



An
Bord
Pleanála

Inspector's Report

ABP-319659-24

Development

Retention and completion of building works. Extension, parking platform with basement, vehicular entrance and modification to site boundary together with all associated site works previously permitted under PL. Reg. No. 05/8713 & extension for duration permitted under PL. Reg. No. 11/4418.

Location

Kilmoylan, Dunmanway Road, Coolfadda, Bandon, Co. Cork.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

23/6443

Applicant(s)

Jeffrey Brennan

Type of Application

Permission

Planning Authority Decision

Grant with conditions

Type of Appeal

Third Party v. Grant

Appellant(s)

John and Brenda Nyhan

Observer(s)

None

Date of Site Inspection

21 January 2025

Inspector

Cáit Ryan

1.0 Site Location and Description

- 1.1. The subject site is located in Bandon, Co. Cork, approx. 25km south west of Cork city. It is a prominent site fronting Dunmanway Road, at the western side of the town, approx. 170m north west of The Shambles.
- 1.2. There is an existing large, detached dwelling house on site, 'Kilmoylan' which is currently being extended and modified. While this house site currently has the appearance of being a large corner site, the western part of the existing curtilage does not form part of the application site outlined in red. The site area is 0.117ha.
- 1.3. The house has an elevated position on Dunmanway Road, and is accessed via steps at its eastern end. Vehicular access to the site is from the rear (north). However, as the site is currently a construction site, much of the northern site boundary is not in place, and temporary construction fencing is in place along this roadside frontage. Grounds levels at the rear of the site are currently below the adjoining cul-de-sac roadway to the north to varying degrees.
- 1.4. The site is accessed from the Dunmanway Road (R586) via L-6130-0, a cul-de-sac roadway. There are no footpaths on this road. The L-6130-0 has a poor road surface in parts on approach to the subject site. There are 4no. houses opposite Kilmoylan on this stretch of the cul-de-sac. The cul-de-sac continues in a northerly direction to serve approx. 3no. houses, and the cul-de-sac also continues in an easterly direction (as non-assigned roadway on the Cork County Road Schedule Viewer, viewed on www.corkcoco.ie). The site is bounded to the east by 'Westbourne', a large detached dwelling house.

2.0 Proposed Development

- 2.1. Permission for retention and completion of building works comprising
 - extension to rear/north of existing dwelling,
 - parking platform with basement to underside as constructed,
 - vehicular entrance,
 - modification to site boundary and
 - all ancillary site works as previously permitted P.A Ref. 05/8713 & extension

for duration P.A. Ref. 11/4418.

The existing 2-storey dwelling is stated to comprise 178sqm, with the ground floor extension comprising 37sqm and the basement area to be retained extending to 78sqm.

3.0 Planning Authority Decision

3.1. Decision

Following a request for Further Information, the planning authority made a decision to grant permission subject to condition. Conditions of note are as follows:

Condition 1: Development to be carried out in accordance with plans and particulars lodged on 8 December 2023, 31 January 2024 and 15 March 2024.

Condition 2: Submit revised proposals for a 1.5m wide garden gate on northern site boundary within 3 months of grant of permission.

Condition 11: Height of vehicle entrance gate shall not be more than 1m above the private parking surface level. Reason is to aid available sight distance.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Executive Planner (7 February 2024 and 10 April 2024)

First report considers there is sufficient amenity space in modified site boundary and any proposal on remaining lands will be assessed on its merits, and notes internal reports. Recommends Further Information.

Second report notes FI response. Considers that the requirement for vehicular access for maintenance is minimal, that a 3m wide vehicular access is not warranted and recommends condition for revised 1.5m wide garden gate to access the lower garden. Recommends permission subject to 11no. conditions.

3.2.2. Other Technical Reports

Area Engineer (7 February 2024 and 9 April 2024):

First report recommends Further Information in relation to access, stormwater run-off, and retaining walls.

Second report states garden gate width should be only be to that necessary for required garden maintenance. States no objection subject to 6no. conditions.

Conservation Officer (7 February 2024): Recommends condition relating to external finishes.

3.3. Prescribed Bodies

None

3.4. Observations to Planning Authority

2no. observations were received by the planning authority. The issues raised relate to impacts on privacy, proposed 3m garden gate would set a precedent, impacts on established rights to park on public road and reinstatement of boundary wall.

4.0 Planning History

P.A. Ref. 05/8713: Permission granted in 2006 for extension to dwelling, parking platform with basement, entrance, landscaping works and swimming pool.

The site outlined in red encompassed a larger site area, extending to the roadside boundary to the west, as viewed on the planning authority's online planning search mapping. The third party's appeal submission in the subject case also includes a photograph of the P.A. Ref. 05/8713 planning application (site plan).

P.A. Ref. 11/4418: Extension of duration of planning permission granted for the P.A. Ref. 05/8713 permission.

5.0 Policy Context

5.1. Cork County Development Plan 2022-2028

The site is zoned **Objective ZU 18-9 Existing Residential/Mixed Residential and Other Uses**. 'Residential development' is an Appropriate Use on this land use

zoning.

The site is within Barrett's Hill Architectural Conservation Area

5.2. Natural Heritage Designations

The site is not located in or adjacent to any European sites. The nearest European sites are:

Courtmacsherry Bay SPA (Site Code 004219) is approx. 9km to south.

Courtmacsherry Estuary SAC (Site Code 001230) is approx. 9km to south.

Bandon Valley West of Bandon pNHA (Site Code 001034) is approx. 1km to west.

Bandon Valley Above Innishannon pNHA (Site Code 001740) is approx. 2.8km to north east.

5.3. EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal is from John and Brenda Nyhan, whose dwelling house 'Lisheen' is located on the opposite (north) side of the cul-de-sac. The grounds of appeal may be summarised as follows:

Access/Parking

- Development has been ongoing intermittently since 2005.
- Appeal against Condition 2 which is to submit within 3 months revised proposals for 1.5m wide garden gate on northern site boundary.
- P.A. Ref. 05/8713 showed ramp leading from raised parking platform down to

the eastern side of the property (Photos 1 and 2). This is the optimal solution and would remove need for garden gate and thus not impact public parking.

- Ramp to west is currently being used by construction machinery.
- Resident of adjoining property to third party lost an on-road parking space when original entrance was widened from 3.8m to 9.8m.
- As this 4-bedroom house will be a long term lease there is potential for tenants with cars to potentially need further parking on road
- Additional entrance, albeit a garden gate, would lead to further loss of parking.
- 14no. houses exit onto L6130. Only the appellants' house does not have private parking so are dependent on road parking outside their house.
- Concern there will be substantial intensification of vehicular usage of roadway causing interference with current freedom of access and egress to their property and to parking their private cars on the public road adjacent to their house

Elevation changes

- No permission was applied for change of elevation treatment to underside of basement. There are now windows/openings (Photo 7) that adversely affected the third party.
- Applicant claims they cannot feasibly put in a ramp on the western boundary of the parking platform due to the prohibitive cost of the ramp.

6.2. Applicant Response

The applicant's response to the grounds of appeal may be summarised as follows:

Dismissal of appeal

- The reduced 1.5m wide garden gate entrance lies in the vicinity of where the appellants park their car. Appellants' claim they have an established right to park at this location. No such right exists. There is no specific nominated right within their legal title.
- Cites Section 5.13 of the Development Management Guidelines for Planning

Authorities (June 2007), stating the planning system is not a mechanism for resolving disputes over title to land or rights over land.

- The grounds for appeal have no basis. Appeal should be dismissed in accordance with Section 138(1)(a)(i) of Development Act (amended)

Parking

- Kilmoylan enjoys 24.6m of public road frontage along its northern boundary which is 4.2m wide. Appellants' property enjoys 10.5m frontage. They choose not to park immediately alongside their own frontage.
- Attached photographs highlight that when car is parked, there is only 2.2m remaining for traffic to pass. Council should not facilitate parking on northern public road abutting the site and classify it a no-parking zone with double yellow lines if necessary. Cars parked at this location render the carriageway impassable to several vehicle types.
- Appellants purchased property knowing it did not have parking space.
- Ample parking alternatives in the vicinity – where L6130 leaves Dunmanway Road and travels north, it is 6m wide. Appellants park cars in this location to facilitate refuse trucks, deliveries, etc.

Comments on appeal

- Aggregate of entrance widths approved under P.A. Ref. 23/06443 is 6.5m (5m + 1.5m), less than 9.6m width permitted under P.A. Ref. 05/8713.
- If house is rented, it will be on a 'whole house' and not 'by-room' lets. Traffic generated by 4-bed dwelling will be no more than any normal family home.
- Proposed garden gate is intended for garden access. Client is accepting of Council's reduction in width from 3m to 1.5m.
- Appellants' suggested ramp solution would represent an incongruous intervention. Does not consider it appropriate to include cumbersome features such as ramps to front and side of dwelling.
- Planning application wording included permission for retention and completion of building works comprising extension to north/rear, parking platform, with basement to underside, etc. Glazing was clearly shown on western elevation

at basement level. Applicant has narrowed this glazing by installing a pillar of blockwork, as seen in appellants' photo 7. The glazing is therefore reduced from that shown on the planning drawings with P.A Ref. 23/06443.

6.3. Planning Authority Response

The planning authority has confirmed that it has no further comment.

6.4. Observations

None

7.0 Assessment

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

- Principle of the Development
- Access and Parking
- Basement Level – Design Detailing
- Other Issue – Surface Water

7.2. Principle of the Development

7.2.1. The subject site is located within an established residential area of Bandon. The site is zoned **Objective ZU 18-9 Existing Residential/Mixed Residential and Other Uses**. 'Residential development' is an Appropriate Use on this land use zoning. Permission was previously granted to extend and modify the existing large, detached dwelling house on site; P.A. Ref. 05/8713 refers.

7.2.2. The development includes modifying site boundaries, whereby the red line boundary of the current site is reduced to 0.117ha. Having regard to the availability of vehicular and pedestrian access along the northern (rear) site boundary, and pedestrian

access via steps from Dunmanway Road, the site would be accessible along two roadside frontages, and would retain a sufficiently large amount of private open space to serve the future occupiers of the extended dwelling house. The remaining garden area to the west, which currently forms part of the overall site, would comprise a 0.07ha corner site with road frontage on its north, west and south sides. Having regard to this size and rectangular shape of the 'new' smaller site to the west, located in an urban area, I consider that the proposed modification to site boundaries would be acceptable.

7.2.3. I consider that the proposal to retain and complete amendments to the permitted development is acceptable in principle.

7.2.4. The development proposed to be retained and completed in the subject case, with reference to the grounds of appeal raised, is discussed in further detail in the following sections.

7.3. Access and Parking

Entrances

7.3.1. The development proposed to be retained and completed seeks to create a new 3m wide garden gate along the northern site boundary, which was reduced to 1.5m by the planning authority's Condition 2.

7.3.2. On site inspection I noted that much of the northern site boundary has been removed, as there is temporary construction fencing in place.

7.3.3. The FI site layout plan shows a 5m wide access gate at the eastern end of the site's northern road frontage. Forming part of the overall entrance design is a metal and timber clad fixed panel directly to west of the opening, and a 1.8m wide matching panel to east. 2no. parked cars are shown on site plan.

7.3.4. The grounds of appeal include a photograph of a partial drawing from P.A. Ref. 05/8713 which shows a 9.8m wide proposed entrance with parking spaces.

7.3.5. Separately, the applicant's response to grounds of appeal states that the aggregate of entrance widths approved under P.A. Ref. 23/06443 is 6.5m (5m + 1.5m), which is less than the 9.6m wide vehicular entrance permitted under P.A. Ref. 05/8713.

7.3.6. I note the site context whereby there is much variation in ground levels. In general, the site slopes down from the northern site boundary at varying degrees. The

basement finished floor level (FFL) is 103.29m, and the road level to north is shown as 106.04m. The proposed 3m wide garden gate is located at the western end of road frontage. This would result in the combined roadside boundary wall and fixed panel between the 3m wide entrance and the 5m wide entrance comprising 14m.

- 7.3.7. I consider that a 5m wide vehicular entrance at the site's eastern end would be acceptable in this case, whereby it is indicated that an approx. 9.8m wide vehicular entrance and parking was previously permitted at this location.
- 7.3.8. With regard to the proposed 3m wide garden gate, I consider that the principle of a new opening along this roadside frontage, to directly access the lower ground level within the site's curtilage, would be generally acceptable.
- 7.3.9. In terms of whether a 3m wide opening would be acceptable, I note the site context and detail of the proposed entrance. There are no footpaths either side of L-6130-0. Approx. 14no. houses are accessed from the L-6130-0 cul-de-sac, including those located in the cul-de-sac to north of the subject site. While the road width at the location of the proposed garden gate does not appear to be annotated, I estimate that it would be approx. 5m wide, as measured from plan. The proposed boundary to the west, bounding the 'new' separate site, is shown to comprise beech hedging with post and wire fence. Given that there is an approx. 90° bend roughly 17m to west of this proposed entrance and the road width is relatively narrow at this location, taken together with the limited number of houses which are served by this cul-de-sac road, I consider that traffic speeds at this location would be low.
- 7.3.10. The FI section drawing indicates that these gates and adjoining wall would be minimum 1.6m in height (Site Sections A-A / B-B & C-C; Drawing No. 1106 – 23P - 02). Notwithstanding the likely low traffic speeds, I note the absence of footpaths and that entrance design is not recessed, and due to limited sight distances for exiting vehicles, I consider the proposed 3m wide access, albeit as a 'garden gate', would not be acceptable in terms of traffic safety. In the event the Board was minded to grant permission, it is recommended that the planning authority's Condition 2 be attached, whereby the entrance width is limited to 1.5m. This entrance width would allow for access to the lower garden, but would restrict vehicular access such as to cars, vans, etc. I consider that subject to the attachment of such a condition, this aspect of the development would be acceptable in terms of traffic safety.

Parking

- 7.3.11. With regard to concerns raised in the grounds of appeal relating to impacts of the proposed garden gate on parking availability on the public road for the appellants, whose property 'Lisheen' is located directly opposite (north of) the garden gate, I consider that the key issue on this matter is that L-6130-0 is indicated to be a local road, in the charge of Cork County Council, as viewed on Cork County Road Schedule Viewer.
- 7.3.12. I note all information on file, including that the appellants outline that of all 14no. houses which exit onto the L6130, they are the only house that does not have a private parking space, and are dependent on the road for parking their cars outside their house. On site inspection I noted that there are no delineated parking spaces or parking signage in place at this location, such as relating to permit parking.
- 7.3.13. Having inspected the site, having regard to all information on file including the submissions received in relation to the appeal, I note that the provision of the proposed garden gates, whether of 3m or recommended 1.5m width, may have implications for those seeking to park alongside the site's northern roadside frontage.
- 7.3.14. However, I consider that the matter raised by the appellants in terms of parking their cars outside their house on the public road is not a matter to be resolved through the planning process. It is noted that the planning authority is satisfied as to the validity of the planning application. Any further legal dispute is considered a civil matter and outside the scope of the planning appeal. In any case, I note the provisions of s.34(13) of the Planning and Development Act 2000, as amended, which state that a person shall not be entitled solely by reason of a permission under this section to carry out any development.
- 7.3.15. I have noted in this assessment that the applicant's response to the grounds of appeal requests that this appeal be dismissed. I do not consider dismissal of the appeal would be appropriate in this case, given that the grounds of appeal raise generally two issues, namely matters of access and parking outlined above, and the detailed design of the basement level, as discussed further in the following section.

7.4. Basement Level – Design Detailing

- 7.4.1. With regard to concerns raised in the grounds of appeal that no permission was

applied for change of elevation treatment to underside of basement, I note that the planning authority accepted the planning application as valid. In terms of detail, I note that the description of development in the subject case includes that retention permission is sought for parking platform with basement to underside as constructed. In this regard I consider that the description of development adequately describes the nature of the works proposed to be retained and completed, as outlined in the lodged plans and particulars.

- 7.4.2. Separately, I note that the applicant's response to grounds of appeal includes that an amendment to the western elevation was carried out at basement level, which can be seen in Photo 7 of the grounds of appeal. It is stated that the glazing has been narrowed by the installation of a pillar of blockwork
- 7.4.3. I note that there are no drawings on file showing this amendment. However, as viewed in Photo 7 and as viewed on site inspection, I note that there is a very minor change to the detailing of the western elevation at basement level.
- 7.4.4. I consider that both the elevation shown in the lodged plans and particulars, and the elevation constructed on site which incorporates a narrow blockwork pillar, would be acceptable on visual grounds. In my opinion, due to very minor nature of the changes to the glazing detail from that indicated in the lodged application, the western elevation constructed on site would not give rise to any new planning issues.
- 7.4.5. However, while noting the very minimal nature of the amendment to the glazing, and while I note also that the description of development refers to the development 'as constructed', no revised, annotated drawings of the western elevation have been received by the Board. Accordingly, in the event the Board was minded to grant permission, I recommend that the standard condition requiring the development to be retained and completed in accordance with the lodged plans and particulars be attached to any grant.

7.5. Other Issue - Surface Water

- 7.5.1. The FI response (Item 3) outlines that the storm water runoff will be adequately catered for by the existing soakaway. The Area Engineer's second report had no objections subject to standard surface water drainage conditions. In this particular case, it is considered, in the event the Board was minded to grant, that a condition is

not required stipulating the submission of plans and particulars relating to surface water drainage to be agreed.

8.0 AA Screening

8.1. I have considered that the development proposed to be retained and completed in in light of the requirements of S177U of the Planning and Development Act 2000, as amended.

The subject site is not located within or adjacent to a European site. The nearest European sites are

- Courtmacsherry Bay SPA (Site Code 004219) is approx. 9km to south.
- Courtmacsherry Estuary SAC (Site Code 001230) is approx. 9km to south.

The development proposed to be retained and completed comprises extensions and alterations to an existing dwelling house, revised access arrangements and modifications to site boundary and associated works. The subject site is within the Bandon development boundary, on serviced lands.

Having considered the nature, scale and location of the development proposed to be retained and completed, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European site.

The reason for this conclusion is as follows:

- Small scale and domestic nature of the development proposed to be retained and completed
- Location of the development in a serviced urban area, distance from European sites and absence of hydrological or other pathways to a European site.

I consider that the development proposed to be retained and completed would not be likely to have a significant effect individually, or in combination with other plans and projects, on a European site and appropriate assessment is therefore not required.

9.0 Recommendation

I recommend that permission be granted subject to conditions.

10.0 Reasons and Considerations

Having regard to the nature and scale of the development proposed to be retained and completed, the Objective ZU 18-9 Existing Residential/Mixed Residential and Other Uses land use zoning which pertains to the subject site, the location of the subject site and the pattern of development in the area, it is considered that the development proposed to be retained and completed would not adversely impact on the residential or visual amenities of the area, and would, subject to conditions, be acceptable in terms of traffic safety. The development proposed to be retained and completed would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 31 day of January 2024 and 15 March 2024, except as may otherwise be required in order to comply with the following conditions. Reason: In the interest of clarity.
2.	Within 3 months of the date of this Order, revised annotated plans and particulars, to a suitable scale, shall be submitted for the written agreement of the planning authority, which shall show the proposed 3 metre wide garden gate reduced to a maximum width of 1.5 metres. Reason: In the interest of traffic safety and orderly development.
3.	(a) The disposal of surface water shall comply with the requirements of the planning authority for such works and services. (b) Surface water shall not be permitted to flow onto the public road as a result of the development.

	Reason: To prevent flooding and in the interests of sustainable drainage.
4.	Details of the materials, colours and textures of all the external finishes to the structure proposed to be retained and completed shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Reason: In the interest of visual amenity of the Architectural Conservation Area and to ensure an appropriate high standard of development.
5.	The landscaping scheme shown on drawing number 1106 -23P -01, as submitted to the planning authority on the 15 day of March, 2024 shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority. Reason: In the interest of residential and visual amenity.
6.	No dust, mud or debris from the site shall be carried onto or deposited on the public road/footpath. Public roads and footpaths in the vicinity of the site shall be maintained in a tidy condition by the developer during the construction phase. Reason: To protect the amenities of property in the vicinity.

7.	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 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.
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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.

Cáit Ryan

Senior Planning Inspector

30 January 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-319659-24		
Proposed Development Summary	Retention and completion of building works comprising extension, parking platform with basement, vehicular entrance and modification to site boundary together with all associated site works previously permitted under PL. Reg. No. 05/8713 & extension for duration permitted under PL. Reg. No. 11/4418.		
Development Address	Kilmoylan, Dunmanway Road, Coolfadda, Bandon, Co. Cork.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No	X		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			

Yes			Preliminary examination required (Form 2)
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5. Has Schedule 7A information been submitted?			
No	X	Screening determination remains as above (Q1 to Q4)	
Yes		Screening Determination required	

Inspector: _____ **Date:** _____