



An
Bord
Pleanála

Inspector's Report

ABP-307111-20

Development	Retention and permission for completion of a dwelling unit for use ancillary to the existing dwelling.
Location	Reenydonagan, Bantry, Co Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	2000041
Applicant(s)	Joseph Downey.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Joseph Downey.
Observer(s)	None
Date of Site Inspection	9 th July 2020.
Inspector	Bríd Maxwell

1.0 **Site Location and Description**

- 1.1. This appeal site relates to a rural site within the townland of Reenydonagan, to the north of Bantry in West Cork. The appeal site has a stated area of 0.29 hectares and comprises an established dwelling /farmyard which is accessed from public road L-8790 cul de sac road running to the west of the N71. The vehicular accesses to the dwellinghouse is from the eastern end of road frontage with access to the farm buildings and land to the west. The dwellinghouse on the site is currently undergoing renovation and extension. To the rear north of the dwelling has been constructed a wooden chalet type dwelling which is the subject matter of the appeal.

2.0 **Proposed Development**

- 2.1. The proposal seeks permission for retention and permission for completion of a single storey detached dwelling unit for use ancillary to the existing dwelling. Permission is also sought for the installation of a new wastewater treatment system to serve both dwellings and all associated site works.

3.0 **Planning Authority Decision**

3.1. **Decision**

By order dated 24th March 2020, Cork County Council issued notification of its decision to refuse permission for the following reason

As stated in the Cork County Development Plan 2014 it is the Council's stated policy. As defined by Objective GI6-1 to protect the visual and scenic amenities of the area, to seek new development that meets a high standard of design that respects the character of the area and existing places and built forms. The Planning Authority has already accommodated the developer a well-designed and proportioned ancillary dwellinghouse 'Granny flat' (Ref 17/632 and 18/312) in this green belt area outside Bantry Town consistent with the advice contained in the "Rural Cork Design Guide 2003". The "unauthorised development" of a wooden chalet set within a 'High Value Landscape' relates unsatisfactorily to the immediate area with an incongruous design and discordant materials, and if permitted would establish an undesirable precedent for other similar developments with a poor standard of amenity that would

invariably lead to other such similar structures being erected that would devalue the intrinsic quality of this green belt area. Furthermore, the proposed ancillary unit would not integrate visually with the existing dwelling as specified in the criteria outlined in paragraph 5.7.13 of the Cork County Development Plan 2014. The proposed development would therefore contravene materially objective GI 6-1m as set down in the Cork County Development Plan 2014 and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planners report notes previous permission for a well designed and proportioned granny flat 17/632 relocated 18/312. Concerns regarding unauthorised nature of the proposal and apparent disregard for planning legislation. Refusal was recommended.

3.2.1.2 Senior Executive Planner's report concurs with recommendation of area planner. Concerns regarding detailed design materials and finish and precedent which it might set.

3.2.2. Other Technical Reports

3.2.2.1 Area Engineer's report indicates site distance at entrance adequate. Wastewater treatment proposals adequate. No objection subject to conditions.

3.2.2.2 Liaison Officer report makes no comment on the application

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland will rely on the Planning Authority to abide by official policy in relation to development on/affecting national roads.

3.4. Third Party Observations

None

4.0 Planning History

19/734 Application for permission for retention and completion of single storey detached dwelling unit for use ancillary to existing dwelling Permission for installation of a new wastewater treatment system to serve both existing and proposed dwellings. Invalid.

SKB190026 Warning letter regarding alleged unauthorised erection of a timber chalet and non-compliance with approved plans and associated conditions attached to a planning permission.

18/312 Permission granted 23 August 2018 to alter site boundaries and site layout including siting location of the permitted granny flat as well as the existing dwellinghouse on site, alterations to existing entrance and associated site works.

17/632 Permission granted on 10th November 2017 to erect a bungalow for use as a granny flat ancillary to main dwellinghouse, removal of existing septic tank, installation of wastewater treatment system to service the bungalow/granny flat as well as existing dwellinghouse on site, alterations to existing entrance and associated works Granted 10th November 2017. Condition 2 restricted occupation to family member, Condition 4 required the easterly entrance to the site to be closed up permanently.

17/451 Invalid.

5.0 Policy Context

5.1. Development Plan

5.1.1 The Cork County Development Plan 2014 refers and West Cork Municipal District Local Plan 2017 refer.

The site is within greenbelt around Bantry.

The N71 east of the site is a designated scenic route

The site is within a high value landscape.

Provision of ancillary family accommodation in Granny Flats.

5.7.12 Consideration can be given to building ancillary accommodation either as an extension to an existing house or as a separate dwelling unit in cases where it can be shown that such is required for a family member. This would include circumstances where a member of the family requires separate living space which is on the same property as the main dwelling. Such units can be established in conjunction with a dwelling house, either within or attached to the house but within the bounds of that site.

5.7.13 This provision allows families to provide accommodation for older or disabled relatives/persons. These units should be permitted where the following criteria can be met:

- There is only one dwelling and one ancillary accommodation unit on the same site.
- The ancillary unit should not impact adversely on either the residential amenities of the existing property or the residential amenities of the area.
- The property and site should not be subdivided.
- The unit should be integrated visually with the existing dwelling.
- Additional parking, sewage treatment units or private amenity space is not required.
- The unit should not be sold off separately from the existing dwelling and a Section 47 agreement should be entered into by the property owner to ensure that any physically separate unit be retained as part of the existing property in perpetuity as a burden on the title.

5.2. Natural Heritage Designations

5.2.1 The appeal site is not itself within a designated area. Those in the vicinity include

- Glengarriff Harbour and Woodland SAC 6.5km
- Cahal Mountains SAC 8km
- Derryclogher (Knockboy) Bog SAC 6.3km
- Conigar bog NHA 11km
- Sheeps Head SAC 14km

5.3. EIA Screening

5.3.1 Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the immediate vicinity, 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 The grounds of appeal are submitted by BJS Consulting Engineers on behalf of the first party. Grounds of appeal are set out as follows:

- Refurbishment of the existing main dwelling is nearing completion but has been stalled due to recent COVID 19 restrictions.
- Chalet is intended to house Mr Michael Downey the father of the applicant.
- Chalet was installed due to financial and personal constraints whilst awaiting grant of permission 18/312. The applicant was unaware that as a temporary structure, it needed permission but applied for retention following enforcement action.
- It is intended to externally insulate and render the walls and paint the unit to match the existing main dwelling.
- Applicant seeking a grant of permission in lieu of permission ref 18/00312 granted on 23 August 2018.
- No objection from Engineering point of view.
- Unit is finished to a high standard in accordance with building regulations.
- Applicant is intended to house Mr Michael Downey on his farm close to family while providing independent living.

6.2. Planning Authority Response

6.2.1 The response by Area Planner is outlined as follows:

- All material planning considerations were addressed in the planning reports and the Planning Authority reaffirms its decision to refuse permission for the reasons as set out.
- Significant delay in making of retrospective application is noted.
- Structure first occupied in April 2019 and use of the structure as temporary accommodation pending renovation of main dwelling achieved by default.
- It is implausible or at least remarkable to consider that the structure did not require planning permission.
- The form, design and appearance of the chalet is not acceptable and would if permitted encourage others to build unauthorised wooden houses of their choosing without planning permission.
- Mr Justice Kearns comments regarding full enforcement of Section 160 which permits removal of unauthorised development where the development was unauthorised and deliberate. (Lough Dan Wicklow) noted.
- Effective enforcement is vital for the credibility of the planning system.
- Chalet fails to integrate visually with the existing dwelling.
- The rendering the timber structure with breeze block painted is not a method associated with the proper construction of an ancillary dwelling house. The squat shape and shallow 17.6-degree roof pitch of black metal sheeting is inappropriate. The loss of the storm porch and chimneys and introduction of poor fenestration arrangement as compared to the permitted dwelling renders the proposal below the required standard.
- Notably the Planning Authority receives a significant number of enquiries regarding the potential for provision of wooden chalets in back gardens which is discouraged and few applications result. Precedent case ABP306104-19 19/602 Bawnlahan Tragumna, Skibbereen.

7.0 **Assessment**

7.1 I consider that the issues arising in the case can be assessed under the following headings:

- Principle of Development & Compliance with Development Standards
- Other Issues

7.2 Principle of Development & Compliance with Development Standards

7.2.1 I note the Council Area Planner's comments and evident displeasure with regard to the retrospective nature of the application and the apparent disregard for the need to obtain prior permission and to follow proper planning procedures. However, I note that the Irish Planning system provides for regularisation of unauthorised development by way of retention application and therefore it is appropriate that the development for retention and completion be considered on its planning merit.

7.2.2 Having regard to the previous permissions on the site 17/632 and 18/312 the principle of provision of an ancillary dwelling on the site is acceptable. The dwelling proposed for retention and completion currently houses the applicant's family pending completion of renovation works to the main dwelling. In the longer term it is intended as a home for the applicant's father. The need for this ancillary dwelling on the site is not in dispute and thus, it is the siting and design of the structure which is the matter in contention and is the basis for the Council's refusal reason.

7.2.3 I note the siting of the structure to the rear of the dwelling and in visual terms it is not highly prominent and benefits from a level of screening provided by the established trees on the site. On the matter of design, I concur with the views of the area planner with regard to the timber cladding design being out of character and generally inappropriate within the Irish context. I note that it is proposed to externally insulate and clad the structure and provide for a painted finish in keeping with that of the existing dwelling. I acknowledge the Council Planner's comments with regard to the loss of character and traditional design features in terms of the porch and chimneys as were provided on the permitted structure (17/632 18/312) and also lament the provision of an uncharacteristic low roof pitch, however I also note the siting of the structure and the character of the overall site in terms of its setting relative to the established dwelling and clustered farm buildings and note in particular the lack of visibility from the wider area. On balance and in light of the unique circumstances of

the site I consider that the structure can be accommodated subject to the provision of a render finish in keeping with the main dwelling as well as provision for additional landscaping to aid further integration. I note the Planner's concerns with regard to the issue of precedent however I consider that the appeal site presents its own unique circumstances and therefore I am of the view that precedent for a future similar approach should not arise. As regards the case referenced within the Council's response to the appeal 306014 Tragumna, I have reviewed that appeal and consider that the case offered entirely different site circumstances and is not directly comparable to the appeal site.

7.3 Other issues

- 7.3.1 As regards site servicing I note the proposal provides for shared packaged wastewater treatment system discharging to constructed soil polishing filter as permitted under 17/632 18/312. Site suitability assessment noted in trial hole excavated to a depth of 1.6m neither water table nor bedrock were encountered. Soil is classified as non dilatant topsoil leading to silt / clay cobbles at 1.4m. A t value of 11.86 was recorded. It is proposed to provide a P8 packaged treatment plant with constructed on site polishing filter with soil for polishing filter having a T value of 10-30. Based on the submitted details it has been demonstrated that the development can be provided in accordance with the standards set out in Wastewater Treatment Manual – Treatment Systems for single Houses.
- 7.3.2 As regards access, I note landscaping works underway on the site provide for the closing up of the second vehicular access as required by previous permissions.
- 7.3.3 As regards the issue of Appropriate Assessment having regard to the nature and scale of the proposed development and nature of the receiving environment and distance to the nearest European Site, no appropriate assessment issues arise and it is not considered that the proposed development 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. Having regard to the foregoing I recommend that the Board grant permission for retention and completion subject to the following schedule of conditions.

Reasons and Considerations

Having regard to the planning history on the site and pattern of development in the area, the design and nature of the works proposed for retention and completion, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention and completion would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development to be retained shall be 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Works comprising the insulation and external render and painting of the dwelling to match the main dwelling on the site shall be carried out and completed within 4 months of the grant of permission.

Reason: In the interest of visual amenity.

3. The dwelling shall be occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs and shall remain so occupied. The dwelling shall not be sold, let or otherwise transferred or conveyed, save as part of the main dwelling on the site.

Reason: To restrict the use of the dwelling in the interest of residential amenity.

4. The landscaping of the development shall incorporate a continuous hedge of indigenous species eg holly, hawthorn or beech which shall be planted along the northern boundary. The hedge shall be planted within the first planting season following grant of permission.

Reason: In the interest of residential and visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

Reason: In the interest of traffic

7. (a) The treatment plant and polishing filter shall be located, construction and maintained in accordance with the details submitted to the planning authority on the 30th January 2020, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency 2000. No system other than the type proposed in

the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, and any statutory provision replacing or amending them, 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: In the interest of the amenities of the area.

9. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Bríd Maxwell
Planning Inspector

15th July 2020