re-orientated to present a side elevation to the said earthen mound. Furthermore, under condition 6 attached to the draft permission, the dwelling would be setback 5m more from the SW boundary of the site, “To integrate the development into the surrounding area and in the interest of protecting the amenities of the adjoining properties.”

- 7.11. During my site visit, I observed that dwellings and gardens in Ballydavid tend to have an open feel by virtue of the means of enclosure to house plots, e.g. earthen mounds, trimmed hedgerows, low walls, and low timber post and rail fences. Thus, there is a greater correspondence between dwellings/second homes/holiday cottages than is customary elsewhere in the country. The resulting open character of the village comes with the corollary of lower privacy than would be normal elsewhere.
- 7.12. In the light of the foregoing paragraphs, I am not persuaded that the Planning Authority's intervention to re-orientate the dwelling was needful. In this respect, I note that, as originally proposed, the front elevation would have faced NW and that, as this orientation is exhibited by the dwelling "two-doors down", its replication would serve the objective of integration. I also note that overlooking from habitable room windows in the front would be relieved by a proposed earthen mound. Habitable room windows would be inserted in the side elevations, too, but not in the rear one. The SW side elevation and the SE rear elevation would be c. 6m and c. 4.5m from their corresponding boundaries. The former would overlook the extremity of the rear garden to the adjoining house plot, while the latter would be adjacent to the NW corner of a holiday cottage, 11m away.
- 7.13. I consider that, while the originally proposed orientation of the proposed dwelling should be retained, more comfort relationships with the rear garden to the SW and the holiday cottage to the SE could be achieved by re-siting this dwelling 3m further away from the site's SW and SE boundaries. Thus, neighbouring amenities would benefit from the ensuing greater separation distances.
- 7.14. I conclude that the sub-division of the site into two house plots would be compatible with the amenities of the existing dwelling. I conclude, too, that, subject to reversion to the original orientation of the proposed dwelling and its re-siting further away from the site's SW and SE boundaries, the proposed dwelling would be compatible with the amenities of the area.

(iii) Traffic and access

- 7.15. The proposal would generate an increase in traffic movements to and from the site. A new access off the adjoining local road to the NW would be formed alongside the existing access to the site. This access would be accompanied by a driveway that

would be laid out beside the SW boundary and which would lap around the front and the NE side of the proposed dwelling to provide a parking and turning area. Thus, off street parking and forward gear manoeuvres to and from the site would be facilitated.

- 7.16. The appellant has drawn attention to the single lane form of the local road, its 80 kmph speed limit and the presence of a bend in this road to the N of the site. He expresses concern that the requisite sightlines would not be available at the proposed access/egress and so its use would be hazardous, as would the generation of additional traffic on a single lane road.
- 7.17. During my site visit, I observed that the local road network comprises roads of single and double lane form. Thus, while the local road that passes the site is of single lane form, 100m to the SW it forms a "T" junction with the local road between Murreagh and Ballydavid, which is of double lane form. During my site visit, I observed that traffic levels on this local road were low and that, while the speed limit appears to be as stated by the appellant, in practice, speeds are lower than that. Passing to the SW of the site is facilitated by the incidence of splayed/recessed site entrances and generous grass verges. Immediately to the NE, there is a fork in the road whereby the local road bends away from the site and a more minor road meets it at acute/obtuse angles. Due to the said bend, the sightline to the NE would be reasonable and, due to the low-level means of enclosure to house plots, the sightline to the SW would be reasonable, too. Traffic egressing from the more minor road would be less visible, but then their speeds would be low, as such traffic would stop/yield on reaching the local road, which passes the site.
- 7.18. I conclude that the traffic generated by the proposal would be capable of being accommodated on the local road network and that the proposed access to the site would be satisfactory.

(iv) Water

- 7.19. The proposed dwelling would be connected to the public mains water supply and the public foul water sewerage system. Irish Water has raised no objection to the new connections that would be ensue. Surface water would discharge to a soak pit.
- 7.20. The OPW's flood information maps do not show any identified flood risk attendant upon the site.
- 7.21. The proposal raises no water issues.

(v) Stage 1 Screening for AA

- 7.22. The site does not lie within a Natura 2000 site. The nearest such site is the Dingle Peninsula SPA, the closest portions of which lie along the coast to the north and to the south of Ballydavid. The site lies in a fully serviced village. I am not aware of any source/pathway/receptor route between it and the said SPA or any other Natura 2000 sites in the wider area.
- 7.23. Having regard to the nature and scale of the proposal and the nature of the receiving environment, no Appropriate Assessment issues arise, and it is not considered that the proposal 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. That retention permission and permission be granted.

9.0 (i) Reasons and Considerations

Having regard to the Dingle Functional Area Local Area Plan 2012 – 2018, it is considered that, subject to a condition, the proposed retention of the existing dwelling on the site within revised boundaries would, in principle, be appropriate from land use and amenity perspectives. Such retention would thus accord with the proper planning and sustainable development of the area.

(ii) Reasons and Considerations

Having regard to the Dingle Functional Area Local Area Plan 2012 – 2018, it is considered that, subject to conditions, the proposal would, in principle, be appropriate from a land use perspective. Subject to the retention of the original orientation and some minor re-siting, the proposed dwelling would be compatible with the amenities of the area. Traffic generated would be capable of being accommodated on the local road network and the proposed access arrangements would be satisfactory. Water supply and drainage arrangements would be in order and no Appropriate Assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

10.0. (i) Condition

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| 1. | <p>The existing dwelling on the site shall be retained within the revised boundaries shown in the plans and particulars lodged with the application</p> <p>Reason: In the interest of clarity.</p> |
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(ii) Conditions

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| 1. | <p>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.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>The proposed development shall be amended as follows:</p> <p>(a) The dwelling shall be orientated as originally proposed.</p> <p>(b) The dwelling shall be re-sited in a position 3 metres further away from both the south eastern and the south western boundaries of the site. Any consequential alterations to the driveway and parking area shall be made explicit.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity.</p> |
| 3. | <p>The proposed dwelling shall be only used as a place of permanent residence and not as a holiday home or second home.</p> <p>Reason: In order to comply with Objective OO-46 of the Local Area Plan.</p> |

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| 4. | <p>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.</p> <p>Reason: In the interest of visual amenity.</p> |
| 5. | <p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p> |
| 6. | <p>The applicant or developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p> |
| 7. | <p>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 hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p> |
| 8. | <p>(a) Prior to the commencement of occupation of the proposed dwelling, the proposed earth mound, which would be sited between this dwelling and the existing dwelling to the north west, shall be laid out and formed and, thereafter, retained in-situ for the duration of the said dwellings on their respective sites.</p> <p>(b) The existing earth mounds along the site boundaries shall be retained for the duration of the existing and proposed dwellings on their respective sites.</p> <p>Reason: In order to safeguard the residential amenities of the area.</p> |
| 9. | <p>The developer shall pay to the planning authority a financial contribution of €2,240 (Two thousand, two hundred and forty euro) in respect of public</p> |

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. The application of any indexation required by this condition 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.

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.

Hugh D. Morrison
Planning Inspector

5th February 2020