



An
Bord
Pleanála

Inspector's Report ABP-306938-20

Development	Retention of dwelling as constructed and all associated site works.
Location	Scilly, Kinsale, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	20/04001
Applicant(s)	John & Margaret Buckley
Type of Application	Retention permission
Planning Authority Decision	Grant, subject to 2 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Henry Dorman
Observer(s)	None
Date of Site Inspection	21 st May 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located centrally within the short peninsula of Scilly, which extends westwards into the inner harbour of Kinsale. This site is on rising land on the inner side of a road that loops around this peninsula. It lies within a residential area, which is punctuated by several public houses and restaurants. To the west of the site lies a cluster of historic buildings and structures on the waterfront, which are centred on “Raffeen” Country House.
- 1.2. The site is of triangular shape and it extends over an area of 0.068 hectares. This site is in the process of being redeveloped: The new dwelling house, which is the subject of the current application, is at advanced stage of construction. It is bound to the north west by the aforementioned loop road, to the north east by a two-storey semi-detached dwelling house and its rear garden, and to the south by a narrow strip of land beyond which lies a row of two storey attached dwelling houses.

2.0 Proposed Development

- 2.1. The proposal is for the retention of a modern three-storey detached dwelling house (479.2 sqm) on the site, as constructed. The submitted plans show the following changes from the plans that were permitted under application 15/5660:
 - a) The siting of the dwelling house has been setback c. 400mm on the site,
 - b) The wall to the rear of the two car parking spaces has been “squared-off” rather than being set at a diagonal,
 - c) At first floor level in the front elevation, a smaller window has been installed to serve the landing and a new window has been added to serve the main bathroom,
 - d) At first floor level in the NE side elevation, two obscure glazed windows towards the centre of this elevation have been installed in positions further apart from one another and to a slightly larger specification,
 - e) At second floor level in the NE side elevation, two obscure glazed windows towards the centre of this elevation have been installed in positions slightly further apart from one another and to a slightly larger specification, and

- f) The height of the dwelling house has been raised by a maximum of 474mm, as a result of the incorporation of a warm roof construction under Part L of the Building Regulations.

3.0 Planning Authority Decision

3.1. Decision

Retention permission granted subject to 2 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See decision.

3.2.2. Other Technical Reports

- Irish Water: No objection, standard advice.
- Cork County Council
 - Area Engineer: No objection.

4.0 Planning History

- 08/9421: Outline for large two-storey dwelling house: Permitted.
- 15/5660: Contemporary dwelling house: Permitted, subject to 10 conditions, the third of which states the following:

The design and external finishes (including colour/texture) of the proposed dwelling and basement walls shall be exactly as shown and specified in the revised particulars lodged as further information on 29th October 2015, and no variations shall be undertaken without first obtaining the written consent of the Planning Authority.

Reason: In the interests of visual amenity on a prominent site and because the bespoke nature and success of the design hinges on the successful implementation of the materials selected and proposed.

- EF19003: Enforcement enquiry dated 11th January 2019.

5.0 Policy and Context

5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), Kinsale is identified as one of five ring towns that encircle Cork City.

Under the Bandon-Kinsale Municipal District Local Area Plan 2017 (LAP), the site is shown as lying within the development boundary around Kinsale and in an existing built-up area.

Policy Objective HE 4-6 of CDP addresses the design and landscaping of new buildings and under Item (c) it recognises the place for fostering an innovative approach to design that acknowledges the diversity of suitable design solutions.

5.2. Natural Heritage Designations

James Fort pNHA (001060)

5.3. EIA Screening

Under Items 10(b)(i) & (iv) 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 and where 10 hectare-urban sites would be developed, the need for a mandatory EIA arises. The proposal is for the retention of a single dwelling house on a 0.068-hectare site. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall 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

The appellant begins by summarising the planning history of the site. He draws attention to the original outline permission, which was for a two storey “traditional

house” in contrast to the three storey contemporary house, which was subsequently permitted and developed. He also draws attention to the importance that was placed upon finishes in ensuring the visual success of this contemporary house.

The appellant precedes to cite the following grounds of appeal:

- The description of the development failed to give sufficient information upon its “nature and extent”. Thus, the details at issue cannot be ascertained from this description.
- The draft retention permission does not address finishes and so it is unclear whether the conditioning of finishes under the parent permission continues to apply.
- Likewise, the draft retention permission does not address surface water drainage and so it is unclear whether the conditioning of such drainage under the parent permission continues to apply. In this respect the ambiguity over previous compliance means that flooding may occur at adjoining properties, including the appellant’s. Rock instability may also ensue.
- Attention is drawn to the historic buildings/structures within the vicinity of the site, which are identified in the NIAH, i.e. an office, a dry dock, a pier/jetty, and “Raffeen” Country House (reg. nos. 20851042 – 45). The concern is expressed that the visual impact of the dwelling house, proposed for retention on the site, upon the latter Country House especially, has not been adequately assessed.

6.2. Applicant Response

The applicants begin by drawing attention to the fact that they have lived in Kinsale all their lives and that they work in the town and they and their children are involved in local sports clubs.

The applicants set out the background to the current application. Thus, under the Building Regulations, a Certificate of Compliance on Completion from the Building Control Authority requires that a check be made on, amongst other things, any outstanding planning enforcement notices or conditions, including deviations from the permitted plans.

The applicants sought to address, by means of correspondence with the PA dated February 2019 and a meeting with the appellant, the concerns that were being raised over the new dwelling house, which is under construction. They review this correspondence and express the opinion that it covers the same issues as are now raised under the current appeal.

The applicants proceed to respond to the grounds of appeal as follows:

- Impact on adjacent properties

Attention is drawn to “Raffeen” Country House, which adjoins the appellant’s dwelling house. This House is neither owned nor occupied by him, and the owner/occupier has not raised any objection to the proposal.

The applicants have submitted a detailed design statement to aid understanding of the new dwelling house, which would be lower than the previously permitted two dwelling houses for the site.

- Retention – works have not been completed

The dwelling house has yet to be completed and so, for example, the cedar cladding has yet to be installed. Progress in this respect has been impeded by recent Covid-19 restrictions.

- Surface water drainage is not presented

Attention is drawn to the three surface water conditions that were attached to the permission granted to application 15/5660. These conditions relate to the provision of a roadside drain and they will be complied with towards the end of the construction phase. If this drain is connected to the public sewer, then any run-off flood risk issue would be addressed.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

6.5. Further Responses

None

7.0 Assessment

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

- (i) Legalities,
- (ii) Visual and residential amenity,
- (iii) Parking,
- (iv) Water, and
- (iv) Screening for Stage 1 AA.

(i) Legalities

7.2. The appellant draws attention to the description of the proposal. He expresses the concern that this description fails to state the nature and extent of this proposal.

7.3. The said description states, "Permission for retention of dwelling as constructed (change of plans as granted under planning ref. no. 15/5660) and all associated site works."

7.4. I consider that this description makes clear the nature of the proposal, i.e. the retention of dwelling as constructed, and it refers to its extent by referring to the change of plans that has ensued.

7.5. The Planning Authority (PA) validated the application and, in so doing, it accepted the accompanying description of development. Validation is the PA's sole responsibility and so the Board does not have a role in reviewing this function.

7.6. The appellant also draws attention to the external finishes and he asks the question as to whether or not condition no. 3 of the permission granted to application 15/5660 would continue to pertain.

7.7. The submitted plans replicate those previously permitted with respect to the specification of finishing materials, except for notation that refers to "limestone"

rather than “render” as an upper floor finishing material. I consider that this notation maybe mistaken, as the permitted plans show the specification of limestone predominantly at ground floor level. Likewise, the expanses of timber cladding are cited as being in “teak” rather than “cedar”. Clarification in these respects is needed.

- 7.8. During my site visit I observed that only the render finish has been applied thus far to the dwelling house. The applicants have commented on this to the effect that this dwelling house remains to be completed. In these circumstances, I am concerned that the description of the proposal simple refers to “retention” rather than “retention and completion”.
- 7.9. As part of the current application, the applicant has submitted, pursuant to condition no. 5 of the permission granted to application 15/5660, a Metal Detection Survey and Archaeological Excavation of any Finds. This Survey concludes that “No finds which may relate to the military occupation/battlefield archaeology were detected during the survey.”
- 7.10. Conditions nos. 3 and 5 were, in addition to condition no. 2 with respect to the relevant development levy, the only conditions precedent attached to the permission granted to application 15/5660.
- 7.11. I conclude that insofar as the dwelling house remains to be completed the description of the proposal should refer to this fact. Clarification of the intended finishing materials is also needed.

(ii) Visual and residential amenity

- 7.12. During my site visit, I viewed the dwelling as constructed from short range and middle-distance public vantage points. I consider that the revisions identified under my elucidation of the description of the proposal would not have any material affect upon the visual and residential amenities of the area.
- 7.13. The subject of finishing materials has been raised by the appellant and commented upon by the applicants to the effect that the dwelling house has yet to be completed. I observed during my site visit that limestone and cedar finishes have yet to be applied. These finishes were the subject of condition no. 3 attached to the permission granted to application 15/5660 and the accompanying reason emphasised their critical importance to the aesthetic success of the project.

7.14. I conclude that the proposal would, subject to its completion in the previously permitted finishing materials, be compatible with the visual and residential amenities of the area.

(iii) Parking

7.15. Condition no. 9 attached to the permission granted to application 15/5660 requires that “Any parking area within the site shall be laid out such that vehicles can safely turn around to exit the site front ways”, in the interest of road safety.

7.16. Revision (b), which is identified in my elucidation of the description of the proposal, would reduce the area available for parking by c. 5.5 sqm. The effect of this reduction upon the capacity of the parking area to facilitate vehicle turning movements has not been addressed by the applicant. In this respect, I note that condition no. 9 cites “vehicles” and so it thus anticipates that 2 cars could be parked in this area and turned around so as to ensure that movements to and from the public road can be undertaken in forward gear. I note, too, that, if the opportunity to undertake such movements is forfeited by the said reduction, then this condition would be breached.

7.17. I conclude that, insofar as the applicant has not demonstrated that the reduced parking area would be as compliant with condition no. 9 attached to the permission granted to application 15/5660 as the original proposal, then it would be premature to grant retention permission.

(iv) Water

7.18. The proposal would be served by the public water mains and the public foul and surface water sewerage system.

7.19. The appellant expresses concern that the previous permission for the site does not address the drainage of surface water in a comprehensive manner. In this respect, I note that conditions nos. 6, 8, and 10 did address surface water run-off from impermeable surfaces and the need to ensure that such run-off was not onto the public road. The applicants have responded to the aforementioned concern by stating that they will comply with the said conditions towards the end of the construction phase. Thus, a roadside drain would be installed that would connect to the public sewer.

- 7.20. During my site visit, I observed two pipes embedded in a roadside garden wall, which would discharge water from the site to the public road. (I note that this wall appears to be a departure from the landscaping scheme permitted for the site under application 15/5660). Clearly, such discharge would not be into the public sewer and so it has not been accounted for in the current application. Accordingly, any thorough going retention application should address surface water drainage “in the round” and, in addition, the said wall.
- 7.21. Under the OPW’s flood maps, the site is not the subject of any identified flood risk.
- 7.22. I conclude that the drainage of surface water from the site needs to be addressed in a comprehensive manner.

(v) Screening for Stage 1 AA

- 7.23. The site does not lie in or near any Natura 2000 site. It is presently a serviced urban site, which under the proposal would be fully serviced by public drainage infrastructure. Consequently, no AA issues would arise.
- 7.24. 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 Conclusion

In the light of my assessment the Board may wish to request further information of the applicant with respect to the clarification of finishing materials, the utility of the revised parking area, a comprehensive surface water drainage system for the site, and the roadside wall to the garden. The applicant should also be requested to re-advertise the proposal on the basis of a description that refers to not only retention but completion of the dwelling house.

9.0 Recommendation

That permission be refused.

10.0 Reasons and Considerations

1. Having regard to condition no. 9 attached to the permission granted to application 15/5660, the applicant has failed to demonstrate that the reduced area available for the parking and turning of vehicles in the basement of the dwelling, as constructed, would be as comparable in its compliance with this condition as the originally permitted parking area. In these circumstances, the Board considers that it would be premature to grant retention permission to this dwelling.
2. Having regard to the need to avoid surface water run-off from the site onto the adjoining public road, which was the subject of conditions under the permission granted to application 15/5660, the applicant has failed to demonstrate that the site would be capable of being so drained in its entirety. In these circumstances, the Board considers that it would be premature to grant retention permission to this dwelling.

Hugh D. Morrison
Planning Inspector

11th June 2020