



An
Bord
Pleanála

Inspector's Report

ABP-312293-21

Development

Retention and permission for development including the amalgamation of apartments and retention of unauthorised house curtilage and associated unauthorised development.

Location

Ard na Mara and Sea Breeze, Circular Road, Dunmore East, Co. Waterford.

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

21768

Applicant(s)

Deirdre and Veton Bytyqi and Russel and Emer Bailey

Type of Application

Permission and Retention Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Niall and Anne Barry and others

Observer(s)

None

Date of Site Inspection

28th October 2022

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.113 hectares and is located on the southern side of Circular Road in the village of Dunmore East, Co. Waterford. The site currently consists of Apartments 1 and 2 Sea Breeze which is served by a private road and Ard Na Mara which is a detached dwelling directly on Circular Road. The area to the front of the Sea Breeze apartments is currently bounded by fencing and block walls and is incorporated into the rear garden of Ard Na Mara. The current use is mainly as a vegetable patch.
- 1.2. Development in the immediate area is primarily residential in character consisting of variety of styles with a mix of permanent dwellings and holiday homes.

2.0 Proposed Development

- 2.1. Retention Permission is sought for the following:
- Alterations to previously approved development under Ref. 90/93 to include the following:
 - Removal of western amenity space associated with Sea Breeze apartments and inclusion of this area in site of existing dwelling 'Ard Na Mara'.
 - Rooflight in Sea Breeze apartments.
 - Alterations to boundary treatment including a 1.85m solid block wall and 1.85m high timber fencing.
 - Construction of a private vehicular entrance and parking space

Permission is sought for the following:

- Amalgamation of two existing apartments into one dwelling house to include extension to provide for a single storey porch, alterations to elevations, removal of internal staircase, removal of dividing fence and alterations to curtilage.

Following a Further Information Request, revised notices and further information was submitted to the Planning Authority dated the 19th of October 2021 which can be summarised as follows:

- Revised drawings were submitted which provide for the retention of both ground and first floors at the existing level which means that no changes are proposed to the level of the balcony jointly serving bedrooms 1 and 2, together with the provision of 'tilt and turn' style windows to serve bedroom 1 and bedroom 4. It is proposed that these windows will be fitted with frosted glass and that the door originally proposed in bedroom 1 will be a tilt and turn window which will also serve as a fire escape.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission subject to 9 No. conditions issued on the 23rd of November 2021.
- 3.1.2. Condition 2 required that the access area to the west of the application site adjacent to the laneway which runs perpendicular to Circular Road shall not be used for the purposes of the parking of vehicles.
- 3.1.3. Condition 3 required that all proposed new first floor windows in the northern and western elevations of the 'Sea Breeze' building shall be fitted with obscure glass.
- 3.1.4. All other conditions are generally standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planner's report dated the 27th of September 2021 considered that Further Information was required. The second report dated 22nd of November 2021 considered that the applicant had addressed the issues raised in the Further Information Request and recommended permission.

3.2.2. Other Technical Reports

- **Water Services:** No objection subject to one condition.

3.3. **Prescribed Bodies**

- No reports.

3.4. **Third Party Observations**

- 3.4.1. A total of 13 No. third party observations were submitted to the Planning Authority with a mixture of letters of support and letters of objection. The grounds raised in the objections are similar to the grounds of appeal.

4.0 **Planning History**

- 4.1.1. Relevant planning history includes the following:

PA Reg. Ref. 90/93

Permission granted for 2 No. apartments.

PA Reg. Ref. 13/26

Retention permission refused by Planning Authority for enlargement of site, garage and fuel store at Ard Na Mara.

PA Reg. 14/161/ ABP PL93.243637

Permission granted by Planning Authority and split decision by ABP which refused permission for retention of garage and removal of condition 1 of PA Ref. 90/93 and granted permission for retention of fuel store.

I note that there is a considerable enforcement history in relation to unauthorised development on the site as detailed in the planner's report.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Waterford City and County Development Plan 2022-2028. The site is within the Dunmore East settlement boundary and is zoned as 'Existing Residential' with a stated objective 'To provide for residential development and protect and improve residential amenity.'
- 5.1.2. Volume 2 outlines Development Management Standards. Table 3.2 sets out private open space requirements for dwellings and Table 7.1 sets out Car Parking Standards.

5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura 2000 site is Dunmore East Cliffs pNHA Site Code 000664 c. 45m to the east of the site.

5.3. EIA Screening

Having regard to the nature of the development and the urban location of the site, 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 main grounds of the third party appeal can be summarised as follows:

- An extensive background to the case is submitted together with a very detailed history of unauthorised development on the site.
- There are many adverse impacts on the appellants from the change of use from the permitted parking and amenity space for apartments to a garden

including loss of privacy, overlooking, noise, anti-social behaviour, traffic impact, encroachment, and devaluation of property.

- Concern that applicants may have tricked the Planning Authority as there is no means of enforcing the amalgamation of the apartments.

6.2. Applicant Response

6.2.1. The response submitted by the applicant can be summarised as follows:

- The grounds of the appeal are frivolous are without substance and it is requested that the Board dismiss the appeal.
- The proposed development seeks permission to amalgamate 2 No. dwellings into one family dwelling and to regularise the planning status of the existing site.
- The lands which were originally proposed as car parking and amenity space were never developed as such. The two apartments were sold to separate owners and the amenity and car parking space was sold to another party. It was purchased by the applicants in 2010 as has been incorporated into the rear garden serving their dwelling. The letter also considers that there are many inaccurate assumptions/ assertions made by the appellants.
- The conversion of the apartments at Sea Breeze into one dwelling removes any requirement for amenity spaces and the proposed dwelling has been afforded sufficient private amenity areas and car parking.
- There is no overlooking from the rooflight due to the inaccessibility of this window.
- The concerns regarding unauthorised development are outside the scope of the appeal process.
- A solicitor's letter is also attached which stated that Emer and Russel Bailey have agreed to sell Apartment 2, Sea Breeze subject to the parties joint planning application. A contract for same is now being drafted for signing by the parties.

6.3. **Observations**

- None.

6.4. **Planning Authority Response**

- None.

7.0 **Assessment**

7.1. Having inspected the site and associated documents, the main issues can be summarised as follows:

- Background and Site History
- Impact on Neighbouring Properties
- Other Matters
- Appropriate Assessment

7.2. **Background and Site History**

- 7.2.1. I note that the appeal provides considerable background information in relation to the history of the site and unauthorised works on the site. At the outset, I would point out that the Board has no role in relation to enforcement matters but would draw the attention of the Board to the detailed background and history of the case set out in the appeal documentation.
- 7.2.2. Permission is sought for the retention of various elements to previously approved development including the retention of fencing, alterations to site boundaries, the installation of a rooflight and the construction of a private vehicular entrance and car parking area. Permission is also sought for the amalgamation of 2 No. apartments into a single dwelling.
- 7.2.3. I refer the Board to the previous history on the site for retention permission for the removal of condition No. 1 from previous permission, enlargement of site, single

storey garage, vehicular access, boundary treatment and fuel store at Ard Na Mara under ABP PL93.243637. The parent permission on the site is PA 90/93 and this provided for the inclusion of the lands outlined as parcel No. 5 on the document attached to the appeal. This area was indicated for use as private amenity space for the 2 No. apartments granted at Sea Breeze and 5 No. car parking spaces.

However, according to the appeal response in 2001, following completion of the development, the 2 individual Sea Breeze apartments were sold to 2 No. separate purchasers. The sale included the portion of lands which were undeveloped and then subsequently sold to the applicants Mr. and Mrs. Bailey (owners of Ard Na Mara) and absorbed into their garden. As such the development was clearly not constructed in accordance with the parent permission as lands proposed as amenity space was never used for this purpose and has been excluded from the site for many years. From the details submitted, it appeared that this land was absorbed into the rear garden of Ard Na Mara c. 2010.

- 7.2.4. The Board issued a split decision on ABP PL93.243637 and granted permission for the fuel store and refused permission for the removal of Condition 1 of PD 90/03.

The reason was as follows:

'Having regard to the pattern of development in the area, the planning history of the site and the governing parent permission PD 90/03 and to the scale and location of works within the site, it is considered that the removal of condition No. 1 of PD90/03 and the enlargement of the site would represent the subdivision of a larger site and would result in substandard parking and amenity areas for the adjoining apartments (Sea Breeze), and furthermore the boundary treatment, the vehicular access and the single storey garage, by reason of scale and proximity to site boundaries, would seriously injure the residential amenities of adjoining properties by reason of overshadowing and visual intrusion. The development proposed for retention would therefore, be contrary to the proper planning and sustainable development of the area.'

- 7.2.5. I note that it is proposed to amalgamate the two apartments at Sea Breeze into one dwelling. I consider that the main question for the Board to determine in relation to this proposal is whether the previous reason for refusal has been addressed. In relation to the first part of the reason for refusal, I consider that the amalgamation of two apartments into one dwelling would not require the 5 No. parking spaces or the

private amenity space previously granted. Table 3.2 of the Waterford City and County Development Plan sets out a minimum private open space requirement of 75 square metres of private open space for a 4 bedroom dwelling. A total of 163m² of private open space is proposed for the dwelling at this location which is considerably in excess of the minimum standards. Parking requirements are set out in Table 7.1 of the Waterford City and Council Development Plan. I note that 2 No. parking spaces are currently provided at this location which complies with the requirements for a 4 No. bedroom house.

- 7.2.6. I note that the garage has been removed and no longer forms part of the development on this part of the site. The current use of this part of the site is as a rear garden for Ard Na Mara. I consider that the removal of the garage addresses the concerns expressed in the reason for refusal relating to the impact on residential amenities by reason of overshadowing and visual intrusion.
- 7.2.7. I note that the planner's report considers that the present application differs materially from the previous appeal to the Board by reason that the area of amenity space and parking would no longer be required to serve the amalgamation of 2 units into 1 as proposed. I concur with this view.
- 7.2.8. I am satisfied that the proposed amalgamation of two apartments into one house complies with the Development Management standards for private amenity space and car parking set out in the current Development Plan. As such, I consider that the previous reason for refusal has been addressed by the current application.

7.3. Impact on Neighbouring Properties

- 7.3.1. The main concerns raised in relation to impact on neighbouring properties relate to loss of privacy, overlooking, noise, anti-social behaviour, traffic impact and devaluation of property.
- 7.3.2. I consider that any impacts associated with noise, anti-social behaviour and traffic would be considerably reduced by the proposed amalgamation of two apartments into one dwelling. In terms of the retention element of the application, I note that it is proposed that land previously approved for use as a car parking and amenity area is

retained as a private rear garden. I consider that the impacts on neighbouring properties from this use would be less than the use previously approved.

- 7.3.3. Specially in relation to overlooking and impacts on privacy, I note that the existing apartments are on higher land than existing dwellings to the north and that the dwellings to the north have small sized rear gardens in close proximity to the site. I note that revised proposals were submitted to the Planning Authority dated the 19th of October 2021 which provided for the retention of the balcony at the existing level, the alteration of a door in bedroom 1 with access to the balcony into an escape window with frosted glass and the provision of a 'tilt and turn' feature in case of a fire. This would allow the window to be opened to let in fresh air without overlooking but also allow the window to be used for escape purposes if necessary. I am of the view that these alterations would address the concerns raised regarding overlooking and impact on privacy. I note that there would be no overlooking from the retention of an existing roof light and refer the Board to photograph Figure 23 in the appeal response which shows that overlooking would not be possible from this location. I note that the Planning Authority had concerns in relation to a first floor window in the front elevation. This would mainly overlook the existing car parking area to the front of the dwelling and the rear garden in the ownership of Ard Na Mara. I consider that the provision of a tilt and turn style window has addressed this concern and I also note that a letter was submitted to the Planning Authority from the owners of Ard Na Mara stating they have no objection to the location of the window and the proposed glazing.
- 7.3.4. In sum, I consider that the proposed amalgamation of two apartments into one dwelling would be acceptable at this location and would not unduly detract from the residential or visual amenities of the area. The existing building is already in place at this location and the alterations proposed as amended by the drawings submitted to the Planning Authority in relation to the Further Information Response have addressed the concerns raised in relation to overlooking and impacts on privacy in my view. As such, I consider that the proposed amendments are acceptable at this location.

7.4. Other Matters

- 7.4.1. I note that the appeal states that there is no means of enforcing the amalgamation of the apartments and that both applicants can keep their apartments and have 'successfully tricked the planning department into granting permission.'
- 7.4.2. In response to this, a solicitor's letter has been attached to the appeal response which indicates that a deal has been done for the sale of the apartment and contracts are now being drawn up.
- 7.4.3. As such, I am satisfied that the applicant's intend to amalgamate the apartments in accordance with the details submitted in the application and appeal. However, the Board has no role in relation to enforcement matters.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development and its distance to the nearest European site, 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.

8.0 Recommendation

- 8.1. I have read the submissions on file, visited the site, and had due regard to the provisions of the Development Plan and all other matters arising. In light of this and the assessment above, I recommend that permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Waterford City and County Development Plan 2022- 2028, the planning history of the site and the design, scale and layout of the proposed development and the development proposed to be retained, it is considered that, subject to compliance with the conditions set out below, the proposed development would integrate in a satisfactory manner with the existing built development in the area, would not seriously injure the residential or visual

amenities of the area or of property in the vicinity and would 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.

10.0 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 submitted on the 19th 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.

Reason: In the interest of clarity.

2. The proposed first floor windows serving bedrooms Nos. 1 and 4 shall be glazed with obscure glazing.

Reason: To prevent overlooking of adjoining residential properties.

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to the 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.

Reason: In the interests of public safety and residential amenity.

4. 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 or public holidays. Deviation from these times

shall 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.

Emer Doyle
Planning Inspector

25th November 2022