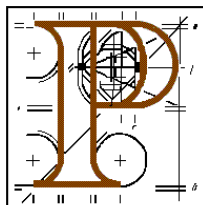


An Bord Pleanála



Inspector's Report

Development: Construction of two houses at Annabella, Mallow, Co. Cork.

Planning Application

Planning Authority: Cork County Council
Planning Authority Reg. Ref.: 14/5983
Applicant: John & Barbara Lehane
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Michael Byrne, Westbury Heights Residents, James A. Barry
Type of Appeal: Third Parties V Grant
Observers: Jim Barry, James & Nora Lehane, Eamonn & Maire O'Connell
Date of Site Inspection: 25th January 2016

Inspector: **Kenneth Moloney**

1.0 SITE DESCRIPTION

The appeal site is located on the western edge of Mallow town centre. The actual appeal site is sandwiched between an established suburban housing estate, i.e. Westbury Heights to the north and residential properties on individual sites which face onto Navigation Road to the south.

Westbury Heights is a suburban housing estate comprising of two-storey red-brick detached houses. No. 25 Westbury Heights adjoins a green space to its east. The appeal site is a vacant site situated between the rear garden boundaries of no. 25 & 24 Westbury Heights and residential properties facing onto Navigation Road to the south.

The gradient of the appeal site falls downwards in a north-south direction. The appeal site is effectively enclosed by the rear and side garden boundaries of established residential properties and is therefore an infill or a backland site.

The appeal site also includes a linear strip of land situated between the established green space in Westbury Heights and the side of no. 25 Westbury Heights. The gradient of this linear strip of land falls from the public road and to the south where it adjoins the main body of the appeal site.

The ground conditions of the appeal site, on the day of my site inspection were soft although no pooling was present.

2.0 PROPOSED DEVELOPMENT

The proposed development is for 2 no. two-storey dwellings, entrance roadway and all associated site works.

The proposal is effectively an infill development with access provided from an established housing estate, i.e. Westbury Heights. The two proposed houses are both two-storey in height however they are different in terms of design and floor area.

The proposed easternmost house has floor area of 265 sq. metres and the ground floor comprises of living area while the first floor consists of four bedrooms. The design of the proposed house is contemporary with a flat roof. The elevations are to be finished in a mix of grey zinc cladding and white render finish. The overall height of the proposed house is approximately 7 metres above ground level.

The proposed westernmost house has a floor area of approximately 258 sq. metres comprising of living space at ground floor level and four

bedrooms at first floor level. This house is also designed in a contemporary finish with a flat roof.

The front elevation includes two vertical lines of glass blocks. The overall finish is a mix of local limestone and white render. The maximum height of the proposed house is approximately 6 metres above the ground level.

Additional information was sought for the following;

1. Revised site layout in order to protect adjoining residential amenities
2. Details of the proposed shed / garage structure shown on the drawings
3. Drainage details
4. Revised cross section drawings,
5. Details of open drains
6. Details of the flow of water in all the pipe work
7. Surface water details
8. Details of the attenuation tank
9. Demonstrate that the local sewers have adequate capacity
10. Full details of the proposed foul sewer system
11. Tree survey
12. Details of legal agreement between applicant and residents of Westbury Heights for connections to sewers

3.0 PLANNING AUTHORITY'S DECISION

The Planning Authority decided to grant planning permission subject to 20 conditions. The conditions attached to the permission are standard for the development proposed.

Internal Reports: There is one internal report on the file:

- Area Engineer; Additional information sought in relation to access and drainage issues.

Objections: There are ten third party objections on the planning file and the issues raised have been noted and considered.

Submissions: There is a submission from Irish Water who have no objections to the proposed development.

4.0 PLANNING HISTORY

- PD 2547 – (2003) – Retention changes to as constructed development, including relocation of the common boundary wall of sites at no. 24 & 25 Westbury Heights.
- PD 2270 – (OP) Dwelling – Refused as the proposed access road is across lands designated for open space.

- PD 1989 – 14 Houses (Phase 3 of estate granted in 1998)
- PD 1988 – 5 Houses (Phase 2 of estate granted in 1998).
- PD 1990 – 6 Houses (Phase 1 of estate granted in 1998).

5.0 DEVELOPMENT PLAN

The operational development plan is the Mallow Town Development Plan, 2010 – 2016.

The appeal site is zoned 'established residential'. The objective of this land-use zoning is 'to provide for primarily residential development and other activities incidental to residential use'.

Paragraph 8.5 of the Plan sets out policy objectives for residential development and Objective H2 states 'promote the concept of a 'compact town' by encouraging appropriate residential development on suitably zoned lands throughout the Plan area in conjunction with available infrastructure'.

The following policy objectives are relevant;

- H1 – 1 – New residential development within lands zoned for residential.
- H1 – 2 – New residential shall not be detrimental to established residential amenity or character of the area.
- H1 – 3 – New residential development shall comply with development control standards.

Section 15.4.5 sets out guidance in relation to 'Infill Development'.

6.0 GROUNDS OF APPEAL

Appeal submission no. 1

Michael Byrne lodged an appeal and the submission outlines the planning / legal history of the site and the main grounds of appeal. The grounds of appeal are summarised as follows:

Sewage

- It is contended that the holding of sewage in an attenuation tank is dangerous.
- It is submitted that the capacity of the tank is excessive.
- The pump serving the tank is relatively small.
- As there is no primary treatment proposed the sludge will become too heavy and block the overflow to the surrounding areas.
- These tanks need constant maintenance as they will scale up, lose capacity, lose head and may burn out.

- The proposed tank will require constant maintenance which is not possible for a private dwelling in an urban environment.
- It is submitted that there are currently spillages from the existing sewer.
- It is contended that the proximity of the proposed attenuation amenities raises a health and safety risk.
- It is submitted that a septic tank contains only a fraction of a risk compared to the proposed attenuation tank.
- It is submitted that the sewage from the proposed development should use the services of the main family home enter the sewers by gravity onto Navigation Road.

Two Houses

- It is submitted that one of the applicant's currently resides and owns no. 25 Westbury Heights.
- The applicants argue that they have a desire to live close to their parent's house. The appellants argue that the two houses should be re-orientated to face towards their parent's home. In this instance the proposed houses could use the same access and services as their parent's home.
- The eastern end of the site water-logs due to the presence of shale and a high water table. There is an absence of clay on the subject site.
- The proposed house overlooks no. 24 Westbury Heights.
- It is submitted that the proposed design and finishes are out of character with the local area.
- It is questioned whether the 7-year rule will be applied restricting the sale of the houses for 7 years.
- It is questioned whether the applicant's father's house is planning compliant.

Driveway v Roadway

- It is questioned why the proposed roadway is 7 metres wide and not 3.5 metres wide.
- It is contended that the access road serving the proposed houses should be through the site of the family home.
- It is submitted that, subject to minor modifications, that the Navigation Road is amenable to an access serving the proposed development.
- The alternative access of traffic for the proposed two houses coming through the estate is a bottle neck at the bottom of Kennel Hill and the Navigation Road.

Boundary Walls

- There is no boundary wall on the bottom boundary of the appellant's property for the residential garden. It is considered that a boundary of at least 3 metres should exist.
- It is contended that the proposed boundary wall with a height of 1m and 1.2 m are relatively small and will be unable to form any effective function.

Ownership

- The ownership of a portion of the green area is contested.
- The application documentation indicates that this green area is owned by the applicant's father however the land registry folio 28605 shows that Jerimiah Creedon Ltd is the owner of all the green area.
- It is questioned who is the rightful owner of no. 25 Westbury Heights.

Permits

- The applicants have not demonstrated adequate permits for right of access to appeal site from Westbury Heights.
- It is questioned whether the applicants had sufficient interest to cut down mature deciduous trees on the boundary of the estate.
- The applicants have no permission in relation to drainage and the use of drains and from this development site.
- The green area in question has been maintained by the residents for the last decade.

Appeal submission no. 2

Westbury Heights Residents submitted an appeal and the following is the summary of the main grounds of appeal;

Appropriate Assessment Screening

- The local authority was unable to conduct a AA screening due to the lack of evidence provided by the applicant.
- In this regard there was insufficient information in relation to sewers and management of surface water.

Application Details

- It is contended that the applicant's do not own the entire site indicated in red in the submitted application.
- It is considered that part of the site is owned by Jeremiah Creedon.
- It is contended that the site boundaries for the ownership of no. 25 Westbury Heights does not include the adjacent green area.
- Fencing off the green area is contrary to its status as covenanted green area / open space.
- It is contended that it is the residents understanding that the green area is to be available to all residents in Westbury Heights.
- The green area is currently maintained by the residents in the form of financial contributions to a private contractor.
- A line of trees has been planted by the applicant's family on a portion of the green and this will require maintenance in the future.
- It is submitted that neither the decision nor conditions of the permission refer to taking in charge of the green space.

Access via Westbury Heights

- It is contended that there is ample space within the applicant's family property to accommodate access to the proposed development from Navigation Road.

- There is also sufficient space to allow for the delivery of construction materials.
- It is contended that deed of transfer and the right of way details apply to site no. 25 Westbury Heights only. It does not indicate a right of way through Westbury Heights for the development of any road other works associated with two further dwellings.
- The LA had acknowledged these issues in their reports.

Foul and rainwater drainage

- The foul sewer provision appears to be far in excess of the standard requirements for the proposed development.
- It is considered that having regard to the reservations expressed by the Area Engineer in relation to foul sewer that a more appropriate proposal would be to connect to the mains water and sewer via the applicant's parents property.
- It is contended that the current drainage arrangements are inadequate and will have an adverse effect on the Local Authority's proposals to take in charge the estate.
- The proposal having regard to the drainage inadequacies are contrary to the following policy provisions;
 - Policy Objective LAS-1 of the Mallow Electoral Area LAP, 2011
 - Policy H1-1 of the Mallow Town Development Plan, 2010 – 2016.
- It is submitted that the Estates Department of the Local Authority outlined its concerns with the condition of the drains as recent as 7th May 2015
- It is contended that the proposal is premature depending the resolution of the drainage issues in the estate.

Design and Amenity

- It is contended that the proposal is contrary to Policy H1-2 of the Cork County Development Plan, 2014, due to design and unnecessary roadway accessing the site.
- It is considered that the proposal is contrary to Section 11.4.5 of the Cork County Development Plan, 2014, given the zinc finishes and the flat roof design. The design of the windows and the solid to void elements is also uncharacteristic of the area.
- The height of the proposed houses are higher than those houses on Navigation Road and are also different to those houses in Westbury Heights.
- In relation to overlooking the residents of no. 24 and 25 Westbury Heights will be able to look into the private space of the proposed houses, especially in winter.
- In relation to boundary treatment it is argued that the proposed boundary treatment adjoining the gardens to the north fails to provide adequate screening from the houses to the north, especially regarding the zinc roof finish.
- The boundary treatment into the Westbury Heights estate via no. 25 Westbury Heights is currently at odds with the rest of the estate

development as the wall is too low and any boundary treatment adjacent to the green area should be consistent with the established design of the estate.

Traffic Hazard

- The access to Westbury Heights from Kennel Hill suffers from poor sightline provision.
- The additional dwellings may increase the potential for accidents.
- The downhill section of the road in Westbury Heights leads to difficulties in winter months.
- At the bend outside houses no. 14 and no. 15 the camber of the road results in drivers swinging into the centre of the road just at the point where sightlines to house no. 16 and upwards is restricted.
- Residents and visitors, including children, make regular use of green areas for play and recreation.
- There are concerns that the nature of the estate will change due to additional traffic movements.

Other Issues

- There is a portion of land to be handed over to the Council. However there is no mention of this land in any planning conditions.
- The Council have not conditioned that the road access will be only for two houses.
- The maintenance of the current illegal road is of concern. The size of the gravel between boundary walls is very large. The fencing is overlapping the road whereas it should be in line with the boundary on the site.
- The footpath access to the green area has been obstructed outside part of no. 25 Westbury Heights.
- The previous planning and legal history of the site has been poor and there is concern that this will be reflected in any future development on the site.
- There is a long history of non-compliance by the applicants and the Board are requested to refuse permission having regard to Section 35 of the Planning Act.

Appeal submission no. 3

Sewage

- The sewage pipes within the estate are already beyond capacity.
- It is reported that the outfall pipe from the estate and an adjoining estate, similar size, is only 110 diameter.
- It is submitted that the foul sewer regularly overflows from the manholes adjoining the green space.
- The applicant's response to the additional information request only relates to a small section of the pipes and the capacity of this section of the sewer is not in question.
- The sewer at the location of the manhole where the two estates meet regularly blocks.

- It is contended that downstream sewers regularly block.
- It is submitted that the Council staff are aware of the problems.
- It is contended that on the basis of the various Engineering Reports the application should be refused.
- It is considered that having regard to the reservations expressed by the Area Engineer in relation to foul sewer that a more appropriate proposal would be to connect to the mains water and sewer via the applicant's parents property.

Title

- The applicant does not have sufficient legal interest in the site in question.
- Case law, i.e. *Frescati Estates v Walker* (1975), established that an applicant shall assert sufficient legal interest to enable them carry out a development.
- It is contended that the applicants have the right only to use the Westbury Heights roadway as access to the single existing house at no. 25 Westbury Heights, and for no further purpose. The applicant's therefore has not sufficient legal interest to access the proposed house. This is consistent with common law and Section 5.13 of the Development Plan Guidelines for Planning Authorities.

Traffic & Associated Issues

- The road adjacent to no. 13 Westbury Heights is on a continuous curve with incoming traffic regularly travelling downhill at speed and bringing them into contact with slower uphill traffic heading towards Kennell Hill.
- The impact of construction traffic would be significant.
- The proposed additional two houses will increase the number of houses using the bend adjacent to no. 13 Westbury Heights from 14 to 16. This will be a significant intensification.
- It is submitted that the proposed construction traffic will have a damaging impact on the estate road in Westbury Heights and this estate is not 'taken in charge'. It is questioned who will be responsible for any repair work.
- It is contended that conditions no. 9, 11 & 17 are meaningless as the road abutting the site is not a public road.

Illegality of Existing Development on Site

- It is submitted that the existing development on the site has failed to comply with an existing circuit court ruling.
- It is contended that the Council should not have accepted this application within regularisation of the non-compliance.
- It is contended that the fenced-off area outside the wall at the east side of the passageway is also in breach of planning permission as it is shown in all the planning documents to date as part of a Green or Amenity Space for the Westbury Heights residents.
- It is submitted that the sewage connection 'spur' onto the roadway was not provided for in the estate plans, but fitted without permission.

Other Procedural Matters

- It is contended that the address on the application notices, i.e. Annabella, is misleading for a development that takes its access from Westbury Heights.
- The Local Authority has imposed conditions in relation to retaining walls, levels and in regard to plan separation. These conditions require future agreement between the applicant and the Local Authority and therefore deprive third parties any further input.
- It is submitted that the green area which will be handed-over (approx. 300 sq. m) should have been part of the original green area in the first place.
- The significant non-compliance with previous planning permission has not been recorded in the planners report.

7.0 OBSERVERS

The following is the summary of an observation submitted by Jim Barry, of 8 Westbury Heights.

- The current condition of the foul sewage system is intolerable.
- There is regular overflow of foul sewage to the green area.
- This has a negative impact on families using the green area.
- The proposal to add two additional houses is unsatisfactory.
- The permission, should it be granted, would award non-compliance.
- It is ironic that a small area, initially taken illegally, will be returned as planning gain.
- There are concerns that Westbury Heights, a mature residential area, will become a building site with noise, dust and HGV movements.
- Westbury Heights is not taken in charge as the residents are voluntarily financially contributing significantly to the upkeep of the Estate. It is questioned who will be responsible for the repairs to the estate after construction.

The following is the summary of an observation submitted by Eamonn & Maire O'Connell, of 14 Westbury Heights.

- The traffic implications are a concern as they increase the risk of collision.
- The observers exit is located adjacent to a sharp bend with no visibility of traffic to the right.
- It is submitted that HGV's will use this sharp bend which is unsatisfactory.
- There is a concern that the proposed development will create a loop road from Navigation Road to Westbury Heights and thus impacting on the mature residential estate of Westbury Heights.
- There is a well-documented sewage problem in the local area and the proposed development will exacerbate this problem.

The following is the summary of an observation submitted by James & Nora Lehane;

- The observers live adjoining the appeal site and have done so for 48 years.
- The application for two houses is for two of the observer's children and their grandchildren.
- The observer's neighbours and those on Navigation Road have raised no objections.
- There is no objection to the proposed development from the residents of no. 23 & 25 Westbury Heights.
- The site of no. 25 Westbury Heights was purchased by the observer in 2002. It was sold with planning permission for one house and right of way / access to the observer's property to the west of the proposed development. The sale included planning permission (L.A Ref. PD2067) and a way leave to access the public road and a parcel of land to access the observer's property to the west of no. 25 Westbury Heights.
- A condition of the sale of the above contract was that the buyer would not apply for planning permission using this access way leave until the expiry of two calendar years after completion of the house no. 25 Westbury Heights. The first planning permission was L.A. Ref. 14/5983.
- The terms of the contract, i.e. way leave to public road and services is not in dispute with the seller, i.e. Jeremiah Creedon Ltd.
- Any unauthorised development was addressed in the settlement with Mallow Town Council in March 2005.
- Subsequent enforcement notices required my son to grass over an area and re-install a hedgerow.
- It is considered that the grant of permission should stand for the following reasons;
 - the applicants wish to live beside extended family
 - not all residents in Westbury Heights have objected to the proposed development, most notably no. 23 & 25 Westbury Heights.
 - the terms of the sale included a site with planning permission to construct a house under planning permission PD2067 and a way leave to access the observers property to the west of the site no. 25 Westbury Heights. Under the sale the developer provided services, including foul sewer manhole for later connection
 - the septic tank serving the established house is located to the south of the site on the advice of the local authority. The proposed houses are to be serviced by main sewers in Westbury Heights.
 - It is submitted that the roads in Westbury Heights has adequate capacity for an additional two houses.
 - The objections are referring to shortcoming in the estate that has been established for some time, e.g. sewer problems.

8.0 RESPONSES

Second Party Response

The local authority submitted a response stating that they had no further comments.

First Party Response

The following is the summary of an response submitted by John & Barbara Lehane;

- There are no legal disputes with the boundary.
- The sale of no. 25 Westbury Heights to the applicant's father included right of way and connection to services within Westbury Heights.
- The terms of the sale also included planning permission to construct a house.
- The green area was subdivided in two and a portion of it was transferred from the owner to the applicant's father as part of the sale.
- The previous gravel area does not form part of the green way.
- No. 25 Westbury Heights was repositioned in accordance with consent from the Local Authority.
- The portion of green area owned by the applicant's father was fenced off on the advice of insurance agents.
- Two deciduous trees were cut down by the applicant's father who is the owner of the site.
- The ditch referred to in PD2067 is a drainage ditch running north – south on the western side of Westbury Heights.
- The full details of the agreement between Mallow Town Council and the land owner are available to the public on request. Refer to email from Director of Services to Michael Byrne.
- The applicants acknowledge that there is a deficiency in the public sewer for the proposed development serving Westbury Heights. The Board are advised to refer to conditions no. 3 & 13 of PD2067 and further more conditions 3 and 13 of PD2547. No sewer design was submitted as part of PD2067.
- The appeal site is serviced with water, waste water, ESB, gas, telephone and site is zoned residential.
- The pumping of sewage is the best engineered solution. A gravity sewer was rejected at pre-planning meetings.
- It is submitted that the entrances to house no.s 12 – 24 were constructed in non-compliance with PD2067 and later granted retention under PD2547.
- The size of the green area will not be affected by this application.
- The applicant has no interest in further developing adjoining lands.
- The applicant's father's house is not served by main sewers.
- The contemporary design has been designed in consultation with Cork County Council.

- The design of the proposed houses provides that the upper floor areas are below the ground floor areas of the adjacent houses in Westbury Heights. This will prevent any overlooking issues.
- Numerous mature trees on the site will remain.
- The applicant and the applicant's father constructed no. 25 Westbury Heights without any damage to the estate road.
- Any houses sold post 2002 in Westbury Heights were sold with the knowledge that there was a way leave and access to the public road from the appeal site.
- The professional and business interests of the applicants should have no bearing on the application.
- The estate road is constructed in accordance with the requirements of Cork County Council. The proposed access road is in accordance with the requirements of Cork County Council.
- The wall on the western side of the access road was constructed in accordance with the exempted development and the wall on the eastern side was constructed in accordance with agreement with Mallow Town Council.
- Planning permission (PD2067) does not require any boundary walls between properties.
- The row of popular trees was planted by the applicant's father and is not part of the development at Westbury Heights.
- Both the applicant's wish to live in close proximity to their parents.
- The manhole constructed in the green area was constructed in accordance with grant of permission PD2547.
- The proposed road does not impact on the legality of the green area.
- The proposed attenuation tank is for storage of rainwater.
- The public road serving the applicant's father's house is 2.9m wide.
- The construction of a boundary wall between the two proposed properties would be out of character with the proposed screen planting.
- The retaining wall requirements in the application are only 1.2m high, structural calculations have been provided for these walls.
- The Westbury Heights residents pay for the up-keep of the green area.
- The size of the sewer serving Westbury Heights is 150mm.
- Condition 13 of PD2067 and Condition 13 of PD2547 require bonds to be put in place to rectify any defects with the sewer.
- The contract for sale between the applicant's father and the J. Creedon Ltd are not in dispute.
- Annabella is the correct address for the subject site.
- An attached map shows the legal boundary of site no. 25 Westbury Heights along with the boundary of the green area under PD2067. The site no. 25 Westbury Heights was outside the retention planning permission PD2547.

9.0 ASSESSMENT

The main issues to be considered in this case are: -

- Principle of Development

- Impact on Residential Amenities
- Services
- Access and Traffic
- Ownership
- Other Issues

Principle of Development

The appeal site is zoned 'established residential' in accordance with the provisions of the Mallow Town Development Plan, 2010 - 2016. The proposal to construct two houses on the appeal site is consistent with the zoning objective and also the pattern of development in the area. The appeal site is effectively an infill site in an established residential area.

It is national policy, (i.e. Sustainable Residential Development in Urban Areas, 2009) to promote residential densities in urban areas in close proximity to services and public transport. The appeal site offers an opportunity to fulfil these national objectives as the subject site is located in an established suburban area and within walking distance of the town centre and the proposal would increase the density of the area in a built-up area. In addition the proposed development is consistent with policy objective H3 -1 of the Mallow Town Development Plan, 2010 – 2016, where it is an objective of the Plan to seek the most effective use of urban land.

Overall I would consider that the principle of a proposed residential development on the appeal site is acceptable given the zoning objectives pertaining to the site and national policy however any development would need to have regard to established residential amenities, and the character of the area.

Impact on Residential Amenities

The proposed development will most likely have an impact on the residential amenities of no. 25 and 24 Westbury Heights given the proximity of the appeal site to these established properties.

I would note from the submitted plans that both no. 24 and 25 Westbury Heights have sizable rear gardens. The length of the rear garden serving no. 24 Westbury Heights is approximately 23 metres in length. The length of the rear garden serving no. 25 Westbury Heights is approximately 29 metres in length. I would note that in the response to the additional information request the applicant submitted a revised site layout drawing which relocated the eastern most dwelling away from no. 24 Westbury Heights. In accordance with this revised site layout plan I would note that the eastern most point of the proposed dwelling is set back approximately 9 metres from the boundary line between the two properties. The proposed development also includes a planting belt which is approximately 5 metres deep and runs along the north eastern boundary of the appeal site and this would, in my view, mitigate any undue overlooking from the

proposed development to no. 24 and 25 Westbury Heights. I would also note that given the levels of the appeal site that both the proposed dwellings would be situated at a lower level than the established houses at no. 24 & 25 Westbury Heights. The application documentation submits that the first floor level of the proposed houses will be lower than the ground floor level in the adjacent houses in Westbury Heights.

In terms of any undue visual impact I would consider that the separation distances and the differences in gradient as outlined above would be sufficient to protect the established residential amenities. In addition and having regard to the topography of the local area I would not consider that overshadowing would be a significant issue. In design terms I would consider that the 7 metre high heights of the proposed houses are acceptable and consistent with the pattern of development in the area. I would acknowledge that the proposed houses are a contemporary in design and given the nature of the site, which is infill, I would consider that the proposal would not adversely impact on the character of the area.

Overall I would conclude that the appeal site can accommodate the two houses as proposed without unduly impacting on established residential amenities.

Services

I would note that several of the appellants outline that the existing foul sewer has capacity issues and there are concerns with the proposed two houses using the existing foul sewer system in Westbury Heights. There are also concerns expressed with the proposed attenuation tank.

It is proposed that the foul sewer from the proposed two houses shall be pumped from the two houses to the established foul sewer system in Westbury Heights which is a 150mm foul sewer. The applicant argues that this proposal is consistent with the requirements of Cork County Council.

The local authority requested that the applicant demonstrate that the existing foul sewer at Westbury Heights has sufficient capacity to cater for the proposed two houses. In response the applicant stated that a condition of the permission relating to the development of Westbury Heights required that the foul sewer is constructed in accordance with guidelines for housing estates by the local authority. However I would consider that this condition may have required that the sewers are constructed to a sufficient standard however the applicant has not submitted any evidence demonstrating that this condition has been complied with.

A report prepared by the Estates Department of the Local Authority, dated on 1st May 2015, notes that the development at Westbury Heights is not currently taken in charge and there are deficiencies within the existing foul sewer system and these need to be addressed prior to consideration for taking in charge.

The local authority sought clarification of additional information requesting that the applicant conduct a CCTV survey of the existing foul sewer pipes to establish that there is sufficient capacity for the proposed development.

The applicant responded by conducting a CCTV survey of the existing foul sewer. The survey carried out is for a portion of the existing sewer, i.e. within close proximity of no. 25 Westbury Heights. I would note that the survey concludes that the foul sewer pipes are 150mm in diameter and that there is sufficient capacity.

The appellants argue that a preferred option would be to route the foul sewage from the proposed development towards Navigation Road where there is public mains however it is stated consistently by the applicant that the existing house, facing onto Navigation Road, immediately to the west of the appeal site is served by a septic tank. As such routing foul sewage from the appeal site towards Navigation Road would not be feasible. I would also note that the proposed attenuation tank will be used to collect surface water from the proposed development.

I would consider, on the basis of the information on the file, that the applicant has adequately demonstrated that there is sufficient capacity within the existing foul sewer serving Westbury Heights for the proposed development. On this basis I would conclude that, subject to conditions, the foul sewage proposals would be acceptable.

Access and Traffic

The vehicular access to the serve the proposed development is a proposed 6 metre access road situated to the immediate east of no. 25 Westbury Heights. This access road will provide vehicular access for the proposed two houses to the existing estate road in Westbury Heights.

I note from the Area Engineer's report on the file, dated 7th November 2015, that there are no objections in principle to this proposed access but concerns are raised in relation to its legality.

I would note from my site inspection that there would be sufficient capacity in the estate road at Westbury Heights to accommodate traffic generation from an additional two houses.

Notwithstanding the legality of the proposed vehicular access I would consider that the proposed access is acceptable and would not adversely impact traffic or result in a traffic hazard.

Ownership

There are several ownership disputes in relation to the appeal site and also whether the applicants have sufficient legal interest to pursue the proposed development. I would note that most notably the linear strip situated between no. 25 Westbury Heights and the green area is legally

disputed and it is also contested that the applicants have insufficient legal interest to use the estate road and the existing foul services in Westbury Heights.

I would consider it is not a function of the Board to investigate or determine whether the assertions submitted by the appellants disputing ownership are accurate. The applicant has submitted documentary evidence demonstrating their legal right to use the estate road and services in Westbury Heights for the proposed development.

Overall I would consider that any arguments disputing ownership are beyond the remit of this appeal. In relation to legal issues it is important to note Section 34(13) of the Planning and Development Act 2006, which states '*A person shall not be entitled solely by reason of permission under this section to carry out any development*'.

Other Issues

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an inner suburban and fully serviced location, no appropriate assessment issues arise.

The appellant raises a number of issues claiming that the applicant has not complied with previous permissions or indeed the conditions of these permissions. I would consider that these issues raised are generally enforcement issues, in accordance with Part VIII of the Planning and Development Act, 2000 (as amended), and would be outside the scope of this appeal which relates to two houses. I would therefore consider that it is a matter to be raised with the local authority.

10.0 RECOMMENDATION

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission shall be granted for the reasons set out below.

REASONS AND CONSIDERATIONS

Having regard to the zoning of the site as set out in the Mallow Town Development Plan, 2010 - 2016, and the extent of the development, it is considered that subject to compliance with conditions set out below, the development proposed to be carried out would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by plans and particulars submitted to Cork County Council on

17th September 2014 and the 27th April 2015 and, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The site shall be landscaped in accordance with a scheme of landscaping, details of which, including details of trees to be retained, shall be submitted to the planning authority for agreement before development commences.

Reason: In the interest of visual amenity.

3. Prior to the commencement of development, the developer shall submit details of all boundary treatment for the agreement of the planning authority. This shall include boundaries between rear gardens and boundaries to the exterior of the site.

Reasons: In the interest of residential privacy.

4. Prior to commencement of development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

5. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

6. That all necessary measures be taken by the contractor to prevent spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

7. Full details of the vehicular access to serve the proposed development shall be submitted for written agreement of the Planning Authority prior to the commencement of development.

Reason: In the interest of traffic safety.

8. Water supply and all drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

9. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of waste.

Reason: In the interest of amenities and public safety.

10. Prior to the commencement of development the developer shall submit, and obtain written agreement of the planning authority for the following (a) a plan containing details of the management of waste (and, in particular, recyclable materials) within the development including the provision of facilities for the separation and the collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for appropriate management of waste and in particular, recyclable materials, in the interest of protecting the environment and the amenities of the area.

11. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision of satisfactory completion and maintenance until taken in charge by the planning authority of access roads and services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure satisfactory completion of development.

12. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Kenneth Moloney
Planning Inspector
29th January 2016