



An
Bord
Pleanála

Inspector's Report PL28.247692

Development	House and Garage.
Location	Site adjoining No. 2 and No. 3 Fairwinds, The Rise and to the rear of Karridale, Bishopstown Road, Bishopstown, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	16/37074
Applicant(s)	Edmund and Vicki Martin.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Edmund and Vicki Martin
Observer(s)	1. Michael & Jean Carroll.
Date of Site Inspection	8 th February 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

The appeal site (0.12 ha) is located adjoining No. 2 and No. 3 Fairwinds at The Rise and to the rear of Karridale, Bishopstown Road, Bishopstown, Cork. It is located at the end of The Rise Cul de sac, in an established residential area.

The appeal site is situated, to the rear of detached dwellings which face onto Bishopstown Road to the south east, to the rear of houses in Ashgrove Park to the north, to the west of adjoining undeveloped land and on the south eastern edge of The Rise residential area which also has frontage onto the Bishopstown Road.

The site is currently grassed and relatively flat with mature planting and a hedge to the north western boundary / the rear of the site. A concrete block wall, c. 1.2 m in height, separates the site from the two existing dwellings at No. 2 and No. 3 Fairwinds and the Rise cul de sac, along the full length of the south western boundary. A post and wire fence forms the north eastern boundary. The site is of irregular shape, with a partially curved boundary to the North East of the site which tapers to a narrow point at the south eastern corner.

2.0 Proposed Development

2.1. The proposal comprises construction of:

- A two storey dwelling house – 320 sq. m GFA
- A garage - 29.54 sq. m
- Access from The Rise
- Associated site works

3.0 Planning Authority Decision

3.1. Decision

Permission refused for one number reason which considers that the proposed development does not have regard to the existing pattern of development and established building lines in the area. Inappropriate scale, layout, orientation and

relationship to adjoining dwellings, would be visually obtrusive and overbearing, be injurious to amenities of the area and depreciate the value of property in the vicinity

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planners Report considers that the design of the proposed dwelling is inappropriate and it would seriously injure the amenities and depreciate the value of property in the vicinity as a result of its excessive scale and inappropriate layout and orientation. It is considered that alteration of site boundaries is required and this could not be done by way of further information request.

Road Design Report: Further Information requested.

Drainage Report: No objection subject to condition.

Environment: No objection subject to condition.

3.2.1. Other Reports

Irish Water: No objection subject to condition.

3.3. **Third Party Observations**

A number of objections submitted to the planning authority raise concerns similar to those raised in the observation submitted and summarised below.

4.0 **Planning History**

- **Reg. Ref. TP15/36314** Permission Refused for two storey detached dwelling with access from the Rise
- **Reg. Ref. TP11/34913** Application Withdrawn for new opening in the existing boundary wall for a pedestrian and vehicular entrance
- **Reg. Ref. TP04/28523** Outline Permission Granted for the construction of one dwelling house at Karridale, Bishopstown with access from The Rise, Waterfall Road

- **Reg. Ref. TP00/24409** Outline Permission Refused for the construction of 12 no. semidetached houses, on the subject lands and lands to the east, access proposed via Fairwinds.
- **Reg. Ref. TP99/22990** permission refused, on a larger landholding which included the subject lands, for the construction of 44 no. apartments and associated site works.

Adjoining lands to the south west

- **Reg. Ref. TP13/35707** Permission Granted for two storey extension to No. 2 Fairwinds. A condition was attached to the permission which required the first floor be set back by 2m from that proposed at first floor level. The gable of no. 2 Fairwinds is set back from the north eastern boundary with the subject appeal site in excess of 2m.

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'.

Section 16.58 Single Units Including Corner / Garden Site

Chapter 14 Suburban Area Policies

The Key Suburban centre of Wilton is discussed in Chapter 14 of the Development Plan. A Key Land Use and Transportation Objective is outlined in paragraph 14.32 It states: 'Vehicular access to lands between Hawkes Road and The Rise at Ardostig Cross, fronting onto Waterfall Road / Bishopstown Road, should not be provided

through The Rise in order to protect the amenity of residents, with the exception of one private dwelling house, with a permanent site boundary wall, on the land adjoining No.2 and No.3 Fairwinds, The Rise and the rear of Karridale, Bishopstown Road’.

6.0 The Appeal

6.1. Grounds of Appeal

Inaccuracies and inconsistencies

- Inaccuracies and inconsistencies in the planning authority planning reports on file, have led to a flawed decision making process in this case.
- Inconsistencies in the reason for refusal. The reason is not consistent with the initial planner’s report, recommendation and reason for refusal.
- Inconsistencies in the advice received (pre planning) prior to the submission of the planning application and the reason for refusal provided subsequently by the planner’s report.
- The planners report refers to an ‘extension’ rather than a dwelling house. Failure to carry out an accurate assessment, errors are misleading and query validity of the final decision.

Site Boundaries

- The curved boundary line to the site comes from the road reservation line, the proposed ‘Ardrostig Relief Road’ which formed part of the LUTS Plan. The relief road was removed by the City Council in the Cork City DP 2015 -2021, however the north eastern boundary of the site remains curved and has not altered due to the omission of the proposal for the relief road.
- The applicant does not own or have power over land outside of the site boundaries, therefore it is unfair and an unreasonable assessment / request to suggest that the boundaries should be altered and permission refused on such grounds.
- The site is large and can easily accommodate the proposed development, not all sites are square or rectangular.

- The planning authority could have requested further information to address concerns.

Compliance with Policy

- The proposal is in accordance with paragraph 16.58 of the CDP
- Paragraph 14.32 of the Development Plan made provision for 'one private dwelling house' with access from The Rise, cognisance is had to this.
- Zoned, Infill, serviced site
- Outline permission for one dwelling has previously granted on the site.
- Concerns of neighbouring property owners that the development would form a gateway or access point for further development of adjoining lands is unfounded
- In accordance with Cork City Councils objectives as stated in the Housing Protection Areas designation and in accordance with the Bishopstown and Wilton Action Area Plan.
- Complies with requirements in terms of separation distances, private open space standards, car parking and a safe means of egress.
- 248 sq. m of private open space proposed which exceeds requirement of 60 – 75 sq. m for 3 – 5 bedroom dwelling. The decision to refuse based upon inadequate open space is unreasonable.
- Adequate car parking is proposed in excess of car parking standards it is not reasonable that the decision to refuse is based upon the view that adequate car parking and a safe means of access and egress is not achievable.

Design – Visual Amenity Impact

- The proposed development has been designed to be site specific and can be easily accommodated on this zoned infill serviced site.
- Design is compatible with adjoining residential dwellings and does not detract from the built character or adversely affect residential amenity.
- The design does not rely on an outdated road reservation line
- There is a variety of house design in the immediate area

- The design proposed is compatible with the adjoining dwellings (No. 1 and No. 2 Fairwinds) in terms of massing, scale and roof profiles.
- Height and materials have regard to surrounding established precedent
- No windows proposed at first floor on the north eastern elevation
- Only one-bathroom window with opaque glazing proposed on the south western elevation.
- The orientation of the dwelling is the same as the adjoining dwelling at No. 2 Fairwinds
- The layout has been dictated by the necessity to address the established building line. Regard is also had to the CDP and to pre planning discussions held. The executive planner in a meeting suggested that part of the proposed dwelling could step out from the established building line to create 'a visual bookend to the road.'
- The scale is compatible with its receiving environment and compatible with precedent set on other infill sites in the locality.

Landscaping and Boundary Treatment

- Extensive landscaping is proposed.
- The applicant is in favour of reinforcing the existing north western mature boundary hedgerow.
- The existing boundary wall with No. 2 Fairwinds provides adequate separation and omits overlooking issues.
- Development Plan Reference Section 14.32 states that a permanent boundary wall should be erected along the north eastern boundary. This is noted and the applicant has no issue with constructing a block boundary wall 84m in length on the boundary to this site, however, it is hoped that a more aesthetically pleasing solution can be considered, that of a planted boundary treatment.

Precedent Cases

- ABP decision albeit over 35 years previous T.P.8884 to grant permission for residential development on a site at Fairwinds has relevance, establishes a precedent and provides significant grounds for the subject appeal
- Precedent established under PL28.225341 is relevant, detached new dwelling on an infill / garden site.

Impact of Relief Road

- Prolonged inaction and eventual removal of a proposed relief road
- Cork City Council refused to allow the land to be developed while also refusing to purchase the land for the provision of the Relief Road. On the removal of the unnecessary relief road Cork City Council have once again applied yet more 'site specific restrictions' to the development of this land through paragraph 14.32 provision for 'one private dwelling house.'

The Appeal is accompanied with:

- Cover Letter Re ABP Appeal
- Notification of Decision to refuse permission Reg. Ref. 16/37074
- Excerpts from the planning file Reg. Ref. 16/37074
- Correspondence of pre-planning meetings / emails
- Certificate of exemption, Section 5, Planning and Development (Amendment) Act 2002.

6.2. Observation

6.2.1. An observation was submitted by Michael & Jean Carroll, it is summarised as follows:

- Inadequate Site Services / surface water drainage
- The site does not have access to the surface water sewer
- The site is prone to flooding
- Concern with respect to location of a soakpit within 5m no. 3 Fairwinds

- Concern of capacity of soakpit proposed, its size and suitability of the site
- History of subsidence issues, instability of the ground and groundwater issues
- Safe Access and egress from the site
- Car parking space proposed outside of the gate but within the site boundary of concern
- Landscape and Boundaries
- No landscaping plan submitted
- Concern with respect to the proposed concrete post and wire fencing along the eastern boundary.
- Excessive scale of dwelling
- Out of Character with the visual amenity of the area
- Impact of the former roadline reservation upon the proposed design
- The site layout is inappropriate in the context of the existing pattern of development and would serve to injure the residential amenity and value of property.

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**
- **Design, layout and visual amenity**
- **Residential Amenity**
- **Surface Water Drainage**
- **Legal Interest**
- **Appropriate Assessment**

7.2. Principle of the Development on the Site

The appeal site 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 Cork City Development Plan 2009 – 2015 indicated the lands to the east of the subject site as being reserved for 'road improvements'. The current statutory Cork City Development Plan (2015 – 2021) however has altered the planning strategy for the area and the specific objective to provide a new link road has been removed.

It is now specific policy as stated in paragraph 14.32 of the Cork City Development Plan that 'Vehicular access to lands between Hawkes Road and The Rise at Ardrostig Cross, fronting onto Waterfall Road / Bishopstown Road, should not be provided through The Rise in order to protect the amenity of residents, with the exception of one private dwelling house, with a permanent site boundary wall, on the land adjoining No.2 and No.3 Fairwinds, The Rise and the rear of Karridale, Bishopstown Road'.

The proposed development, for a dwelling on a site of 0.12 ha zoned ZO 4, is therefore considered compatible with the zoning objective and acceptable in principle

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

7.3. Design, layout and visual amenity

It is the planning authority's opinion that the layout has been dictated by the perceived need to comply with the now defunct road reservation line. It is stated in the planning report on file that 'the current site boundary may prejudice an opportunity to design with the existing pattern of development and the amenities of adjoining properties in mind.'

The first party do not disagree that the curved north eastern boundary line to the site comes from the link road reservation line, for the proposed 'Ardrostig Relief Road', The relief road proposal has, however, been removed from the south western suburbs objectives of the current statutory Cork City Development Plan 2015 -2021 and is no longer pertinent. It is submitted that the north eastern boundary of the site has not altered due to the omission of the proposal for the relief road. The first party submit that they do not own or have power over land outside of the site boundaries, therefore it is unfair and an unreasonable assessment / request to suggest that the boundaries should be altered and permission refused on such grounds.

I agree with the first party on this matter, the site size is generous and albeit of irregular shape comprises zoned, serviced lands, within 4 Km of Cork city centre and can easily accommodate a single dwelling while complying with development control standards regard is had in particular to open space and car parking provision.

Concern has been raised with respect to the design, scale and mass of the dwelling and proximity to site boundaries. Having considered the plans and drawings submitted I too have concern with respect to the design, scale, height and mass of the dwelling and its proximity to the south western boundary. Regard is had to the fact the site is somewhat constrained in terms of its shape, proximity to adjoining properties and that privacy issues arise.

I note the height of the dwelling at 8.523m which is in excess of the height of surrounding dwellings. No. 2 Fairwinds the adjoining dwelling is indicated, on the plans submitted, to have a height of 8.2m. The roof plan proposed is complicated and bulk is added to the building by way of the single storey garage (with a GFA of

approx. 29.12 sq. m) proposed to the front / south east elevation, the elongated utility and exercise room proposed to the rear and external chimney to the north east elevation. A set back off the south western boundary of 0.8m is considered unacceptable given the scale and depth of the building proposed, regard is had to the proximity of the garage to the boundary wall. I also consider that failure to maintain the established building line is unacceptable. Clearly bedroom four at first floor level projects beyond the building line established by number two Fairwinds and the adjoining dwellings along the cul de sac to the south west

I agree with the planning authority that the scale, depth and mass of the dwelling is excessive, it would impact negatively in terms of overbearing upon number two Fairwinds and would be visually obtrusive in its setting.

I note the concern raised by the p.a. with respect to the first floor window (bedroom 4) along the south western boundary approx. 4m from the neighbouring property. This window is located to the front of the dwelling and does not directly oppose adjoining windows. It could be altered, somewhat, by way of condition if permission was deemed to be forthcoming. Overall I have considered amending the proposal by way of condition to omit the single storey garage proposed to the front / south east elevation and reducing the overall scale of the building such that the dwelling would be located off the south western boundary with number two the Fairways by a minimum of 2m. However, such amendments may be considered significant in terms of design and given the level of concern by third parties regarding the design I recommend that permission be refuse in this instance.

Concern has been raised with respect to landscaping and boundary treatment. Regard is had to the proposed landscape plan submitted with the application. I note the proposal to retain the existing concrete post and wire fence along the north eastern boundary of the site and to the proposal for supplementary planting and hedging to define the boundary. Third parties are concerned that this does not comply with paragraph 14.32 set out in the City Development Plan which refers to a 'permanent site boundary wall' and could lead to possible future development or access to lands via the Rise cul de sac. I am of the opinion that concern for any possible, future proposals are unfounded, given that each application is dealt with on

a case by case basis. Given the zoned undeveloped nature of the lands to the east and the wording of paragraph 14.32 I consider that a solid block boundary wall 1.8 m in height would be appropriate. I note the first party have acknowledged the requirement for a wall, as set out, in the Development Plan and their agreement to provide a block wall should the Board deem it necessary.

Concern has been expressed with respect to safe access and egress to the site. The proposed access to the dwelling is via an existing cul de sac in the Rise. A splayed vehicular entrance is proposed with gates and a separate pedestrian gated entrance. The road design office has indicated that a preferable option would be to set back the site boundary by 1.8m along the end of the cul de sac and to provide a public footpath, at the applicant's expense, along the boundary of the site. I agree that this option would provide safer pedestrian access to the site and would also provide the necessary sight distance for vehicular egress.

7.4. Residential Amenity

I am of the opinion that neighbouring houses would not be overlooked or be materially overshadowed by the proposed house. I note the location of the site to the north / north east of number 2 Fairwinds, regard is had to the proximity of a first floor bedroom window along the south western boundary approx. 4m from number 2, however, it is not directly opposing any window and is located to the front of the dwelling. This window could be altered by way of condition, if considered appropriate by the Board, in the event that planning permission is forthcoming.

As referred to above, in the preceding section of this report the scale, mass, height and depth of the dwelling, in addition, to its proximity to the south western boundary, constitutes overdevelopment of the site, would lead to overbearing upon number 2 Fairwinds, set an undesirable precedent and would thereby be injurious to the residential amenities of the area.

7.5. Surface Water Drainage

Concern has been expressed by adjoining property owners to the south east of the appeal site with regard to location and size of the proposed soakpit, 5m from their boundary and also to flood risk.

I note the Environment and Drainage Reports on file which have no objection to the proposal subject to conditions. Irish water also has no objection to the proposal. The appeal site is not located within flood zones A or B as specified in the Flood Risk Management Guidelines for Planning Authorities 2009. I evidenced no flooding or signs of flooding on the appeal site at the time of my site visit, February 2017.

It is a requirement of the p.a. that all storm water runoff shall be retained on site. Full details and supporting calculations shall be submitted to and agreed in writing with the p.a. prior to the commencement of development. All soakaways must be designed in accordance with BRE Digest 365 or similar as approved by the p.a.

Given the foregoing, it is my opinion, that no clear evidence has been submitted that would indicate that the proposed development would be at risk of flooding or would cause an unacceptable risk of flooding to adjacent properties, provided development is carried out to an appropriate standard.

7.6. Legal Interest

The p.a. has raised the issue as to whether the applicants have the legal interest to demolish the boundary wall with Fairwinds. It is considered that, albeit requested, no clarification of such legal interest has been provided.

Given the specific objective set out in paragraph 14.32 of the City Development Plan with respect to vehicular access and to permit 'one private dwelling house' accessed from the Rise and to the planning history of the appeal site, I consider that the applicant has demonstrated 'sufficient' legal interest over the access for the purposes of securing a grant of planning permission. This being said I note the provisions of s.34(13) of the P & D Act 2000: '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. Given the refusal of permission recommended in this instance and the concerns of the p.a. I

consider that any subsequent planning application should demonstrate sufficient legal entitlement to access the site from The Rise cul de sac.

7.7. Appropriate Assessment (AA)

The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).

The planning report on file concludes that appropriate assessment is not required.

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. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. The proposed development, by reason of its design, scale, bulk, height and projection forward of the established building line would be out of character with the existing residential properties in the vicinity and would set a precedent for further inappropriate development in the vicinity of the site. The proposed development would, therefore, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area

2. It is considered that the proposed development, by reason of its height, scale, massing, bulk and proximity to site boundaries, would constitute overdevelopment of the site and seriously injure the amenities of the area and of property in the vicinity, in particular it would give rise to overbearing of number 2 Fairwinds. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

Fiona Fair
Planning Inspector
07/03/2017