



An
Bord
Pleanála

Inspector's Report

ABP-314975-22

Development	Construction of a house and all associated site works.
Location	Inchydoney, Clonakilty, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	22183
Applicant(s)	Denis and Lorna Murphy
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant
Appellant(s)	Frank and Orla O'Sullivan
Observer(s)	None
Date of Site Inspection	9 th March 2023
Inspector	Eoin Kelliher

1.0 Site Location and Description

- 1.1. The appeal site is located on the south side of Inchydoney Island, circa 2.5km southeast of Clonakilty. The site is located within the development boundary of the Inchydoney settlement / holiday resort and has a stated area of 0.0815ha.
- 1.2. The site fronts onto the public road (L-4013-30) and overlooks Muckruss Strand to the south. The site is accessed from the northwest via a right of way over a private unsurfaced road which also serves 3 no. timber chalet type dwellings and 2 no. dwellings of more recent construction. There is a bungalow to the east of the site with independent access from the public road network. The topography of the site drops circa 9m from north to south and comprises a mix of grass to the north of the site and gorse and bramble on its lower southern slope. The roadside (southern) boundary of the site is defined by an overgrown embankment, the eastern boundary a hedge and the northern boundary a drystone wall and fence. The western boundary of the site is undefined at present. An easement for a private sewer runs along the eastern boundary of the site. The surrounding area is, for the greatest part, characterised by holiday homes and one-off houses overlooking the sea.

2.0 Proposed Development

- 2.1. Permission is sought to construct a detached two-storey family dwelling and all associated site works. The lower level of the house would have a flat roof and would be set into the slope of the site. The upper level of the house would be set further back into the site and would have a smaller footprint and low-pitched roof akin to the timber chalets to the west. The upper level would open onto a contained terrace on the roof of the lower level. The proposed external finishes include smooth rendered walls and a zinc roof. The proposed site works include a driveway and car parking area to the north of the proposed dwelling, a foul water connection to the public sewer and a surface water soakaway to the front of the site. Existing planting is to be removed only where necessary and supplemented with native hedging along the site boundaries.
- 2.2. The design of the proposed dwelling was revised in response to a request from the Planning Authority to reduce the scale of the dwelling and mitigate overlooking impacts on the rear garden of the adjoining bungalow to the east of the site. In this

regard the size of the house was reduced to 134sq.m, a kitchen window on the east elevation omitted, frosted glass proposed to the utility door, and the roof terrace / balcony relocated to the western gable of the house.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 4th October 2022 Cork County Council granted permission subject to 13 no. conditions. The following conditions are of note:

Condition No. 2 restricting the erection of additional structures within the curtilage of the dwelling without the benefit of a further planning permission.

Condition No. 8 stating that any upgrade necessary for the use and future maintenance of the access road between the public road and the site is the responsibility of the developer and the other affected road users on the access road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Area Planner's report dated 9th May 2022 considered design revisions necessary with respect to the scale of the dwelling and overlooking impacts.

Clarification was also sought with respect to the following matters:

- Sizing and capacity of proposed soakaway.
- Confirmation that connections to Irish Water infrastructure is feasible.
- Width of site access road / right of way.
- Clarification regarding applicants' legal right to use the access road and who is responsible for its maintenance.
- Proposals for the maintenance of the access road.
- Clarification regarding the purpose of the wayleave on the eastern boundary of the site.
- A long section showing the proposed development relative to adjoining development in the vicinity was sought.

The applicants were also requested to confirm whether further proposals with no services (access road, lighting, open space) are planned and were advised that this type of piecemeal development is not encouraged.

The applicants' response indicated the following;

- Only surface water from the roof of the dwelling would flow into the proposed soakaway which would be designed in accordance with BRE365 Standards for Soakaway Design.
- Irish Water have confirmed new connections to the existing water supply and wastewater infrastructure is feasible.
- The access road evolved in terms of route and alignment over many years with the width of the right of way defined as 12 feet (3.6m). A minimum width of 4.8m appears to be technically achievable for the entire road.
- The road is currently in private ownership and would be maintained with other users / existing householders. The western portion of the access road is in the process of being transferred to Cork County Council to provide for a new road access point in accordance with Objective U-01 of the County Development Plan.
- Historically the access road has been maintained by the landowner and other users, and the level of maintenance has proven adequate for the level of traffic it carries. Given the porosity of the surface and the well-drained nature of the ground, the road copes well with rainfall and surface water run-off is minimised.
- The wayleave to the east of the site is for a single wastewater sewer.
- A long section drawing showing the proposed dwelling in context was provided.
- The scale of the proposed dwelling was reduced in size and the design of the dwelling revised to mitigate overlooking impacts.
- The applicants' interest in developing the site is for the purposes of their own dwelling only; the site to the west is not in the applicants' ownership.

The Area Planner's subsequent report dated 4th October 2022 recommended granting permission subject to 13 no. conditions. The decision of the Planning Authority reflects the report and recommendation of the Area Planner.

3.2.2. Other Technical Reports

The Area Engineer's initial report dated 4th May 2022 considered the site capable of development from an engineering perspective but sought clarification on several aspects of the development including, *inter alia*, the proposed soakaway, the access road to the site and the wayleave on the eastern boundary of the site.

The Area Engineer's subsequent report dated 23rd September 2022 states that the access lane and its maintenance is an issue for the landowners and the residents to deal with and advises that the Council will not affect improvements. No objection was raised subject to 9 no. conditions which were attached to the grant of permission.

3.3. Prescribed Bodies

No comments received.

3.4. Third Party Observations

4 no. observations were received in respect of the application from the owners/residents of surrounding properties. The issues raised relate to the following matters:

- Planning application documentation was not available online until a week before the submission deadline.
- Impact on the condition of the access road during the construction and operational phase of the development given its narrow width and inferior construction. Previous construction works on the road gave rise to subsidence requiring remediation at the cost of the residents.
- Proposed two-storey dwelling would not be in keeping with the character of the area, detract from a sensitive landscape/skyline and obstruct scenic views. There are no two-storey houses in the area.
- Proposed dwelling would overlook, overshadow and reduce the level of natural light enjoyed by adjoining properties.
- Construction traffic would give rise to noise impacts and intrude on adjoining properties.
- It is unclear where the proposed sewerage connection would occur.

- Concerns raised that the proposed entrance would encroach on a common boundary.
- An existing public footpath traversing the site has not been considered.
- Ground works would give rise to vermin nest disturbance and disturb a network of existing rabbit warrens.

4.0 Planning History

Subject Site: None

Surrounding Sites: Relevant applications on surrounding sites are summarised below.

Reg. Ref. 18/364 and **ABP302957-18**: Permission granted in 2019 for the construction of a dwelling house and all associated site works on a site to the northwest of the appeal site and accessed from the same private road. The permitted development has been executed.

Reg. Ref. 15/110: Permission granted in 2015 for demolition of an existing house to the west of the appeal site and the construction of a replacement dwelling accessed from the same private road. The permission was not implemented.

Reg. Ref. 15/70: Permission granted in 2015 for demolition of an existing house and construction of a replacement house on an adjoining site to the north of the appeal site. This permission was subsequently extended (reg. ref. 20/187) and the design of the dwelling modified under reg. ref. 21/127. The existing dwelling has since been demolished with works on-going on site.

Reg. Ref. 12/100: Permission granted in 2012 for demolition of an existing house and the construction of a replacement house on a site to the west of the appeal site and accessed from the same private road. The permission was not implemented.

Reg. Ref. 05/6937: Permission granted in 2007 for the construction of a dwelling house for short-term letting on a site to the northwest of the appeal site and accessed from the same private road. This permission was subsequently extended (reg. ref. 10/672) and the permitted works executed.

5.0 Policy Context

5.1. Cork County Development Plan 2022-2028

The site is situated within the development boundary of Inchydoney on land that is not explicitly zoned.

The site is located within an area identified as a High Value Landscape. The public road to the south of the site is identified as a Scenic Route (Ref. S74-Coastal Road from Clonakilty to Inchydoney and Ardfield).

Section 2.48.1 of Volume 5 of the Plan sets out the vision for Inchydoney.

The following Development Boundary objectives for Inchydoney are of relevance:

- **Objective DB-01:** Encourage development to be compatible with existing development and in particular, to be consistent with the vernacular architecture and scale of the holiday resort. The resort is located in a high value landscape area and all new development should take this into consideration.
- **Objective DB-04:** Protect and enhance the attractive coastal setting and landscape character of the settlement.

Specific **Objective U-01** in respect of Inchydoney identifies an indicative route for a proposed road connection from the north to the south of the island. On the south side of the island the proposed road would connect to the existing public road where the shared access road serving the appeal site currently connects to the public road.

5.2. Project Ireland 2040: National Planning Framework (2018)

The National Planning Framework seeks to focus growth on cities, towns and villages with an overall aim of achieving compact urban growth.

National Policy Objective 35 seeks to 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.

5.3. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

The guidelines state that for small towns and villages to thrive and succeed their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. New development should contribute to compact towns and villages. The scale should be in proportion to the pattern and grain of existing development.

5.4. Natural Heritage Designations

The site is located circa 80m from the Clonakilty Bay SAC (Site Code 0091) and the Clonakilty Bay SPA (Site Code 04081).

5.5. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and the distance to the nearest sensitive location, 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

This third-party appeal has been made by Frank and Orla O'Sullivan, owners of Chalet No. 2, against the decision of the Planning Authority to grant permission subject to conditions. The grounds of appeal are summarised below.

1. Site Access and Lane Structure

The unsurfaced access roadway serving the site is an old track / lane on an incline with no substantial foundation. The lane is not fit to carry goods vehicles or lorries, an increase in existing traffic levels, or service and emergency vehicles. There is no space for construction vehicles to turn on the

access lane or within the site itself. The surface of the lane has been eroded by rain and the width of the lane is restricted at pinch points. The recommended minimum width of 4.8m for the lane cannot be achieved without disturbing the adjoining embankments.

2. Maintenance of Access Lane

The Planning Authority's request for further information regarding the applicants' right of way over the access lane and its maintenance were not satisfactorily addressed. The proposed new road to the west of the site (Road Objective U-01) is removed from the location of the existing houses on the access lane. The current owner of the lane has not upgraded or maintained the lane or contributed to same; maintenance has been carried out by the existing house owners only. It is unreasonable to expect the existing chalet owners to repair and maintain the laneway because of continuous piecemeal development by the landowner.

3. Development in a Sensitive Landscape

The proposed development would dominate the landscape and comprises piecemeal development in a high amenity area containing a scenic route. There are no two-storey houses in the area and the proposed dwelling would be 3.3m higher than the dwelling immediately to the east.

4. Disturbance of Wildlife / Rabbit Warrens

The grounds works and traffic associated with the proposed development would disturb the network of existing rabbit warrens in the area.

5. Legal Ownership

There is a lack of clarity regarding the legal ownership of the access lane and whose responsibility it is to maintain the lane.

6.2. Applicants Response

DB Architects responded to the concerns raised in the appeal on behalf of the First Party. The applicants' response is summarised below.

1. Site Access and Lane Structure

The access lane serving the site has previously catered for the construction of several dwellings. Appropriate planning and technical solutions can overcome construction challenges such as terrain and topography on tight sites; such challenges should not form the basis for refusing permission.

2. Maintenance of Access Lane

The maintenance and upgrade of the access lane is a matter to be agreed between the legal owner of the lane and its users to whom a right of way has been granted. The applicants are not and will not be legal owners of the lane and cannot be held accountable for its upkeep.

3. Development in a Sensitive Area

The lower level of the dwelling would be set well into the ground and the scale of the upper floor of the dwelling is similar to the adjoining chalets. There are several examples of two storey dwellings in the area.

4. Disturbance of Wildlife / Rabbit Warrens

The appeal site can be considered an infill site within the existing built-up area of Inchydoney. Extensive zoned green amenity areas and lands outside the development boundary provide ample area for wildlife to thrive.

5. Legal Ownership

The legal ownership of the lane lies with Collette Murphy who gave the applicants her consent to apply for planning permission on the site, which is to be transferred to the applicants along with a right of way for use of the access lane, subject to planning.

6.3. Planning Authority Response

None received.

6.4. Observations

None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and having inspected the site, and having regard to relevant local and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Landscape Impacts / Visual Amenity
- Access and Traffic
- Other Matters
- Appropriate Assessment

7.1.1. Landscape Impacts / Visual Amenity

Whilst the subject site is located within a High Value Landscape, it is also located within the development boundary of Inchydoney wherein the pattern of development is largely characterised by detached dwellings built into the topography of the area and orientated towards the sea. Objective DB-01 of the County Development Plan encourages development in Inchydoney that is compatible with existing development whilst taking into account its location within a High Value Landscape.

I consider the design and siting of the proposed dwelling an appropriate response to the site context, noting that the principal building line of the house would be set back from that of the adjoining dwelling to the east, the profile of the house would be stepped so that it sits into the topography of the site, and the scale and form of the upper level of the house would be akin to the chalets to the west of the site. This design approach can be seen elsewhere in Inchydoney, most notably in the row of houses circa 250m east of the appeal site. The external materials and finishes of the proposed dwelling would also be in keeping with the character of the area.

Furthermore, the submitted landscaping proposals provide for the retention of the existing embankment and vegetation to the front of the site which should screen the lower level of the house to a large extent. Native hedging would be planted along the western and northern boundaries of the site and would provide further screening.

Having regard to the foregoing, I am satisfied that the proposed development would be assimilated into the landscape and would not detract from the visual amenity of the area or views from the Clonakilty to Inchydoney scenic route.

7.1.2. **Access and Traffic**

The proposed dwelling would be located at the end of a shared access road serving 5 no. houses presently. The said access road appears to have been created in the 1970s to serve the 3 no. timber chalets to the west of the subject site, with rights of way granted over the access road by the owner of the overall landholding. The applicants state the source map for the right of way sets out an approximate route with the width of the route defined as 12 feet (3.8m) with a parking area at the access at 20' (6m).

In his request for further information the Area Engineer referenced a 4.8m recommended width for the access road. This is the recommended maximum total carriageway width for local streets where a shared surface is provided; 'The Design Manual for Urban Roads and Streets' (DTTS & DHPLG May 2019) refers.

On the ground, the existing access road is narrow with sections where two vehicles cannot pass, most notably on a bend that is on an incline. Furthermore, the access road is in poor condition owing to its hardcore construction and the lack of surface water drains / management measures. In his initial report, the Area Engineer indicated that increased use of the access road would have a negative impact on its condition and that significant works are required to bring it up to a taking-in-charge standard. I concur with this assessment.

Whilst the applicants have indicated that it is technically possible to achieve a 4.8m width along the full length of the road, proposals to upgrade the access road were not included with the planning application. I note that the subject site and a right of way only are to be transferred to the applicants, subject to planning permission. The site and the access road are presently in single ownership. In this regard, I share the Planning Authority's initial concerns that the overall landholding is being developed in a piecemeal manner without the benefit of an adequate access road.

Whilst the access point to the public road is to be upgraded by the Council in accordance with Objective U-01 of the County Development Plan, the Area Engineer

has indicated that the Council will not be carrying out any improvements to the remainder of the private access road.

I concur with the appellant that the initial concerns raised by the Planning Authority's in respect of the access road were not adequately addressed in the applicant's response. I am not satisfied that these issues can be resolved by way of a planning condition requiring the developer and the other affected users of the access road to carry out upgrades to the road when the road is not in their ownership. I also have concerns that a decision to grant permission would set an undesirable precedent for further piecemeal development on the road without an adequate standard of road access being in place.

In summary, having regard to the location of the proposed development at the end of an unsurfaced shared access road currently serving five existing properties, and the inadequate width, alignment and structural condition of the road, I consider that the proposed development would endanger public safety by reason of traffic hazard and would set an undesirable precedent for further piecemeal development on the road. Accordingly, I recommend that planning permission be refused.

7.1.3. **Other Matters**

With regards to construction traffic, I consider the existing access road and site capable of accommodating construction vehicles associated with a development of the scale proposed. Had all other matters been in order, a construction management plan could have been conditioned to ensure that the amenity of adjoining properties is not unduly compromised during the construction phase.

I am also satisfied that the proposed development does not pose a significant threat to the wildlife of the area, noting the limited biodiversity value of the site and its infill nature within the development boundary of an existing settlement. I also note that rabbits are not a protected species under the EU Habitats Directive or the Wildlife Act 1976, as amended.

The applicants have provided the name of the legal owner of the access road serving the site, who is also the owner of the appeal site, and state that it is a matter for any other property owner availing of a legal right of way to clarify their rights in relation to its use. Notwithstanding, I have concerns that no person(s) or management company has been formally charged with maintaining the access road

upon which the proposed development relies, particularly given its poor condition. I agree with the appellant that there is a lack of clarity in this respect, and I am not satisfied that an acceptable standard of road maintenance would be provided in the future should the proposed development be granted permission.

7.1.4. **Appropriate Assessment**

The subject site is located circa 80m from the Clonakilty Bay SAC (Site Code 0091) and the Clonakilty Bay SPA (Site Code 04081). The proposed development would be located within the development boundary of Inchydoney and comprises a new dwelling served by existing public wastewater infrastructure with surface water attenuated on-site.

Having regard to:

- the domestic nature of the development,
- the existing wastewater infrastructure and surface water attenuation proposals,
- the consequent absence of a pathway to the European site,

it is considered that the proposed development would not be likely to have a significant effect individually, on in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

8.0 **Recommendation**

I recommend that permission be refused for the following reason.

9.0 **Reasons and Considerations**

Having regard to the location of the proposed development at the end of an unsurfaced shared access road currently serving five existing properties, and the inadequate width, alignment and structural condition of the road, it is considered that the proposed development would endanger public safety by reason of traffic hazard and would set an undesirable precedent for further piecemeal development on this road. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Eoin Kelliher
Planning Inspector

21st March 2023