



An
Bord
Pleanála

Inspector's Report

ABP-315114-22

Development	Retention of developments including garage, potting shed and first floor extension and permission for a further extension to a house
Location	Herne Hill Lodge, Ballinluska Td., Myrtleville, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	216978
Applicant(s)	Donal and Maureen O'Leary
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant
Appellant(s)	Bertie O'Brien and Kathy Soo-O'Brien
Observer(s)	None
Date of Site Inspection	6th April 2023
Inspector	Eoin Kelliher

1.0 Site Location and Description

- 1.1. The subject site is situated in the seaside village of Myrtleville, which is located circa 2km south of Crosshaven, County Cork. The site comprises a residential property ('Herne Hill Lodge') which occupies an elevated position circa 65m from the coastline, overlooking Myrtleville Bay. The topography of the area falls in a southeast direction. The surrounding landscape is characterised by dispersed one-off dwelling houses and holiday homes orientated towards the sea.
- 1.2. The subject site has a stated area of 0.2ha. The existing dwelling on the site comprises a detached house consisting of two diagonally arranged blocks with a connecting hallway that has been extended by way of a boot room. The western block, which contains living accommodation, is single storey in height and has pitched and flat roofs. There is a partially constructed extension to the front of this block. The eastern block contains bedroom accommodation and has been extended by way of an additional floor containing two bedrooms and a winter garden. There is a detached domestic garage to the front of the site and a newly constructed potting shed to the rear of the house. There is an existing effluent treatment system to the southwest of the site, adjoining the driveway, and soak pits in the front garden.
- 1.3. The appellant's property is located on higher terrain to the north of the subject site and comprises a detached dwelling situated circa 24m from the boundary of the subject site. A pedestrian path / right of way separates the curtilage of both properties and is lined by a mature hedge and trees. A detached dwelling ('Mystic Lodge') sits on lower terrain to the south of the site and shares a vehicular entrance from the public road with the subject site.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of:
 - A single storey extension (10sq.m) to the rear of the bedroom block / side of the entrance hall comprising a boot room.
 - A detached garage (27.59sq.m) to the front of the house.

Permission is sought for the retention and completion of:

- A detached potting shed (6.5sq.m) to the rear of the house.
- A first-floor flat roofed extension (84.4sq.m) over the bedroom block with a combination of aluminium and larch timber cladding externally; the extension comprises 2 no. bedrooms and a winter garden and contains 4 no. roof lights and a lantern on its flat roof.

Permission is also sought for the construction of a single storey flat roofed extension (11.4sq.m) to the southern side of the living accommodation block.

- 2.2. In response to a request for further information from the Planning Authority regarding the capacity of the existing on-site wastewater treatment system to cater for the increased loading arising from the proposed development, the applicant proposed to install a replacement wastewater treatment system (Tricel Novo Package Plant and Tricel Puraflo) in the same location.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 26th October 2022 Cork County Council decided to grant permission subject to 11 no. conditions. Condition No. 8 is of relevance:

Foul drainage shall be by means of a proprietary wastewater treatment system. This treatment unit and percolation area shall meet all the requirements of the Code of Practice, Wastewater Treatment Disposal Systems Serving Single Houses (p.e. <10) EPA 2021 and shall be installed and maintained in accordance with the manufacturer's instructions.

Reason: In the interests of public health.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Assessment

The Planning Officer's initial report raised no objection to the development, but recommended seeking plans and elevations of the extension permitted under reg. ref. 08/9604.

A Site Suitability Assessment confirming that the existing on-site wastewater treatment system can cater for the increased loading was also sought; the applicants were advised that if the existing system cannot cater for the additional loading proposals for an upgraded system should be submitted.

Further Information Submission

The applicants submitted a Site Suitability Report prepared by Joe Moynihan Engineering, as requested. On foot of the recommendations of the report, the applicants proposed to install a new packaged wastewater treatment system in the southwestern corner of the site; specifications and a layout drawing of same were provided.

Drawings of the previously permitted development were also submitted along with a cover letter explaining the rationale for departing from the design of same.

Assessment of Further Information

The Planning Officer's subsequent report noted that the Area Engineer had no objection to the proposed new wastewater treatment system and recommended granting permission.

The Planning Officer's recommendation is reflected in the decision of the Planning Authority to grant permission.

3.2.2. Other Technical Reports

Area Engineer:

Initial report notes additional bedrooms would be provided and recommends seeking a Site Suitability Assessment to confirm the existing on-site wastewater treatment system can accommodate the additional loading; a dimensioned drawing showing both wastewater facilities (percolation areas, treatment unit etc.) and the required separation distances as per the EPA Code of Practice was also sought.

Subsequent report raises no objection to the proposed installation of a packaged wastewater treatment plant subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Separate third-party observations on the application were made by each of the appellants. The main issues raised are summarised as follows:

- The permission granted under reg. ref. 08/9604 has expired; reference to same in the development description is misleading.
- The first-floor extension to be retained differs significantly from that permitted; it is 1.5m higher and the submitted plans do not indicate the roof lights and lantern installed at roof level.
- The roof lantern would cause severe light pollution at night and may provide for future access to the roof by means of a staircase.
- The overdevelopment of the site has resulted in visitors and tradesmen parking on the turning circle required for neighbouring residents.
- The first-floor extension is utilitarian in appearance, excessive in scale and proportion, and detracts from the visual amenity of the area and views from the observer's property.

4.0 S.132 request for Further Information

4.1. The Board is advised that further to my site inspection and on foot of my concerns regarding the ground conditions in the location of the proposed DWWTS, and the ownership of the land on which the system is to be located, the following further information was sought on behalf of the Board in accordance with section 132 of the Planning and Development Act 2000, as amended:

1. An updated Site Characterisation Form which describes the ground conditions (including trial hole and surface and subsurface percolation test results) of the embankment on which the proposed domestic wastewater treatment system is to be located and the suitability of this location for the proposed DWWTS.

2. A detailed survey drawing indicating the extent of the embankment within the applicant's ownership.
- 4.2. By letter dated 31st July 2023 Waterman Kelly Consulting Engineers responded to the request on behalf of the applicant. Regarding Item No. 1 the applicant states that the existing Biocycle unit (Ecotank ECT7 Gravity) has since been inspected and serviced and is deemed to be in good working order; the tank is said to be suitable for five bedrooms. Regarding Item No. 2 the applicant submitted a Site Plan drawing (Dwg. No. SK001) which shows the existing Biocycle unit within the registered boundary of the property.
- 4.3. The further information was circulated to the Planning Authority and the third-party appellants and comments sought on or before 4th September 2023. No submissions were received.

5.0 Planning History

5.1. Subject Site:

P.A. reg. ref. 08/9604: Permission granted 30th August 2009 for reconstruction and extension of existing attic, extensions and elevational alterations to existing dwelling.

The permitted extensions included a first-floor master bedroom over the existing bedroom block with a balcony on the east side of the extension. The permitted extension was to have a flat roof profile with a parapet height of 5.55m above ground level.

Small ground floor extensions were also permitted to the rear of the bedroom block, to provide for a guest w.c., and on the east side of the kitchen.

This permitted development was not executed.

6.0 Policy Context

6.1. Cork County Development Plan 2022-2028

- 6.1.1. The subject site is located within the development boundary of Crosshaven and Bays village in an area zoned 'Existing Residential / Mixed Residential and Other Uses'. Section 18.3.3 of the County Development Plan states, *inter alia*, that the objective for this zoning is to conserve and enhance the quality and character of established residential communities and protect their amenities. Infill developments, extensions, and the refurbishment of existing dwellings will be considered where they are appropriate to the character and pattern of development in the area and do not significantly affect the amenities of surrounding properties.
- 6.1.2. The site is also located within an area designated a High Value Landscape. **Objective GI14-10** of the Plan states, *inter alia*, that higher development standards (layout, design, landscaping, materials used) will be required in areas designated as High Value Landscapes.
- 6.1.3. **Objective RP 5-23** of the Plan relates to the servicing of single houses (and ancillary development) in rural areas and seeks to ensure, *inter alia*, that proposals for development incorporating on-site wastewater disposal systems comply with the EPA Code of Practice for Domestic Waste Water Treatment Systems.

6.2. Natural Heritage Designations

- 6.2.1. The nearest Natura 2000 is Cork Harbour SPA (Site Code 004030) which is located circa 1.2km to the southwest of the site.

7.0 The Appeal

7.1. Grounds of Appeal

This is a third-party appeal against the decision of Cork County Council to grant permission for the retention and construction of extensions to a neighbouring property. The main issues raised in the appeal are summarised as follows:

- The construction of the first-floor extension commenced in May 2021, seven years after planning permission reg. ref. 08/9604 was granted.
- The applicants ignored correspondence from Cork County Council in June 2021 advising that the extension was being carried out without the benefit of planning permission.
- In November 2021 the applicants submitted a planning application for the retention and completion of a first-floor extension previously granted planning permission under reg. ref. 08/9604, the height of the permitted extension was to be 5.55 metres. The height of the extension to be retained, however, is 6.33 metres.
- The applicants installed 4 no. skylights and a large roof lantern in the roof of the extension which emits a large glow of light at night and reflects sunlight into the appellant's property. These features were not included in planning application reg. ref. 08/9604 or in drawings submitted with the retention application. The roof lantern brings the height of the extension to 7 metres.
- The decision of the Council should be overruled, and the applicants required to reduce the height of the extension to 5.55 metres as originally permitted.
- The applicants should be advised that no permission exists for the skylights and roof lantern in the extension.

7.2. Applicants Response

None.

7.3. Planning Authority Response

No further comment to make.

7.4. Observations

None.

8.0 Assessment

8.1. I consider the following to be the main issues to be addressed in this appeal:

- Impacts on Residential Amenity
- Wastewater Treatment (New Issue)
- Procedural Issues
- Appropriate Assessment

8.2. Impacts on Residential Amenity

- 8.2.1. Procedural and planning enforcement issues aside, I note the appellants' main concerns regarding the subject development relate to the height of the first-floor extension and the roof lights and lantern installed on the roof of the extension.
- 8.2.2. The first-floor extension has an overall parapet height of 6.33m above ground level. This amounts to a 0.78m increase in height relative to the previously permitted extension. Given the separation distance of circa 38m between the extension and the appellants' dwelling, the lower level at which the subject dwelling is situated, and the boundary landscaping along the northern boundary of the subject site, I am satisfied that the height of the first-floor extension as constructed does not diminish the residential amenity of the appellants' property by way of overbearing appearance or overshadowing. I am also satisfied that the design and finishes of the first-floor extension do not detract from the visual amenity of surrounding properties or the area more generally.
- 8.2.3. The roof lights and lantern installed on the roof of the first-floor extension are also so minor in scale and so removed from the appellants' dwelling that the level of light pollution and glare impacts arising would be negligible.
- 8.2.4. The garage and boot room extension to be retained, the potting shed to be retained and completed, and the proposed living room extension are modest in scale and would not, by virtue of their design and location, have an adverse impact on the residential amenity of the area.

8.3. Wastewater Treatment (New Issue)

- 8.3.1. Whilst the Area Engineer had no objection to the proposed replacement wastewater treatment system required to serve the additional loading from the first-floor extension to the bedroom block, I have concerns regarding the information contained in the submitted Site Characterisation Form and the location of the proposed domestic wastewater treatment system (DWWTS) on the site.
- 8.3.2. Specifically, I note from the submitted photographs that the trial holes used to assess the soil and subsoil characteristics of the site were dug in the front garden of the property, circa 25m from the location of the proposed infiltration area. The stated nature of the soil and subsoil at this location is manmade and may be specific to the front garden. The proposed infiltration area would be located on an embankment above a retaining wall with weep holes at its base and bounding the driveway of the adjoining property to the south ('Mystic Lodge'). The ground conditions at this location are unclear and I have serious concerns regarding the suitability of this location for the purposes of disposing of treated effluent to ground.
- 8.3.3. On foot of the foregoing, and in accordance with s.132 of the Planning and Development Act, 2000 (as amended), the applicant was requested on behalf of the Board to submit an updated Site Characterisation Form which describes the ground conditions of the embankment on which the proposed DWWTS is to be located and the suitability of this location for the proposed DWWTS. The applicant was also requested to submit a detailed survey drawing indicating the extent of the embankment within their ownership.
- 8.3.4. Waterman Kelly Consulting Engineers' response to the s.132 request states since the planning application was lodged the existing on-site Biocycle unit (Ecotank ECT7 Gravity) has been inspected and serviced by Wastewater Solutions and it has been deemed that operation and aeration is in good working order and the system is fully operational. The letter states that the unit is suitable for five bedrooms and sufficient to cater for the loading of the subject dwelling. A product information sheet for the unit was not, however, provided. A servicing certificate from Wastewater Solutions dated 21st July 2023 and a drawing of the unit are attached to the correspondence.
- 8.3.5. Notwithstanding the fact that the Biocycle unit is said to be operating accordingly, it remains unclear whether the ground conditions in the location of the unit are suitable

for disposing of treated effluent. The drawings of the existing unit do not indicate where treated effluent would be discharged to. Furthermore, details of the soil characteristics / conditions of the receiving ground have not been provided. As such, my initial concerns remain unaddressed.

- 8.3.6. Whilst I acknowledge that minimum separation distances as set out in the EPA Code of Practice (CoP) for Domestic Waste Water Treatment Systems may have influenced the location of the proposed replacement DWWTS, a relaxation of the CoP separation distances might have been acceptable in this instance, in the interest of locating the infiltration area above suitable receiving soil / subsoil. In this regard I note the EPA website (www.epa.ie/environment-and-you/waste-water/inspections--repair/) states that remediation of existing septic tank systems may have regard to the techniques, technologies and solutions set out in the Code of Practice but it is not bound by the full requirements of the code. There are, in my view, more suitable locations on the site for the proposed DWWTS than the embankment where the existing system is located.
- 8.3.7. Having regard to the foregoing, I am not satisfied that the additional first-floor bedrooms to be retained would be adequately serviced in terms of wastewater treatment. Accordingly, I recommend that planning permission be refused for this element of the development on public health grounds. As this is a new issue the Board may wish to seek the views of the parties.

8.4. **Procedural Issues**

- 8.4.1. I concur with the appellant that the description of the first-floor extension to be retained and completed as set out in the public notices was misleading insofar as it states that the extension was previously granted under planning registration reference no. 08/9604. The design of the extension to be retained and completed is different to that previously permitted in terms of its overall height, size / footprint, fenestration and the number of bedrooms to be provided. However, the appellants made the appeal and, so, were not evidently misled.
- 8.4.2. I note the applicants were not requested to give notice to the public that significant further information had been submitted to the Planning Authority when they proposed to replace the existing DWWTS. Consequently, third parties, and most notably the owners of 'Mystic Lodge', did not have an opportunity to make a

submission on this element of the development. However, as the applicant now proposes to retain the existing on-site DWWTS, I recommend that this matter be put aside.

9.0 **Appropriate Assessment**

9.1. Having regard to the small scale and nature of the development, and the distance to the nearest European sites, it is considered that the development would not be likely to have a significant effect individually, or in combination with other plans or projects, on a European site. Accordingly, Appropriate Assessment is not required.

10.0 **Recommendation**

10.1. I recommend that permission be **GRANTED** for the retention of the single storey extension to the rear of the dwelling and the detached domestic garage, retention and completion of the potting shed to the rear of the dwelling, and the construction of a single storey bay window to the front of the dwelling, for the reasons and considerations set out in Schedule 1 subject to conditions, and that permission be **REFUSED** for the retention of the first-floor extension for the reasons and considerations set out in Schedule 2.

11.0 **Schedule 1**

Reasons and Considerations

Having regard to the policies and objectives of the Cork County Development Plan 2022-2028, the scale, design and location of the garage, potting shed and ground floor extensions to be retained and completed, and the character and pattern of development in the area, it is considered that the development would not, subject to compliance with the conditions set out below, have an adverse impact on the residential amenity of adjoining properties or the visual amenity of the area. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1.	<p>The development shall be retained and carried out 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 within six months of permission being granted, and the development shall be retained and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The detached garage and potting shed shall be used solely for purposes incidental to the enjoyment of the dwelling house and shall not be used for any commercial purpose or for human habitation.</p> <p>Reason: In the interest of residential amenity and clarity.</p>
3.	<p>Drainage arrangements for the disposal of surface water shall comply with the requirements of the planning authority for such works.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

12.0 Schedule 2

Reasons and Considerations

Having regard to the information in the submitted Characterisation Form and supporting documentation, and the location of the existing / proposed domestic wastewater treatment system on an embankment of unknown ground conditions, the Board is not satisfied that the additional first-floor bedroom accommodation to be retained would be adequately serviced in respect of wastewater treatment. The proposed development would, therefore, be prejudicial to public health.

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

5th September 2023