



An
Bord
Pleanála

Inspector's Report

ABP-308704-20

Development	Amendments to 4 houses permitted under PA ref. 18/1296.
Location	Rear 2 and 3 Boghall Cottages. Bray, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	20135
Applicant(s)	Benduff Ireland Ltd.
Type of Application	Permission for retention
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Benduff Ireland Ltd.
Observer(s)	Sinead O'Toole
Date of Site Inspection	20 th April 2021
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The appeal site of .0625 ha relates to an infill site with frontage onto Ard na Greine road (Deerpark Road) and extends across the rear of numbers 2 and 3 Boghall Cottages which front onto Boghall Road. It is adjoined at the other end to the south by the rear gardens of houses in Ashfield Court and also adjoins the southeastern side of the rear garden of no.4 Boghall Cottages.
- 1.2. A terrace of four houses has been constructed and faces Ard na Greine. The houses are substantially complete and rendered concrete boundary walls c. 1.8m high have been constructed at each end of the terrace with timber fencing to the rear. The houses are set back from the boundaries to the side by c. 5 m and 3.2m to the northeast and southwest respectively as measured from the front building line. The site is fenced off along the frontage with temporary wire screens at present.
- 1.3. Ard na Greine is a local distributor road serving a number of residential developments south of Boghall road.

2.0 Proposed Development

- 2.1. It is proposed to retain the four houses as built and as a variation of plans permitted under planning authority ref. 18/1296. The main changes include:
 - Increase in width and depth and larger windows. In the appeal submission it is proposed to revise the proposal to box the rear facing 1st floor bedroom window of unit 4 (as detailed in FI) by instead reducing its transparent area by using opaque glazing.
 - The permitted gross floor area is 334.2 sq.m, whereas the subject development has been constructed with floor area of 358 sq.m. This amounts to an average increase of 5.9 sq.m. per dwelling.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of decision to refuse permission for the stated reason:

- Having regard to:
 - the location of the site within an existing residential area where the objective is RE Existing Residential: To protect , provide and improve residential amenities of existing residential areas,
 - the differences between the impacts of the development granted permission under Planning Register Reference 18/1296 and the constructed development,

it is considered that the proposed development would seriously injure the residential amenity of adjoining properties by reason of overlooking and overshadowing. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report: Further information was sought in respect of: ascertaining the impact on residential amenity, legal entitlement and car parking. The key issues were assessed accordingly:

- Overshadowing: It is noted that no.3 Boghall Cottages receives sunlight in accordance with BRE Guidelines in the scenario of previously permitted development 10/43 and 18/1296 but that the property does not receive sunlight in accordance with the BRE standards in the as constructed scenario. It is considered that the development has resulted in significant new overshadowing that significantly erodes the amenity of the adjoining property.
- Overlooking: The zinc boxing as submitted in revised drawings around the 1st floor window closet to no, 3 is not considered to sufficiently address overlooking. Accordingly it is considered that the development has resulted in significant new overlooking that significantly erodes the amenity of the adjoining property.

- Given the urban context the two-storey development is not considered to be overbearing.
- With respect to light pollution it is considered this can be addressed by condition.
- The applicant submitted evidence of full legal ownership of the site. and is acceptable.
- Revised drawings in respect of car parking were considered satisfactory.

A letter confirming no objection from the owner of no.2 Boghall Cottages is noted.

3.2.2. Technical reports

3.2.3. Bray Engineer:(15/10/20) works on the public road have been carried out without consent or consultation with the road authority. The development has compromised pedestrian and cycle priority routing on the road. No provision has been made to ensure surface water is prevented from flowing onto the public road.

3.3. **Prescribed Bodies – Reports - None**

4.0 **Planning History**

4.1. An extensive history is set out in the planning authority report and grounds of appeal. The most relevant decision is in the case of **PA ref 18/1296** in which permission is granted for 4 dwellings on the subject site. Condition 2 restricts the houses to a max ridge height of 7.83m, a hipped roof profile and either high level or obscured glazing in gable windows. This followed a previous grant for 4 dwellings with retained access from Boghall Road PA ref 10/630043 which was extended to 23/11/2018.

4.2. PA ref. 18/122 refers to refusal of permission for 4 houses with access off Deerpark Road. The reason stated:

- Having regard to:
 - the locations of the site within an existing residential area where the objective is to allow for infill residential development that protects the amenity of adjoining properties and the general character of the area (as per the Bray Development plan 2011-2017, Draft MD Bray LAP2018 and Wicklow CDP 2016-2022),

- the location of the vehicular access to unit 4 at a complex junction of roads with deficient visibility and high levels of traffic and pedestrian movements,
- the proposal for a driveway to unit 4 and the adverse impact of this driveway on the amenity of 2 Boghall Cottages by reason of noise disturbance, impact on privacy and the removal of the amenity/circulation space associated with this unit such that the dwelling is provided with a deficient amount and standards of amenity space,

it is considered that the development would be contrary to the development plan objectives for the site , would result in traffic hazard, would result in overdevelopment of the site and would have an adverse impact on the amenity of adjoining property. The development would therefore be contrary to the proper planning and sustainable development of the area.

4.3. Previous decisions PA ref 07/630195, (granted for 3 dwelling and alteration to nos.2 and 3 Boghall cottages), PA 06/630179/ ABP ref PL39.220025 (refusal demolition of cottages and construction of apartments) refer to a larger site which includes the original cottages. There are also more previous decision relating to smaller scale developments.

4.4. **Enforcement**

4.4.1. PA ref UD5114C refers to an Enforcement file. An enforcement notice was issues on 9th October 2019 in respect of the non-compliance with condition 1 attached to PA ref 18/1296. A letter dated 17th January 2020 issued by Wicklow County Council response to the agent for the landowner and confirms that

- The overall length of the block of four units on the permitted floor plans (Drawing No.P/1918/01) measures as 18.3m. On the ground this measures as 19.42m. The overall width of the four blocks on the permitted floor plans (Drawing no No.P/1918/01) measures as 10.8m. On the ground this measures as 11.95m.
- On the permitted site layout drawing (No.P/1918/05) the set back from unit no.4 to the existing block wall at its narrowest point measures 6.4m. on the ground this measures 4.95m.

- The building footprint and setback from the site boundaries are not constructed in accordance with the requirements of condition no.1 as attached to PRR18/1296.

4.4.2. The planning authority acknowledges that immaterial deviations are allowable in practice and the concept of substantial compliance is well established. However having regard to the particular circumstances pertaining in this case the Planning Authority considers the deviations, in particular, the reduced separation distances from no.3 Boghall Cottages and the increased window depth/reduced cill height of the 1st floor rear window in unit 4 impact on the degree of overlooking of no.3 Boghall Cottages. On this basis the Planning Authority considers that the deviations are material and therefore the development is not substantially compliant with PRR18/1296.

4.4.3. The file also contains correspondence from the owner of no.3 Boghall explaining her boundary and purchase of this property on 17th January 2020 from Joe Maguire.

5.0 Policy Context

5.1. Wicklow County Development Plan 2016-2022

5.1.1. The site is governed by the objective 'to protect, provide and improve residential amenities of existing residential area' (Zone RE) .

5.2. Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, (2009 as amended)

5.2.1. Section 4.12 refers to passive solar design in new housing: Passive solar design of new housing schemes contributes to a reduction in energy demand and thus in CO₂ emissions. This includes taking maximum advantage of available sunlight, by orientating as many dwellings as possible within 30° of south and by avoiding obstructions which block light reaching windows. The greatest energy savings are achieved when passive solar design principles are also applied to the design of the individual dwelling units (see chapter 7). Passive solar design needs to be integrated with other design objectives of the development to ensure a balanced approach.

Where feasible south-facing elevations should not be overshadowed by other

buildings or planting; ideally, a distance of 21m between two-storey dwellings is needed to provide reasonable sunlight in winter, due to the low angle of the sun. Higher buildings or taller trees should preferably be located to the north of the site; similarly, car parking and garages should be located to the north of housing where possible.

- 5.2.2. **The Urban Design Manual** sets out more detailed guidance in section 7.1-7.3 it is stated that where design standards are to be used such as the UK document Site Layout Planning for Daylight and Sunlight, BRE, it should be acknowledged that for higher densities in urban areas it may not be possible to achieve the specified criteria and standards may need to be adjusted locally to recognise the need for appropriate heights or street widths.

5.3. **Natural Heritage Designations**

Not relevant

5.4. **EIA Screening**

- 5.4.1. 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**

The applicant has lodged a first party appeal through an agent. The grounds of appeal are based on the following:

- There is a detailed planning history which includes a number of permissions for housing on the site. One lapsed permission could have been extended to 23/11/2020 PA ref 10/630043 as extended by PA ref 15/326 and closely reflects the 'as constructed' development.

- There is a lack of consistency in the decision of the planning authority. The precedent was set in 10/43. The PA refers to precedent in its rationale for permitting 18/1296.
- The infill housing development accords with the Bray Urban District LAP objectives R1, R2, and R4 and the Wicklow County Development Plan objectives HD10.
- The as built development also accords with infill policies in Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities.
- Precedent in the case of 6 dwelling in Old Court Park which is 350m north of the site. – there is virtually no separation distances to adjoining gardens and some houses don not have rear gardens.
- There were inaccuracies in the drawings submitted in the case of 18/1296
 - There is no boundary shown to the rear of 2 and 3 Boghall Cottages
 - The footprint and layout of 2 and 3 Boghall Cottages is not accurately shown
 - The building to the south are not accurately depicted nor are the buildings to the west
- Some separation distances show in the planning drawings are not possible due these matters. The site is however broadly consistent.
- The proposal is a modest increase of 23.8 sq.m (c.5%) from the permitted development of 334 sq.m. The Board is requested to look at in the context of the previously permitted development of 386.42sqm. (10/43)
- The differences relied upon by the planning authority are minimal as set out in the summary table below.

PA Ref. No.	Sq.m.	External width m	External length m	Approx. Dist. to no, 3 (nearest)	Approx. Dist. to no.2 (nearest)
20/125 (built)	358	19.5	11.9 +10.5	7m	1m
18/1296	334.2	18.5	11 +10	8m	2.2m
10/43 + 15/326	386.42	19.5	11 + 10.5	7m	1m
07/630195	347	19.5	11	7m	1m

- The plot ratio and site coverage increase are immaterial. The marginal differences are further illustrated in an overlay of footprint drawings.
- The layout is very similar to the permitted developments in 18/1296 and 10/43 in which the planning authority states 'it is considered that the proposal shall not result in a detrimental impact on the residential amenity of the existing dwellings at no.2 and 3 Boghall Cottages.'
- The proposed dwellings would not adversely affect the cottage dwellings.
- The owner of no. 2 has no objection as confirmed in writing.
- There will be no significant increase in overlooking or overshadowing particularly in context of amended drawings.
- There will be no overlooking from the gable end. The gable windows facing nos. 2 and 3 have less windows than permitted in 18/1296 and the 2 first floor windows are bathroom windows and opaque.
- It is proposed to significantly reduce the nearest first floor window in unit no. 4 which is proposed as dressing room. revised plans and photomontages attached.
- The sunlight day light analysis demonstrates that the proposal complies with BRE standards.
- The test messages submitted by S.O'Toole are taken out of context and a full transcript is offered if required.
- The sunlight and daylight analysis tests include
 - an analysis of the levels of skylight access which would be available to the windows which serve these properties and
 - an analysis of the levels of sunlight access which would be available to the associated rear yards.
- When skylight was assessed full compliance with BRE guidelines was identified in all scenarios and levels are also noted to be substantially consistent with that previously permitted. This is also similar for sunlight levels in the yards in a range of scenarios and particularly when assessed with reference to typical annual conditions. It is concluded that the results obtained in these tests indicate that both the skylight and the sunlight levels produced by the scheme as constructed would be substantially similar to the levels associated with both of the previously consented schemes including the scheme consented under PA ref 18/1296 and the scheme consented under PA ref 10/43.

6.2. Planning Authority Response

No further comments to planning report

6.3. Observations

6.3.1. D. O'Grada, planning consultant, has lodged an observation on the appeal on behalf of Sinead O'Toole of 3 Boghall Cottage. The following points are made against the retention of the houses and in support of the planning authority decision.

- The council is attributing unwarranted significance to permission for what is submitted to have been outlandish schemes. The most recent permission 18/1296 was excessive but appears to have been permitted in the mistaken belief that previous decisions constrained the decision.
- That overshadowing is similar to that permitted in 18/1296 is disputed. The unauthorised development has reduced the rear gardens and sunlight.
- A refusal of permission is requested to safeguard the amenities of no.3 Boghall Cottages.
- The extent of overlooking consequent on the proximity of unit 4 is evident in the attached photographs. It is 1.1m from the boundary with no.3 and the 1st floor window provides a direct view into this home. As this this single storey dwelling all the ground floor windows are sensitive to any loss of privacy.
- It is submitted to be one of the worst cases of privacy loss seen in over several decades by the planning agent.
- Traffic: The recommendation by the council's traffic engineers to refuse permission on grounds of traffic hazard is supported . It is further submitted that the car parking spaces are too narrow. Permission should be refused on grounds of traffic hazard and obstruction.
- The position and scale of the terrace is at issue and it is submitted consideration of mitigation is not correct.
- Procedural Matters:
 - The public notices incorrectly refer to 'minor' deviations when in fact the alterations were necessitated by a 'material' contravention of a permission.
 - The site address is inaccurate ad the site layout does not show the street name.

- The Board is requested to refuse permission on grounds of:
 - Material contravention of the zoning objective and absence of exceptional circumstances.
 - Having regard to open space the proposed development would constitute overdevelopment of the site and would constitute a substandard form of residential development for future occupants.
 - Overdevelopment on a restricted site giving rise to serious injury of residential amenity by reason of overlooking, overshadowing, overbearing impact and loss of privacy.
 - Undesirable precedent.
 - Endanger public safety by reason of traffic hazard and traffic congestion due to traffic movements generated and manoeuvring of vehicles.
 - Inadequate public notices.

7.0 Assessment

7.1. Issues

- 7.1.1. This appeal relates to a proposal to retain a terrace of 4 two-storey houses as constructed, in contravention of permission under planning ref 18/1296. There are a number of issues raised by the planning authority and road engineers in relation to impact on residential amenities and parking, however the key issues in this appeal relate to impact on residential amenity by reason of overshadowing, overlooking and visual obtrusion. While I note the letter from the owner of no.2 the impact on amenities cannot be disregarded in an assessment having regard to the long-term residential amenity of the property and sustainable development.

7.2. Impact on residential amenity

- 7.2.1. The terrace of houses has been constructed at a larger scale and closer to the boundaries with nos. 2 and 3 Boghall Cottages than permitted . This is particularly an issue for the dwelling at no.3, the owner of which has submitted an observation

following objections to the planning authority. The deviations from the permission are as set out in the enforcement file: The terrace has been constructed 1.12m wider and substantially in the direction of no.3 . The depth of the terrace has also been increased by 1.15m to 11.95m .

- 7.2.2. The report on the enforcement file (in pouch at back of file) also refers to the set back of unit no.4 from the existing block wall at its narrowest point measuring 6.4m in the approved plans whereas on the ground this measures 4.95m. I note that the drawings indicate with dimensions that the closest point of gable end of unit 4 to the rear boundary of no.3 is in fact 1m. This is measured from the rear corner of the dwelling which has a ground floor patio door and first floor window in close proximity to the boundary. Having regard to the depth of rear garden of no.3 at c.5.2m at its deepest I consider this arrangement is most likely to result in a significant loss of privacy for no.3 and also for the future occupants of the unit 4. I consider this is evident on the ground and is also well illustrated in the photographs lodged by the owner of no.3.
- 7.2.3. The applicant makes the case that it is minor deviation from approved plans, however in the context of the confined curtilage of no.3 and its single storey nature, this I consider constitutes a significant impact and I therefore concur with the planning authority in this regard. I do not consider the reduction in the window area and room size will mitigate this impact.
- 7.2.4. With respect to overshadowing having regard to the orientation, height and proximity of unit 4, the level of sunlight and daylight will be reduced within what is a constricted curtilage of no.3 . The Daylight Analysis submitted by the applicant which is stated to have been carried out in accordance with the BRE guidelines 2nd Edition quantifies the loss in terms of VSC and demonstrates that windows 1-7 have VSC levels of 31%, 30%, 30%, 30%, 30%, 27% and 33 % as compared to the higher levels achieved 32%, 32%, 32%, 31%, 30%, 28% and 34% in the scenario of the permitted development. The shadows cast are clearly more extensive in the confined and shallow rear garden/patio areas particularly in March shown in the append images of the Daylight Assessment. While in absolute terms the quantity of loss of daylight and sunlight is small as compared to the previously permitted scheme I consider, as in the case of the overlooking, this impact is significant in the context of the amenities and setting of no.3 in particular and that a 2% VSC is a limits of

acceptability in BRE guidance. This is not a dense environment and there are no compensatory amenities as in, for example, those provided in a comprehensive development or in a more central location. I consider the loss of amenity to breach acceptable limits for this context .

7.2.5. While the planning authority does not consider the proposal to have an unreasonable level of overbearing impact I do not agree. I consider that the proximity, height and extent of overshadowing combine to present an austere, visually obtrusive and crowded impact. I note that the width of the building spans about 16m at its widest point on a line parallel to the rear building of the cottages and this span is directly south of the pair of cottages which have combined span of 21m and at distances ranging from 6 to 11m between the rear elevations of the cottages and the terraced structure.

7.2.6. With respect to the matter of precedent and the missed opportunity of the applicant in seeking an extension of permission for a similar development I would make the point that the circumstances have changed for example the cottages appear to have been part of the initial site for which development was permitted for additional dwellings. They are now within separate holdings. Notwithstanding, the Board is not bound by the previous lapsed permissions.

7.3. **Other**

7.3.1. On the matter of procedure I note the planning authority has validated the application and I consider this to be substantially in compliance with the Planning and Development Regulations 2001 as amended and see no basis to invalidate the application.

7.4. **Conclusion**

7.4.1. On balance I consider the proposed retention would seriously injure residential amenity by reason of overlooking, overshadowing, visual obtrusion and overbearing impact. In this way the proposed development does not accord with the land use objective for the site and its environs 'to protect and improve residential amenity' and

would accordingly be contrary to the proper planning and sustainable development of the area.

- 7.4.2. I consider the only way to permit this development would be to demolish unit 4 so as to provide an adequate separation distance from the established cottage to the north. Having regard to the roof profile I consider this would be more appropriately addressed in an separate application. I also note there are issues relating to conflict with the provision of a cycle way as raised in the Bray Engineers report and the removal of dwelling may also for better integration with the road layout. This constitutes a new issue. These matters would be more appropriately addressed in a fresh application rather than by condition. The Board may also consider revised proposals .

8.0 Appropriate Assessment

- 8.1. Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. I recommend that decision of the planning authority be upheld and that planning permission for the retention of development be refused based on the following reasons and considerations.

10.0 Reasons and Considerations

It is considered that the existing terrace of houses to be retained, by reason of scale and proximity to the northern boundary and relationship with the single storey dwellings to the north of the site is visually obtrusive and overbearing and would give rise to an unacceptable level of overshadowing particularly of adjacent properties particularly the curtilage of No.3 Boghall Cottages. Furthermore it is

considered that the proposed window arrangement in this context would give rise to significant overlooking. The proposed retention of the structure would therefore seriously injury residential amenity and be contrary to the Wicklow County Development Plan 2016-2022 objective 'to protect, provide and improve residential amenities of existing residential areas' and would accordingly be contrary to the proper planning and sustainable development of the area.

Suzanne Kehely
Senior Planning Inspector

25th May 2021