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Bord  
Pleanála

## Inspector's Report ABP 311236-21

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<b>Development</b>	Retain and complete extension to rear of dwelling.
<b>Location</b>	Eddy Stone, Cooney's Field, Ballinluska, Myrtleville, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	21/4774
<b>Applicants</b>	Andreas & Patricia Scherr
<b>Type of Application</b>	Retention & Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	John & Ann O'Mahony
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19/10/21
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The site which has a stated area 0.05 ha, is within an area known as Cooney's Field in Myrtleville which is c. 2km south of Crosshaven. Cooney's Field contains approx. 30 dwellings of varying types and condition, laid out in a somewhat haphazard manner set out around the edges of the field. The enclave of houses is accessed via an unsurfaced track off a minor local road.

The appeal site is located to the south of the enclave and slopes down steeply from north to south with views of Myrtleville Bay to the south-east. Work on an extension has commenced to the rear of the single storey dwelling. From the plans accompanying the application there was a timber decking area to the rear of the dwelling which has been removed to facilitate the works. The dwelling is served by a small rear garden.

The dwelling bounding the site to the west (appellants' property) has been extended to the rear with windows serving habitable rooms on the eastern elevation looking onto the appeal site. The boundary is delineated by a low wall and planting. The site is bounded by a single storey dwelling to the east with a low wall delineating the boundary.

## 2.0 Proposed Development

The application was lodged with the planning authority on the 26/03/21 with further plans and details submitted 08/07/21 following a further information request dated 18/05/21.

Permission is sought to retain and complete a 14 sq.m. rear extension to the dwelling with steps to allow access to the rear garden.

A 2 metre fence is to be erected along the western site boundary.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant retention permission and permission for the above described development subject to 5 conditions. Of note:

Condition 2: 2 metre high fence to be erected along the western boundary of the site prior to the first occupation/active use of the extension.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The 1<sup>st</sup> Executive Planner's report notes:

- Condition 6 attached to permission granted under ref. PL04.219740 precluded the exempted development provisions of classes 1 and 3.
- The site is overlooked by the extension constructed to the rear of the dwelling to the west.
- Concerns about overlooking of adjoining property.
- A modest extension would be considered subject to the reduction in the extent of glazing on the eastern and western sides of the elevation.
- The steps and platform area should be omitted.

Further information recommended

The 2<sup>nd</sup> report following further information notes:

- The extension would be usable as an internal space integral to the dwelling 365 days a year. The decking area to the rear of the dwelling would not have been used with such frequency.
- The extension is of a similar form, design and siting to that to the rear of the adjoining property to the west.
- In view of the existing relationship between the sites and the proposal to construct a 2 metre fence the extension is acceptable in a context such as this where there is clearly an element of mutual overlooking arising between neighbouring properties.

A grant of permission subject to conditions recommended.

#### 3.2.2. Other Technical Reports

Area Engineer has no objection subject to a condition.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

An objection to the proposal received by the planning authority is on file for the Board's information. The issues raised are comparable to those set out in the 3<sup>rd</sup> party appeal summarised in section 6 below.

## **4.0 Planning History**

PL04.219240 (06/7603) – permission granted on appeal in February 2007 for retention of house and retention and completion of waste water treatment plant.

Condition 2: Alterations to patio area

Condition 6: Preclusion of exempted development provisions save with a prior grant of permission

## **5.0 Policy Context**

### **5.1. Development Plan**

Bandon Kinsale Municipal District Local Area Plan, 2017

The site is within the settlement boundary of Crosshaven and Bays which is a designated key village.

### **5.2. Natural Heritage Designations**

Cork Harbour SPA is c.1km to the south-west of the appeal site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The submission by John McCarthy B.E. on behalf of the 3<sup>rd</sup> party appellants, which is accompanied by supporting documentation, can be summarised as follows:

- Their dwelling is not a holiday home and is more or less used on a fulltime basis.
- The extension with floor to ceiling glazing on the western elevation, in addition to the steps and platform, will give rise to undue overlooking.
- They would support the replacement of the glazing with high level windows and roof lights.
- The steps and platform area should be omitted. They can be relocated and screened in an effective manner.
- Raising the boundary to 2 metres would have little benefit. The existing common boundary is measured to a height of 1.7 metres when viewed from their side.
- The proposal is contrary to the decision made on file ref. PL04.219740 (06/7603) with specific regard had to the requirements of condition 2 pertaining to the extent of the patio permitted and condition 6 precluding the exempted development provisions of classes 1 and 3 without permission. The design approach adopted not only ignores the restrictions set out but also the spirit and rationale which informed these conditions.
- The proposal would result in the devaluation of their property. High Court decision Maher v. An Bord Pleanala cited. Compensation excluded if refused permission.
- Compensation is also excluded where a development would interfere with the character of the landscape or with a view or prospect of special amenity value or natural interest or beauty.
- A design statement was not submitted with the application. No reference made to the physical constraints of the site, impact on percolation area etc.

The submission also details procedural issues in terms of the planning authority's assessment, observations made to the planning authority, engagement with the applicants and the context of the extension erected to the rear of their property.

## 6.2. Applicant Response

The applicants' response can be summarised as follows:

- They were unaware of the planning history pertaining to the property.
- They are aggrieved that the appellants see no issue in overlooking their property from their rear extension.
- The kitchen and bedroom accommodation to the rear of the appellants' property is dual aspect. The windows facing their property can reasonably be classed as secondary windows with the principal windows facing the rear garden.
- The extension is modest and is positioned as far away as reasonably possible from the appellants. Any impacts on daylight and sunlight levels would be negligible.
- It is within the appellants' power to regulate the level of privacy within the rooms by way of blinds/curtains.
- The access stairs from the extension to the rear garden and associated landing area would not give rise to any greater overlooking impact than that arising from the permitted deck that was previously in place.
- A 2 metre fence along the western site boundary was proposed. The principal area of open space serving the appellants' property is located to the west of their dwelling and would not be impacted by the extension.
- The open space to the rear of the property to the east has never been screened as to do so would obstruct outward views.
- The pattern of development in the area is contextually different to that of traditional residential areas where greater value is placed on privacy.
- The extension would have no additional loading on the waste water treatment system.
- Should the Board consider it necessary obscure glazing to a height of 1.8 metres in the west side of the elevation could be installed.

Issues raised as to the planning status of appellants' property

### 6.3. **Planning Authority Response**

No further comment.

### 6.4. **Observations**

None

## 7.0 **Assessment**

The pattern of development in the area, which is ad hoc and somewhat haphazard, appears to stem from the original holiday chalet development of Cooney's Field. Over time many of the structures have been replaced/upgraded with many now in permanent occupation. Invariably this change in type of occupation has resulted in the wish to upgrade/extend the properties to provide for a level of residential amenity commensurate with a property in such permanent occupation and this presents challenges in terms of the application of standards for amenity and privacy which are constrained by the configuration and pattern of development. I would concur with the applicants' view that the area is contextually very different to that of what would be considered to be a more conventional/traditional residential area.

The appellants contend that the Inspector's assessment on the previous appeal under ref. PL04.219740 (06/7603) and the conditions attached to same are pertinent and that the proposed development contravenes the provisions and spirit of same. Whilst I would concur with the view that regard should be had to the said permission, I submit that this must be in the context of the altered pattern of development that has arisen in the period since the decision.

Firstly, the need to apply for permission for the 14 sq.m. rear extension arises as a consequence of condition 6 attached to a previous grant of permission on the site for retention of the dwelling under ref. PL04.219740 (06/7603) granted in February 2007. As noted by the parties to the appeal the condition does not preclude an extension but that permission is required for what would normally be covered under the exempted development classes 1 and 3. The applicants state that they were unaware of the constraint imposed by the condition and ceased work when it was brought to their attention.

The appellant's property 'Chillville' is immediately to the west of the appeal site to which a rear extension has been constructed since the above permission was granted on the appeal site. The extension is setback c. 4 metres from the shared boundary. A large window serving a living area in the eastern elevation overlooks the appellants' property. This room is, at minimum, dual aspect with windows serving same noted in the southern elevation. I also note a window, serving a bedroom in the eastern elevation of the original dwelling structure. Again this room appears to be dual aspect. The dwelling is served by a decked area on its western side away from the shared boundary, with the extension, itself, screening it from view from the east. The planning status of the extension and whether it required planning permission is not before the Board for adjudication nor is the issue of the permanent occupancy of the dwelling.

The extension subject of the appeal is to provide for glazing on all elevations with a patio door in the western elevation to allow access to the proposed steps providing access to the garden. A patio/decking area which was permitted under the previous appeal has been removed to facilitate the works. The appellants contend that undue overlooking of their extension would arise.

In the context of the existing pattern of development in the area as noted above the application of standards as would be applicable in a more conventionally designed residential area is not, in my opinion, feasible and I submit that it is somewhat unreasonable for the appellants to avail of unfettered access to views across the appellants' property arising from the window in the eastern elevation of their extension without reciprocating a certain level of latitude. Certainly the original decking area to the rear of the dwelling, subject to modifications by way of condition 2 attached to the previous permission, would have allowed for a level of overlooking. There is also mutual overlooking of the respective dwellings from the rear gardens.

I consider that the applicants' proposal to install obscure glazing in the opening on the eastern elevation of the extension is an appropriate compromise in view of the constrained nature of the sites and will afford the appellants a reasonable level of privacy. A 2 metre high fence is also proposed to be erected along the boundary which will assist somewhat. I have no objection to the steps and landing to the rear garden and I do not consider that they would provide for an increase in overlooking over and above what the previous decking area afforded. The extent of the said



decking area relative to the proposed extension and steps is delineated on the site plan and section submitted by way of further information.

The proposed extension would not result in additional loading to the effluent treatment system serving the dwelling nor additional vehicular movements.

Whilst noting the appellants' appeal submission there are no views or prospects listed for protection in the vicinity which would be impacted by the development. I would also submit that a design statement for such a small extension is not required.

I also note the appellants' concerns as to the assessment of the application by the planning authority. This is not a matter for comment at this juncture. The case is before the Board de novo with the appeal submission accompanied by copies of submissions made to the planning authority.

#### *Appropriate Assessment – Screening*

Having regard to the nature and scale of the proposed development and distance from the nearest European Site it is concluded 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**

Having regard to the foregoing I recommend that permission and retention permission be granted for the above described development subject to the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the nature and extent of the extension to be retained and completed and to the pattern of development in the area, it is considered that the development, subject to compliance with the conditions set out below, would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would, therefore, be accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by the planning authority on the 8<sup>th</sup> day of July, 2021, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. The window and door openings in the western elevation of the extension to be retained and completed shall be glazed with obscure glass to a minimum height of 1.8 metres as measured from the finished floor level.

**Reason:** To prevent overlooking of adjoining residential property.

3. A 2 metre high fence shall be erected along the western site boundary prior to the occupation of the proposed extension.

**Reason:** In the interest of residential amenity.

4. Drainage arrangements including the disposal of surface water shall comply with the requirements of the planning authority for such works.

**Reason:** In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**November, 2021**