



An  
Bord  
Pleanála

## Inspector's Report PL28.247674

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<b>Development</b>	Demolition of house, construction of 2 houses, parking, vehicular entrances, landscaping, drainage and setback of northern boundary of adjoining Douglas Wells apartments.
<b>Location</b>	Inish, Well Road, Douglas, Cork.
<b>Planning Authority</b>	Cork City Council.
<b>Planning Authority Reg. Ref.</b>	16/36933
<b>Applicant(s)</b>	Into the Future Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	1. Cormac Lalor 2. Sean Cooper
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	8 <sup>th</sup> February 2017
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

The appeal site, with a stated area of 0.1 ha, is located on the eastern side of Well Road, approx. 300m north of Douglas village, south of Cork city centre.

The surrounding area is predominantly residential in character, with the lands immediately adjoining to the north, west and east comprising substantial detached two storey dwellings. The Douglas Well apartments, two storey in height with third floor set back at roof level, are located to the south.

The appeal site currently hosts a mature bungalow, 'Inish', with one large box style dormer window in the front roof space and a single storey glass conservatory to its rear. The dwelling with attached garage is set back from the public road, it has a gated vehicular access onto Wells Road, off street parking with mature trees running along the front / western boundary.

The southern boundary adjoins a public pedestrian walkway which provides pedestrian access to houses to the rear / east in Douglas Hall Lawn and Douglas Tennis Club. The eastern boundary comprises a solid block wall and is heavily landscaped with tall trees and thick mature hedging. The northern boundary also comprises a solid block wall and hedge.

## 2.0 Proposed Development

2.1. The proposal comprises permission for:

- Demolition of existing dwelling house and garage 120 sq. m,
- Construction of two number five bedroom houses, each, 250 sq. m
- Landscaping, Drainage, Parking, Vehicular entrances,
- Setback of northern boundary of adjoining Douglas Wells apartments
- Ancillary development works

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Following a request for Additional Information with respect to (i) cross section drawing indicating the relationship of the proposed dwelling to be sited immediately to the rear of number one Douglas Hall Lawn, (ii) consultation with ESB to confirm that they have no objection to the construction of the proposed wall onto Well Road adjacent to the existing ESB substation with the apartments and (iii) legal confirmation that the directors of Douglas Wells Management Limited have appropriate legal authority to dispose of the area of land which is located within the Douglas Wells Apartment Development, planning permission was granted subject to 17 number conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planners Report sets out that having regard to the nature, location and context of the site and surrounding area, the policies of the Cork City Development Plan 2015 – 2021 and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions that the proposed development would not seriously injure the residential or visual amenity of the area. .

Drainage Report: No objection subject to condition.

Roads Planning: No objection subject to condition.

Traffic and Transportation: No objection subject to condition.

Environment: No objection subject to condition.

### **3.3. Third Party Observations**

A number of objections were submitted to the planning authority. Concerns raised are similar to those raised in the third party appeals summarised in detail below.

## 4.0 Planning History

**Reg. Ref. 99/22973** Permission Granted for extension to existing dwelling.

## 5.0 Policy Context

5.1.1. Sustainable Residential Development in Urban Areas, 2009

5.1.2. Quality Housing for Sustainable Communities, 2007

5.1.3. Development Plan

The site is governed by the policies and provisions contained in the Cork City Development Plan 2015-2021.

The site is zoned ZO 4 Residential, Local Services and Institutional Uses with the objective 'to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3'.

Residential Density

Section 16.40 & Section 16.41, excerpts attached as appendix to this report.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The issues raised within the third party appeals from PLM Architects on behalf of Sean Cooper, Douglas Hall and Cormac Lalor, No. 1 Douglas Hall Lawn have been collated under the following headings:

#### **Set Back of the Boundary Wall Of Douglas Wells Apartments**

- Directors of Douglas Wells Owners Management Company Ltd. do not have authority to sell the section of garden to accommodate the development.
- Such a set back of the boundary, as proposed, does not have a majority agreement of apartment owners of Apartment Block 3.
- Apartment Block 3 will be most affected by the proposal.

- Proposal is contrary to Multi – Unit Development Act 2011

### **Negative Impact Upon Residential Amenity**

- Noise from Traffic will be closer to Apartment Block 3
- Loss of garden amenity
- Air pollution from cars
- Devaluation of property in the Douglas Wells Apartment complex.
- Loss of evening light to rear garden of number one Douglas Hall Lawn to the east.
- Loss of skyline vista of number one Douglas Hall lawn.

### **Negative Impact Upon Visual Amenity**

- At 9.67 m the proposed buildings are 0.76m higher than the neighbouring houses to the north on Well Road, 'Lugano'.
- Dominating roof profile when viewed from the east
- Contrary to policy stated in the development plan which required all residential development to maintain building lines and roof pitches.
- A reasonable development with A roof profile, no higher than neighbouring houses to the north would be welcomed.

### **Loss of Privacy**

- Two bedrooms in a third storey facing east will compromise privacy of number 1 Douglas Hall Lawn.
- Overlooking, perceived overlooking, passive monitoring
- 25m separation distance is not sufficient for a three storey house

### **Traffic**

- Indirect benefit from the development is the enhancement of road safety on the Wells Road y the improvement of the road traffic sight lines. This is welcomed.
- Two car parking spaces per dwelling is not practicable on the site.

- Cars backing onto this heavily trafficked road would give rise to a traffic hazard.

**The Appeal is accompanied with:**

- Copy of draft lease for Douglas Wells Management Limited
- Copy of Companies Act 2014 – Douglas Wells Owners Management Company Limited by Guarantee
- Multi-Unit Development Act 2011
- Letter to Sean Cooper from Theresa Lawton dated 30<sup>th</sup> March 2004
- Minutes of Extraordinary General Meeting dated 12<sup>th</sup> November 2015
- Copy of information from the planning files
- Photographs taken from rear garden of number one Douglas Hall Lawn
- Autotract Analysis

**6.2. Applicant Response**

- 6.2.1. A response was submitted by McCutcheon Hally Planning Consultants on behalf of the applicant Into the Future Ltd. it is summarised as follows:

**Visual Amenity**

- The scale of the proposed dwellings is compliant with the City Development Plan policies and consistent with neighbouring properties
- The Well Road is lined with dwellings varying in type and size.
- The dwellings are well designed and appropriate in their context

**Residential Amenity - Overlooking**

- 22m separation distance between opposing rear first floor windows is observed,
- Separation distance with dwellings to the east is in excess of 26m
- There will be no overlooking as a result of the separation distances proposed
- Screen louvre detail is proposed to the larger windows at rear first floor level

- One escape window proposed at second floor level, 0.7m wide

#### Loss of Amenity

- No policy stating that a landowner is entitled to a view from their property.
- Regard being had to BRE Guidance documents, the proposed development is unlikely to significantly impact on the use, value and enjoyment of the rear garden of no. 1 Douglas Hall Lawn.
- There will be no adverse light / overshadowing impact to the rear living room extension of no. 1 Douglas Hall Lawn

#### Traffic Impact

- The road engineer and the transportation section have no objection to the proposed development.
- Autotrack analysis submitted by appellant is misleading and inaccurate
- Ample space in excess of two car spaces (2.5m x 5m) is proposed in each front garden, therefore ample space to park vehicles.
- The car parking proposed emulates the current situation on the appeal site and also neighbouring properties along Wells Road.
- The proposal is compliant with maximum parking standards for Zone 3 as set out in the CDP 2015

#### Legal Entitlement to sell lands

- A letter of consent was submitted from the directors of Douglas Well Management Limited to facilitate the set back of the northern boundary wall
- By way of further information, the title / deeds of Douglas Wall Management Limited was submitted showing that they are the registered legal and beneficial owners of the property over which the application was made.
- Civil property rights are a legal matter and not within the jurisdiction of the planning authority or An Bord Pleanala to deal with.
- The Development Management Guidelines Section 5.13, sets out that the planning system is not designed to resolve issues relating to title to land

- Landmark Case cited Frascati Estates v Walker (1975) IR 177)
- A planning authority or An Bord Pleanala are not precluded from granting planning permission notwithstanding the need for other permission or consents before the development may lawfully commence. (Keane v An Bord Pleanala (1997) I.R.29)

**Response Accompanied with:**

- Cross section drawing indicating the relationship of the proposed dwelling and number one Douglas Hall lawn.

**6.3. Planning Authority Response**

- Response received no further comments forthcoming.

**7.0 Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Development on the Site**
- **Overdevelopment / Impact Upon Residential Amenity**
- **Traffic Impact & Car Parking**
- **Setback of the Boundary Wall**
- **Appropriate Assessment**

**7.2. Principle of the Development on the Site**

The appeal site (0.1ha) is located within an area zoned with the objective ZO 4 'Residential, Local Services and Institutional Uses' with the objective 'to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3' of the Cork City Development Plan 2015-2021.

The proposed development for demolition of a single mature dwelling house of no particular merit or designation and its replacement with two number detached dwellings with associated car parking and services is acceptable in principle within



with this zoning objective, subject to compliance with development management criteria set out in the Development Plan.

### 7.3. Overdevelopment / Impact Upon Residential Amenity

7.3.1. Regard is had to concerns raised by third parties, in particular with respect to over development, loss of light, overshadowing, overbearing and overlooking. I note that the proposal for two three storey dwellings, approx. 9m in height, would be slightly above the height of the adjoining property to the north 'Lugano' and dwellings further to the north along Well Road. However, having regard to all of the information before me, and having conducted a visit of the site and its environs, I am of the opinion that the scale, mass and design of proposed development, is acceptable in the context of existing permitted development. This is a detached urban site which is well contained both physically and visually, set back from the road with high walls and dense screening to its rear, east.

7.3.2. I do not consider the scale of the proposed development to be excessive in its context. The amended proposal complies favourably with section 16.59 'Infill Housing' of the 2015 – 2021 Cork City Development Plan which states ‘

‘The planning authority will consider the appropriate development of infill housing on suitable sites on a case by case basis taking into account their impact on adjoining houses, traffic safety etc... Infill proposals should:

- Not detract from the built character of the area;
- Not adversely affect the neighbouring residential amenities;
- Respect the existing building line, heights, materials and roof profile of surrounding buildings;
- Has an appropriate plot ratio and density for the site;
- Adequate amenity is proposed for the development’.

7.3.3. The new dwellings, with a GFA of 250 sq. m, respect the established building line. 22 m separation distance between opposing rear first floor windows is observed. The separation distance with dwellings to the east is in excess of 26m. No overlooking

would arise given the mature dense screening in place along the eastern boundary and the separation distance proposed. While the design of the dwellings is three storey I note the screen louvre detail proposed to the large first floor rear bedroom window and that, only, two velux windows are proposed, on the rear roofspace, at second floor level.

- 7.3.4. The design of the proposed dwellings is to a high standard with an aesthetically pleasing brick finish proposed to the front façades. All existing planting and boundaries are to be retained and supplemented with additional screen planting, regard is had to the landscape plan submitted.
- 7.3.5. There are currently no views into / from adjoining rear gardens from ground level. I do not agree with the third party that overlooking, overshadowing, loss of light or overbearing would arise.
- 7.3.6. I consider that the design, which is to a high standard, taken together with the size of the site, screening and development in the vicinity, is such that the proposal would not give rise to overdevelopment of the site, would not be visually incongruous or diminish residential amenity so as to warrant a refusal of permission.

#### **7.4. Traffic Impact & Car Parking**

- 7.4.1. Concern has been raised with respect to car parking proposed to the front of the dwellings which it is contended would give rise to reversing movements onto the Wells Road resulting in a traffic hazard.
- 7.4.2. Two car parking spaces per dwelling is proposed to the front courtyard of each dwelling. While I note the concern raised I am of the opinion that the appeal site is an urban infill serviced site within walking distance of services and amenities, the proposal is compliant with the maximum parking standards for Zone 3 as set out in the Cork City Development Plan. I agree with the first party that the car parking arrangement emulates the current situation on the appeal site and also neighbouring properties along Wells Road. Regard is had that Wells Road is heavily trafficked and therefore car speed is slow.

- 7.4.3. The applicant proposes to set back the front boundary wall of the adjoining Douglas Wells apartments so that sight distance of 45 m from the proposed accesses can be achieved in a southerly direction. It is proposed to incorporate a public footpath and setback the wall by 2m over a distance of some 45m.
- 7.4.4. The proposal to set back the wall and provide a footpath is welcomed by the roads planning engineer / the planning authority and one of the appellants, however, a third party has raised concern with respect to the set back of the wall and legal entitlement to carry out the works. This matter is dealt with in a subsequent section of this report.
- 7.4.5. Overall I am of the opinion that the set back of the boundary wall by 2m and provision of a footpath is a welcome planning gain and I see no justifiable reason to refuse planning permission on traffic safety grounds.

## 7.5. **Setback of the Boundary Wall**

- 7.5.1. Regard is had to concerns raised by a third party, with respect to, inclusion of lands within the Douglas Wells Apartments, within the site boundary. It is contended that the set back of the wall would materially affect the amenity value of the open space attached to the apartments, impact most upon the residential amenity enjoyed by Block 3 in terms of noise, air pollution and devaluation of property. It is also contended that the proposal to setback the boundary wall is contrary to the agreement of majority residents in Block 3, thereby, contrary to Multi-Unit Development Act 2011 and that the Directors of Douglas Wells Owners Management Company Ltd. do not have authority to sell the section of garden to accommodate the development.
- 7.5.2. In agreement with the planning authority I am satisfied that the setback proposed to the Douglas Wells Apartments would not materially affect the amenity value of the open space attached to the apartment development. It is a relatively marginal strip of

some 2m in depth relative to the overall open space area. I also agree that there is a substantial planning gain in addressing the road safety issues, by way of achievement of and incorporation of sightlines and a footpath along this stretch of Well Road.

- 7.5.3. Having regard to concerns raised, with respect to the legal entitlement to set back the boundary wall, I have had regard to the submitted information by both the first and third parties. I note the letter of consent from the Directors of Douglas Wells Management Limited. I also note the letter from Daly Derham Donnelly Solicitors dated 5<sup>th</sup> October 2016 which confirms that the portion of ground being transferred was conveyed to Douglas Well Management Company Limited. The Deed shows that they are the registered legal and beneficial owners of the property over which the application was made.
- 7.5.4. It is my opinion, that the applicant has demonstrated 'sufficient' legal interest, for the purpose, to seek and be granted planning permission on the appeal site. However, site ownership and legal entitlement over lands are civil matters and not a matter for consideration by An Bord Pleanala. In this regard I highlight that Section 34 (13) of the Planning and Development Act, 2000, as amended, states that a person shall not be entitled solely by reason of a grant of planning permission to carry out development on land where they have no sufficient legal interest.

## 7.6. **Appropriate Assessment (AA)**

- 7.6.1. The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).
- 7.6.2. The planning report on file concludes that appropriate assessment is not required.
- 7.6.3. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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

- 8.1.1. I recommend that planning permission should be Granted subject to the following conditions.

## 9.0 Reasons and Considerations

- 9.1.1. Having regard to the land-use zoning of the site, the existing pattern of development on the site and in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not give rise to a traffic hazard, be injurious to visual amenity of the area or injure residential amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 10th October 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. Details of the materials, colours and textures of all the external finishes to the proposed residential units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. The windows serving all bathrooms, en-suites and walk-in wardrobes shall be permanently fitted and maintained with obscure or stained glass. The use of film is not permitted.

**Reason:** In the interests of proper planning and sustainable development of the area

4. Water supply and drainage arrangements, including the attenuation and 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.

5. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house

**Reason:** In the interests of amenity and public safety.

6. That all necessary measures be taken by the contractor, including the provision of wheel wash facilities, to prevent the 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. (a) The construction of the development shall be managed in accordance with a Construction Environmental 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 noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interests of public safety and residential amenity

8. (i) Prior to the commencement of development a 1.8m wide footpath shall be provided along the full perimeter of the boundary and extending along the boundary of the adjoining property. Details of same shall be approved in writing, by the planning authority, prior to the commencement of development. The works shall be undertaken and paid for at the developer's expense.

(ii) The gates for the proposed new vehicular entrances shall comprise bi-folding gates or bi-parting sliding gates to avoid conflict with future vehicles using the proposed new driveways / parking areas.

(ii) The footpath in front of the new driveway vehicle entrance shall be dished and strengthened at the developer's expense in accordance with the requirements of the Roads Maintenance and Roads Control Section of the planning authority.

**Reason:** In the interest of traffic safety.

9. 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.

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Fiona Fair  
Planning Inspector  
09/03/2017