



An
Bord
Pleanála

Inspector's Report ABP312000-21

Development

Retention of minor differences between length and width of permitted house (18/296) and consequent changes to site layout, enlarged windows to all bedrooms and permission for the installation of partial opaque glazing to the rear bedroom of House no. 3 at first floor level to increase privacy.

Location

Rear of 2 & 3 Boghall Cottages, Bray, Co. Wicklow.

Planning Authority

Wicklow County Council.

Planning Authority Reg. Ref.

21902.

Applicant(s)

Benduff Ireland Limited.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party.

Appellant(s)

Sinead O'Toole.

Observer(s)

N/A.

Date of Site Inspection

04.05.2022.

Inspector

Mary Mac Mahon.

1.0 Site Location and Description

- 1.1. The site is located in Bray, Co. Wicklow. Boghall Cottages are a row of single storey cottages, set back on the south side of Boghall Road. There is a pattern of backland development in Boghall Cottages. The site appears to be formed from the rear gardens of No.s 2 and 3 Boghall Cottages. These gardens backed onto a distributor road, Deerpark Road. A terrace of 4 dwellings has been constructed on the site. The terrace is set at an approximate 45 degree angle to No.s 2 and 3 Boghall Cottages. No. 1 appears to be currently occupied.
- 1.2. The subject site is stated as 0.0179 ha and is No. 3 in a mid-terrace location. The rear wall of House No. 3 is approximately 9 metres from the rear wall of No. 3, Boghall Cottages, the appellant in this case.

2.0 Proposed Development

- 2.1. The development proposed for retention is seeking to retain its position, footprint and alterations to the front and rear elevations. The gross floor area of the house is stated on the application form as 85 square metres, but the architect later describes it as 88 square metres.
- 2.2. The building line has been set back by 0.4 metres to accommodate car parking to the front. The depth of the dwelling was permitted at circa 9.6 metres and constructed to a depth of circa 10 metres. The width of the dwelling has increased from circa 4.4 metres to circa 4.6 metres. At first floor, the location of the en-suite to the second bedroom has moved internally and currently only one window has been provided in the rear elevation (please note that this change was shown on the drawings submitted at compliance stage and acknowledged by the planning officer).
- 2.3. The windows at ground and first on the front elevation have moved to a more central position and have been enlarged. The rear garden depth of the permitted development was approximately 10.42 metres. The constructed stated rear garden depth of 10.01 metres. The glazing of the first rear window opening was proposed to be obscure.

- 2.4. Units 2 and 3 share a single rear roof gable. The roof profile as granted under 18/1296 showed a double roof gable. However, the compliance drawing, which was approved, showed the same roof profile as currently exists.
- 2.5. Please note that the drawings submitted refer to a side elevation. The elevation is to House No. 4, rather than the current site – the flanking walls of which are internal to the terrace.
- 2.6. At further information, the first floor rear window was proposed as a box frame angled window, with the solid section facing No. 3 Boghall Cottages.

3.0 Planning Authority Decision

3.1. Decision

Grant permission, subject to 6 standard conditions, including Condition 3 that external lighting be ground floor only, cowled and directed away from the public road and adjacent property.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report notes that there are three concurrent planning applications for each of the dwellings in the terrace. 21-866 for House No. 1, 21-867 for House No. 2 and 21-903 for House No 4.

The report notes the residential zoning of the site. An observation has been received by from the resident of No. 3 Boghall Cottages, the contents of which is summarised. The planning officer considered the scale of the development for retention, proximity to No 3 Boghall Cottages and the visual, overbearing, overshadowing and overlooking on this property. The report notes that the permitted unit was circa 83 square metres gross floor area and the current is circa 88 square metres gross floor area. The position of the block is further from the distributor road – 5.4 metres as constructed instead of 5 metres. The rear garden is reduced in size from 53 square metres to circa 43 square metres. The county development plan generally requires a minimum garden area of 50 square metres for a two bedroom dwelling. However, the quality of the space is

considered satisfactory and no overlooking of it occurs. The report states that the northern corner of the house is circa 9 metres from the rear wall of No. 3 Boghall Cottages, as opposed to circa 10.2 metres in the consented scheme. The report finds that this does not give rise to significant overbearing of No. 3 Boghall Cottages, as that arises from the adjacent unit, House No. 4. The rear garden size is considerable acceptable, in spite of its area, due to the quality of the space. The modifications to House No. 3 are considered acceptable. The rear first floor window still is considered to give rise to overlooking and perceived overlooking. Further information is requested to deal with this matter.

3.2.2. At Further Information stage, the window at first floor level has been reduced 42% in area and a box frame to surround the window, so as no views to No. 3 Boghall Cottages are possible. The planner considered this change to satisfactorily deal with the issue of overlooking.

3.2.3. Other Technical Reports

None received.

4.0 Planning History

The recent planning history of the site is as follows:

21-903 – Permission refused by Wicklow County Council for House No. 4 on 06.09.2021 – the reason provided in the planner’s report is as follows:

“Despite the modifications proposed by the applicant to House No. 4 under this current planning application, it is considered the cumulative impact of the construction of the terrace of dwellings closer to the shared boundary with No. 3 Boghall Cottages, still results in House No. 4, by reason of its scale and proximity to the northern boundary and relationship with the single storey dwellings to the north of the site, been visually obtrusive and overbearing and would give rise to an unacceptable level of overshadowing of adjacent properties, particularly the curtilage of number 3 Boghall Cottages. Furthermore, it is considered that in the absence of more significant modifications than those proposed, the development would still give rise to significant overlooking. The development also results in a rear garden to No. 4 which due to its size, shape and orientation, will not provide an acceptable level of quality private

amenity space to serve the dwelling on site. The proposed structure for which retention and permission is sought, would, therefore, seriously injure the residential amenities of the area, would be contrary to the Wicklow County Development Plan 2016-2022 objective' to protect, provide and improve residential amenities of existing residential area' and would be contrary to the proper planning and sustainable development of the area." The decision has not been appealed.

21- 902 – Permission granted by Wicklow County Council for House No. 3 on 11.11.2021 – currently on appeal ABP 312000-21.

21-866 – Permission granted by Wicklow County Council for House No. 1 On 15.10.2021.

ABP 308704-20 (Reg. Ref: 20/135) – Refusal of Permission for Retention of the terrace of dwellings. The reason for refusal is as follows:

"It is considered that the existing terrace of houses to be retained, by reason of its scale and proximity to the northern boundary and relationship with the single storey dwellings to the north of the site would be visually obtrusive and overbearing and would give rise to an unacceptable level of overshadowing particularly of adjacent properties particularly the curtilage of number 3 Boghall Cottages. Furthermore, it is considered that in the absence of more significant modifications, the proposed development would give rise to significant overlooking. The proposed retention of the structure would, therefore, seriously injure the residential amenities of the area, would be contrary to the Wicklow County Development Plan 2016-2022 objective 'to protect, provide and improve residential amenities of existing residential areas' and would be contrary to the proper planning and sustainable development of the area."

Wicklow County Council had similarly refused for overlooking and overshadowing impacting on the residential amenity of adjoining properties.

Enforcement Files UD5114C – noncompliance with Condition 1 of 18/1296

18/1296 – Permission granted 27.02.2019 for the development of a single block containing 4 no. terraced dwellings (the parent permission). Condition 2 required that the roof profile of units No.s 1 and 4 be hipped.

18/122 – Permission refused for a single block of 4 dwelling units refused for traffic reason and the location of the driveway to unit No. 4 impacting on the amenity of No. 2 Boghall Cottages.

15/326 – Extension of duration permission for 10/630043 for single block of 4 no. terraced dwellings in lieu of 3 no. dwellings.

10/630043 - for single block of 4 no. terraced dwellings in lieu of 3 no. dwelling.

5.0 Policy and Context

5.1. National Policy

Project Ireland 2040: National Planning Framework 2018

The first National Strategic Outcome expected of the National Planning Framework is compact growth. Effective densities and consolidation of urban areas is required to minimise urban sprawl and is a top priority. 40% of future housing delivery is to be within the existing footprint of built up areas (National Policy Objective 3a).

National Policy Objective 35

Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

Sustainable Urban Housing: Design Standards for New Apartments 2020

While the development to be retained is not a block of apartments, the relevant standards for daylight and sunlight are identified in this document. Page 32 states: “*Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’*”.

Sustainable Residential Developments in Urban Areas 2009

4.12. *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 30o 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. **Development Plan**

5.3. *Wicklow County Development Plan 2016-2022*

In relation to zoning, the plan states:

“The priority for new residential development shall be in the designated ‘town’ and ‘village’ / ‘neighbourhood centres’ or ‘primary zone’ in settlements with development plans, or in the historic centre of large and small villages, through densification of the existing built up area, re-use of derelict or brownfield sites, infill and backland development. In doing so, particular cognisance must be taken of respecting the existing built fabric and residential amenities enjoyed by existing residents, and maintaining existing parks and other open areas within settlements.”

HD2: New housing development, above all other criteria, shall enhance and improve the residential amenity of any location, shall provide for the highest possible standard of living of occupants and in particular, shall not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.

HD9: In areas zoned / designated ‘existing residential’, house improvements, alterations and extensions and appropriate infill residential development in

accordance with principles of good design and protection of existing residential amenity will normally be permitted (other than on lands permitted or designated as open space, see Objective HD11 below). While new developments shall have regard to the protection of the residential and architectural amenities of houses in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.

HD10 In existing residential areas, infill development shall generally be at a density that respects the established character of the area in which it is located, subject to the protection of the residential amenity of adjoining properties. However, where previously unserved, low density housing areas become served by mains water services, consideration will be given to densities above the prevailing density, subject to adherence to normal siting and design criteria.

5.4. *Bray Municipal District Local Area Plan 2018 – 2024 applies. The site is zoned RE – Existing Residential. The objective is to: To protect, provide and improve residential amenities of existing residential areas. The description is: To provide for house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity.*

5.5. Page 26 of the written statement states:

“In order to make best use of land resources and services, unless there are cogent reasons to the contrary, new residential development shall be expected to aim for the highest density indicated for the lands. The Council reserves the right to refuse permission for any development that is not consistent with this principle. Lands zoned Residential – High Density will be expected to achieve a density of not less than 50 units / hectare.”

5.6. **Natural Heritage Designations**

5.7. Having regard to minor scale and the foreseeable emissions from the proposed development 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.

5.8. EIA Screening

Having regard to the nature and minor scale of the development proposed to be retained, its location on a brownfield site in a built-up urban area where public water supply and public sewerage are available and in light of the foreseeable emissions therefrom it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The third party submits the following grounds:

- Concern over the splitting of the development to be retained into 4 separate applications.
- Reference is made to the previous planning report prepared by Dr. Ó Grada and the objection made by the appellant.
- Reference is made to loss of solar gain, given that the development some 13.5 metres to the back wall of the cottage and that the Sustainable Residential in Urban Areas 2009 recommend a distance of 21 metres, to provide for winter sunlight.
- The development proposed for retention creates overshadowing and results in the interior and back garden of no. 3 Boghall Cottages receiving little or no sunlight particularly in the winter.
- The development protrudes 1 metre longer than permitted and is overbearing. A photograph of the extent of overlooking from the first floor window to the bedroom of the appellant is provided.

- Other disamenities include light pollution, noise, risk of flooding, encroachment on No. 4 Boghall Cottages, etc.
- Due to the level of injury to residential amenity, the development cannot comply with the residential zoning of the area.
- Traffic hazard arises from the driveways.

6.2. Applicant Response

The applicant's agent, MPBA Architects responded.

- The applications have been split so as to allow for the issues relating to each house be addressed.
- Permission for House No.s 1, 2 and 3 have been granted by Wicklow County Council. Permission for House No.4 has been refused.
- The overall site was purchased with the benefit of planning permission under 18/1296. There was a number of inaccuracies in the site dimensions. Some aspects did not comply with national standards or building regulations at the time. This was corrected at construction.
- The difference in length and breadth of House No. 2 is circa 200mm on both dimensions. This gives rise to a floor area increase from 83 square metres to 88 square metres and is not significant.
- The building line had to be set back to accommodate car parking.
- There is a possibility of overlooking of No. 3 Boghall Cottages and so the box frame window was submitted at Further Information stage.
- The dwelling does not exacerbate overshadowing.
- There is no issue of traffic hazard.
- All outdoor lighting is at ground level.
- Surface water is now attenuated on site and together with soft landscape improves local drainage on what was previously a concrete covered yard;
- No encroachment arises.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None received.

6.5. **Further Responses**

No further circulation occurred.

7.0 **Assessment**

7.1. The appeal concerns one dwelling in a terrace of four, where the dwelling is located in a mid-terrace location, which extends beyond of the nearest dwelling unit (House No. 4) to No. 3 Boghall Cottages. The first floor rear window is proposed as a box frame window, to minimise overlooking or perceived overlooking.

7.2. The splitting of the planning unit from a single development of a terrace of 4 residential units into a set of four planning units is not contrary to planning law or regulation. Indeed, after construction, it is the usual approach for dealing with alterations or extensions in developments consisting of different units.

7.3. In this case, the development proposed to be retained is larger in extent than that permitted under 18/1296, as, as a block, it has essentially crept closer to No.s 2 and 3 Boghall Cottages and therefore has greater impacts.

7.4. The location of the rear projection of House No. 3 is approximately 1.2 metres closer to the rear wall of No. 3 than the consented development. It is overbearing on the rear garden of No. 3 Boghall Cottages.

7.5. I note the shadow studies prepared by BPG3 submitted with the history file, ABP 308704-20, which show that on the 21st of March, shadows from the development to be retained overshadow the rear garden of No. 3 Boghall Road in the morning until circa 1000 when the garden is in part free from shadow. By 1200, the shadow has changed so as two areas are now in sunlight. By 1400, the extent of shadowing from the

development to be retained has been reduced, but the garden area is now shadowed by its rear boundary. By 1600, the garden shadowing is entirely from the boundary.

- 7.6. The Annual Average of Solar Access of the property, shows that the rear garden of No.3 marginally fails the 2 hours minimum of sunshine on the 21st March (46% instead of 50%). 58% would have been achieved had the scheme been constructed in compliance with the parent permission.
- 7.7. The Visual Sky Component test which considers the access to skylight that the windows in a development can obtain show that there are minor differences in the daylight achieved between the consented scheme and the scheme as constructed.
- 7.8. The development proposed for retention, House No. 3 impacts the amenity of the rear garden of No. 3 Boghall Cottages, due to its overbearing and overshadowing impacts. However, rectification would require the setting back of the rear first floor building line and the subsequent loss of the second bedroom, converting the dwellings from two bedroom units to one bedroom units only as the second room would not be large enough for a bedroom. I would consider this loss to be disproportional to the impact caused by the development to be retained.
- 7.9. The loss of solar gain from No. 3 Boghall Cottages is to a greater extent than would be if the development had been constructed in compliance with the parent permission. However, I note the reference to the Strategic Urban Housing Residential Guidelines. Buildings that come within 21 metres south of a dwelling will impact on solar gain. However, the corollary, to require that no building be allowed within 21 metres south of a building to preserve winter sunlight, would be contrary to the National Planning Framework, which requires that 40% of new builds be located within the built envelope and the consolidation of the urban area, with effective densities. Infill development is essential for the sustainable development of settlements. Therefore, I do not the location of the unit within 21 metres of No. 3 Boghall Cottages, sufficient reason for refusal. In effect, the policies in the *National Planning Framework (2018)* overtake the policies in the *Sustainable Residential Development in Urban Areas (2009)*.
- 7.10. In relation to traffic hazard, the development is one of four driveway that front on the Deerpark Road. The driveway is approximately 5.2 metres long. There is in addition a public footpath with grass verges which add circa 2 metres more. I am satisfied that the open nature of the driveway ensures adequate visibility for vehicle drivers and

pedestrians. The location of the trees and the tree girths do not compromise sight visibility lines. The distance of the driveway from the junction with Deerpark Road and Boghall Road is over 40 metres. Therefore, I am satisfied that no traffic hazards arise.

7.11. I do not consider that the level of light pollution, noise and risk of flooding are any significantly greater than would be the case had the development been constructed in compliance with the permitted development.

On balance, having regard to national policy in relation to the consolidation of urban areas and the *Sustainable Urban Housing: Design Standards for New Apartments 2020* (which I note was not before the Board at the time of the last decision), while the development proposed to be retained has an impact on the residential amenities of property in the vicinity, in excess of the consented development, No. 3 Boghall Cottages is not significantly affected in terms of daylight and receives marginally below the accepted norm for Annual Hours of Probable Sunshine. Therefore, I am recommending a grant of permission.

8.0 Recommendation

8.1. Grant of permission recommended.

9.0 Reasons and Considerations

Having regard to *Project Ireland 2040: The National Planning Framework*, which seeks to consolidate residential growth in urban areas and the *Sustainable Urban Housing: Design Standards for New Apartments 2020*, the zoning and the planning history of the site, it is considered that the development proposed for retention, would be acceptable in terms of its impacts on residential amenity, would not endanger public safety by reason of traffic hazard and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development to be retained shall comply with the plans and particulars lodged with the application submitted, as amended by the further plans and particulars submitted on the on the 15th day of October, 2021, 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The box frame first floor window to the rear elevation shall be installed within 3 months of the date of this order.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>Any external lighting of the development proposed to be retained shall be restricted to ground floor level, shall be cowled and directed away from the public road and adjacent residential properties.</p> <p>Reason: In the interests of traffic safety and residential amenities.</p>
4.	<p>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</p>

	<p>referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>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.</p>
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Mary Mac Mahon
Planning Inspector

16th May, 2002