



An
Bord
Pleanála

Inspector's Report ABP-310817-21

Development	Retention of changes to permitted (01/573) alterations and extensions to include basement to existing bungalow.
Location	Ard-na-Gaoithe, Spur Hill, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	20/39620
Applicant(s)	Edward & Helen Cregan
Type of Application	Retention permission
Planning Authority Decision	Grant, subject to 6 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Luile & Deb Ni Croidheagain
Observer(s)	None
Date of Site Inspection	13 th October 2021
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located on Spur Hill, an area of elevated land to the south of Cork City and to the north-west of Cork Airport, which is the site of a RTE transmission mast and an extensive cluster of dwelling houses. This area is served by a local road that extends southwards from the city and which is known as Spur Hill. The site is situated in a backland position off the eastern side of this road. It is accessed from the local road by means of a shared laneway.
- 1.2. The site is of regular shape and it falls at gentle gradients to the north and to the west. This site extends over an area of 0.217 hectares and it accommodates a five-bed/seven-person bungalow, which is “L” shaped in plan-view and which is sited in the eastern half of the site. This bungalow has a partially submerged basement underneath the extremity of its north-eastern arm. It is served by a septic tank and percolation area, which are sited in the north-western corner of the site. It is also served by a driveway and turning area, which have been laid out beside its north-western elevation, and by a driveway and parking area, which have been laid out beside its south-western elevation.
- 1.3. To the west of the site lie two bungalows, which share the laneway to the site, and to the north-west lies a further bungalow. The western boundary of the site with the nearest of the two bungalows is denoted by means of a concrete post and panel fence. The northern and eastern boundaries are denoted by means of a sod and stone ditch and trees and the southern elevation is denoted by means of a post and wire fence and a hedgerow.

2.0 Proposed Development

- 2.1. As originally constructed, the bungalow on the site had a floorspace of 115 sqm. This bungalow was subsequently extended to the north-east and to the south-east to provide an additional 223 sqm to give a total floorspace of 338 sqm. Of the 223 sqm, 77.88 sqm was unauthorised. This floorspace was “added-in” at the extremities of the north-eastern arm and the south-eastern arm. In the former case, the basement was extended as well as the ground floor.

2.2. Under the proposal, the applicants are seeking to retain the unauthorised extensions and associated alterations to the bungalow.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, retention permission was granted, subject to 6 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Site layout plan to depict siting of septic tank and percolation area,
Confirmation needed with respect to WWTS: Is it original or a replacement one?

Confirmation needed of completion of date of extensions.
- Clarify that the dwelling has not been sub-divided.
- Clarify if subject extensions formed part of the original extensions or not, and
Clarify the gross internal area of the unauthorised floorspace.
- Clarify when the fence to the western boundary was erected.
- Revised elevations to show the existing balcony.

3.2.2. Other Technical Reports

- Cork Airport: No comment.
- Cork City Council
 - Area Engineer: No objection.
 - Drainage: No objection.
 - Rural Water: Following receipt of further information, no objection, subject to conditions.

4.0 Planning History

- 76/1709: Bungalow: Permitted.
- 01/573: Alterations and extension, including basement: Permitted.

5.0 Policy and Context

5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020, the site is shown as lying within the Prominent and Strategic Metropolitan Cork Green Belt and within the Landscape Character Area known as City Harbour and Estuary, which is deemed to be of high landscape value.

5.2. Natural Heritage Designations

- Cork Harbour SPA (004030)
- Douglas River Estuary SAC (001046)

5.3. EIA Screening

The proposal is essentially for the retention of unauthorised extensions to the bungalow on the site. As it does not relate to the provision of an additional dwelling, but only the expansion of an existing one, this proposal does not constitute a class of development that is subject to EIA.

6.0 The Appeal

6.1. Grounds of Appeal

- Attention is drawn to the applicants' further information response to questions about the WWTS. If modifications to the septic tank were made, then they should be elucidated so that they can be properly assessed. This matter should also have been flagged for public consultation.

- Attention is drawn to the applicants' statement on the completed supplementary application forms that the dwelling house is their "family home". The appellants state that the applicants reside elsewhere and that the dwelling house has been rented out since it was extended, and a fence erected on the western boundary of the site. Whereas the dwelling house did meet their "exceptional rural generated housing need", it does so no longer.
- The appellants state that the dwelling house was being extended even as planning permission was being applied for to extend and that the actual extensions exceeded what were subsequently permitted.
- The appellants state that, when the current application was made, the fence at issue had been erected within the last 7 years. Prior to its erection, they state that a hedgerow was removed, and the level of their garden was raised: Subsequently, the appellants have experienced drainage issues in their property.

The fence at issue exceeds 2m and so it is not exempted development. In places it is in a precarious state and it is sited too close to the appellants oil tank for safety. During strong winds, its concrete panels rattle causing noise nuisance. This fence should be replaced with a timber one, under exempted development.

- The appellants state that the applicants garden was raised by 600 – 700mm when the basement to the dwelling house was being constructed. Consequently, a retainer was needed along the western boundary. Whereas the raised garden is a pleasant amenity for the applicants, for the appellants, the retainer is an on-going source of problems that affect their garden and their well. The applicants should, therefore, lower their garden in order to ease these problems.
- The appellants state that the applicants have widened their driveway and re-sited an entrance pillar so that it encroaches onto their property and blocks an entrance to their rear garden.
- The driveway to the site is shared between three residential properties. The top third serves the applicants property only. It is unsurfaced and its increased

use with the enlarged dwelling house is resulting in damage to neighbours' fences. This third should be provided with a sealed surface.

- Contrary to the Planning Authority's assessment of the application, the appellants express the view that serious injury is occurring, and they question whether the Planning Authority undertook a site visit.

6.2. Applicant Response

The applicants begin by drawing attention to the appellants, who do not reside in the locality of the site. The resident of the dwelling house to the west of this site is their father and he has not objected to the application. They proceed to respond to the grounds of appeal as follows:

- The commentary on the WWTS was accepted by the Planning Authority.
- The dwelling house was extended to meet the needs of the applicants and their family and they resided therein between 2000 – 2013. Since then they have resided in the USA, although they are intent on returning to Ireland. Between 2013 and 2019 the dwelling house was rented out to one household only and since 2019, a relative has resided therein. It remains the applicants permanent place of residence.
- Any suggestion that the alterations and extensions that were the subject of 01/573 were commenced prior to permission being granted is strongly contested.
- The fence at issue was erected in June 2011, as testified to by the contractor who erected it and as illustrated by contemporaneous photographs.
- The hedgerow at issue lay along the common boundary. It was removed by the appellants' father and so the applicants erected the existing fence in its place to ensure security and privacy.
- The concrete fence does not need to be plastered or capped. It is of similar height to the hedgerow that it replaced. The contractor testifies that ground levels were not altered as part of the works that he undertook. The appellants reference to rubble flowing under the fence is mystifying.

- The reference to a back garden entrance to the residential property to the west of the site is mystifying as there is no such entrance. The pillars at the entrance to the site are erected entirely on the applicants' property.
- The extension at issue does not result in greater traffic movements and the existing driveway is not the subject of the current application.
- Any suggestion that the Planning Authority did not undertake a proper assessment is contested.

6.3. **Planning Authority Response**

In response to the appellants final point, the case planner confirms that she did undertake a site visit.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the Cork County Development Plan 2014 – 2020, 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) Planning history,
- (ii) Amenity,
- (iii) Access,
- (iv) Water,
- (v) The fence, and
- (vi) Appropriate Assessment.

(i) Planning history

- 7.2. The appellants draw attention to the planning history of the site. The bungalow was granted permission, under application 76/1709. The appellants state that the applicants when resident in the bungalow would have ensured that it was being occupied in accordance with this permission. However, as they reside elsewhere, they contend that its occupation is in breach of this permission.
- 7.3. The applicants have responded by stating that, while they have not been residing in the bungalow for several years, it remains their permanent place of residence and they intend to resume such residency in the future.
- 7.4. The appellants in citing the original permission for the bungalow have not identified any specific condition that maybe being breached. Given that this permission dates from 1976 and given, too, that contemporary conditions that address the occupancy of rural dwellings tend to have a 7-year time span, I consider that it is safe to assume that the reach of any occupancy condition will no longer apply.
- 7.5. The appellants also draw attention to application 01/573 for the extension of the bungalow. They contend that work on extending the bungalow commenced prior to the grant of permission.
- 7.6. The applicants have responded by strongly denying this contention.
- 7.7. I consider that, if there was an issue here, then it would have been for the Planning Authority to address. In this respect, I consider that it is instructive that application 01/573 was accepted as being valid with a “proposed development” description rather than a “retain and complete” description.
- 7.8. I conclude that the planning history of the site poses no impediments to the Board proceeding to assess/determine the current application/appeal in the normal manner.

(ii) Amenity

- 7.9. The unauthorised portions of the extensions to the bungalow are sited at the extremity of this bungalow’s arms, which extend to the north-east and to the south-east and so towards the corresponding corners of the site. Existing bungalows lie to the west and to the north-west of the site and so these portions of the extensions do not project towards these bungalows. Consequently, they do not impact upon the visual and residential amenities of them to any appreciable extent.

7.10. The proposal is compatible with the visual and residential amenities of the area.

(iii) Access

7.11. The appellants state that with the enlargement of the bungalow, the lane to the site is the subject of greater use and so the top third, which serves the site, should be provided with a sealed surface.

7.12. The applicants have responded by stating that the enlargement in question has not resulted in an increase in traffic. In any event the lane is not the subject of this application.

7.13. The enlargement in question does *prima facie* appear to have facilitated the bedroom denoted as No. 1. Nevertheless, the presence of a double bedroom would not necessarily lead to a significant increase in traffic movements on the lane. During my site visit, I observed that only the initial portion of this lane has a sealed surface and so both the applicants' bungalow and the bungalow belonging to the appellants' father are served by stretches of unsealed lane.

7.14. The appellants state that the applicants have widened the entrance to the site by moving a gate pillar so that it encroaches onto the neighbouring site to the west, thereby blocking a pedestrian entrance to it.

7.15. The applicants have responded by stating that the gate pillar in question is erected entirely on their site and that the reference to an adjacent pedestrian entrance is mystifying as none exists.

7.16. During my site visit, I did not see any evidence that the gate pillar in question had been moved and I did not see an adjacent pedestrian entrance to the site to the west.

7.17. I conclude that no access issues arise.

(iv) Water

7.18. Under further information, the applicant stated that modifications to the septic tank were made in conjunction with the provision of the extensions permitted under application 01/573.

7.19. The advice to the Planning Authority in the Rural Water Report notes that submissions received on application 01/573 did not raise waste water as an issue

and the subsequent permission was not accompanied by any waste water condition, again, indicating that it was not an issue. This advice concludes that the waste water treatment system “is taken to be working satisfactorily and not causing a risk to human health or the environment.” It recommended Conditions Nos. 3 & 4 of the Planning Authority’s permission. During my site visit, I did not see any evidence that would contradict the position adopted in this Report.

- 7.20. The appellants state that if modifications were made then they should be elucidated and consulted upon to ensure that a proper assessment can be made.
- 7.21. The applicants have responded by referring to the Rural Water Report.
- 7.22. I consider that it would be reasonable to act on the appellants critique if there was evidence that the waste water treatment system was not working properly. In this respect, I note that the applicants report that the bungalow has been occupied in their absence and so this system would not have been dormant in recent years. I note, too, that the appellants do not cite any evidence themselves of malfunction.
- 7.23. I conclude that the proposal raises no water issues.

(v) The fence

- 7.24. The appellants draw attention to the concrete post and panel fence along the western boundary of the site. They state that this fence was erected in conjunction with changes in levels within the site and so it functions partially as a retaining measure. Nevertheless, debris passes/seeps underneath it. They state that the fence was erected within 7 years of the making of the current application, that it exceeds 2m in places, and that it should be replaced by a 2m high timber fence that would be exempted development.
- 7.25. The applicants have responded by stating that the fence in question was erected in 2011 and that it replaced a hedgerow of similar height. They also cite a statement of their contractor to the effect that he did not undertake regrading works in conjunction with the erection of this fence.
- 7.26. During my site visit, I observed the fence *in-situ*. No appreciable change in levels was evident across the western boundary of the site. Stumps adjacent to the fence within the site would correlate with the applicants’ reference to an earlier hedgerow. A

top run panel in one section of the fence was missing, but that apart it appeared to be intact.

7.27. Ultimately, the retention application does not address the fence in question and any issues pertaining to it appear to be a matter for the adjoining landowners to address.

7.28. I conclude that the fence is not the subject of the current application.

(vi) Appropriate Assessment

7.29. The proposal is for the retention of two unauthorised extensions, which represent the enlargement of permitted extensions to the applicants' bungalow. I am not aware of any source/pathway/receptor route between the site and the European sites that lie either in Cork Harbour or further afield. Accordingly, this proposal raises no Appropriate Assessment issues.

7.30. Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and the proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

That permission be granted.

9.0 Reasons and Considerations

Having regard to the Cork County Development Plan 2014 – 2020 and the planning history of the site, it is considered that, subject to conditions, the proposed retention of changes to the proposed alterations and extensions permitted under application 01/523 would be acceptable from a land use perspective. These changes would be compatible with the visual and residential amenities of the area. No access, water, or Appropriate Assessment issues would arise. They would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 20th day of May 2021, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Within 12 weeks of the date of this Order, the applicants shall submit a scheme for the management and future maintenance of the waste water treatment system on the site to the Planning Authority for its written agreement.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Within 12 weeks of the date of this Order, the developer shall pay to the planning authority a financial contribution of €3311 (three thousand three hundred and eleven euro) 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, as amended. The contribution shall be paid to the planning authority and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.</p>

Hugh D. Morrison
Planning Inspector

27th October 2021