



An
Bord
Pleanála

Inspector's Report PL04.248149

Development	To demolish existing bay window and to construct an extension at the front of existing dwelling.
Location	"Ard Faille", Church Bay, Crosshavenhill, Crosshaven, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/6533
Applicant(s)	Michael Buckley & Lucy Deane
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Eveline Curran
Observer(s)	None.
Date of Site Inspection	31 st May, 2017
Inspector	Robert Speer

1.0 Site Location and Description

The proposed development site is located in the small coastal settlement of Church Bay at Crosshavenhill, Co. Cork, approximately 1.3km southeast of Crosshaven village centre and 8km east-southeast of Carrigaline, where it occupies an elevated position with expansive views southwards over Poulnacallee Bay within a row of existing housing along the northern side of the public road. The immediate site surrounds are characterised by a variety of housing types / styles with detached, semi-detached and terraced two-storey properties dominating the more elevated lands to the north of the public road whilst the lower-lying lands along the southern side of the roadway are generally occupied by single storey / dormer-style dwelling houses. The site itself has a stated site area of 0.04 hectares, is generally rectangular in shape, and is presently occupied by a two-storey, semi-detached dwelling house set back from the public road. Currently, the only available means of access to the site is via a pedestrian right of way through the adjacent property to the immediate east.

2.0 Proposed Development

- 2.1. The proposed development involves the demolition of an existing ground floor bay window and the subsequent construction of a single storey extension (floor area: 16m²) across the front of the existing dwelling house which will accommodate an expanded living room and a new porch / lobby area.
- 2.2. Amended proposals were subsequently submitted in response to a request for clarification of further information which revised the eastern elevation of the proposed extension by substituting a window with a plastered wall construction.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of responses to a request for further information and subsequent clarification, on 14th February, 2017 the Planning Authority issued a

notification of a decision to grant permission for the proposed development subject to 1 No. condition which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports:

An initial report concluded that, in light of the surrounding pattern of development, with particular reference to the variety of front conservatories and extensions constructed to neighbouring properties in the immediate vicinity, the proposed extension would not adversely impact on the prevailing character of the wider streetscape. However, there were concerns that the proposed extension would result in overlooking of the neighbouring property to the immediate east (or would give rise to a perception of being overlooked) and, therefore, the applicant was required by way of a request for further information to submit amended proposals which would mitigate the potential for overlooking such as through the elimination of the side (eastern) window and / or reducing the depth of the proposed front projection.

Following the receipt of responses to requests for further information and subsequent clarification, which included the submission of amended proposals whereby a significant extent of the glazing originally proposed along the eastern elevation of the extension would be replaced with a wall construction, a final report was prepared which stated that these revisions satisfactorily addressed the potential for a loss of privacy to the neighbouring property before subsequently recommending a grant of permission subject to a single condition.

3.2.2. Other Technical Reports:

Area Engineer: No objection.

3.3. **Prescribed Bodies**

Irish Water: No objection, subject to conditions.

3.4. Third Party Observations

A total of 2 No. submissions were received from interested third parties and the principle grounds of objection contained therein can be summarised as follows:

- The inadequacy and inaccuracy of the submitted drawings
- The invalidity of the planning application / failure to comply with the requirements of the Planning and Development Regulations, 2001 as amended.
- Detrimental impact on residential amenity by reason of overlooking / loss of privacy, overshadowing, overbearing appearance, degradation of available views / vistas, loss of security etc.
- Inappropriate design and visual impact
- Lack of consultation with the occupants of neighbouring properties.
- Devaluation of property
- The potential for the proposed works to undermine the structural integrity of neighbouring property.
- The proposal is contrary to the proper planning and sustainable development of the area.

4.0 Planning History

On Site:

None.

On Adjacent Sites:

PA Ref. No. 08/6328. Was granted on 22nd July, 2008 permitting Evelyn Curran permission for the widening of vehicular entrance, extension to car parking space, removal of septic tank and connection to public sewer at Rockcliffe, Weavers Point, Crosshavenhill, Crosshaven, Co. Cork.

On Sites in the Immediate Vicinity:

PA Ref. No. 05/7174. Was granted on 3rd January, 2006 permitting Padraig & Eithne Mallon permission for alterations and extensions to dwelling at No. 4 Atlantic Villas, Weavers Point, Crosshaven, Co. Cork.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan, 2014:

Chapter 13: Green Infrastructure and Environment:

Section 13.5: *Landscape*

Section 13.6: *Landscape Character Assessment of County Cork:*

Section 13.6.8: Landscape Character Types which have a very high or high landscape value and high or very high landscape sensitivity and are of county or national importance are considered to be our most valuable landscapes and therefore it is proposed to designate them as High Value Landscapes (HVL), highlighted in green in the Table in Appendix E Landscape Character Assessment attached and shown in Figure 13.2.

Section 13.7: *Landscape Views and Prospects:*

GI 7-1: General Views and Prospects:

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

GI 7-2: Scenic Routes:

Protect the character of those views and prospects obtainable from scenic routes and in particular stretches of scenic routes that have very special views and prospects identified in this plan. The scenic routes identified in this plan are shown on the scenic amenity maps in the

CDP Map Browser and are listed in Volume 2 Chapter 5 Scenic Routes of this plan.

GI 7-3: Development on Scenic Routes:

- a) Require those seeking to carry out development in the environs of a scenic route and/or an area with important views and prospects, to demonstrate that there will be no adverse obstruction or degradation of the views towards and from vulnerable landscape features. In such areas, the appropriateness of the design, site layout, and landscaping of the proposed development must be demonstrated along with mitigation measures to prevent significant alterations to the appearance or character of the area.
- b) Encourage appropriate landscaping and screen planting of developments along scenic routes which provides guidance in relation to landscaping. See Chapter 12 Heritage Objective HE 46.

Chapter 14: Zoning and Land Use:

ZU 3-1: Existing Built Up Areas

Normally encourage through the Local Area Plan's development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted.

Carrigaline Electoral Area Local Area Plan, (2nd Ed., Jan. 2015):

Section 1: *Introduction to the Carrigaline Electoral Area Local Area Plan*

Section 2: *Local Area Strategy*

Section 3: *Settlements and Other Locations: Key Villages: Crosshaven & Bays*

Draft Bandon Kinsale Municipal District Local Area Plan, 2016:-

Key Villages: *Crosshaven and Bays*

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

- Due to the overall size, scale, massing and positioning of the proposed development relative to the appellant's property, it is considered that the submitted proposal will have a detrimental impact on the level of amenity presently enjoyed by the appellant's dwelling house, with particular reference to those views / vistas presently available from same towards Poulnacallee Bay.
- The applicants presently have a right of way for the purposes of pedestrian access only through the appellant's property, however, given the specifics of the boundary line between the two properties, there are concerns that the proposed development works will result in the disruption and trespass of the appellant's property.
- The plans and particulars submitted in support of the application are inadequate, inaccurate and do not comply with the statutory requirements of the Planning and Development Regulations, 2001, as amended. Deficiencies include the following:
 - The absence of a temporary benchmark or an indication of levels contrary to Article 23(1)(c).
 - The failure to distinguish between those works comprising the reconstruction, alteration or extension of the structure contrary to Article 23(1)(e).
 - The failure to adequately detail the principal dimensions of the proposed development contrary to Article 23(1)(f).
- The submitted drawings are inaccurate in that they do not correctly detail certain aspects of the existing site layout, including boundary treatment arrangements and works already undertaken to the rear of the site.

- Given the inadequacy and inaccuracy of the application documentation, it is considered that the Board cannot rely on same in its determination of the subject application.
- It is considered that the revised drawings submitted by the applicant on 20th January, 2017 include conflicting details as regards the treatment of the eastern elevation of the proposed extension which have not been suitably addressed in the notification of the decision to grant permission.
- In light of the deficiencies in the submitted plans and particulars, it is considered that the subject application is invalid.
- The proposed development will result in the overshadowing and overlooking of the appellant's property.
- The overall design of the proposed extension fails to accord with the provisions of the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' and the companion document entitled '*Urban Design Manual: A Best Practice Guide*'.
- The proposed development will not make any positive contribution to the character and identity of the surrounding area.
- The proposed works will compromise the stability and integrity of the appellant's dwelling house.
- The overbearing and dominating nature of the proposed development will result in a diminution in the use, enjoyment and residential amenity of the appellant's property.
- The proposed development will result in the devaluation of the appellant's property.
- The subject proposal has not been properly assessed by the local authority.
- The proposed development is contrary to the proper planning and sustainable development of the area.

6.2. Applicants' Response

- The applicants purchased the subject site (Dwelling No. 1) in December, 2014 from a son of the appellant who presently resides in the adjoining property (Dwelling No. 2). Upon their purchase of the property the applicants retained a pedestrian access to their front doorway (as shown in yellow on the submitted site layout plan) and it is this arrangement which contributes to any potential loss of privacy that may be experienced by the occupant of Dwelling No. 2.
- The applicants need to extend the living area of their dwelling house and have amended the design of the proposed extension in order to accord with the requirements of the Planning Authority and to address the concerns raised by the adjoining property owner (as detailed in the accompanying drawings).
- The dwelling houses to the east of the subject site have been extended in a manner similar to that set out in the submitted site layout plan.

6.3. Planning Authority's Response

None.

6.4. Further Responses

Response to Circulation of Submission Received from the Applicants:

Response of the Appellant:

- It is acknowledged that the applicants have a right of way over the appellant's property and that this was included in the original transaction, however, the Board is requested to note that the response of the applicants has not sought to address the manner in which the proposed development will be constructed given that the submitted drawings indicate formal strip foundations and the application of finishes such as plaster and cladding etc. which will all require interventions on the appellant's property. Indeed, the proposed demolition and construction works, in addition to any future maintenance etc. (e.g. cleaning), will require access over the appellant's property and no permission has been sought or granted in this regard.

- The appellant should not be exposed to any conflict that may arise if the proposed development were to be permitted as planned. The safe use of her home should not be compromised by any permitted development.
- The proposed development should be repositioned from the site boundary in order to allow for adequate working space in order to carry out works from within the confines of the application site.
- The remaining full-length window proposed within the eastern elevation of the proposed extension will be installed along the boundary line and will not only injure the residential amenity of the appellant's property but is also contrary to good building practice and all statutory and regulatory requirements, including the Building Regulations.
- The window within the eastern elevation of the proposed extension is not only unacceptable in both planning and design terms, but also poses a risk to fire safety.
- The exempted development provisions of the Planning and Development Regulations, 2001, as amended, clearly state that *'any windows proposed at ground floor level as part of an extension should not be less than 1m from the boundary they face'*. In this respect it should be noted that there will be no separation distance between the side elevation of the proposed extension and the shared site boundary and thus the proposal does not comply with the aforementioned criteria.
- The submitted design is contrary to the requirements of the Building Control Act and the Regulations made thereunder. In this regard the Board is referred to Technical Guidance Document 'B' of the Building Regulations which deals with external fire spread wherein it is stated that *'The external walls and roof of a building shall be so designed and constructed that they afford adequate resistance to the spread of fire to and from neighbouring buildings'*. It is considered that the foregoing section informs the exempted development provisions of the Planning and Development Regulations, 2001 and thus no unprotected areas can be provided in or on a boundary line. Whilst it is acknowledged that there are some minor exceptions to the foregoing as regards vents or similar, external fire spread must be avoided through

adherence to the minimum separation distance of 1m between any proposed windows and the boundary which they face.

- Table 4.3 of Technical Guidance Document 'B' of the Building Regulations refers to permitted unprotected areas in residential buildings and demands 0% of unprotected area in instances when the minimum separation distance is less than 2.5m. The design detailed in the response received by the Board on 7th April, 2017 provides for 15%, close to that permitted when the separation distance is 2.5m.
- The Board is requested to have regard to all statutory and regulatory requirements in its assessment of the subject proposal, including the Building Control Act and '*Leaflet PL5: Doing Work around the House, The Planning Issues*' as published by the Department of the Environment.

Response of the Planning Authority:

None.

7.0 **Assessment**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- Impact on residential amenity
- Overall design and layout / visual impact
- Appropriate assessment
- Other issues

These are assessed as follows:

7.1. **Impact on Residential Amenity:**

The proposed development involves the demolition of a bay window and an enclosed porch area to the front of an existing dwelling house and the subsequent construction of a new single storey ground floor extension across the frontage of the property which will incorporate an expanded living room and a new porch / lobby area. In this respect concerns have been raised by the occupant of the neighbouring

dwelling house to the immediate east of the subject site that due to the overall design, proximity and orientation of the proposed construction relative to her residence, it will have a detrimental impact on the residential amenity of her property primarily by reason of overshadowing and overlooking with a consequential loss of privacy, although reference has also been made to the potential infringement of the views presently available from that property.

Following a review of the available information, and having conducted a site inspection, in my opinion, it is necessary at the outset to note the specific circumstances governing the relationship between the subject site and the neighbouring property identified as 'Dwelling No. 2' on the submitted site layout plan. In this regard I would advise the Board that the boundary line between the two properties is somewhat unusual in that the appellant's land ownership extends westwards to include that area immediately in front of the doorway to the applicant's dwelling house. Accordingly, pedestrian access to the existing dwelling house on site from the lower roadway to the south is only available via a dedicated right of way over the appellant's property (as identified in yellow on the submitted site layout plan) and I am inclined to suggest that it is this access / ownership arrangement which forms a key basis for the grounds of appeal.

The overall design of the proposed extension, as initially submitted to the Planning Authority, includes for a considerable expanse of glazing / fenestration within the eastern elevation of the proposed construction and it is this aspect of the proposal which has given rise to concerns as regards the potential for overlooking of the front part of the appellant's property. In effect, it has been suggested in the grounds of appeal that as the extent of the appellant's land ownership extends up to the limit of the proposed extension, the eastern elevation of the proposed construction should not include any glazed elements so as to avoid overlooking of her property. In support of the foregoing, reference has been made to Class 1 of Part 1 (Exempted Development – General) of Schedule 2 of the Planning and Development Regulations, 2001, as amended, which refers to the erection of extensions to dwelling houses and to the inclusion of a condition / limitation within Column 2 of that class whereby *'Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces'*.

Whilst I would acknowledge the appellant's concerns as regards the possibility of being overlooked from within the proposed extension, I would suggest that cognisance must be taken of the site context given that the front of a property is not typically afforded the same level of protection / consideration as, for example, a rear garden area which would accord with the accepted definition of 'private open space' in that it would be free from undue observation. Indeed, front garden areas are not considered to comprise private open space in that they are usually visible from adjacent public areas (e.g. the public road, footpath etc.). Similarly, ground floor accommodation towards the front of a property, such as living rooms or dining areas, is not typically held to warrant the same level of privacy as, for example, a bedroom area. Notwithstanding the foregoing, I am inclined to suggest that any instances of overlooking of the appellant's dwelling house which may arise from use of the proposed extension are likely to be comparable to any overlooking arising from usage of the applicants' front garden area and the access / right of way to their property. Therefore, on the basis of the foregoing, I am not convinced that the proposed development will result in such a degree of additional overlooking as to have a detrimental impact on the enjoyment or residential amenity of the appellant's property.

With regard to the fact that the eastern elevation of the proposed extension will directly adjoin the site boundary shared with the neighbouring property to the east, and although it would not normally be permissible in such circumstances to allow a window / glazed area to be included within that elevation so as to avoid undermining the development potential of the adjacent property, in the subject instance I would suggest that cognisance must be taken of the presence of an identified right of way within the confines of the appellant's property alongside the application site / proposed development. In this respect it would seem unlikely that any development would be permitted to occur within the appellant's property that would impinge on the applicant's right of way and thus there would appear to be a reasonable case to be made that glazing within the eastern elevation of the proposed extension would be tolerable in this instance. However, I would concede that it is entirely possible that the circumstances regarding the property line and the right of way may change in the future and, therefore, I would suggest that the revised proposal submitted on 20th

January, 2017 in response to the request for clarification of further information is an acceptable compromise in that it has significantly reduced the extent of glazed area within the eastern elevation of the proposed extension and substituted same with a conventional wall construction.

In assessing the potential impact as regards a loss of light or overshadowing, it is necessary to consider a number of factors including the height of the structures concerned, their orientation, the separation distances involved, and their positioning relative to each another. Accordingly, having considered the submitted information, in my opinion, it is unlikely that the proposed construction, by reason of its overall height, positioning, orientation and proximity to the neighbouring dwelling house, will give rise to any significant diminution in the amount of direct sunlight / daylight received by the front rooms of the appellant's property. In this respect I would advise the Board that the subject site is situated in an urban area where some degree of overshadowing would be not unexpected whilst both the application site and the appellant's property enjoy a southerly aspect. Therefore, I would suggest that any reduction in the amount of direct sunlight received by the neighbouring property consequent on the subject proposal would not be of such significance as to warrant a refusal of permission.

Concerns have also been raised that the proposed development will have a detrimental impact on residential amenity by reason of the obstruction of views available from the appellant's property over Poulnacallee Bay. In addition, it has been suggested that this apparent loss of amenity will result in a consequential devaluation of the property in question. Having considered the available information, in my opinion, it is of the utmost relevance to note that the views available from the appellant's property (in addition to those from surrounding properties) over the surrounding area are not of public interest nor are they expressly identified as views worthy of preservation in the relevant Development Plan. They are essentially views enjoyed by a private individual from private property. A private individual does not have a right to a view and whilst a particular view from a property is desirable, it is not definitive nor is it a legal entitlement and, therefore, I am of the opinion that the proposed development would not seriously injure the amenities of the appellant's

property (or that of any other properties in the vicinity) simply by interfering with their view of the surrounding area.

In relation to the potential for any trespass or interference with the appellant's property consequent on the proposed development, I am inclined to suggest that such issues would amount to civil matters for resolution between the parties concerned. I would also draw the Board's attention to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

In respect of the concerns raised in the grounds of appeal that the proposed development will have a visually overbearing influence / impact on the appellant's property, having regard to the site location in a built-up area, the surrounding pattern of development, the limited size and scale of the subject proposal, and the positioning of the proposed construction relative to the appellant's dwelling house, I am inclined to conclude that the subject proposal will not give rise to such an overbearing appearance / influence as to significantly impact on the level of residential amenity presently enjoyed by the occupants of the appellant's property.

Therefore, on the basis of the foregoing, I am satisfied that the overall development proposal will not give rise to any significant impact on the residential amenity of the appellant's property.

7.2. Overall Design and Layout / Visual Impact:

Whilst the proposed development site is located within a '*High Value Landscape*' as identified in the County Development Plan and is also situated alongside Scenic Route Ref No. S59 (Roads between Crosshaven and Myrtleville, Church Bay, Camden, Weavers Point and Fountainstown) with the views of the sea and coastal landscape available from same being listed for preservation in the Development Plan pursuant to GI 7-2: '*Scenic Routes*', having regard to the limited size and scale of the proposed extension and the surrounding pattern of development, with specific reference to those instances of comparable conservatories / extensions constructed

to the front of properties in the immediate vicinity of the application site, it is my opinion that the overall design of the proposed development will not unduly detract from the visual amenity or character of the wider area.

7.3. **Appropriate Assessment:**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.4. **Other Issues:**

Procedural Issues:

With regard to the accuracy and adequacy of the submitted information, including the plans and particulars which accompanied the initial planning application, in my opinion, there is adequate information on file to permit a balanced and reasoned assessment of the proposed development which in turn supports the decision of the Planning Authority to grant permission.

Compliance with the Building Regulations:

In reference to the appellant's concerns as regards adherence to fire safety standards and the Building Regulations etc., it is my opinion that such issues are essentially building control matters which are subject to other regulatory control / legislative provisions and thus are not pertinent to the consideration of the subject appeal.

8.0 **Recommendation**

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

Having regard to the site location, the pattern of development in the area, and the scale and design of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 13th day of December 2016 and the 20th day of January, 2017 and by the further plans and particulars received by An Bord Pleanála on the 7th day of April, 2017, 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. The external finishes of the proposed extension shall be the same as those of the existing dwelling in respect of colour and texture.

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 and to ensure a proper standard of development.

4. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 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 order to safeguard the residential amenities of property in the vicinity.

Robert Speer
Planning Inspector

14th June 2017