



An
Bord
Pleanála

Inspector's Report

ABP-309526-21

Development	House and associated site development works.
Location	Crookhaven, Co. Cork.
Planning Authority	West Cork County Council
Planning Authority Reg. Ref.	2000408
Applicant(s)	Pat O Sullivan.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions.
Type of Appeal	Third Party
Appellant(s)	James & Magdalena O Driscoll.
Observer(s)	None.
Date of Site Inspection	18 th May 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. This appeal relates to a site located within the scenic coastal village of Crookhaven on the Mizen Head Peninsula in West Cork. The site has a stated area of 0.01 hectares and adjoins to the northeast of an established two storey dwelling at the junction of two local roads on the Main Street in the village. The site is grassed and there is a stone outbuilding adjoining to the southeast of the site. The site is within 40m of the foreshore with a pier directly opposite to the north.

2.0 Proposed Development

2.1. The proposal involves permission for the erection of a two-storey one bedroomed dwelling of 53sq.m and associated site development works. The proposed dwelling to be served by way of connection to the public watermain and public foul sewer.

3.0 Planning Authority Decision

3.1. Decision

By order dated 3 February 2021 Cork County Council issued notification of the decision to grant permission subject to 10 conditions which included the following of particular note:

Condition 2. Design to incorporate dark coloured slate roof, smooth plaster finish windows with vertical interest.

Condition 3. Roadside boundary of native stone or smooth painted plaster.

Condition 4, Construction Environment Management Plan.

Condition 7. Construction phase method statement

Condition 10 Development Contribution €247.52

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report notes that permission was previously granted for dwelling on the site. Design acceptable however no private open space provided. Issue regarding right of way in respect of sewer line and landownership to be addressed. Based on email of Ecologist the need for an NIS is screened out.

A request for additional information issued seeking land registry and title deeds. Encroachment on the adjoining site to be avoided. Proposals for private open space and boundary treatment details. Entrance details and details of impact on junction visibility / sightlines. Storm water details to be provided and clarification on whether a public waste-water mains traverses the site.

Following submission of additional information report and a request to clarify information regarding sightlines at the junction the planner's final report recommends permission subject to conditions.

3.2.2. Other Technical Reports

Area Engineer's report indicates concerns that the proposal may reduce visibility at the junction. Application site covers two folios neither of which name the applicant as owner. Further details are required in relation to boundary treatment, surface water outfall. Following further information and clarification response Area Engineer indicates no objection subject to conditions.

Ecology report - initial report refers to an email to the Area Planner¹. Second report recommends that works are carried out in accordance with a construction environmental management plan.

3.3. Prescribed Bodies

Irish Water No objection subject to connection agreement and capacity requirements. All development should be carried out in compliance with Irish Water Standards Codes and practices.

¹ I note that the report of the ecologist as set out in email is not provided on the Board's file nor is it available on the Cork County Council online enquiry system [ePlan - Online Planning Details \(corkcoco.ie\)](http://ePlan - Online Planning Details (corkcoco.ie)) however it is reported within the Area Planner's report. See section 8.4.1 below.

3.4. **Third Party Observations**

Submission by James O Driscoll and Magdalena O Driscoll object to the encroachment onto their property adjoining to the east. No agreement to construction directly connecting to their property. Note that foul sewer drainage from their property discharges through the appeal site.

4.0 **Planning History**

06/411 Permission granted for dwelling house to Pat O Sullivan 8/8/2006.

ABP-309159-21 (20/0568) Concurrent appeal (First Party) currently before the Board involving permission for a dwellinghouse on a site circa 350m to the west of the appeal site.

5.0 **Policy Context**

5.1. **Development Plan**

5.2. **The Cork County Development Plan 2014 and West Cork West Cork Municipal District Local Area Plan 2017 refer.**

Crookhaven is a designated village in the LAP. The vision for the village is to retain its attractive character by consolidating sympathetic development within the existing fabric of the settlement. The appeal site is within the development boundary for the village

Development Boundary Objectives include:

DB-01: Within the development boundary encourage the development of up to 40 additional dwelling units during the plan period.

DB-03: Protect the sensitive setting of the village and encourage a high standard of design generally within the settlement which respects the character of the area and sense of place of the village.

Table 2.3 notes that in relation to water and wastewater services Irish Water Services are in place with limited or no spare water services capacity.

The landscape character is defined as Rugged Ridge Peninsula.

The site is within a High Value Landscape Area.

5.3. **Natural Heritage Designations**

- Barley Cove to Ballyrisode Point SAC (Site Code 001040)
- Sheep's Head to Toe Head SPA (Site Code 004146)
- Sheep's Head SAC (Site Code 000102)
- Three Castle Head to Mizen Head SAC (Site Code 000109)
- Roaringwater Bay and Islands SAC (Site Code 000101)
- Farranamanagh Lough SAC (Site Code 002189)

5.4. **EIA Screening**

6.0 Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment and on preliminary examination an environmental impact assessment report for the proposed development is not necessary in this case.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1 The appeal is submitted by James and Magdalena O Driscoll owners of the adjoining dwellinghouse to the west and south of the appeal site. Grounds of appeal are summarised as follows:

- Object to the proposal to construct adjacent to the appellant's boundary wall. This is not a party wall and no permission has been given to such construction. Proposal involves the removal of a stone wall in the ownership of James O Driscoll.
- Majority of the site is within Folio 4596 owned by Elizabeth Clinton, Buckinghamshire, England.
- Sewer serving the appellant's dwelling crosses the appeal site. No agreement has been reached with regard to the proposal to encase the sewer in concrete with manholes at both ends. Proposal would be prejudicial to public health.
- Proposals for two manholes would be impracticable and unworkable. Unfettered access would have to be provided. Details should be agreed in advance and an indemnity provided for any losses damages or liability arising from works done.

7.2. Applicant Response

7.2.1 The response submitted by VOM Associates Architectural and Surveying Services on behalf of the first party is summarised as follows:

- The site has been in the ownership of the applicant and his father before him for many decades. The site and most of Crookhaven Village was part of the Clinton Estate prior to the formation of the Irish Free State in 1922. Folio CK489 submitted with the appeal shows Pelham Clinton as the registered owner in 1917. It is the applicant's intention in due course to update the land registry registration.
- Permission was granted in 2006. There was no objection then on basis of encroachment.

- Photographs appended show the original building on the site butted against the gable wall of the appellant's property.
- Any existing sewer pipe uncovered during and after construction will be protected. Manholes to be constructed to facilitate free access for cleaning and rodding purposes. Applicant prepared to encase the existing sewer in 1000mm of concrete under the floor of the dwelling as requested.
- Letter from Phil O Regan Solicitors note that land ownership title is not a planning issue. Appeal should be invalidated. Vast bulk of the village of Crosshaven has its base in the Estate of Elizabeth Conkling Di Zerega Pelham Clinton.

7.3. **Planning Authority Response**

The Planning Authority did not respond to the appeal.

8.0 **Assessment**

8.1 This appeal can in my view be addressed under the following broad headings:

- Ownership / Legal Issues
- Design, Layout & Servicing
- Appropriate Assessment Screening

8.2 **Ownership / Legal Issues**

8.2.1 Regarding details of ownership the third-party appellants contend that the proposed development encroaches onto their property and also contest the appellant's claim to ownership of the property noting land registry title based on historic possession in the estate of Elizabeth Clinton, Buckinghamshire. The third-party appellant also outlines strong objection to the proposal for a building directly abutting their dwelling. The submission on behalf of the first party in response to the appeal by Phil O Regan and Co Solicitors states that the property is in the beneficial occupation and ownership of the first party Pat O Sullivan and devolved through his father Denis O

Sullivan. It is the applicant's intention to update land registry registration in due course. It is outlined that the building which previously occupied the site was used as a store for fishing operations and that the gable wall remains in situ. I note that historic mapping confirms that a building historically occupied the site.

8.2.2 I cannot adjudicate on the competing claims made by the parties to the appeal with regard to the ownership boundary however I would note in response that all the matters raised are essentially civil matters between the parties and are not strictly matters for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: *"A person shall not be entitled solely by reason of a permission under this section to carry out any development."*

8.2.3 The third-party appellants also claim that there is a wayleave through the site in respect of a sewer line crossing the appeal property. Within the response to further information the first party questions whether the foul sewer line crosses the site as there is a mains foul sewer under the public road to the front and west of the site. I note that the proposal as reiterated within the grounds of appeal to construct manholes at either end of the sewer to facilitate access and maintenance. It is also proposed to encase the sewer within 100mm of concrete. I note that the generic report by Irish Water on the appeal file did not address this matter. I consider that detailed arrangements can be addressed by way of condition and the matter of a wayleave is not strictly a planning issue.

8.2.3 As regards the validity of the appeal, I have outlined the matters raised and allegations that the development will result in negative impact on the appellant's property and I consider it appropriate to proceed to address the planning issues.

8.3 Design Layout and Servicing.

8.3.1 I note the dwelling design which adopts a traditional format in keeping with the pattern of development in the vicinity. The proposal is for a modest single bedroomed dwelling and fits appropriately to the setting creating a positive corner feature to the streetscape. The proposed dwelling provides for a reasonable standard of residential amenity with private open space provision to the front and side of the dwelling.

8.3.2 As regards servicing connection to public water supply and public sewer is proposed. Irish water submission is a generic response indicating no objection subject to pre connection agreement, capacity constraints of the Irish Water Capital Investment Programme and compliance with Irish Water Standards codes and practices. I note from the West Cork Municipal District Local Area Plan, Table 2.3 indicates that services are in place with limited or no spare water services capacity. Having regard to the brownfield infill nature of the site and limited scale of the development proposed it is considered that the proposed development would not give rise to a significant demand in terms of infrastructural and servicing arrangements.

8.4 Appropriate Assessment Screening

8.4.1 I note that the issue of appropriate assessment is a new issue in terms of the appeal submissions. I note that the Planner's report refers to an email from the ecologist as follows:

"The Council's Ecologist has advised that given the small scale of the development and its location within an urban setting and outside the Sheep's Head to Toe Head SPA, she is satisfied that the proposal does not pose a risk of significant effects on Chough or Peregrine Falcon which are the qualifying interests of this SPA.

Also given the distance of this site across an open water body to Barleycove to Ballyrisode Point SAC, the Ecologist is satisfied that the proposed development does not pose a risk to the qualifying interests of this SAC either having regard to the conservation Objective mapping for this site.

Therefore, the development screens out from the requirement to carry of² AA Screening.

The site is located c40m from the foreshore. Therefore, it is recommended that measures are put in place to ensure that surface water from the construction stage is contained on site and that there will be no release of silt, sediments or polluting contaminants to the foreshore area. The issue can be dealt with by condition if permission is being considered.”

8.4.2 In terms of Screening I note the **description and scope of the proposed development** involves the provision of a house 53sq.m to be serviced by mains water and foul sewer.

8.4.3 In terms of the identification of the **European Sites which could potentially be affected**, I note that there are a number of sites within 15km of the appeal site as follows:

- Barley Cove to Ballyrisode Point SAC (Site Code 001040)
- Sheep’s Head to Toe Head SPA (Site Code 004146)
- Sheep’s Head SAC (Site Code 000102)
- Three Castle Head to Mizen Head SAC (Site Code 000109)
- Roaringwater Bay and Islands SAC (Site Code 000101)
- Farranamanagh Lough SAC (Site Code 002189)

8.4.4 There is no connectivity between the site and Three Castle Head to Mizen Head SAC, Farranamanagh Lough SAC, and Sheep’s Head SAC and therefore these sites can be screened out.

8.4.5 As regards the other three sites, I note the following:

² Assumed typo - should read out

- Barley Cove to Ballyrisode Point SAC is located circa 450m to the northwest of the site and a source-pathway-receptor link exists between the site and the SAC via water quality impacts during construction/operational phase.
- Roaringwater Bay and Islands SAC is located 6km north-east of the site and a source-pathway-receptor link exists between the site and the SAC via water quality impacts during construction/operational phase.
- Sheep's Head to Toe Head SPA is located within 16m to the south of the site and a source-pathway-receptor link exists between the site and the SAC via spread of invasive species and construction noise disturbance.

8.4.6 The qualifying features of conservation interest and conservation objectives for these sites are as follows:

Barley Cove to Ballyrisode Point SAC

Qualifying Interests:

Mudflats and sandflats not covered by seawater at low tide [1140]

Perennial vegetation of stony banks [1220]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

European dry heaths [4030]

Petalwort

Conservation Objectives

To maintain the favourable conservation condition of the mudflats and sandflats, the perennial vegetation of stony banks, the *Salicornia* and other annuals, and the

European dry heaths and to restore the favourable conservation condition of the other habitats.

Roaringwater Bay and Islands SAC

Qualifying Interests

Large shallow inlets and bays [1160]

Reefs [1170]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

European dry heaths [4030]

Submerged or partially submerged sea caves [8330]

Phocoena (Harbour Porpoise) [1351]

Lutra (Otter) [1355]

Halichoerus grypus (Grey Seal) [1364]

Conservation Objectives

To restore the favourable conservation condition of Otter and to maintain the favourable conservation condition of the other habitats and species.

Sheep's Head to Toe Head SPA

Special Conservation Interests

Peregrine (Falco peregrinus)

Chough (Pyrrhocorax pyrrhocorid)

Conservation Objectives

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

8.4.7 Identification of Likely Effects

The proposed development is not connected with or necessary for the conservation management of any Natura 2000 site and the site and all works associated with the proposed development are intended to take place outside of any European site. As a result, there would be no direct loss of habitat within these European sites. Potential indirect effects are noted:

- In relation to the proximity of the site to the Sheep's Head to Toe Head SPA in considering whether noise and other disturbances could impact on protected bird species it is considered that given the brownfield nature of the site and location within the village centre the site is not significant in terms of chough or peregrine and the given scale and nature of the development it is unlikely to have any impact in terms of habitat displacement or disturbance.
- Surface water runoff during construction and potential release of silt sediments or polluting contaminants to the foreshore could impact on qualifying habitats and species in the vicinity, notably Barley Cove to Ballyrisode Point SAC. However given the scale of the development and dilution capacity available within Roaringwater Bay significant effects can be excluded.
- Wastewater from the proposed development would be treated at Crookhaven WWTP prior to discharge to Roaringwater Bay. I note from the West Cork Municipal District Local Area Plan 2017 that this treatment plant has limited or no spare capacity. Given the small scale of the development and distance of discharge to designated waters the potential for significant effect on water quality of Roaringwater Bay and Islands SAC can be ruled out.

8.4.8 In-combination Effects

I have taken into consideration potential for cumulative in-combination effects in terms of other land uses causing runoff into the SACs or potential sources of pollution.

8.4.9 Screening Determination

Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on Barley Cove to Ballyrisode Point SAC (Site Code 001040), Roaringwater Bay and Islands SAC (Site Code 000101), and Sheep's Head to Toe Head SPA (Site Code 004146) in view of their Conservation Objectives, and Appropriate Assessment is not therefore required. This determination is based on the scale and infill nature of the proposed development and the distance from the European Sites.

9.0 Recommendation

9.1. Grant Permission subject to the following schedule of conditions.

Reasons and Considerations

It is considered that the proposed development, subject to conditions set out below, would not adversely affect the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received on the 19th day of November 2020 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

- 2 The road works associated with the proposed development including the setting out of the entrance, paving and surface finishes shall be carried out and completed in accordance with the requirements of the planning authority.

Reason: In the interest of traffic safety and orderly development.

- 5 The applicant or developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

6. Details of the materials, colours and textures or all external finishes shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services, and shall be agreed in writing with the Planning Authority prior to commencement of development.

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

8. All service cables associated with the proposed development (such as electrical, television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of the visual amenities of the area.

9. The construction of the development shall be managed in accordance with a Construction Environmental 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. The Plan shall be accord with the recognised standard best practice CIRIA Guidance No C532 Control of Water Pollution from Construction Sites and IFI Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters (2016)

Reason: In the interests of public safety and residential amenity and to prevent water pollution.

- 10 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
27th July 2021