



An  
Bord  
Pleanála

## Inspector's Report ABP-306313-20

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<b>Development</b>	Relocation of roadside boundary walls and 3 vehicular entrances, widening of public road, and all associated works
<b>Location</b>	Caherdaniel West, Bantry, County Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	19/443
<b>Applicant(s)</b>	Kieran O'Sullivan Construction Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sam Flynn
<b>Date of Site Inspection</b>	3 <sup>rd</sup> March 2020
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

- 1.1. The site of the proposed development is located to the north-east of the town of Bantry in West Cork within the 60kph speed limit zone of the town. The site comprises three residential properties consisting of detached dormer houses and their curtilages. The frontages of these properties abut the adjoining local road L-4711-0 and consist of block walls with individual vehicular entrances. The site is flanked by fields to the west and to the east by an Irish Water reservoir. The land is undeveloped on the opposite side of the local road.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the relocation of roadside boundary walls and three vehicular entrances to existing houses, the widening of the adjacent public road to 5.5 metres, the construction of a 1.5 metre wide footpath and 300mm wide verge, and all associated works.
- 2.2. Details submitted with the application included letters of agreement from the owners of the residential properties whose frontages are proposed to be altered by the proposed development.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 24<sup>th</sup> October 2020, Cork County Council decided to grant permission for the proposed development subject to 7 conditions.

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

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

The Planner noted the planning history of the site and on lands in the vicinity, the policy context, and the Area Engineer's report. Reference was made to the intention of the planning authority to have connectivity between proposed housing estate development and the town and that the footpath in the current application forms part of this. A request for further information was recommended in relation to a revised

entrance arrangement, sightlines, increasing the footpath width, connectivity across the frontage of the neighbouring reservoir and surface water details.

### 3.2.2. Other Technical Reports

The Area Engineer submitted the application should be read in conjunction with Planning Application 19/444 for 44 houses on an adjoining site. It was noted that the proposal seeks to facilitate the 34 house development. It was further noted that the proposal would rebuild existing recessed entrances as in-line entrances and this was considered questionable, given the expected increase in traffic volumes associated with the adjoining housing proposal and future housing development on zoned lands. The adequacy of sightlines was queried. The lack of proposals to provide a footpath across the front of an adjoining Irish Water reservoir property was also raised. It was acknowledged that the proposed development is remote from the existing public footpath and public lighting services along the local road. A request for further information was recommended in relation to providing recessed entrances, sightline details, further set back, and clarity on surface water drainage proposals.

A further information request was issued by the planning authority on 23<sup>rd</sup> August 2019 and a response was received from the applicant on 2<sup>nd</sup> October 2019. The following reports were then received:

The Area Engineer had no objection and included a schedule of conditions.

The Planner recommended that permission be granted subject to conditions.

## 4.0 Planning History

I note from the Planner's report that the houses on the site were subject to permissions in the 1970s and the 1990s. A schedule is also in the report setting out details of planning applications for development in the general location in which the development is proposed.

## 5.0 Policy Context

### 5.1. West Cork Municipal District Local Area Plan 2017

#### Bantry

#### *Zoning*

The site of the proposed development is located within the settlement boundary of the town and are zoned 'Existing Built-up Area'.

#### *Specific Development Objectives – Residential*

These include:

**BT R-02:** Medium B Density Residential Development including some serviced sites. Provision of centralised open space/amenity area, pedestrian/cycling linkages to adjoining residential sites and the Mealagh River Valley.

This objective applies to 19.5 hectares of land to the east of the appeal site on the northern side of the local road.

**BT R-04:** Medium B Density Residential Development with provision for a neighbourhood centre and community facilities, including 16 classroom primary school on the western part of the lands and fronting onto existing public roads. Provision of pedestrian/cycling to surrounding existing and planned residential areas and the Mealagh River Valley.

This objective applies to 10.7 hectares of land to the west of the appeal site on the northern side of the local road.

**BT R-05:** Medium B Density Residential Development including serviced sites. Provision of pedestrian/cycling linkages to adjoining residential sites.

This objective applies to 3.5 hectares of land to the south of the appeal site on the opposite side of the local road.

## 5.2. **Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

## 5.3. **EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The grounds of the appeal may be synthesised as follows:

- The nature of the proposed development was materially altered following the issuing of a request for further information by the Council without his consent to such an extent that it now materially and negatively affects his enjoyment of his property.
- The applicant indicated to the Council by way of further information that a 2.0m wide footpath was proposed to be provided along with the already proposed widening of the public road to 5.5m. The applicant submitted a drawing with the further information response showing road widening taking place on the appellant's lands on the opposite side of the road from the proposed footpath.
- Having regard to the site layout drawings and Condition 1 of the planning authority's decision, the decision of the local authority to grant permission is *ultra vires*.
- There is an obligation on the Board to invalidate the application.

- The planning authority can only impose conditions in respect of land under the control of the applicant.
- The conditions imposed must be enforceable.
- The planning authority can only impose conditions that are required for the development.
- It is ultra vires for a planning authority to seek to circumvent the compensation granting provisions of the Planning and Development Act in favour of the non-compensation sections of the Act.

## 6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

- The decision to permit the development only applies to works which were proposed by the applicant on land within the revised red line boundary, i.e. the curtilage on the northern side of the road and the strip along the frontage of the Irish Water site for which written consent was obtained. There is no intention by the applicant to widen the public road to the south by encroaching on the appellant's lands.
- Condition 1 is a standard condition to clarify whether the development should be carried out as originally proposed or in accordance with amendments submitted as further information. It does not require the applicant to enter the appellant's property.
- It is remarkable that no consideration was given to deleting Condition 1 and allowing the development to proceed on the basis of the original submission or amending the text of Condition 1 to clarify which works to the public road are to be carried out by the applicant and the planning authority.
- Condition 1 should be interpreted in the context of the request for further information. This condition did not require the applicant to carry out all works envisaged by the planning authority to the public road.

- The applicant would have no objection to Condition 1 being reworded to clarify that the works proposed by the applicant along the road frontage of the existing dwellings and the footpath and boundary treatment proposed along the road frontage of the Irish Water site shall be carried out by the applicant in accordance with the plans and particulars lodged with the application as amended by the documents/drawings received by the planning authority on 2<sup>nd</sup> October 2019.

### 6.3. Planning Authority Response

The planning authority's response to the appeal may be summarised as follows:

The Planner submits:

- No submissions were ever made by the landowner to this planning application.
- The appeal is without substance or foundation and is frivolous and falls under section 138 of the Planning and Development Act.
- Conditions have not been imposed that are *ultra vires*.
- No development has been proposed on the appellant's lands.
- There was no requirement to advertise the further information as 'significant further information'.
- The Area Engineer met with the applicant's agent before the response to the further information was received and submits a rebuttal to the points made on behalf of the appellant.

The Area Engineer submits:

- There is nothing in the seven conditions attached to the grant of permission that permits development outside the site outlined in red in the drawings.
- The increased width of the footpath from 1.5m to 2.0m is accounted for within the original site outlined in red. There is no material change to the application site.
- It is only the possible future widening of the public road that may have an impact on the appellant's land.

- The applicant has submitted no proposals to widen the road.
- Removing/relocating the appellant's roadside boundary does not form part of the application description nor part of the conditions applied.
- The applicant cannot carry out road improvements such as road widening on lands he doesn't own, has no consent for and does not have planning permission. This is the road authority's responsibility.
- It is not the intention of the planning authority to suppress then rights of the appellant.
- Should the development of the nearby site for 34 houses go ahead, the road authority may initiate consultations with the appellant in relation to the acquisition of land required for road widening purposes.

As an addendum, the Area Engineer comments on references made on the drawing submitted by way of further information. It was also submitted that the provision of a 2.0m wide footpath by the applicant within his site was to be the initial phase of the provision of a 3.0m shared space, all on the applicant's side of the public road. It was concluded that the road width remains unchanged until such time as the Council carries out road improvement works, which may include the purchasing of land to progress the works.

#### **6.4. Further Responses**

The appellant submitted that he did not concur with the views expressed in the planning authority's response to his appeal and reiterated his concerns raised in the appeal submission.

### **7.0 Assessment**

7.1. My considerations on the proposed development and the issues the subject of the appeal are as follows:

- The proposed development, comprising the relocation of roadside boundary walls and three vehicular entrances to existing residential properties, the installation of a 2.0m wide footpath and 300mm verge, and all associated works, is proposed to be developed within the confines of the site outlined in



red in the drawings submitted to the planning authority with the original application and by way of further information.

- I note that the applicant also sought permission to widen the adjacent public road. The planning authority has contended that the applicant has submitted no proposals to widen the road, while arguing that road improvements such as road widening are the responsibility of the roads authority.
- There are differences between Drawing No. 003 Rev H (i.e. the proposed Site Layout submitted with the initial planning application) and Drawing No. 003 Rev I (i.e. the proposed Site Layout submitted by way of further information) in relation to the representation of the southern side of the local road. It is evident that the latter shows a reduction in width of the existing sod and stone ditch along the southern side of the road.
- It is apparent that the applicant has insufficient legal title to undertake works to the southern side of the local road.
- The appellant's concerns, leading to the making of an appeal, are reasonable in light of:
  - a) the proposals shown in the further information,
  - b) the planning authority's expressed intent to seek a 3.0m wide "shared space" footpath at this location, and
  - c) the lack of clarity by the planning authority in explaining, through this planning application process, the methods by which it seeks to achieve the delivery of a 3.0m wide "shared space" footpath.
- The provision of a footpath of adequate width is an essential infrastructural component to allow for the delivery of further housing at this serviced location, i.e. facilitating appropriate connectivity with the town of Bantry. It would be wholly in keeping with the zoning and Special Development Objectives for this area of the town. It would clearly facilitate connectivity for future development of land for residential purposes to the east.
- There are no objectives in the West Cork Municipal District Local Area Plan that seek the delivery of a 3.0m wide "shared space" footpath at this location.

7.2 Overall, based upon the details in the application and the submissions to date, I consider the works proposed within the confines of the site outlined in red to be acceptable, constituting development that would facilitate and support the orderly and sustainable development of housing in this area. I note that the appellant has no objection to such proposed works within the confines of the appeal site. Acknowledging this, I submit to the Board that appropriately worded conditions should sufficiently address the issues raised.

## 8.0 Recommendation

8.1. I recommend that permission be granted subject to the following reasons, considerations and conditions.

## 9.0 Reasons and Considerations

Having regard to the limited scale of the proposed development and its containment within the confines of the existing site, it is considered that the proposed development would not adversely impact on the amenities of adjoining properties, would be consistent with the provisions of the West Cork Municipal District Local Area Plan 2017, and would otherwise be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The proposed development shall consist solely of the relocation of roadside boundary walls and the three vehicular entrances to the existing houses and the construction of a 2.0 metre wide footpath and 300mm wide verge, and associated works within the confines of the site as outlined in red in the Site Layout Plan submitted to the planning authority on 2<sup>nd</sup> October 2019.

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

2. Drainage arrangements shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of orderly development.

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Kevin Moore  
Senior Planning Inspector

5<sup>th</sup> March 2020