



An  
Bord  
Pleanála

## Inspector's Report PL28.247279

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<b>Development</b>	House to include associated site development works and alterations to existing vehicular entrance
<b>Location</b>	Ardnagrena, Blackrock Road, Ballintemple, Co. Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	16/36713
<b>Applicant(s)</b>	Tony & Patsy Harrington
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Tony & Patsy Harrington
<b>Observer(s)</b>	Frances & Eamonn Dillon
<b>Date of Site Inspection</b>	3 <sup>rd</sup> November 2016
<b>Inspector</b>	Mary Crowley

## **1.0 Site Location and Description**

1.1. The appeal site with a stated area of 0.07 ha comprises the side and rear of the grounds of Ardnagrena, a substantial dwelling on the Blackrock Road in the Cork suburb of Ballintemple. Access to the site is via an existing entrance gate on the Blackrock Road. The land gently slopes from south to north. The boundaries comprise of substantial tree belts and planting. The area is characterised as residential. 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. This is an application (12<sup>th</sup> January 2016) for the development of a three bed detached dormer dwelling (185.58 sqm) to the rear of Ardnagrena, Blackrock Road, Ballintemple including associated site development works together with alterations to the existing vehicular entrance off Blackrock Road. The scheme will be served by the public water mains and sewer. Surface water disposal is by means of a public sewer / drain. The application was accompanied by Housing Strategy Certification of Grant of Exemption together with a cover letter.

2.2. In response to a request for further information the applicant submitted the following (28<sup>th</sup> July 2016) as summarised

- Revised drawings for the dwelling with a smaller footprint
- Additional cross sections
- Proposed entrance gateway details including heights and finishes
- Drawings, specifications and a traffic engineers report which addresses proposed sight lines from the existing entrance.

## 3.0 Planning Authority Decision

3.1. Cork City Council **refused permission** for the following two reasons:

- 1) *The proposed development, by reason of its location, layout and design, would result in overlooking and overshadowing of the neighbouring properties; would impact on their privacy; and constitutes overdevelopment of the site. The proposed development would therefore seriously injure the amenities of and depreciate the value of property in the vicinity and would be contrary to the proposed planning and sustainable development of the area.*
- 2) *It is considered that the proposed development would endanger public safety by reason of traffic hazard because the additional traffic movements generated by the proposed development, where the sightlines are restricted, would interfere with the safety and free flow of traffic on the public road.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Local Authority Planner in their first report (3<sup>rd</sup> March 2016) requested the following further information as summarised:

- Revised house plans to provide for a smaller footprint
- Cross sections
- Details of the proposed gateway and entrance
- DMURS

The Planner in their second report (23<sup>rd</sup> August 2016) and having considered the further information concluded that *overall, the proposed two storey structure cannot be accommodated on this site and will adversely affect not only the setting of the existing NIAH listed property to the north but also adversely affect the property and residential amenity of neighbouring property to the east.* It was further stated that *it will create undue overlooking and will possibly devalue both existing properties.* The Local Authority Planner recommended that planning permission be **refused** for two

reasons. The notification of decision to refuse planning permission issued by Cork City Council reflects this recommendation.

### 3.2.2. Other Technical Reports

- The **Roads Design & Construction Section** (29<sup>th</sup> February 2016) requested further information regarding the proposed entrance. Road Design in their second report (23<sup>rd</sup> August 2016) and having considered the further information recommended that permission be refused *as the proposal submitted does not meet the guidelines for sight lines for new development as set out in DMURS.*
- The **Conservation Officer** (3<sup>rd</sup> March 2016) considered the application to be *problematic because of the impact on Ardnagrena and on Cleve House, its neighbour to the east, and should not be permitted in its present form.* Further stated that *it may be possible to provide a house with a smaller footprint having more space between the new house and the boundaries to the north and east, and without undue overlooking of neighbouring gardens.* The **Conservation Officer** in their second report (23<sup>rd</sup> August 2016) and having considered the further information does not consider the amendments proposed to be sufficient to address the issues previously raised and recommends against a decision to grant permission as *the application would have a serious negative impact on the setting of a house of architectural heritage importance which is listed on the NIAH (reference no. 20867029).*
- The **Drainage Division** (19<sup>th</sup> February 2016) has no objections subject to conditions as set out in their report.

### 3.3. Prescribed Bodies

- The **Health & Safety Authority** has no stated observations.
- **Irish Water** has no stated objection.

### 3.4. Third Party Observations

There are three observations on the planning file from Eamonn & Frances Dillon, registered owners of Burnley; the adjoining property to the west of the appeal site. The issues raised relate to traffic safety, overlooking, boundary treatment, loss of

residential amenity, impact on architectural character, legal interest to carry out access roadway, Ardnagrena is listed as of regional significance in the National Inventory of Architectural Heritage of Ireland and this protection extends to the curtilage or attendant grounds of the building, precedent that would undermine the aims of the ACA, intensification of development that is out of kilter with architectural suburban grain and character of the area, scheme would dominate the rear curtilage,

## 4.0 **Planning History**

4.1. There is no evidence of any previous appeal on this site.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

5.2. The operative plan for the area is the **Cork City Development Plan 2015-2021. Map 6 South Central Suburbs** identifies the within an area zoned **Residential, Local Services and Institutional Uses** as well as being within an area designated an **Architectural Conservation Area**. Development Management policies are set out in Chapter 16.

### 5.3. **Natural Heritage Designations**

5.4. 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. The first party appeal has been prepared and submitted by Hogan Architecture Urban Design on behalf of the applicant. The grounds of appeal may be summarised as follows:

6.2. **Background** - The applicants have resided at this location for over 30 years and wish to continue living there. However, they are both in retirement and can no longer personally attend to this large period property. The applicants are also full time

carers for the special needs adult son. They have previously rented a property nearby and tried to get their son used to the idea of living elsewhere but their sons condition deteriorated considerably necessitating their return to Ardnagrena. The applicants have no intention of seeking institutional assistance for their son and therefore the only viable solution is to downsize on their amply sized property.

- 6.3. **Location** – The property is fully serviced with all the necessary public infrastructure and its orientation is such that is capable of accommodating an additional dwelling thereon without impacting negatively on its neighbouring properties.
- 6.4. **Layout** – The dwelling is as far as possible from the three adjoining properties to prevent overlooking.
- 6.5. **Design** – The modest design and aesthetic was carefully considered and submitted to the Conservation Officer for approval and subsequently approved in principle prior to submission for planning permission.
- 6.6. **Overlooking** – The issue of overlooking was appropriately addressed in the proposed design such that no discernible impact would result to the immediately adjoining properties.
- 6.7. **Overshadowing** – Burnley to the west cannot be impacted upon by overshadowing from the proposed dwelling. Elderwood Drive are located to the south where overshadowing is impossible due to the path of the sun. To the west Cleve House, is well distant from the proposed dwelling and any overshadowing is caused by the existing Ardnagrena dwelling itself together with the existing mature boundary screening. The dormer nature of the proposal considerably reduces the level of overshadowing currently experienced at the property and the re-orientation of the garden to the western side of Ardnagrena addresses the present constraint achieving a net improvement overall.
- 6.8. **Privacy** – Overlooking of adjoining properties is not an issue. The roof lights referred to in the City Councils Conservation Officers report are purely intended to afford light to the proposed dwelling while protecting the private residential amenity of Ardnagrena. It is also intended to construct a new diving wall well in advance of putting Ardnagrena on the market and to extensively landscape between the new garden area of Ardnagrena and the development site.

- 6.9. **Overdevelopment** – The addition of a single dwelling on the Ardnagrena site has no real impact on density terms as it is clearly well below any of the minimum threshold densities set out required to be implemented by the City Council, irrespective of any constraints applied by its location, the Conservation Area in this instance, where existing properties on much smaller plots of land happily sit alongside and opposite the development site on either side of the Blackrock Road.
- 6.10. **Depreciate Value of Property in the Area** – In order to redress this reason for refusal the applicant has engaged the services of an Auctioneering firm, Frank V Murphy & Co (report attached to submission) who state that no diminution in or depreciation in values will result to the neighbouring properties as is stated by the City Council.
- 6.11. **Traffic Hazard & Sightlines are Restricted** – The present vehicular and pedestrian access arrangements to Ardnagrena are wholly deficient. Submitted that the access to the site is very easily facilitated but that in this instance the entrance can be significantly improved but the DMURS sightline (to the east) cannot be fully complied with as they cannot be on any entrance on the Blackrock Road.
- 6.12. **Conclusion** - The proposed new dwelling is appropriate for the site, is in keeping with the established vernacular and pattern of development in the area and does not, in any way, constitute a traffic hazard or interfere with the safety and free flow of traffic on the public road.
- 6.13. **Planning Authority Response**
- 6.14. No response is recorded on the appeal file.
- 6.15. **Observations**
- 6.16. There is one observation on the appeal file from Frances & Eamonn Dillon, registered owners of Burnley; adjoining property to the west of the appeal site. The issues raised are similar to those set out in Section 3.4 above. Additional issues raised relate to the stated restriction on building between the two properties (Ardnagrena & Burnley) by way of “restrictive covenant” as set out in the Indenture of Lease dated 10<sup>th</sup> July 1935.

## 6.17. **Further Responses**

6.18. None recorded on the appeal file.

## 7.0 **Assessment**

7.1. Cork City Council **refused** planning permission for the development of a house at this location for two reasons relating to (1) overdevelopment of the site; injury to the amenities of adjoining properties, depreciation in the value of property in the vicinity and (2) endangerment of public safety by reason of traffic hazard. Having regard to the information presented by the parties to the appeal and in the course of the planning application and to 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
- Design & Architectural Character
- Residential Amenities
- Traffic Safety
- Property Value
- Appropriate Assessment Screening
- Other Issues

### 7.2. **Principle / Policy Considerations**

7.2.1. Under the provisions of the Cork City Development Plan 2015-2021 the appeal site is zoned Residential, Local Services and Institutional Uses as well as being within an area designated an Architectural Conservation Area. Having regard to the nature and residential use of the development I am satisfied the principle of a dwelling house at this location is acceptable subject to compliance, with the relevant policies, standards and requirements set out in development plan.

### 7.3. **Design & Architectural Character**

7.3.1. As set out above the appeal site is within a designated Architectural Conservation Area; a designation that is essentially concerned with protecting the historic



character of the area. While Ardnagrena is not a protected structure it is listed as of regional significance in the National Inventory of Architectural Heritage of Ireland (NIAH). The protection status given by the NIAH also applies to the curtilage or attendant grounds of the building. The Conservation Officer (3rd March 2016) considered the application to be problematic because of the impact on the parent house, Ardnagrena and on Cleve House, its neighbour to the east. The Conservation Officer in their second report (23rd August 2016) and having considered the further information did not consider the amendments proposed to be sufficient to address the issues previously raised and recommended against a decision to grant permission as the application would have a serious negative impact on the setting of a house of architectural heritage importance which is listed on the NIAH (reference no. 20867029).

7.3.2. The scheme before the Board (as amended) involves the division of the existing historic curtilage and a further intensification of dwellings in an ACA whose large gardens are part of the historic character of the residential pattern defined by the large plot sizes and spacious gardens. It is therefore essential that any new should ensure the conservation and enhancement of both Ardnagrena and the ACA.

7.3.3. It is my view that the modest design and aesthetic of the new dwelling (as amended) before the Board in terms of elevational treatment, scale and positioning is designed to complement Ardnagreena. Further I am satisfied that it forms a compatible and acceptable response to the site without compromising the amenity space to the existing house. While I note the concerns raised by the Conservation Officer I am satisfied that this scheme (as amended) is a sensitively designed and carefully considered dwelling that is sympathetic and appropriate to its context without detracting from Ardnagrena or the ACA. In conclusion I consider that the proposed development will not seriously injure the visual amenities or character of the area.

#### 7.4. **Residential Amenities**

7.5. Cork City Council refused permission in the first instance because the sites location, layout and design would result in overlooking and overshadowing of the neighbouring properties; would impact on their privacy; and would constitute overdevelopment of the site.

7.5.1. Having considered the amended proposal together with the submission on file I am satisfied that the proposed development is appropriate in scale and design to ensure it will not dominate the adjoining properties and that the scheme will harmonise with the local character of the area. Further the proposed dwelling in its positioning (as amended) demonstrates that a reasonable balance between the protection of the amenities of the adjoining dwellings and the proposal to provide a dwelling on this restricted site can be achieved. Overall I consider that the scheme in its design, form and positioning strikes a reasonable balance between the protection of the amenities and privacy of the parent dwelling and that of adjoining dwellings on this restricted site and that the scheme will not result in any significant or unreasonable over shadowing or loss of natural of adjoining properties and that there will be no undue overlooking of adjoining properties. I consider therefore that the development (as amended) would not result in a significant impact on the residential amenity of any other property in terms of overlooking or overshadowing or otherwise that would justify refusing permission on these grounds.

## 7.6. **Property Value**

7.6.1. Cork City Council in their first reason for refusal stated that the proposed development would depreciate the value of property in the vicinity. The applicant in their appeal stated that diminution in value of adjoining properties is regularly cited in the grounds of refusal by Local Authorities without, in most cases, any documentary evidence of this in their associated planning reports (i.e. valuation report from an Auctioneer to verify the claim). In order to redress this reason for refusal the first party appeal was accompanied by a valuation report prepared by Auctioneering firm, Frank V Murphy & Co stating that the development of a new dwelling *would not materially affect the saleability or value of the referred to dwelling houses* (i.e. Ardnagrena and the immediate neighbouring residential properties).

7.6.2. The proposed dwelling house is to be located on lands zoned Residential, Local Services and Institutional Uses where such developments are considered a permissible use and where it is reasonable to expect developments of this kind would normally be located. Residential uses are not considered to be a bad neighbour in this context and as concluded above would not in my view lead to an undue loss of residential amenities to adjoining properties. I do not therefore consider that to permit a dwelling house at this location would lead to devaluation of

property values in the vicinity. Matters pertaining to residential amenity are discussed elsewhere in the assessment. Accordingly, I am satisfied that this matter is not material to the consideration of this appeal in this instance.

## **7.7. Traffic Safety**

- 7.7.1. Cork City Council in their second reason for refusal stated that the proposed development would endanger public safety by reason of traffic hazard because the additional traffic movements generated by the proposed development, where the sightlines are restricted, would interfere with the safety and free flow of traffic on the public road.
- 7.7.2. In response to a request for further information the applicant submitted revised drawings and specifications together with a traffic engineers report addressing deficiencies in the sight lines from the existing entrance (28<sup>th</sup> July 2016). The revised proposals indicate the re-alignment of the southern edge of the public road carriageway immediately outside the entrance in a northerly direction, to provide a public road width of 6m (from the existing kerb at the northern side of the carriageway) and that this can be achieved by extending the existing kerb at the southern side of the carriageway, at the eastern side of the Ardnagrena entrance, in a westerly direction to delineate the new carriageway edge, while providing a break in this kerb line to serve Ardnagrena and the adjacent dwelling, Burnley to the west. It is submitted that this will have the benefit of moving the setback point for the site line triangle in a northerly direction thereby providing improved sightlines. It is stated that there will be a 50m sightline achieved to the west and a 25m sightline achieved to the east, at a 2.0m setback from the proposed new carriageway edge. Further proposed to widen the existing entrance to facilitate easier movement of vehicles into the existing and proposed house on the site leading to a reduction in the likelihood of vehicles having to stop on entry to the site, thereby reducing traffic hazard.
- 7.7.3. The achievement of a 50m sightline to the west exceeds the requirements of DMURS for a road with a design speed of 50km/hr. DMURS recommend that a 45m sightline be achieved. However, the applicant states that to achieve a 45m sightline to the east would require removal of the full extent of the existing boundary wall with Blackrock Road together with the removal of the existing road side garage wall and significant cutting of existing hedging and trees. Given the environmental and

aesthetic value of these boundary features the applicant considered that it would not be prudent to demolish and remove such features and that the achievement of a 25m sightline to the east without impact on existing boundaries, is considered to be a reasonable and prudent proposal.

7.7.4. The Cork City Council Roads Design & Construction Section in their second report (23rd August 2016) and having considered the further information recommended that permission be refused as the proposal submitted does not meet the guidelines for sight lines for new development as set out in DMURS.

7.7.5. The present vehicular and pedestrian access arrangements to Ardnagrena are wholly deficient. As observed on day of site inspection, vehicles or pedestrians emerging from the entrance at Ardnagrena have zero metre sightlines to the east and virtually zero sightlines to the west with the result that traffic travelling along the public roadway, from the east, cannot be seen by vehicles or pedestrians as they depart from Ardnagrena or indeed its adjoining neighbouring property Burnley which suffers from similar deficiencies. As demonstrated by the applicant the existing entrance can be significantly improved but the DMURS sightline (to the east) cannot be fully complied with without significant physical intervention. It is my view that this application presents an important and pragmatic opportunity to improve a hazardous traffic situation that would otherwise likely continue unchanged. However, notwithstanding the obvious improvements to the current situation the proposed scheme will inevitably lead to an intensification of use and additional traffic movements at this point along Blackrock Road. On balance I consider that this application in these particular circumstances presents an important opportunity to address an existing public safety hazard whereby consideration should be given to granting permission in this instance as the vehicular arrangement proposals at the entrance will improve the overall traffic and pedestrian safety at the junction with the public roadway.

## 7.8. **Appropriate Assessment Screening**

7.8.1. I refer to the report of the Senor Executive Engineer, Cork City Council Drainage Division (19<sup>th</sup> February 2016). Having regard to the nature and scale of the proposed development, the 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.

## 7.9. Other Issues

- 7.9.1. **Legal Interest** – The observers to the appeal, Frances & Eamonn Dillon, registered owners of Burnley; adjoining property to the west of the appeal site raise concerns that there is a restriction on building between the two properties (i.e. Ardnagrena & Burnley) in the area of the proposed access driveway by way of “restrictive covenant” as set out in the Indenture of Lease dated 10th July 1935. Details of which are attached to the submission. The applicant in their submissions to the Board silent on this matter.
- 7.9.2. The concerns raised are noted however I would draw attention to Section 34(13) of the Planning Act that states, that a person is not be entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted and should the observers or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.
- 7.9.3. **Section 48 Development Contribution** - 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.
- 7.9.4. **Section 49 Supplementary Development Contribution** - 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. Having considered the contents of the application, the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

9.1. Having regard to the location of the site, the land use zoning objective for the site, the established residential use of the site, the pattern of development in the area, the nature and scale of the proposed development as amended, and the policy considerations set out in the current Development Plan for the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property values in the vicinity and would respect the existing character of this Architectural Conservation Area. Therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 28<sup>th</sup> July 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. A schedule [and appropriate samples] of all materials to be used in the external treatment of the development to include [proposed brick, shopfront materials, roofing materials, windows, doors and gates] shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure an appropriate standard of development/conservation

3. All service cables associated with the proposed development (such as electrical, telecommunications and television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

4. 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 commencement of development. This plan shall provide details of intended construction practice for the development, including
  - (a) hours of working;
  - (b) details of site security fencing and hoardings;
  - (c) details of on-site car parking facilities for site workers during the course of construction;
  - (d) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
  - (e) off-site disposal of construction/demolition waste; and

(f) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

(g) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

**Reason:** In the interest of amenities, public health and safety.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management

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

**Reason:** In the interest of public health

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf



of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Mary Crowley**

**Senior Planning Inspector**

**25<sup>th</sup> November 2016**