



An
Bord
Pleanála

Inspector's Report PL.28.247803

Development	Outline permission for 4 houses with access via Clontymon Lawn and all associated ancillary development works.
Location	Clontimon House, Boreenmanna Road, Co. Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	16/36827
Applicant(s)	Anne Murphy
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Clontymon Lawn Residents Association, Denis J. Spillane and Rosaire Spillane, Anne Lawlor
Observer(s)	None
Date of Site Inspection	8 th March 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located off Boreenmanna Road situated to the south of the City Centre.
- 1.2. The appeal site is located within the grounds of a period dwelling, i.e. Clontimon House. The site is currently accessed from the driveway serving Clontimon House.
- 1.3. The subject site is currently a side and rear garden serving Clontimon House.
- 1.4. There is a large boundary wall located on the eastern side of the appeal site.
- 1.5. This boundary wall separates Clontimon House from the adjoining housing estate Clontymon Lawn.
- 1.6. The size of the appeal site is approximately 0.1 ha (0.247 acres) and the shape of the appeal site is approximately rectangular.

2.0 Proposed Development

- 2.1. Outline planning permission is sought for the construction of 4 no. houses.
- 2.2. The proposed house types are semi-detached with front driveway and rear gardens.
- 2.3. It is proposed that access will be taken from Clontymon Lawn which is the established housing estate located to the immediate east of the appeal site.
- 2.4. The proposed development will be connected to public water mains and public sewer.

Additional information was sought for (a) the submission of revised site layout details, (b) details demonstrating compliance with DMURS, and (c) boundary details.

3.0 Planning Authority Decision

Cork County Council decided to grant outline planning permission subject to 9 no. conditions which are standard for the nature of development.

3.1. Planning Authority Reports

3.1.1. The main issues raised in the planner's reports are as follows;

Executive Planner

- The principle of the residential development is in accordance with the zoning objective.
- Clontymon Lawn was historically part of Clontimon House and its curtilage.
- Clontimon House is listed as being of Regional Importance on the National Inventory of Architectural Heritage.
- Clontymon Lawn is taken in charge.
- Additional visitor car parking is required.

3.1.2. Strategic Planning & Economic Development; - The proposed development meets the Part V housing exemption criteria.

3.1.3. Health and Safety Authority; - No objections.

3.1.4. Environmental Waste Management and Control; - No objections subject to conditions.

3.2. Third Party Observations

There is twenty five third party submissions and the issues have been noted and considered.

4.0 Planning History

- L.A. Ref. 12059/84 – Permission **granted** for 36 no. dwellings.

5.0 Policy Context

5.1. Development Plan

Cork City Development Plan, 2015 – 2021, is the operational Development Plan.

The appeal site is zoned Z0 4 'Residential, Local Services and Institutional Uses'.

The objective of this land-use is '*to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to the employment policies outlined in Chapter 3*'. The following policy objectives are relevant to the proposed development;

- Objective 6.1 – Residential Strategic Objectives
- Objective 6.8 – Housing Mix
- Objective 6.9 – Housing Density

Paragraph 11.15 of Chapter 11 sets out the Open Space Strategy in relation to City Parks.

Paragraph 11.24 – 11.26 of Chapter 11 sets out guidance in relation to Public Open Space Provision.

Part C: Residential Development is a relevant consideration for the proposed development.

Paragraph 16.59 sets out guidance in relation to 'Infill Housing'.

Paragraph 16.78 sets out guidance in relation to 'Demolition of Existing Residential Dwellings'.

6.0 National Policy

Sustainable Residential Development in Urban Areas, 2009

- 6.1. The Guidelines promote higher densities in appropriate locations. A series of urban design criteria is set out, for the consideration of planning applications and appeals. Quantitative and qualitative standards for public open space are recommended. In general, increased densities are to be encouraged on residentially zoned lands, particularly city and town centres, significant 'brownfield' sites within city and town

centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout.

Sustainable Urban Housing: Design Standards for New Apartments, Dec. 2015

These guidelines provide recommended guidance for internal design standards, storage areas and communal facilities, private open spaces and balconies, overall design issues and recommended minimum floor areas and standards.

7.0 The Appeal

The following is the summary of a third party appeal submitted by **Clontymon Lawn Residents Association**;

- The objection is primarily in relation to access.
- It is submitted that the site notice was not erected adjacent to the site.
- It is submitted that the appeal site has an established vehicular entrance.
- The use of the established vehicular entrance would ensure that no entrance is required through the existing housing estate.
- It is submitted that the extra traffic created by the proposed development would not interfere with the integrity of Clontimon House.
- Clontimon House is not a protected structure.
- It is questionable why permission was granted for access through a housing estate when an entrance already exists to Clontimon House.
- It is submitted that the design of the proposed development is out of character with the established housing which consists of front gardens with grassed areas.
- It is submitted that the proposed design is in conflict with high quality urban design.

- Section 6.19 of the County Development Plan encourages home ownership and the proposed development is contrary to this objective.
- It is submitted that the proposed development is in breach of Section 16.49 of the County Development Plan.
- The proposed development introduces overlooking of amenities and green spaces.
- Section 16.61 of the County Development Plan states that no rear boundaries should face onto a green space. This objective is not achieved by the proposed development.
- It is submitted that the proposed development is not consistent with Dmurs.
- The proposed development will have an adverse impact on established privacy.

The following is the summary of a third party appeal submitted by **Denis J. Spillane and Rosaire Spillane** of no. 14 Clontymon Lawn;

- It is contended that neither party is legally entitled to interfere with the boundary walls / fences without the expressed consent of the party on the other side.
- It is submitted that Appendix 3 demonstrates that the public road does not extend right up to the boundary wall. There is a terminating kerb and some green space adjoining the boundary wall.
- The proposed development would exacerbate traffic congestion in the existing housing estate.
- The proposal would convert an existing cul-de-sac to a through road and therefore remove parking spaces.
- The proposed development involves interference with a boundary wall which will impact on existing amenities.
- It is contended that no formal pre-planning meetings took place for the subject development.

- It is submitted that the site notices do not adequately describe the proposed development and are not in accordance with guidance notes published by Cork City Council.
- The legal status has not been adequately addressed including the kerb and planting area adjoining the stone wall.
- It is contended that the boundary wall is not part of Clontimon House. The wall is a boundary wall and consent has not been granted for its removal.
- The proposed development will have a negative impact on Clontimon House which is listed as being of Regional Importance on the National Inventory of Architectural Heritage.
- The proposed development will reduce the curtilage of the site by approximately 25%.
- It is submitted that an alternative approach could be pursued which would respect and complement Clontimon House, its gardens and entrance and respect the individuality, integrity, amenities of residents of Clontymon Lawn.

The following is the summary of a third party appeal submitted by **Anne Lawlor** of no. 13 Clontymon Lawn;

- The site is not landlocked and has an established vehicular entrance.
- It is contended that the high stone wall is a party wall and the applicant has no permission to interfere with this wall.
- It is contended that there is a planted area adjoining the stone wall and this area is owned by the residents. The applicant has no title to this area.
- The applicant has not demonstrated that she has sufficient legal interest.
- The proposed development would adversely impact on established residential amenities due to passing traffic, both vehicular and pedestrian.

7.1. **Applicant's Response**

The following is the summary of a response submitted by the applicant's agent;

Compliance with City Development Plan

- The proposed development is consistent with paragraph 16.46 of the County Development Plan. This section states that housing developments should reflect the character of the local housing with regards to design, massing and density.
- The design of the proposed development attempts to form an extension to the existing housing estate.
- The revised development of 2 no. dwellings ensures that adequate separation distances have been achieved.
- In terms of density and scale the proposed 2 no. houses are in keeping with the existing housing.
- As the planning application is an outline permission external appearances cannot be commented on.
- The proposed development is located on lands zoned Z04 for 'Residential, Local Services and Institutional Uses'. The proposed development will not impact on the existing green space.
- The proposed development is consistent with policy 16.59 'Infill Housing' as the proposal will not adversely impact on surrounding residential amenities. The proposed development is appropriate plot ratio and density and there is adequate amenity for the proposed development.
- The Local Authority planner was content that the proposed development is consistent with the requirements of the County Development Plan and the proposal greatly exceeds the County Development Plan standards for amenity space.
- The proposed development is consistent with principles of the Joint Housing Strategy.

Loss of Amenity for Clontymon Lawn

- The proposed development will not interfere with public open space at Clontymon Lawn and will not result in a loss of amenity for the residents of Clontymon Lawn.
- The proposed development is situated on residentially zoned lands.
- It is submitted that the planted area between the kerb and the boundary wall is not usable open space and will not constitute a loss of public open space.
- The subject verge will result in a traffic turning area which will make traffic turning movements easier.

Traffic

- The proposed development is essentially an extension to Clontymon Lawn.
- The proposed development is consistent with DMURS and provides a turning area.
- The planners report confirmed that the proposed development is compliant with DMURS.
- The minimal increase in traffic generated by two additional housing will not negatively impact or impede on the existing traffic.
- Section 2.6 of the Department of the Environment (DoE) Recommendations for Site Development Works for Housing Areas recommends that turning bays in residential areas should be provided at the end of the cul-de-sacs to allow vehicles to turn safely.
- There will be no overspill of car parking from the proposed development as the number car parking spaces provided will meet development plan standards.

Legal Ownership

- Section 5.13 of the Development Management Guidelines, 2007, confirms that the planning system will not be used to resolve legal disputes.

- Section 11.4 of the Planners Report states that the existing Clontymon Lawn estate historically formed part of Clontimon House and its curtilage. It states that the wall was in existence as part of Clontimon House / Clontymon Lawn and thus the ownership of same remains with Clontimon House.
- The Planning Authority has confirmed that the housing estate was taken in charge on the 18th June 1990 and therefore neither the roads nor the verge is in the ownership of the residents of Clontymon Lawn.

7.2. Planning Authority Response

The Planning Authority has no further comments.

7.3. Observations

The following is the summary of an observation submitted by Carl O'Sullivan of no. 24 Clontymon Lawn;

- It is submitted that there is a strip of green space between the road and the boundary road. This strip of green space is an amenity for the residents.
- The applicant is not the owner of this amenity strip.
- There are 33 houses in Clontymon Lawn.
- The pre-planning meetings referred to traffic as an issue.
- The proposed development is not consistent with DMURS.
- It is contended that third party submissions did not get adequate coverage in the planner's report.
- There is no issue with granting planning permission on the site of Clontimon House however there are issues with providing access through Clontymon Lawn.
- The use of the existing entrance for residential development would not interfere with the conservation character of Clontimon House.

The following is the summary of an second observation submitted by Carl O'Sullivan of behalf of Clontymon Residents Association;

- It is contended that the report of the planning officer failed to consider the concerns of Clontymon Lawn
- The residents are concerned with the access issues that the relate to Clontymon Lawn.
- The Boundary wall forms part of the amenity of the residents of Clontymon Lawn.
- It is submitted that there was no consultation with the residents of Clontymon Lawn.

The following is the summary of an observation submitted by D. Spillane and R. Spillane of no. 14 Clontymon Lawn;

- It is submitted that the proposed development would seriously injure the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.
- The proposed development would result in serious parking and traffic problems and in particular to the front of the observer's house.
- The proposed development development would have a divisive, disruptive and detrimental effect on Clontymon Lawn and its residents.
- The applicant has never consulted with the residents of Clontymon Lawn or sought permission to interfere with the boundary wall.
- There is no objection in principle to residential development in Clontimon House however access should be through the existing exit onto Boreenmanna Road.
- The observer submits that their house will be the most affected by the proposed development.

The following is the summary of an observation submitted by D. Spillane and R. Spillane of no. 14 Clontymon Lawn;

- The observer supports the appeal by Anne Lawlor, of no. 13 Clontymon Lawn.
- The observer concurs with the appeal submission in stating that the lands of the appeal site are not landlocked.
- The observer agrees with the appellant that the applicant is not allowed to interfere with the boundary wall without the expressed consent of parties / party on the other side of the wall.
- The observer supports the view that the strip of land is owned exclusively by the residents of Clontymon Lawn.
- The ownership issue has not been adequately addressed.
- It is submitted that the signature on the application form is neither that of the applicant or her agent. This is another anomaly in the planning application.

8.0 **Assessment**

- Principle of Development
- Impact on Established Residential Amenities
- Access
- Legal Issues

8.1. **Principle of Development**

- 8.1.1. The proposed development site is zoned for residential development and the proposed two-storey houses are therefore consistent with this zoning objective. The proposed development would be consistent with the recommendations of the Guidelines for Planning Authorities, 'Sustainable Residential Development in Urban Areas', 2009, as these guidelines recommend increasing residential densities in inner suburban / infill sites.

8.1.2. Having regard to the location of the proposed development which is a suburban location I would consider that the principle of residential development would be acceptable provided that the proposal has adequate residential amenity, adequately safeguards the residential amenities of the adjoining properties, would not result in a traffic hazard, and would be in accordance with Paragraph 16.59 'Infill Housing' of the Cork City Development Plan, 2015 – 2021.

8.2. **Impact on Established Residential Amenities**

8.2.1. The original planning application submitted to Cork City Council comprised of 4 no. houses comprising of a pair of semi-detached houses. Following a request for further information whereby the local authority considered that 4 no. dwellings would not be adequately sited on the subject site the proposed development was revised downwards to 2 no. detached houses.

8.2.2. The submitted plans for the revised development demonstrates that the private open space provision for the proposed 2 no. houses would be of a good standard in both quantitative and qualitative terms. The private open space provision for the northern most house is approximately 176 sq. metres and approximately 214 sq. metres for the southern most house. I would consider, based on the submitted Site Layout Map, which accompanied the additional information response, that the proposed houses are set back an adequate distance from the established houses in Clontymon Lawn. Therefore the proposed development is unlikely to result in any overshadowing impacts or have any undue overbearing impacts.

8.2.3. The layout of the proposed most northern house would indicate that overlooking is not likely to occur to the neighbouring properties on Clontymon Lawn as established building lines are generally respected. In addition the rear elevation of the southern most house will overlook a green area and is therefore not likely to result in overlooking of established residential amenities.

8.2.4. Overall I would conclude that the proposed development having regard to its scale, layout and orientation will not seriously injure established residential amenities in the immediate area.

8.3. **Loss of Residential Amenities due to Access**

- 8.3.1. Having regards to the information on the file a significant issue, in my view, is the potential loss of residential amenity associated with the impact that the proposed development will have on the established cul-de-sac at Clontymon Lawn. I would acknowledge that the proposed access will result in the direct loss of a strip of narrow planted land. It is argued by the observers and the appellants that the loss of this strip of land will devalue the established residential amenities within Clontymon Lawn.
- 8.3.2. In considering whether the proposed access through the existing cul-de-sac would result in a loss of residential amenity for existing residents I would have regard to the established amenities of the area.
- 8.3.3. Firstly I would acknowledge that there are currently 38 no. houses in Clontymon Lawn and the character of these houses is an established suburban development of two-storey semi-detached houses. House no. 13 – 15 enjoy the benefits of an existing cul-de-sac and the position of these houses also enjoy the benefits of overlooking the established public open space (i.e. green area) within the housing estate. The proposed development involves the introduction of two additional houses at the end of this cul-de-sac adjacent to no. 13 – 15 Clontymon Lawn. This therefore will introduce additional passing traffic, both pedestrian and vehicular, to the front of no. 13 – 15 Clontymon Lawn. The proposed access to serve the proposed 2 no. houses will also result in the removal of a green planted strip that adjoins the stone wall boundary and which residents argue forms part of their amenity. Furthermore it has been raised in the submitted observations and appeals that the proposed entrance can be accessed from the existing vehicular entrance serving Clontymon House, which is located off Boreenmanna Road.
- 8.3.4. In general I would consider, based on the submissions and a visual observation of the area, that the introduction of a vehicular access at the end of an existing cul-de-sac will have a minor impact on established residential amenities. Having regard to the scale of the proposed development, i.e. two houses, and also given that the

proposal will not create a through road but instead is extending the existing cul-de-sac westwards. I would consider that the loss of residential amenity due to the proposed vehicular access would not be sufficient to warrant a refusal of permission. In addition I would acknowledge that the strip of planted land which adjoins the boundary wall is proposed to be removed. I would consider that given the scale of this planted area and furthermore given that the planted strip is not usable public open space that the overall loss of residential amenity would not be significant.

8.3.5. In relation to the use of the Boreenmanna Road vehicular entrance to serve the proposed development I would acknowledge the conservation status of Clontimon House and the adverse impact that a development as proposed would have on the character of this period property. In addition the safety of the existing vehicular access onto Boreenmanna Road has not been justified for an intensification of the vehicular access.

8.3.6. Therefore, in my view, the proposed vehicular access would not be seriously injurious to the residential amenities of the area.

8.4. **Legal Issues**

8.4.1. The submitted appeal makes a number of arguments that are, in my view, outside the scope of this planning appeal. Firstly, it is argued that the proposed development will impact on a boundary wall that is owned by both the applicant and the residents of Clontymon Lawn. In addition it is argued that as the residents retain the planted strip adjoining the boundary wall and this is therefore in their ownership and there is no consent granted for its removal. The appeal documentation does not include any legal documentation demonstrating title for the boundary wall or the planted strip along the boundary wall. Nonetheless the Board are unable to adjudicate on the issue of a title within the remit of the Planning and Development Act. It is important to note Section 34(13) of the Planning and Development Act, 2006, which states 'a person shall not be entitled solely by permission under this section to carry out any development'. The Development Management Guidelines, 2007, advise that a planning system is not designed as a mechanism for resolving

disputes about title to land. There is therefore an obligation on the applicant to ensure that they have full legal title before proceeding with any permitted development.

9.0 Recommendation

9.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reason set out below.

10.0 Reasons and Considerations

Having regard to the zoning of the site as set out in the Cork City Development Plan, 2015 - 2021, and the extent of the development, it is considered that subject to compliance with conditions set out below, the development proposed to be carried out would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. Outline permission is granted in accordance with the drawings received by the Planning Authority on 08/04/2016 and as amended on 20/10/2016 and 07/11/2016 save where otherwise required by the following conditions. The grant of Outline Permission is only for the principle of development of two no. dwellings and associated works on the site. This grant shall not be construed as acceptance of any particular layout of development, height of structure, or other particulars submitted.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed dwelling 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. Water supply and drainage arrangements, including the 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.

4. All service cables associated with the proposed development (such as electrical, telecommunications and communal 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.

5. Site development and building works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

6. 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 traffic management measures, noise management measures and off-site disposal of construction waste.

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

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 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 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.

Kenneth Moloney
Planning Inspector

6th April 2017