



An  
Bord  
Pleanála

## Inspector's Report PL28.246786

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<b>Development</b>	Demolition of store room and new access arrangement to serving rear of Killarney Guest House, rearrangement of parking and bin storage and construction of one house
<b>Location</b>	The Mardyke Walk and rear of Killarney Guest House, Western Rd, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	TP16/36823
<b>Applicant(s)</b>	Stephen & Margaret O'Leary
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Stephen & Margaret O'Leary
<b>Observer(s)</b>	Frances & Sean Franklin Brian O'Callaghan
<b>Date of Site Inspection</b>	10 <sup>th</sup> October 2016
<b>Inspector</b>	Mary Crowley



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## 1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.0603 ha forms part of the car park to the Killarney Guest House which exists onto the Western Road. A garage presently acting as a store to the guest house is located on the subject site and vehicular access via a gated entrance is provided from the car park onto the Mardyke Walk. The primary vehicular and pedestrian access to the Guest House is from the Western Road and unaffected by the proposed development. It is stated that the applicants presently manage the Killarney Guest House and envisage retiring to live on a permanent basis in the proposed dwelling. The immediate area is characterised by terraced dwellings of similar character and scale. The appeal site is within an Architectural Conservation Area. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I would also refer the Board to the photographs available to view throughout the appeal file.

## 2.0 Proposed Development

- 2.1. Permission is sought for the development of a new two storey detached dwelling house (162.05 sqm), off street car parking, ancillary site works including rearrangement of car parking and bin storage to the Killarney Guest House, demolition of an existing detached store room (29.27 sqm) and new access arrangement serving the rear of the Killarney Guest House at the Mardyke Walk and the rear of the Killarney Guest House, Western Road, Cork City. The scheme will be served by a new connection to the public water mains and the public sewer. The proposed surface water disposal will be by means of the public sewer / drain. The application was accompanied by a Planning Report and a Flood Risk Assessment.

## 3.0 Planning Authority Decision

- 3.1. Cork City Council refused planning permission for the four reasons relating to private open space, impact to the Mardyke ACA, car parking and traffic safety. The reasons for refusal are as follows:

*1) Having regard to the configuration of the site, the minimum standards for private open space as set out in Table 16.7 of the Cork City Development*

*Plan 2015 and to the planning guidance in relation to the development of single dwelling units as outlined in Paragraph 16.58 of the Plan, it is considered that the proposed development would, by reason of its inappropriate scale and substandard private open space, result in inadequate private open space provision and a living environment of low amenity value for the future occupants of the dwelling. The proposed development would contravene Development Plan objectives and would set an undesirable precedent for similar type developments in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

- 2) Having regard to the location of the site within the Mardyke Architectural Conservation Area (Ref: Map 9, Volume 2 of the Cork City Development Plan 2015-2021 and Objective 9.29 of Volume 1 of the Plan), the historical plot size of the properties fronting Western Road and the scale of the proposed dwelling, the proposed development would be out of character with the pattern of development in the area of the Mardyke and would set an undesirable precedent for similar piecemeal and uncoordinated development in the vicinity. The proposed development would, therefore, seriously injure the amenities of the Architectural Conservation Area and would be contrary to the proper planning and sustainable development of the area.*
- 3) Having regard to Condition 1 TP 92/17379, the reduction in the number of usable car parking spaces as a result of the proposed development it is considered that, if permitted, Killarney Guesthouse would be inadequately served in terms of car parking and would not meet Development Plan car parking standards as set out in Table 16.8 of the 2015 Cork City Development Plan. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.*
- 4) Having regard to the current access arrangements to the rear car parking area from the Western Road and the open nature of the boundaries on the western side of the proposed car park, the proposed development would, by reason of consolidating such access/car parking arrangements, endanger public safety by reason of traffic hazard and obstruction of road users.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

3.2.2. The Planner notes that the application was not referred to Planning Policy, the conservationConservation Officer, Traffic or Parks. However, the Planner states that they *note Traffic raised concerns in relation to the loss of car parking to the Killarney Guesthouse under TP 15/36385 and Parks recommended refusal in relation to TP 00/24502.*

3.2.3. There has been no alteration in the scale of the proposed dwelling and indeed the only difference between this application and that refused permission under TP 15/36385 is the allocation of an addition 2m depth between the rear of the proposed house and the car and the reconfiguration of the car park area to provide an additional car parking space (12 instead of 11)

3.2.4. The The report also suggests that either authorised works have been carried on site or that conditions attached to previous grants of permission at this location have not been complied with. Having considered the scheme the Local Authority Planner recommended that permission be granted subjectrefused for four reasons relating to 29 conditions.private open space, impact to the Mardyke ACA, car parking and traffic safety. The notification of decision to grantrefuse permission issued by Cork City Council reflects this recommendation.

### 3.2.5. Other Technical Reports

3.2.6. The Cork City Council **Roads Department** has no stated objection to the scheme subject to conditions relating to widening of the vehicular entrance gates / doors to be recessed and incapable of opening outwards and no surface water from the site shall not run across public footpath (or road).

3.2.7. There are two reports from Cork City Council **Drainage Department** on file. There is no stated objection to the scheme subject to conditions relating to storm drainage, pubic foul sewer and a cctv survey of the public foul sewerage required. The report concludes that appropriate assessment is not required. With regard to flooding it is stated that flood mitigation measures for the site shall be carried out.

### 3.3. Prescribed Bodies

- 3.3.1. **Irish Water** state that the drawings and specifications do not provide Irish Water with sufficient data to make a determination on the development.

### 3.4. Third Party Observations

- 3.4.1. There are several observations recorded on the appeal file from (1) Kevin Cross, (2) Brian O'Callaghan and (3) Frances & Sean Franklin all of whom are objecting to the scheme. The issues raised relate to loss of light, proximity to the boundary, overdevelopment of the site, history of non-compliance with planning conditions, house is an extension to the existing B&B use, applicants already have a house in a nice quiet cul de sac within minutes' walk of the proposed site, scheme to be conditioned for use as a retirement home and not an extension of the B& B use, not to be used for resale or commercial gain, loss of car parking, inaccurate drawings, impact on ACA, overlooking and parking to the front of Killarney House is not permitted.

## 4.0 Planning History

- 4.1. **TP 92/17378** – Cork Corporation granted permission for the retention of a change of use to guest accommodation at Killarney House.
- 4.2. **TP 92/18680** – Cork Corporation refused permission for the provision of vehicular access off the Western Road to Killarney Guesthouse for two reasons relating to (1) public safety by reason of traffic hazard and (2) loss of landscaped garden area and depreciation of property values in the vicinity.
- 4.3. **TP 94/19316** – Permission granted for modifications to the forecourt at Killarney House consisting of a set down area with an “in and out” entrances with the remainder of the front garden landscaped.
- 4.4. **PL28.122030 (TP 00/24502)** – The Board refused permission in 2001 for the demolition of domestic garages and erection of seven staff / family apartments to the rear of Killarney and Crawford Guesthouses for the following two reasons relating to the scheme being (1) *out of character with the pattern of development in this area of*

*the Mardyke* and the (2) overdevelopment of the site by reason of inadequate parking provision to serve the existing and proposed development on the site.

- 4.5. **TP 16/36385** – Cork City Council refused permission for works, similar to those subject of this appeal on 25<sup>th</sup> June 2015.
- 4.6. **TP 15/36385** – Cork City Council refused permission in 2015 for the development of a new two storey detached dwelling house, off street car parking, ancillary site works including rearrangements of car parking and bin storage, demolition of existing detached store room and new access arrangements serving the rear of Killarney Guesthouse for 2 reasons relating to (1) the inadequate provision of private open space as outlined in para 16.58 of the Development Plan and the (2) substantial reduction in car parking spaces serving Killarney Guest House as required by Table 16.8 of the Development Plan. It is also noted that a hand written addendum by the co-signatory of the Case Planners report stated that they “*consider a revised application addressing the refusal reasons would be acceptable*”.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.2. The site is also within the Mardyke Architectural Conservation Area. The area of the Mardyke lying opposite the site is designated as an Area of High Landscape Value (Map 9 Volume 2 refers).
- 5.3. The operative plan for the area is the Cork County Council 2015-2021. Map 3 Central Suburbs identifies the within an area zoned Residential, Local Services and Institutional Uses where the objective is *to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3*. Development Management policies are set out in Chapter 16.
- 5.4. Section 16.58 Single Units Including Corner/Garden Sites states that the planning authority will have regard to the following criteria in assessing proposals for the development of single units:
  - The existing character of the area/street;



- Compatibility of design and scale with the adjoining dwelling paying particular attention to the established building line, form, heights and materials etc. of adjoining buildings;
- Impact on the residential amenities of adjoining areas;
- Open space standards;
- The provision of adequate car-parking facilities and a safe means of access and egress to and from the site;
- The provision of landscaping and boundary treatments;
- Trees and gardens which make a significant contribution to the landscape character of an area are retained and unaffected by the proposal.

5.5. The site is also within the Mardyke Architectural Conservation Area. Objective 9.29 Architectural Conservation Areas seeks to *preserve and enhance the designated Architectural Conservation Areas in the City.*

## 5.6. Natural Heritage Designations

5.6.1. The site is not located within a designated Natura 2000 site. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The First Party appeal has been prepared and submitted by Cunnane Stratton Reynolds on behalf of the applicant, Stephen & Margaret O'Leary and may be summarised under the following general headings

6.1.2. **Planning History** – Submitted that a number of dwelling have been constructed in recent years in the rear gardens of properties which front Western Road but also have frontage onto Mardyke Walk. This pattern of development allows these large urban plots to be redeveloped in a sustainable manner. Detailed history of permission in the area provided.

- 6.1.3. **Pre-App Meetings** – Submitted that the Council Officers are generally supportive of the proposal with positive feedback at pre-planning stages and even in hand written notations at refusals stage where it is stated that “*a revised application addressing the refusal reasons would be acceptable*”. The application, the subject of this appeal was prepared following a review of the previous refusal and also allowed for ongoing discussion with the local authority as to what would be acceptable given that the Council was to, at some stage, prepare and issue a “Design Brief” for the Mardyke.
- 6.1.4. **Scale of Development and Provision of Private Open Space** – Forty-three sqm is proposed at the rear of the dwelling. Table 16.7, to which the planner refers, states that a reduced standard is offered for properties that are “City Centre, Docklands and Inner Urban Areas”; this reduced standard is 35-50 square metres. Put simply, the site/area is pre 1920’s and at 43 square metres complies with Council Policy.
- 6.1.5. **Design Brief** - There is no indication that this guiding document will be finalised in the near future. Applicant considers the refusal of this planning application to be premature pending the publication of a document which is not yet at draft stage or will have any statutory status is unacceptable.
- 6.1.6. **Pattern of Development of the Area** – Development to the rear fronting Mardyke Walk is varied with a number of houses, outbuildings and parking areas. The development would not be interrupting a consistent pattern of development along this part of Mardyke Walk. Part of the area’s character is the variety of boundary treatments and the less urban scale of development.
- 6.1.7. **Mardyke Architectural Conservation Area** - This modern proposal respects and reflects the ACA designation and the existing fabric of the area and therefore warrant the dismissal of the second reason for refusal. There is no established building line and form or consistency in terms of heights and materials along the Mardyke whereas the proposal supports the building line by maintaining the wall to the Mardyke. The proposal would not have an adverse impact on residential amenity.
- 6.1.8. **Provision of Car Parking and Access Arrangements** - The Council now operate a “Maximum” Car Parking Standard, not a minimum provision as would have applied in 1992 when Condition 1 of TP 92/17378 (to which the planner refers) was drafted. This condition required the submission of a layout for 14 cars for the guesthouse. This was submitted and compliance was achieved. A car parking survey conducted

on the Sunday of a Bank Holiday Weekend, at a period of high occupancy showed only 8 no. cars parked on site. The suggested car parking layout now shown in the application refused by the Council provides for up to 13 no. spaces in a formal layout.

- 6.1.9. **Traffic Safety** - There are no recorded accidents at this location and the Council Roads Department had absolutely no objection to the proposal. The front of the property is a set down area. The rear car parks can be accessed from the Western Road (safely) and the car park can also be accessed via Mardyke and the gates in question are locked as a management measure as (1) the rear of the property has in the past been insecure due to gates being open all the time and (2) patrons of other facilities have used the car park. Submitted that the proposed development allows for a better formalised access to the Mardyke which can be used.
- 6.1.10. **Conclusion** - The proposal is compliant with the land use zoning for the site and considered acceptable in terms of the proper planning and sustainable development of the area.
- 6.1.11. **NOTE** - The appeal was accompanied by the Pre-Application Consultation Minutes, summary of TP 14/36071 and TP 13/35543, correspondence from Cork City Council regarding layout to rear of adjacent property and copy of notification of decision to refuse permission under Reg Ref TP16/36823.

## 6.2. **Planning Authority Response**

- 6.2.1. There is no response recorded on the appeal file.

## 6.3. **Observations**

- 6.3.1. There are two observations recorded on the appeal file from Frances & Sean Franklin and Brian O'Callaghan. The issues raised relate to the overdevelopment of the site, loss of car parking, haphazard development in this ACA, inadequate open space, scale and bulk of scheme is inappropriate, traffic safety, history of non-compliance with planning conditions, development is an extension to the B&B, applicants already a house and that a condition be attached that dwelling is to be used as a retirement home for the applicants as per the planning application.

## 7.0 Assessment

7.1. Cork City Council refused planning permission for the scheme now before the Board for four reasons relating to (1) inadequate private open space, (2) impact to the Mardyke ACA, (3) car parking and (4) traffic safety. It is also noted that the Cork City Council refused permission on this site in 2015 (Reg Ref TP 15/36385 refers) for a similar development for 2 reasons relating to (1) the inadequate provision of private open space as outlined in para 16.58 of the Development Plan and the (2) substantial reduction in car parking spaces serving Killarney Guest House as required by Table 16.8 of the Development Plan. Having considered both schemes it would appear from the information available that this is a repeat application save for the allocation of an additional 2m depth between the rear of the proposed house and the car park and the reconfiguration of the car park area serving the guesthouse to provide an additional car parking space (12 instead of previous 11).

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Private Open Space (Refusal Reason No 1)
- Architectural Conservation Area (Refusal Reason No 2)
- Car Parking (Reason No 3)
- Traffic Safety (Reason No 4)
- Planning History
- Flooding
- Pre Planning
- Screening for Appropriate Assessment
- Development Contribution

### 7.3. Principle / Policy Considerations

7.3.1. This is an application for the demolition of an existing detached store room, the construction of a new two storey detached dwelling, off street car parking, ancillary

site works including the rearrangement of car parking and bin storage and new access arrangements serving the rear of Killarney Guest house.

- 7.3.2. Under the provisions of the Cork City Development Plan 2015-2021 Map 3 Central Suburbs identifies the site within an area Zoned ZO4 Residential, Local Services and Institutional Uses where the objective is *to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3*. Having regard to the nature of the development I am satisfied the principle of this residential use at this location to be acceptable subject to compliance, with the relevant policies, standards and requirements set out in development plan.

#### 7.4. **Private Open Space (Refusal Reason No 1)**

- 7.4.1. Cork City Council in their first reason for refusal state that the development would, by reason of its inappropriate scale and substandard private open space, result in inadequate private open space provision and a living environment of low amenity value for the future occupants of the dwelling. The proposed development would contravene Development Plan objectives and would set an undesirable precedent for similar type developments in the area.
- 7.4.2. The applicant disagrees that the scale of the development proposed is inappropriate and that the provision of private open space is substandard. Forty-three sqm is proposed at the rear of the dwelling. It is submitted that the Planning Officer has made a material error in demanding an open space requirement of 60-75 sqm. Table 16.7, to which the planner refers, states that a reduced standard is offered for properties that are “City Centre, Docklands and Inner Urban Areas”; this reduced standard is 35-50 square metres. The City Inner Urban Areas are defined in the Development Plan under 16.29 as being the parts of the City that were constructed pre 1920. The Mardyke is one such area. Put simply, the applicant submits that the site/area is pre 1920’s and at 43 square metres complies with Council Policy.
- 7.4.3. Much of the provision of private open space standards centres on whether the appeal is located within the “city centre” or “central suburbs” as the application of minimum private open space requirements is different in both scenarios. While any new Development Plan will be open to scrutiny and interpretation it is imperative that for the most part that they provide clear guidance and a high degree of certainty for

any member of society to understand. To this end I note that Table 16.7 refers to only two types of land category; “City Centre, Docklands and Inner Urban Areas” and “Suburban Areas”. These two categories do not tally with the zoning maps that set out areas such as “city centre and docklands”; “city centre”; “central suburbs”, “north suburbs”, “east suburbs” etc. This leads to some ambiguity and makes it very difficult to accurately define the area subject of this appeal particularly as Section 16.29 (referred to above by the applicant) refers to Building Height in the City Centre and Inner Urban Areas and not open space. However, based on the strict interpretation of the zoning maps I agree with the Planning Authority that the site is located in a suburban area and not City Centre. Therefore, a minimum private open space area of 48 to 60 sqm is required at this location.

- 7.4.4. Having regard to the configuration of the site, the minimum standards for private open space as set out in Table 16.7 of the Cork City Development Plan 2015 and to the planning guidance in relation to the development of single dwelling units as outlined in Paragraph 16.58 of the Plan, there is an inadequate provision of private open space provision to serve this dwelling house. Refusal is recommended.

#### **7.5. Architectural Conservation Area (Refusal Reason No 2)**

- 7.5.1. The proposed development is located within the Mardyke Architectural Conservation Area (Ref Map 9 Volume 2 and pages 54-57 of Volume 3 of the Cork City Development Plan 2015 – 2021. Objective 9.29 of Volume 1 states that is an objective of the City Council to “seek to preserve and enhance the designated Architectural Conservation Areas in the City”. Cork City Council in their second reason for refusal stated that proposed scheme would seriously injure the amenities of the Architectural Conservation Area
- 7.5.2. Killarney Guest house forms part of an original terrace of 3 houses (Nos 1 – 3 Jamesville) with the guesthouse located in Nos 1 and 2. It is listed on the National Inventory of Architectural Heritage (Ref 20866109) and is given a “regional rating”. The appraisal states that the block is *“a large scale terrace of three which is a dominant feature in the streetscape due to its tall form, which is emphasised by its steeply pitched roof and full height gables ... it forms part of a group with the nineteenth century terraces that were built along the Western Road in the latter part of the nineteenth century in the fashionable contemporary architectural styles.”* The

development proposal does not include any works to the main dwelling, Killarney Guesthouse or to any works within the front boundary, which may alter its appearance.

- 7.5.3. As set out above I have considered the previous scheme on the site together with the current scheme before the Board and it would appear from the information available that this is a repeat application save for the allocation of an additional 2m depth between the rear of the proposed house and the car park and the reconfiguration of the car park area serving the guesthouse to provide an additional car parking space (12 instead of previous 11). Overall I agree with the Local Authority that having regard to the location of the site within the Mardyke Architectural Conservation Area, the historical plot size of the properties fronting Western Road and the scale of the proposed dwelling, the proposed development would be out of character with the pattern of development in the area of the Mardyke and would set an undesirable precedent for similar piecemeal and uncoordinated development in the vicinity.

#### **7.6. Car Parking (Reason No 3)**

- 7.6.1. Cork City Council in their third reason for refusal stated that having regard to Condition 1 of TP 92/17379, the reduction in the number of usable car parking spaces as a result of the proposed development it is considered that, if permitted, Killarney Guesthouse would be inadequately served in terms of car parking and would not meet Development Plan car parking standards as set out in Table 16.8 of the 2015 Cork City Development Plan. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.
- 7.6.2. The appeal site is located in Zone 3 Suburban as per Map 11 of Volume 2 which is classified as a suburban area with associated maximum parking requirements outlined in Table 16.8. Table 16.8 outlines the parking requirements in such areas. Residential accommodation (3 to 3+ bedrooms) has a requirement of 2 spaces plus .25 spaces for visitor parking while guesthouse accommodation has a requirement of 1 space per room. I am satisfied that adequate parking is proposed to serve this new dwelling.
- 7.6.3. The lands to the rear of Killarney Guesthouse are currently in use as a private car park by residents of the guesthouse. This existing established use consists of a

hardstand area that does not have demarcated parking bays. As part of this application the applicant is seeking to resurface the area and formalise the allocated car parking. Within Zone 3 where a guesthouse would be required to provide 1 space per room as a maximum. The guest house has 18 rooms available for occupation. Therefore, the maximum number of car parking space to be provided is 18. The development proposal is to provide 12 car parking spaces. However, Condition No 1 of retention permission TP 92/17379 required the submission of a layout for 14 no cars within one month of the date of grant of permission. It is stated that this was submitted on 6<sup>th</sup> August 1992 (showing this area accessed from Mardyke Walk) and compliance was deemed to have been achieved. While a copy of this decision has been made available to the Board the compliance documentation pertaining to Condition No1 has not.

- 7.6.4. The applicant submits that the Council operate a “Maximum” Car Parking Standard, not a minimum provision as would have applied in 1992 when Condition 1 of TP 92/17378 (to which the planner refers) was drafted. Although the current Development Plan requirements propose 1 space per room as a maximum, 14 no. spaces were considered acceptable when the guesthouse was developed and the guesthouse has been operating without any car parking problems. The guesthouse generally does not operate to full capacity and subsequently the car park is rarely full. A car parking survey conducted on the Sunday of a Bank Holiday Weekend, at a period of high occupancy showed only 8 no. cars parked on site.
- 7.6.5. While I have no objection to a reduced car parking provision at this location in line with what was agreed in 1992 (i.e. 14 no spaces) I agree with the Planning Authority that the current scheme would appear to breach the conditions of the previous grant of permission. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of approval permission for the proposed development in such circumstances. Refusal is recommended.

#### 7.7. **Traffic Safety (Reason No 4)**

- 7.7.1. Cork City Council in their fourth reason for refusal stated that the current access arrangements to the rear car parking area from the Western Road and the open nature of the boundaries on the western side of the proposed car park, the proposed development would, by reason of consolidating such access/car parking



arrangements, endanger public safety by reason of traffic hazard and obstruction of road users.

7.7.2. Killarney Guest House comprises No 1 and 2 Jamesville Place, Crawford Hall (Nos 1 and 2 Avondale) and No 6 College View Terrace are located immediately to the west of the site. On the date of site inspection, it was noted that the car parking area to the rear of Killarney house is open to that serving Crawford house and No 6 College View Terrace – in other words all car parking area to the rear of these properties are interconnected. Question No 15 of the application form states that *the subject site forms part of the car park to the Killarney Guest house which exits onto the Western road. A garage presently acting as a store to the guesthouse is located on the subject site and vehicular access via a gated entrance is provided from the car park onto the Mardyke Walk. The primary vehicular and pedestrian access to the guesthouse is from the Western Road and unaffected by the proposed development.*

7.7.3. As pointed out by the Road Department widening of the vehicular entrances serving the car park and the proposed new dwelling house to 3.9m and 5.5m respectfully is not acceptable under the Cork City Development Plan. The recommended width in the City Development Plan is 3 metres however maximum width of 3.6 metres could be allowed. While I am satisfied that this matter can be dealt with by way of a suitably worded condition I am concerned that the configuration of the off street car parking to serve this new dwelling would necessitate reversing onto the Mardyke Walk which is undesirable in terms of pedestrian safety in this area. Further I agree with the Planning Authority that the open nature of the boundaries on the western side of the proposed car park would, by reason of consolidating access/car parking arrangements, endanger public safety by reason of traffic hazard and obstruction of road users. Refusal is recommended

## 7.8. **Unauthorised Development**

7.8.1. It is noted from the Local Authority Planners report that authorised works may have been carried out on site or that conditions attached to a previous grant of permission at this location have not been complied with. It is further noted that the public notices make no reference to unauthorised development works or the retention of same. It is my view that this is not a matter for An Bord Pleanála. Any development which requires permission and does not have that permission is unauthorised

development, as is a development which is proceeding in breach of conditions laid down in the planning permission. Further the carrying out of unauthorised development is an offence. The planning system is operated on the ground by local planning authorities who are responsible for operating Ireland's planning enforcement regime. Accordingly, it is my view that concerns raised by the Planning Authority should be dealt with at local authority level.

- 7.8.2. I note from an internal Case Memorandum dated 4th August 2016 on the public appeal file that a question arises as to whether a fee of €4,500 is required. The fee lodged with the appeal was €1,500. According to the memo it appears that the existing access and entrance arrangements are unauthorised and that permission for this application would effectively confer a grant of retention of same. It may be that permission sought should have included "retention of existing unauthorised access arrangements", however such was not included in the development description or public notices. The fee paid to the planning authority was €65 (one house) plus €80 (demolition of a structure). The planning authority accepted this fee and although recognising the unauthorised development did not require public notices. I note from a further internal Case Memorandum dated 4th August 2016 that concern is raised that the proposed development would attract the commercial fee but the status of "ancillary site works including the rearrangement of car parking and bin storage and new access arrangement serving the rear of Killarney Guest house" is not clear. In a third and final internal Case Memorandum also dated 4th August 2016 it is stated that if the Board following inspection / report are of a mind to grant permission for the development, it is considered that new public notices would be required and clarification of the existing development on site. Having regard to the information on file together with my site visit I agree with these comments and recommend that should the Board be minded to grant permission that clarification of the existing uses on site be sought and consideration given to new public notices.

## 7.9. **Flooding**

- 7.9.1. The application was accompanied by a Flood Risk Assessment that identified the appeal site as within Flood Zone B. A residential use is classified as a Highly Vulnerable Development and therefore a justification test is required. The Assessment the concluded the following:

- The proposed development is located within the Western Cork City Centre area and the site is zoned as Residential.
- The site is designated as being within Flood Zone B.
- The proposed development, which includes a two-storey residential property is classified as 'highly vulnerable' development in terms of flood risk.
- A justification test was carried out as part of this report and is deemed to have been passed.
- The proposed development finished floor level is 4.15m OD. This level is above the predicted Lee CFram Flood study current scenario for the 1 in 100 fluvial and 1 in 200 tidal events.
- Additional protection will be provided to 4.9m OD in the form of demountable barriers and flood resilient construction measures.
- A Flood Management Plan will require to be implemented due to the location and nature of the building.

7.9.2. Cork City Drainage Department requested that (1) works, in accordance with submission received as part of the planning application, for Flood Defence and including Flood Mitigation measures for the site shall be carried out and that (2) works to include actual measures selected to address the risk of flooding within the property, i.e. Flood defence to minimum of level proposed, floor resilience of the building, including drainage, and egress from the building in the event of a flood.

7.9.3. Having regard to the information available on file I am satisfied that the potential impacts of the proposed development in terms of flooding have been established. I do not consider that the proposed development would exacerbate the risk of flooding in the area. Should the Board be minded to grant permission it is recommended that in addition to the recommendation of the Cork City Drainage Department that a condition be attached requiring that adequate storm / surface water infrastructure is provided on site to ensure that the proposed scheme does not contribute or exacerbate any existing deficiencies in relation to storm / surface water infrastructure in the area.

## 7.10. Pre Planning

7.10.1. With regard to the pre-planning discussions I note that the applicant places great emphasis on the general support and positive feedback for the proposal from the

local authority together with the hand written notations at the previous refusal stage where it is stated that “a revised application addressing the refusal reasons would be acceptable” (Reg Ref TP 15/36385 refers). However, it is important to state that the legislation makes it clear that offering advice at pre-application consultation does not in any way confine the planning authority’s discretion in deciding on a subsequent application or in discharging any of its other functions. I would also add for the purposes of clarity that the development proposed is considered “de novo”. That is to say that the Board considers the proposal having regard to the same planning matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application.

#### **7.11. Screening for Appropriate Assessment**

7.11.1. I refer to the report of the Cork City Council Drainage Division. Having regard to the nature and scale of the proposed development, nature of the receiving environment and proximity to the nearest European site (Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058)), no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **7.12. Development Contribution(s)**

7.12.1. I have noted the Cork City Council Supplementary Application Form that accompanied the planning application for the purpose of the development contribution indicating floor area of demolition and development was. Cork City Council has adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th October 2013. Section 1.7 Exemptions and Reduction sets out the categories of development which will be exempted from the requirement to pay a development contribution under the scheme. The proposed scheme is not exempted from the payment of a Section 48 Development Contribution. I recommended that should the

Board be minded to grant permission that a Development Contribution condition is attached

7.12.2. In relation to the Section 49 Supplementary Development Contribution Schemes (re-opening of an operation of suburban rail services on the Cork to Middleton line; provision of new rail services between Blarney and Cork and the upgrading of rolling stock and frequency on the Cobh rail line as demand increases) it is noted that the subject site is located outside the catchment area of these projects (1km corridor) and therefore the Section 49 scheme is not applicable in this case.

## 8.0 Recommendation

8.1. The scale and bulk of the proposed development is inappropriate for the restricted nature of the site, is incompatible in terms of design, form and scale with character of the ACA, provides inadequate private open space to serve the proposed dwelling and the vehicular access to the site together with the car-parking facilities do not provide a safe means of access and egress to and from the site. Further to permit the development would reduce the parking standards accepted in the 1992 planning conditions to serve the guest house. Having considered the contents of the application, the provision of the Cork City Development Plan 2015 - 2021, the provisions of government guidance, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. Having regard to the configuration of the site, the minimum standards for private open space as set out in Table 16.7 of the Cork City Development Plan 2015 and to the planning guidance in relation to the development of single dwelling units as outlined in Paragraph 16.58 of the Plan, it is considered that the proposed development would, by reason of its inappropriate scale and substandard private open space, result in inadequate private open space provision and a living environment of low amenity value for the future occupants of the dwelling. The proposed development would contravene Development Plan objectives and would set an undesirable

precedent for similar type developments in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site within the Mardyke Architectural Conservation Area (Ref: Map 9, Volume 2 of the Cork City Development Plan 2015-2021 and Objective 9.29 of Volume 1 of the Plan), the historical plot size of the properties fronting Western Road and the scale of the proposed dwelling, the proposed development would be out of character with the pattern of development in the area of the Mardyke and would set an undesirable precedent for similar piecemeal and uncoordinated development in the vicinity. The proposed development would, therefore, seriously injure the amenities of the Architectural Conservation Area and would be contrary to the proper planning and sustainable development of the area.
3. Having regard to Condition 1 of Reg Ref TP 92/17379, the reduction in the number of usable car parking spaces as a result of the proposed development it is considered that, if permitted, Killarney Guesthouse would be inadequately served in terms of car parking and would not meet Development Plan car parking standards as set out in Table 16.8 of the 2015 Cork City Development Plan. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.
4. Having regard to the current access arrangements to the rear car parking area from the Western Road and the open nature of the boundaries on the western side of the proposed car park, the proposed development would, by reason of consolidating such access/car parking arrangements, endanger public safety by reason of traffic hazard and obstruction of road users.

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**Mary Crowley**

**Senior Planning Inspector**

**15<sup>th</sup> December 2016**