



An  
Bord  
Pleanála

## Inspector's Report ABP-314711-22

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<b>Development</b>	Retention of Greenhouse, temporary construction access, earthworks, and re-grading.
<b>Location</b>	Ocean Lodge, Kilmichael East, Fountainstown, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	22/5638.
<b>Applicant(s)</b>	Paul O'Callaghan
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Grant subject to Conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Tim and Laura Fitzgerald.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	24 <sup>th</sup> August 2023.
<b>Inspector</b>	John Bird.

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## 1.0 Site Location and Description

1.1. The site is the garden of an existing dwelling. There is a cul-de-sac road on the north. The site drops irregularly to the coastal rock platform which extends along the north side of Ringabellla Bay. The entire site is fenced off. The site is heavily overgrown, but part of the construction access is visible. Private steps lead to the foreshore under an elevated pipe which runs to the percolation area.

West of these steps, the garden is retained by gabions. To the east details were obscured by vegetation.

1.2. The weather was exceptionally good and the tide appeared to be out. There was no line of seaweed or other indicators of the high-water mark, or of specific erosion, to be seen from my viewpoints.

## 2.0 Proposed Development

2.1. Retain greenhouse, construction access and earthworks and re-grading.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant Retention subject to Conditions

- Control of temporary construction access.
- Removal or setback of temporary fence on coast to restore public footpath.
- De exemptions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Report on online Pre-Planning Consultation (not S.247) held on 01/03/2022 to discuss how to proceed following the unauthorised development.

The Consultation concluded that Application for Retention and Application for Permission should be separate consecutive Applications to give clarity.

Planner's Report dated 08/09/2022 listed the various issues raised in the submissions and the detailed report from the Ecologist. While noting the extent of damage to /loss of the foreshore of about 54m<sup>2</sup> and the type of vegetation and habitat, the Ecologist concluded that the change and loss did not require an Appropriate Assessment. The Ecologist concluded that the site could not be restored without causing further damage.

The Planner concluded that Retention Permission be Granted, subject to Conditions that would require specific actions within a short timeframe.

Other Technical Reports

None on file.

On 26/10/2022 the Bord submitted the Appeal details to An Taisce, The Minister for Culture Heritage and the Gaeltacht, and The Heritage Council. No responses on file.

#### **4.0 Planning History**

Previous Invalid Application for Retention as no Screening for AA.

No other relevant history.

#### **5.0 Policy and Context**

##### **5.1. Development Plan**

The relevant Plan is the Cork County Council County Development Plan 2022-2028.

The site is in an area zoned "Existing Residential / Mixed Residential and Other Uses and is in a "High Value Landscape."

For the purposes of my Assessment, I propose to treat this Application for Retention as being essentially terrestrial and above the high tide mark and that Cork County Council is the Competent Authority. Any future Application for Permission may have to be considered with regard to marine planning policies and legislation.

## 5.2. **Natural Heritage Designations**

Cork Harbour SPA Code 004030 extends along the rock platform to within a few metres of the site.

## 5.3. **EIA Screening**

5.4. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 **The Appeal**

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

Received on 30<sup>th</sup> September 2022. HRA Planning on behalf of Tim and Laura Fitzgerald.

- Stage 2 Appropriate Assessment should have been carried out.
- Loss of valuable coastal habitat.
- Adjacent to Cork Harbour SPA Code 004030.
- Photos of preexisting site and path.
- Refers to Zoning and CDP Objective BE 15-2 which seeks to protect sites, habitats and species.
- Erosion by runoff and damage by pollutants.
- Effects on other 3<sup>rd</sup> Party lands adjoining.
- Visual impact as seen from sea.
- Loss of established coastal path - local amenity.

- Not possible to restore what has been lost. Applicant should be guided down a process of sensitive natural restoration, as far as possible, including the removal of imported hardcore material.

## 6.2. Applicant Response

Letter from McCutcheon Halley dated 28/10/2023.

- Minor impact on Habitat.
- Supports Ecologist's view that there is no need for Stage 2 AA.
- Client wishes to reduce unsightly aspect of works.
- Accepts Council Condition relating to public walkway.
- Current Application for Retention is part of a process following an Enforcement Notice.

## 6.3. Planning Authority Response

- By letter received on 24/10/20022, the PA stated that it had no further comment to make.

## 6.4. Observations

- None

## 6.5. Further Responses

None

## 7.0 Assessment

- 7.1. As stated above, I propose to treat this matter as terrestrial and within the competence of the Planning Authority. Definition of foreshore and coastal erosion and such matters can be considered when a subsequent Planning Application is

lodged. Any restoration and other works may have to be considered having regard to the Marine Area Plan Act 2021, the National Marine Framework Plan, and the legal redefinition of the foreshore and any emerging Regional Coastal Plans, or licensing from MARA.

- 7.2. The Applicant may subsequently have to provide modelling in relation to any proposals for coastal works on his site, and where there is alleged damage to adjoining lands, in order to minimise knock-on effects on the wider environment of Ringabella Bay and the SPA.
- 7.3. At this stage it appears to me that the issues likely to emerge in future can be dealt with as “Nearshore” by the PA as the Competent Authority.
- 7.4. The subsequent Planning Application required by the PA Conditions and under the threat of Enforcement will provide 3<sup>rd</sup> Parties with a further opportunity to engage.
- 7.5. Portion of the redline area is retained as a percolation area and historic photos show that the higher parts of the site were a domestic style garden.
- 7.6. Historic photos show the public path along the foreshore.
- 7.7. The file indicates that the work was carried out in May 2021. At the date of my inspection in late August 2023 there had been considerable growth of vegetation. This is probably helping to control runoff and any pollution. It had also softened the visual impact in contrast to the photos taken at the time of the works.
- 7.8. I accept the Ecologist’s conclusion that the relatively small area of habitat affected does not warrant a Stage 2 AA. I note the conclusion that it is not possible to fully restore the damage.
- 7.9. I therefore consider that the 2-stage approach taken by the PA is reasonable.
- 7.10. Taking an overall view, I am concerned that remedial works to be agreed should be carried out as soon as possible in order to protect, if feasible, the coastal area, but also the roadway and the cliffs above. In this context I support the practical approach taken by the PA.
- 7.11. **Appropriate Assessment Screening.**
- 7.12. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built-

up urban area and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

## 8.0 Recommendation

8.1. Having noted that the Ecologist does not recommend a 2<sup>nd</sup> Stage AA and that the damage cannot be fully restored I consider that the staged Application for Retention to be followed by an Application for Permission provide the best process and is in the best interest of all parties. I therefore recommend that Permission for Retention be Granted subject to the Conditions proposed by the PA.

## 9.0 Reasons and Considerations

That the Enforcement relating to earthworks and re-grading undertaken on the site and the irreversible damage caused can best be initially resolved by the Grant of Retention Permission subject to the considered Conditions proposed by the Planning Authority acting as the Competent Authority.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 temporary construction entrance along the northern boundary shall be remove within 24 months of the date of this permission, unless planning

	<p>permission for a new boundary treatment is obtained and / or unless a further permission for a temporary construction access is obtained.</p> <p><b>Reason:</b> In the interests of orderly development and visual amenity.</p>
3.	<p>The security fencing along the southern boundary shall either be removed entirely or re-located further inwards so that the existing path to the Shell Hole is accessible to members of the public. This shall be undertaken within 12 weeks of the date of this permission. The path shall not be blocked or interfered with by any temporary fencing. Within 6 weeks of the date of grant of permission, details shall be submitted for the written agreement of the Planning Authority of a revised site layout plan showing the path and identifying the location of any new fencing (if so proposed).</p> <p><b>Reason:</b> In the interests of orderly development.</p>
4.	<p>Development described in Classes 1,3 or 6 of Part 1 of the Planning and Development Regulations 2001-2021 as amended, shall not be carried out within the curtilage of the subject property without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interests of visual amenity and to protect the biodiversity and ecology of the site.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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John Bird  
 Planning Inspector

2<sup>nd</sup> November 2023.