



An
Bord
Pleanála

Inspector's Report

Development	Retention of house, garden shed, walls, driveway, landscaping and associated site works, 25 Westbury Heights, Annabella, Mallow, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/4991
Applicant	Barbara Lehane
Type of Application	Retention Permission
Planning Authority Decision	Grant subject to conditions
Appellant	Michael Byrne
Type of Appeal	3rd Party v. Grant
Observer(s)	None
Inspector	Pauline Fitzpatrick
Date of Site Inspection	01/09/16

1.0 SITE LOCATION AND DESCRIPTION

The Westbury Heights housing estate is accessed from the Kennell Hill Road to the west of Mallow town centre and is comprised of two-storey, red-brick detached houses. No. 25 Westbury Heights is located in the southern part of the estate with the land rising from south-east to north-west. The site itself slopes away from the road. Its side boundaries are delineated by block walls, capped and plastered and are stepped with the slope of the site. The rear boundary is delineated by mature planting. A small garden shed is positioned in the south-western most corner of the rear garden.

A rough surfaced strip of ground approx. 7 metres wide, runs between the boundary wall of No. 25 and the public open space to the east.

2.0 PROPOSED DEVELOPMENT

- 2.1. The proposal is for the retention of the dwelling as constructed on the site including the positioning of the dwelling, the side boundary walls and the small garden shed.
- 2.2. Unsolicited information dated 03/06/16 was submitted in response to the objection received by the planning authority.

3.0 PLANNING AUTHORITY DECISION

3.1. Decision

The Planning Authority decided to grant retention permission for the above described development subject to 6 conditions:

Condition 3: Shed to be used only for purposes incidental to enjoyment of dwelling house.

Condition 6: Financial contribution as per section 48 scheme.

3.2. **Planning Authority Reports**

The **Area Planner's** report details the previous planning history within the estate and the subject site and an enforcement case in relation to alleged unauthorised works including alterations to the site boundaries and the hardcore base to the east.

There is no objection in principle to the retention of the existing development. The dwelling design is similar to the house type permitted on other sites in the scheme and integrates satisfactorily. The shed would not result in any adverse visual impact. Issues of overlooking and overshadowing do not arise. A grant of permission subject to conditions is recommended.

3.3. **Other Technical Reports**

Area Engineer has no objection subject to a condition.

Irish Water has no objection.

3.4. **Third Party Observations**

The issues raised in the objection received by the planning authority are comparable to those set out in the 3rd party appeal summarised in section 6 below.

4.0 **PLANNING HISTORY**

The planning and enforcement history on the site and adjoining lands is detailed in the Area Planner's report on file. Of note:

PL04.245596 (14/5983) – permission granted on appeal for two houses accessed via a road to the side of No. 25.

5.0 POLICY CONTEXT

Mallow Town Development Plan, 2010 – 2016.

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

6.0 THE APPEAL

6.1. Grounds of Appeal

The 3rd Party appeal against the PA' s notification of decision to grant retention permission, which is accompanied by supporting detail including details of the planning history on the site and adjoining lands, can be summarised as follows:

- The repositioning of the house allowed for the subdivision of the plot. No. 25 is now 20% smaller. This has allowed for a 7 metre road to be constructed providing access to the lands to the rear. In addition part of the green area has been fenced off and incorporated into this site.
- The dwelling is c. 5 metres nearer the boundary with No. 24

6.2. Planning Authority Response

The response noted the significant planning and enforcement history on the site. From planning and engineering perspectives the proposal to regularise the development was considered to be acceptable.

6.3. 1st Party Response

The response by EMC which is accompanied by supporting detail can be summarised as follows:

- House No.25 was not repositioned by the applicant. Mallow Town Council gave instruction to James Lehane to complete the dwelling on the foundations constructed by Jeremiah Creedon.
- The roadway referred to is subject of permission granted under ref. PL04.245596.
- No roadway was constructed on site no. 25. The area referred to as an illegal road way was a gravel area between 2 rendered walls. It is outside the area of the application.

6.4. **Observations**

None

7.0 **ASSESSMENT**

A significant amount of detail accompanies both the appeal and the applicant's response as to the history of the lands with specific regard had to the provision of the track adjacent to the site subject of this appeal. In the interests of clarity the nature and extent of the development before the Board is for the retention of the house, garden shed, walls, driveway, landscaping and associated site works as constructed on plot 25 Westbury Heights and does not pertain to any other matter including the said track. I therefore do not propose to comment on same. I note that the Board, under planning ref PL04.245596 (14/5983), granted permission for two houses to be accessed via a road along the line of the said track to the side of No. 25. Construction does not appear to have commenced on same.

Unsurprisingly there is lack of consensus as to the background and basis for the development of the dwelling and plot now subject of the appeal. The appellant appears to contend that it was laid out and developed so as to allow for the development of the track to the site whilst the applicant states that the previous site

owner laid the foundations with Mallow Town Council advising the subsequent owner to complete the development as per the layout set by the said foundations.

The Westbury estate is comprised of large plots with detached two storey dwellings. The dwelling as constructed on plot no.25 effectively emulates the prevailing detached house design in the estate, maintains the building line, and at 197 sq.m. is large in terms of floorspace, with external finishes matching those in the vicinity. Certainly in a visual context the dwelling as constructed does not have any discernible difference to the dwellings in the vicinity.

The plot with a stated area of 0.1625 hectares, whilst smaller than other plots in the estate as is evidenced from the site layout plan, is not so at variance as to be noticeable. It is served by both generous front and rear garden areas. Side access is available to both sides with the dwelling setback 3.5 from the boundary with the appellant's dwelling to the north-west and 2.5 metres to the boundary to the south-east. Whilst the appellant contends that the dwelling should have been setback a further 5 metres from its side than is the case I do not consider that that, as existing, to be unreasonable. The setback is generous in its own right and does not result in overlooking or overshadowing of the appellant's property. I note that the general falls in the area mean that the appellant's dwelling is marginally higher than the appeal site. The boundary treatment, namely rendered block wall with brick detailing, reflects that used elsewhere in the estate and complements the dwelling.

A small garden shed has been constructed in the south-western corner of the site. There was no evidence to suggest that it was being used for commercial purposes although access was not available on day of inspection. The fact that it may have the benefit of services such as lighting does not, in itself, suggest that it is being used for purposes other than those incidental to the dwelling.

I am therefore satisfied that the development to be retained is acceptable and that it would not have an adverse impact on the residential or visual amenities of the area or of property in the vicinity.

I note that the PA attached a condition requiring a financial contribution in accordance with the adopted scheme. The applicant did not appeal this condition.

Appropriate Assessment

Having regard to the nature and scale of the development to be retained 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.

8.0 RECOMMENDATION

- 8.1. Having regard to the documentation accompanying the application, the grounds of appeal, the response thereto, a site inspection and the assessment above I recommend that retention planning permission should be granted for the following reasons and considerations, subject to conditions.

REASONS AND CONSIDERATIONS

Having regard to the extent and nature of the development to be retained, its location within the Westbury Heights housing estate and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development to which this permission for retention refers is as detailed on the plans and details accompanying the application, only, and does not refer to any other structure or works.

Reason: In the interest of clarity.

2. The garden shed to be retained shall be used as a private domestic garage solely for purposes incidental to the enjoyment of the dwellinghouse, and shall not be used for commercial, trade or industrial purposes or for human habitation.

Reason: In the interest of residential amenity.

3. 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.

Pauline Fitzpatrick
Inspectorate

October 2016