



An
Bord
Pleanála

Inspector's Report ABP315498-23

Development	Retention of the construction of a new driveway to dwelling, site entrance, remediation works including landscaping and stabilisation to existing western boundary and associated site works.
Location	Currabeg, Ovens, County Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	224846.
Applicant	Geraldine Mc Donagh.
Type of Application	Retention Permission.
Planning Authority Decision	Grant of permission with conditions.
Type of Appeal	Third Party
Appellant	Eithne O'Halloran.
Observer(s)	None.
Date of Site Inspection	19 th April 2023.
Inspector	Derek Daly.

1.0 Site Location and Description

1.1. The site is located in the townland of Curraghbeg in a rural area 3 kilometres to the west of the town of Ballincollig in County Cork. The site is accessed from a narrow public road, which defines the site's southern boundary which is at the end of cul de sac and which via a series of public roads has a junction with the N22 National Primary Route approximately 2 kilometres to the south. The appeal site has a steep gradient falling in level to the north and there is a two storied dwelling located in the northern area of the site. The site has a stated area of 0.30 hectares. There is a dwelling in the adjoining site to the west/southwest which is located at a higher level. This site also has access to the cul de sac road at the termination of metalled surface of the roadway. The road continues unsurfaced in a westerly direction.

2.0 Proposed Development

2.1. The proposed development as submitted is for a retention permission for the construction of a new driveway to the dwelling on the site, for a site entrance and for remediation works which include landscaping and stabilisation to the existing western boundary of the site. The application as initially submitted on the 13th April 2022 included drawings which indicate a driveway initially running westwards in close proximity to the site's southern boundary to the adjoining party boundary with the site to the west before an acute bend and veering east and then north terminating to the east of the dwelling. Stone filled steel mesh gabions are indicated at the bend of the driveway in proximity to the party boundary. The drawings indicate site levels and there is also a site section which indicates the steep gradient of the site as it falls from south to north.

2.2. Further information was submitted on the 11th November 2022 in response to a request from the planning authority. The drawings indicate a survey of the site prior to the dwelling being constructed, a current as built site survey, site section, photographic images and a site layout map which indicates proposals for a section of gabion baskets as indicated on the initial submission which it is indicated are to prop up the verge edge. However, the written response states no further works are proposed at this point. The response also includes a written submission from a consulting engineer indicating the embankment adjoining the southern boundary of

the site is stable and that no further works are proposed at this time. In the event that this position is unsatisfactory to the neighbour gabion baskets can be retrospectively installed to provide additional support and it is the professional opinion of the engineer that the existing embankment will have no impact on the adjoining property. There is also no plans to change the geometry of the existing driveway for which retention permission is being sought.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission subject to five conditions. Condition no 2 requires within 8 weeks of the grant of permission revised drawings which omit all references to proposed gabion basket along the south/southwestern side of the site, specifies drawings to be included and indicates that the permission does not include permission for any gabion basket at this location.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 2nd of June 2022 refers to the site history and indicates that the driveway and ground levels to the south of house are materially different to the layout permitted in the grant of planning permission for the dwelling. The report refers to an absence of clarity in relation to what it is proposed to retain and further information on a wide range of matters was recommended and subsequently sought by the planning authority seeking further clarity in relation to what is actually being applied for by way of the retention application.

A planning report dated the 2nd of December 2022 considers the further information submitted on the 11th November 2022 and in considering the response indicates the viewpoint that the application as submitted is for retention only and not for other works to be constructed in particular a gabion basket which it is contended would not be exempted development. The report concludes the response addresses the matters raised and recommends planning permission.

3.2.2. Other Technical Reports

Engineering reports indicate no objections to the development.

4.0 Planning History

P.A. Reg. No. 18/5225. Permission was granted for a dwelling, wastewater treatment plant, a site entrance and associated site ancillary works. The driveway as permitted was located at the southeastern corner of the site and the layout and alignment did not encroach in the direction of the western and southwestern boundary of the site property.

P.A. Reg. No. EF/20/174. This is an enforcement file in relation to non-compliance with the conditions of P.A. Reg. No. 18/5225 and focuses on the issue of the route of the drive as permitted and as constructed.

5.0 Policy and Context

5.1. Development Plan

The current statutory plan is the Cork County Development Plan 2022-2028 however given the nature of the development and grounds of appeal there are no specific provisions of the plan which apply in this appeal.

5.2. Natural Heritage Designations

None relevant

5.3. EIA Screening

- 5.3.1. The proposed development does not fall within the scope of any of the Classes of development for the purposes of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

- The appellant is the adjoining landowner and has a dwelling on the property.
- The appellant had concerns in relation to the planning permission on the appeal site not complying with what was granted in particular in relation to the location of the driveway.
- The appellant engaged the services of a consulting engineers and the concerns raised in the report prepared were made known to the planning authority.
- The plans as submitted clearly indicate a gabion basket/wall on the boundary with the appellant's property which would secure the safety of the appellant's property for the future.
- The current application as submitted is for retention it is however clear that the appellant's engineer indicated that gabions were necessary, the applicant's drawing also indicated gabions but the application as submitted did not request permission for the gabions.
- The applicant's engineer in the further information submission refers to no danger at present but does not address any future undermining.
- There is a likely lack of support over time and a high probability of slippage in particular with bouts of severe rain and that the boundary will collapse and the appellant's driveway is a risk of collapse.
- It is respectfully submitted that the retention permission should have made conditional providing gabions to support the embankment adjacent to the appellant's property.

6.2. Planning Authority Response

The planning authority in a response is of the opinion that all relevant issues have been covered in the technical reports and have no further comment.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal to the planning authority's decision to grant planning permission. Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.

7.2. Issues raised in the grounds of appeal.

- 7.2.1. The substantive issue in the grounds of appeal are concerns in relation to the development as applied for and the conditions as applied to the grant of permission. The development as applied for clearly specifies a permission for retention but as initially submitted the public notices refer to a new driveway, a site entrance and remediation works including landscaping and stabilisation works to the existing western boundary. The drawings submitted indicate works which extend beyond the works currently in place and including steel mesh gabions baskets/walls clearly intended to prop up the grass verge. It is noted that the relocation of the driveway to the route currently in place has resulted in significant alteration of site levels and cutting into the slope.
- 7.2.2. The concern of the appellant arises from the relocation of the route of the drive to a position in proximity to the party boundary and the potential impact arising from this relocation which are potential ground instability with potential collapse of the lands along the site boundary and potential impact on the driveway in the appellant's property. The appellant engaged an engineer to assess this risk and the report indicates that measures were necessary to avoid the potential of adverse risk on the appellant's property.
- 7.2.3. The absence of clarity arising from the initial resulted in the planning authority requesting clarification in relation to what was applied for and that new works other than a retention of the current works would involve a new application. The applicant in response has in effect limited the application as applied for to a retention of what is currently in place and although the drawing do show gabion baskets/walls it is not intended to construct these and an engineer on behalf of the applicant has indicated that additional stabilisation works are unnecessary at this point in time. The engineer's report does leave open the position that if this is unsatisfactory to the neighbour the gabion baskets can be retrospectively installed. The installation of these gabion baskets the applicant's engineer contends would be exempted

development and this it is noted is disputed by the planning authority. It is important to state that it is not the function of this particular appeal to determine of whether or nor it is exempted development.

- 7.2.4. The planning authority having sought clarity has determined the application solely in relation to a retention of what has been constructed and has by condition further limited this by the provisions of condition no. 2 which require submission of drawings which omit all references to proposed gabion basket along the south/southwestern side of the site, specifies drawings to be included and indicates that the permission does not include permission for any gabion basket at this location.
- 7.2.5. In assessing the application, the planning authority did offer the applicant the opportunity to apply for development which extended over and above a retention of what has been constructed and in granting permission solely for retention of what has been constructed the procedural process as followed by the planning authority is correct as it was not in a position to permit works which extend in excess of the works currently carried out as the application is a retention permission.
- 7.2.6. The issue to be considered is whether in limiting the terms of the permission has this decision impacted on the appellant's property to the detriment of the amenities currently enjoyed which the appellant considers to be the case and is central to the grounds of appeal.
- 7.2.7. There appears to be no doubt that as initially intended stabilisation works were envisaged to occur on the site and drawings indicating gabion baskets/walls are illustrative of this. The response by the engineer and the architect for the applicant does refer no works required at this time and only to possibly further grading of soil. The appellant's engineer strongly holds the view that stabilisation works as initially indicated by the applicant are required.
- 7.2.8. In granting permission without any provision for stabilisation of the slope and to prop up the verge edge it is difficult to accept the current situation can be considered a satisfactory or safe solution into the future and a high level of uncertainty results from this. It may be satisfactory at this point in time but there is little definitive assurance that this will remain the case and as already indicated there was a clear initial proposal to construct gabion baskets/walls as a means to providing stabilisation which would address the concerns of the appellant.

- 7.2.9. It is also important to state the relocation of the driveway was a decision of the applicant and in doing so has raised the potential of damage along the party boundary and possibly the appellant's driveway and granting a retention of permission will not address stated valid concerns and potential impacts on residential amenities currently enjoyed by the appellant in relation a longer term stability of the slope and avoidance a slippage which would potentially adversely impact on the appellant's property and driveway.
- 7.2.10. It is open to the applicant to address these concerns with an appropriate planning application but granting permission for what has been currently applied for is not satisfactory and creates a situation of uncertainty which would be detrimental to the residential amenities of the adjoining landowner and the grounds of appeal as expressed by the appellant are valid and reasonable concerns.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the minor nature of the proposed development on a site developed for residential use, it is concluded that no Appropriate Assessment issues arise as the proposed development would not 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 recommend that the application be refused.

9.0 Reasons and Considerations

Having regard to the nature of the development as constructed and which is the subject of a retention of planning permission, it is considered that in the absence of a clear programme of works currently and into the future to provide for stabilisation of the slope between the driveway as constructed and the party boundary with the adjoining site to the south and southwest, would give rise to potential adverse impacts on the adjoining property which are not satisfactorily addressed by the development as applied for by way of retention. The development therefore would be detrimental to the residential amenities currently enjoyed by the adjoining property

and would therefore be contrary to the proper planning and sustainable development of the area.

Derek Daly
Planning Inspector

8th May 2023