



To:	The Board
From:	Planning Inspector – Adrian Ormsby
Re:	Board Direction – BD-014723-23
Date:	21 st of March 2024
Development	Amendments to Condition 4 and 5 of 16299. Amendments to design under 19852 and all ancillary site works
Location	Ballingaddy West, Ennistymon, Co. Clare

1.0 Introduction

- 1.1. This report is an addendum to an original report dated the 22nd of February 2023, in respect of a first party appeal against a decision to refuse permission by the Council.
- 1.2. My original Inspector's Report recommended a grant of permission subject to conditions.
- 1.3. At a Board meeting held on the 20th day of November 2023 the Board decided to defer consideration of the case for consideration at a further Board meeting. They also decided to request the Inspector prepare an addendum report addressing the following issue-

"The validity of the application:

- a) *As the outline permission and the permission consequent, the subject of this application for amendment, appears to have lapsed.*

- b) *A permission consequent is on foot of an outline permission, the applicant is proposing to amend both an outline and a permission consequent at the same time.”*

2.0 Policy Consideration

2.1.1. Since my original Inspectors Report the Clare County Development Plan 2023-2029 (CDP) was adopted on the 09/03/23 and came into effect six weeks later on the 20/04/23. The following is considered relevant-

- The site is located in a Settled Landscape as per Map 14A (page 357) of the CDP and Map C Volume 2- Landscape Designations of the CDP.
- Policy CDP 14.2 Settled Landscapes appears to be Policy CDP13.2 from the previous plan.
- Policy CDP14.7 Scenic Routes appears to be Policy CDP13.7 from the previous plan.

2.1.2. I have not identified any significant change in the policy framework or relevant objectives specific to this development type, the application site's location and landscape designation, or proximity to designated scenic views.

3.0 Assessment

3.1. I referred the case and issue raised by the Board to An Bord Pleanála's Director of Legal Affairs on the 29th of December 2023. I received his finalised response on the 28th of February 2024. I attach this advice for the Boards consideration to this report.

3.2. The advice refers to 'Simons on Planning Law' which sets out that the Permission Consequent is for the five years and:

'...it would seem that the 'life' of the second planning permission is not parasitic or dependent on that of the outline permission.'

The advice states-

There are two planning permissions. The second permission, the Permission Consequent, stands on its own two feet once it is granted. It can, therefore, be amended by way of a subsequent application, per the above case law.

It concludes-

“the appeal is valid in so far as it seeks to appeal the refusal to amend 19/852, but invalid in so far as it seeks to amend 16/299.”

3.3. In section 8.2.7 of my original report I detailed-

This applicant has applied for permission to change conditions to the original outline permission granted under 16-299 and for changes to the design and finished floor levels of the dwelling granted by way of permission consequent 19-852. Outline 16-299 has now expired. However the principle of a permitted house at this site has been established by virtue of the permission consequent granted under 19-852. Or in other words a new permission consequent application on foot of the outline would not be accepted at this time. Accordingly I am satisfied that the matter for assessment in this appeal is essentially only a change of house design (including from single storey to part single and part two storey) and finished floor levels permitted under 19-852.

3.4. I remain of the view that the only matter for assessment in this appeal is the change of house design from that permitted under 19/852. I refer the Board to Section 6.11.3 of the ‘Inspectors Report Advice Note- September 2020’ which states-

“An application can be legitimately made for development which is contrary to a condition of previous/parent permission and should be dealt with on its own merits as usual. The fact that the proposal was excluded in a previous permission by means of a condition is not an automatic reason for refusal. The reason for the condition simply needs to be addressed as a material consideration in the assessment of the new proposal.”

3.5. I accept the situation with the current application is not the exact scenario envisaged in the Advice Note, however I am of the opinion that this ‘Advice’ should reasonably be applied in this instance. I am satisfied my original report adequately considers the material considerations as regards the proposed amendments to 19/852. Accordingly, I recommend a grant of permission as per my original recommendation.

3.6. The Board are advised they could decide to issue a split decision where they-

- a) refuse the Amendments to Condition 4 and 5 of 16299 as they are precluded from considering same due to its invalidity and

b) grant the Amendments to design under 19852 and all ancillary site works however in my opinion this would be superfluous in this context.

4.0 Recommendation

4.1. I recommend that permission is granted subject to the following conditions-

5.0 Reasons and Considerations (amended)

5.1. Having regard to the location of the development to be retained within a 'Settled Landscape' as detailed in the Clare County Development Plan 2023-2029, the permitted development at the site under 19-852, the design, siting and layout of the development proposed, the nature of the receiving environment and subject to compliance with the conditions set out below, it is considered that the proposed development would not significantly injure the visual or residential amenities of the area or of property in the vicinity over the impact already permitted under 19-852. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

6.0 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 15th day of August 2022, 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 development shall comply with all of the conditions attached to the permission granted under Planning Reference Number 19/852 except as amended in order to comply with the attached conditions.

Reason: In the interest of clarity.

3. Details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1, Class 3 or Class 5 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

5. 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, as amended. 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 referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

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.

Adrian Ormsby
Planning Inspector
21st of March 2024