



An
Bord
Pleanála

Inspector's Report

ABP-306319-20

Development	Construction of a detached dwelling house and all associated site works.
Location	Canal Bank, Rhebogoe, Limerick.
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	19/577
Applicant(s)	Lorraine Meany
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party V. Grant
Appellant(s)	Damian Mc Donagh
Observer(s)	None
Date of Site Inspection	29 th April 2020
Inspector	Elaine Power

1.0 Site Location and Description

- 1.1. The appeal site is located on Canal Bank approx. 1m east of Limerick City centre. The site is bound to the north by the public road (Canal Bank) which is a one-way street, and the canal, to the south by Mount Richmond Close residential estate, to the east by a detached dwelling and to west by a yard. The lands to the east and west of the site are within the ownership of the applicant's family. There area is suburban in nature and there are a variety of house types and styles located within the immediate vicinity of the site.
- 1.2. The site has a stated area of 0.42 ha. There is an existing 4m wide metal gate to the site onto Canal Bank. This gate also provides access to the adjoining yard. The site is currently an overgrown garden / yard associated with a larger landholding within the ownership of the applicant's family.

2.0 Proposed Development

- 2.1. It is proposed to construct a 2-storey 2-bed house with a gross floor area of 83sqm. The house has a traditional design approach with a pitched roof and a large feature window at first floor level on the front elevation. It has a maximum height of 7.2m and is set back approx. 8m from the public road.
- 2.2. The existing vehicular access to the site would be retained and altered to provide a 5m wide access. Car parking is proposed to the front of the proposed house.
- 2.3. The development would be connected to the public foul sewer and main water supply.
- 2.4. ***Unsolicited Further Information lodged on the 5th August 2019***
The applicant submitted a response to a third-party submission and details of the history and the legal ownership of the site.
- 2.5. ***Response to Further Information lodged on the 9th October 2019***
The response to the further information request resulted in minor alterations to the size and positing of windows. It also included: -
 - Folio details and a land registry map

- Colour copies of site photographs which includes the angle of each photograph on a site plan.
- A revised site plan clearly indicating the site boundaries, including location, height and materials.

2.6. **Clarification of Further Information lodged on 22nd November 2019**

The applicant submitted an official land registry copy folio and has clarified that no right of way exists over the site. The clarification of further information did not result in any alteration to the proposed development.

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission was granted subject to 12 no. conditions. Condition no. 12 stated the driveway associated with the dwelling shall be used solely for purposes ancillary to the enjoyment of the house.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The initial Area Planners report raised some concerns regarding the proposed development and recommended that further information be sought regarding the following: -

- Full land registry and folio details for the site;
- A photographic survey of the site;
- A revised site layout plan indicating which boundaries exist and which are proposed. Potential for overlooking should be addressed; and
- Response to third party submission.

Following receipt of further information and clarification of further information it was considered that all concerns had been fully addressed and it was recommended that permission be granted subject to conditions.

3.2.2. **Other Technical Reports**

None

3.3. **Prescribed Bodies**

Irish Water: No objection subject to conditions

3.4. **Third Party Observations**

A third-party submission was received from Damian McDonagh. The concerns raised are similar to those in the third-party appeal.

4.0 **Planning History**

Subject Site

None

Surrounding Sites

Reg. Ref. 19/963: Permission was granted in 2019 for the construction of a house on a site located approx. 11m east of the appeal site, on lands indicated as being the applicant's parents' site on drawings submitted with the application.

ABP 306541-20: Current Strategic Housing Application for a mixed-use development of 18 no. houses, 363 no. apartments, 189 no. student bedspaces, childcare facility and associated site works on a site located approx. 95m west of the appeal site. Decision is due May 2020.

5.0 **Policy Context**

5.1. **Limerick City Development Plan, 2010-2016 (as extended)**

The appeal site is zoned Objective ZO.2 (A) Residential: - To provide for residential development and associated uses. Policy H.5 is considered relevant.

Policy H.5:- It is the policy of Limerick City Council to promote increased density where appropriate to do so, having regard to the existing or proposed public transport provision and proximity to the City Centre'

Chapter 16 sets out guidance for infill sites. It states: -

Infill Housing

In order to comply with general policy on infill sites and to make the most sustainable use of land and existing urban infrastructure, the Planning Authority will permit the development of infill housing on appropriate sites. In general, infill housing should comply with all relevant Development Plan standards for residential development, however, in certain limited circumstances; the Planning Authority may relax the normal planning standards to allow development to take place.

In all cases where permitted infill housing should:

- *Have regard to the existing character of the street by paying attention to the established building line, proportion, heights, parapet levels and materials of surrounding buildings.*
- *Comply with the appropriate minimum habitable room sizes.*
- *Have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard.*

5.2. National Guidance

- National Planning Framework
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area (2009).

5.3. Natural Heritage Designations

The appeal site is located approx. 16m south of the Lower River Shannon SAC (002165), on the opposite side of the public road.

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal was received from Damian McDonagh, who owns the land to the west of the appeal site. The concerns raised are summarised below: -

- There are inconsistencies in the drawings submitted and conflicting elevations.
- The applicant did not substantially alter the layout to reduce the potential for overlooking, as requested by the planning authority by way of further information. Concerns that the proposed dwelling would unduly overlook the appellants property.
- The proposed development was materially altered by the further information response.
- The applicant has not fully addressed the issue of land ownership. A letter from the appellants solicitor was submitted with the appeal which notes that the appellant has issued proceedings regarding his title and right to the subject property.
- There is a right of way over the lands. Access to the appellants site, which is located to the east of the appeal site, is via the existing 4m wide access gates to the subject site. The granting of planning permission would landlock the appellants site.
- The existing boundary wall between the applicant and the appellants site is over 100 years old. The removal of this wall would impact on the structural stability

of the remaining wall around the appellants property. The applicant has not addressed this issue.

- The photographic survey submitted is insufficient and does not cover the totality of the site.
- The appellant has occupied the site for 47 no. years and erected the access gates and has the site connected to services. The applicant has no ties to the site and not justification to live there.

6.2. Applicant Response

The applicants response states that there are a number of appendices attached, however, these were not received. The response is summarised below: -

- The appellants appeal is vexatious.
- The applicant's grandmother divided a site into 4 no. plots of land. Given the uneven nature of the north and south boundary walls the sites were divided as equally as possible which resulted in sloped not straight boundaries between the 4 no. plots of land. The information regarding the site size and dimensions submitted by the appellant to the Planning Authority in his third-party appeal are incorrect. The site boundaries of the appeal site, as submitted by the applicant, are correct. The proposed development does not negatively impact or impinge on the appellants lands which are located to the west of the appeal site.
- The applicant's application for legal title and rights to the property is invalid and should be rejected.
- The revised drawings submitted by way of further information reduce the size of some windows and clarified the use of the windows. The proposed design and layout of the house would not result in overlooking of adjoining sites.
- In response to the clarification of further information the applicant submitted full folio details from the land registry. The issue of land ownership has been fully addressed.

- The applicant disputes the claim that the appellant has lived at the site for 47 years. It is noted that the site was leased to Roadstone to store heavy machinery and equipment. A metal container was located on the site for ancillary uses for staff of Roadstone. It was not possible for the appellant to utilise the site at this time. In 2010 Roadstone vacated the site. The appellant was present on the property. However, this was no more significant or frequent than other family members. This period falls below the 20-year stipulation to legally acquire a right of way or 12 years to acquire an adverse possession.
- A full photographic survey of the site, which included 15 no images was submitted to the planning authority.
- It is acknowledged that access to the appellants site is via the applicant's site. However, there is no right of way over the site. The appellants site is not landlocked. It has a 13m frontage onto a public road, Canal Bank. The applicant has approached the appellant with regard resolving this concern, which included covering the costs of a new entrance. The applicant has also engaged with the planning authority regarding pre-planning discussions for a new vehicular access at the appellants site.
- The northern boundary of the site does include a historic wall, which is within the ownership of the applicant. The proposed house is located approx. 8m from this wall. The proposed development does not include any works to this wall. The appeal site previously formed part of a larger site which has been subdivide into 4 no plots. 3 no. plots have a vehicular access gate. These entrances required the removal of a section of the historic wall and did not result in any structural damage to the remaining sections of the wall.
- The applicant has provided details of her personal life and her connection to the site, which is on family land. It is also noted that the applicant undertakes a caring role for her brother, who lives at the adjoining site with her parents.

6.3. Planning Authority Response

None

7.0 Assessment

7.1. As indicated the appeal refers to the development as submitted with the Planning Authority, on the 22nd November 2019, by way of clarification of further information. The following assessment, therefore, focuses on that proposal with reference to the original scheme, where appropriate. The main issues relate to legal issues, residential amenity and construction practices. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Residential Amenity
- Legal Issues
- Construction Practices
- Appropriate Assessment

7.2. *Residential Amenity*

7.2.1. It is proposed to construct a 2-storey 2-bed house with a gross floor area of 83sqm. The house has a traditional design approach with a pitched roof and a large feature window at first floor level on the front elevation. The house has a maximum height of 7.2m. Concerns were raised that the revised layout submitted by way of further information does not fully address potential overlooking of adjoining properties.

7.2.2. The site is bound to the north by the public road, to the south by a residential estate Mount Richmond Close, to the east by an existing detached house and to the west by the appellants site, which currently accommodates sheds / storage unit. The house is generally located in the centre of the site, approx. 8m from the public road. It sits at the western boundary with the appellants site and is located approx. 6m from the eastern boundary of the site and the adjoining house. The rear building line of the proposed house is located approx. 13m from the southern site boundary and approx. 23m from the rear building line of an adjoining property in Mount Richmond Close.

7.2.3. There are no windows proposed on the east (side) elevation of the house. It is proposed to provide 2 no. velux roof lights on the western elevation to serve a bathroom. The first-floor rear (south) window is a double height window which serves

the ground floor living space. The house has been designed to provide 1 no. bedroom at first floor level with a window on the front (north) elevation. Drawing no. F101 submitted by way of further information details the position of all windows.

7.2.4. Having regard to the design and layout of the house, it is my opinion, that it would not result in any undue overlooking of adjoining properties or negatively impact on the existing residential amenities of any adjoining property.

7.3. ***Legal Issues***

7.3.1. Concerns have been raised by the appellant that the applicant is not the legal owner of the site. The appeal included a letter from the appellants solicitor which notes that the appellant has issued proceedings regarding his title and right to the subject property. In response the applicant has stated that she is the legal owner of the site and full folio details from the land registry were submitted with the application to the planning authority. It is also stated that the subject site forms part of a larger site which was previously in the ownership of the applicant's grandmother and was subsequently subdivided in to 4 no. plots. The appellants site is located to the west of the subject site and the proposed development does not impinge on this site.

7.3.2. Concerns were also raised regarding a right of way over the appeal site. It is noted that there is an existing 4m wide access to the appeal site and that this access also provides access to the appellants site to the west. The applicant has acknowledged that this entrance provides access to the adjoining site, however, she has stated that there is no right of way over the site and she has tried to engage with the applicant with regard providing alternative access arrangements.

7.3.3. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states, 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.

7.3.4. In conclusion, I consider that the disputes between the parties in relation to site boundaries, that may or may not arise, are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

7.4. *Construction Practices*

7.4.1. Concerns have been raised that the proposed development could potential negatively impact on the structural integrity of the northern boundary wall of the site. The appellant has stated that this wall is over 100 years old and any instability could impact on his site which is located to the west of the appeal site. In response the applicant has stated that the proposed house is located approx. 8m from the northern boundary and no works are proposed to the existing wall. The applicant has also noted that 3 no. separate vehicular access have been provided within this wall and these works did not result in any structural issues.

7.4.2. It is noted that the wall is not a protected structure. Having regard to the separation distance between the existing boundary wall and the proposed house, it is my view that the proposed development could be carried out without negatively impact on the wall. It is also considered that the onus is on the applicant and their contractors, to ensure that the construction phase is undertaken in a safe manner, in accordance with their obligations under separate codes, and I further note that the granting of permission would not relieve the applicants of their responsibilities in this regard.

7.5. *Appropriate Assessment*

7.5.1. The appeal site is located approx. 16m south of the Lower River Shannon SAC (002165). The appeal site and the designed site are separated by the public road, Canal Bank. The proposed development would not be located within the SAC and there would be no direct effects as a result of the works.

7.5.2. The Lower River Shannon SAC stretches for over 120km through counties Clare, Limerick and Kerry. The site is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II, including the priority habitats lagoon and alluvial woodland, Bottle-nosed dolphin and lamprey.

7.5.3. As indicated on the OPW flood maps the site is located outside of any flood zones. Foul water from the site would be connected to the public mains. The potential

pathways for impacts on the Lower River Shannon SAC are, therefore, confined to surface water run-off.

7.5.4. The application form notes that it is proposed to provide a soak pit on site. This would ensure that all surface water run-off from the development, would be collected and managed within the site. Therefore, there is no hydrological link to any Natura 2000 sites.

7.5.5. Notwithstanding the proximity of the site to the SAC, it is my view that, having regard to the nature and scale of the development, the sites location in a serviced urban area, the location of the public road which separates the appeal site from the designated site and to the nature of the qualifying interests, that the proposed development would not adversely affect the integrity of the Lower River Shannon SAC

7.5.6. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect Lower River Shannon SAC European Site No 002165 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

It is recommended that permission be granted subject to conditions.

9.0 Reasons and Considerations

Having regard to the residential zoning objective of the site, the pattern of development in the area and the small scale of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 9th day of October 2019 and on the 22nd day of November, 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars

Reason: In the interest of clarity.

2. The driveway shall be used solely for the purpose's ancillary to the enjoyment of the dwelling house.

Reason: In the interest of clarity

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of visual amenity.

5. Site development and building works shall be carried out only between the hours of 0700 to 1900 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.

Reason: In order to safeguard the residential amenities of property in the vicinity

6. The applicant shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

7. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

8. 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

Elaine Power
Planning Inspector

6th May 2020