



An
Bord
Pleanála

Inspector's Report PL28.248611

Development	Demolition of garage/store building and construction of dwelling with associated site works.
Location	42A Evergreen Buildings, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	16/36986.
Applicant(s)	Yeun Wong
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Ger McCarthy
Observer(s)	None.
Date of Site Inspection	11 th August 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site (with a stated site area of 0.007 ha) is located at 42(A) Evergreen Buildings, Barrack Street, an established residential area, located to the south of Cork City centre.
 - 1.1.1. The appeal site at 42A Evergreen Buildings is located adjoining a two storey, red brick, gable fronted dwelling. No. 42 Evergreen Buildings is the end terrace house in an attractive terrace of similar such buildings. The houses along the same side of the street are in the main single storey cottages, which have been modified with large projecting dormer roof boxes.
 - 1.1.2. The site is occupied by a single storey shed / garage structure, and is located adjoining the rear yard areas of Nos. 19-22 Barrack Street to the north-west. Barrack street, located at a lower level to the appeal site, hosts a terrace of seven two storey plaster finished dwellings with roof dormers, which back onto the western boundary of appeal site.
 - 1.1.3. Evergreen Buildings runs parallel to Evergreen Street to its north east. Buildings along Evergreen Street back onto the rear yards and boundaries of buildings opposing on Evergreen Buildings. A Japanese Restaurant 'Miyazaki' occupies the, directly opposing building to the north east, its rear yard area directly abuts the rear boundary of the subject appeal site. The restaurant building on Evergreen Street is located at a much lower ground level to the subject appeal site. Steep steps, from the rear yard area of the Japanese Restaurant, access the yard area associated with the shed / storey to be demolished. The flat roof of the Japanese restaurant building is level with the ground level of the subject appeal site.
 - 1.1.4. The site sits within a tightly developed urban environment within the heart of Cork City.

2.0 Proposed Development

2.1. The proposal comprises permission for:

- The demolition of an existing single storey garage/store building (21 sq. m)
- The construction of a new two storey dwelling house (55.30 sq. m)
- All associated site works

3.0 Planning Authority Decision

3.1. Decision

Following a request for Additional Information with respect to (i) design of the proposal within Friar Street ACA, (ii) details of boundary treatment and rear yard details; and a clarification request with respect to accurate elevation drawings' planning permission was Granted subject to 14 number Conditions. Conditions of note include:

Condition 2. Revised front elevation showing the cill level of the ground floor front window raised so that it is not less than 700mm over the footpath level.

Condition 3. Full details of the proposed external finishes shall be submitted for written agreement with the p.a.

Condition 4. Specifications, method statements and schedules of works for the exterior envelope shall be prepared by an experienced registered architect qualified to at least RIAI conservation grade III who shall certify upon completion that the works have been carried out in accordance with good conservation practice.

Condition 5. Archaeological

Condition 6. The timber fence along the northern boundary shall be no lower than 1.8m in height on the applicant's side. The rear yard / private open space shall be used for the occupants of the dwelling and no access to the space from the adjoining premises to the northeast shall be provided, save as in the case of emergencies.

Condition 7. The first floor bedroom window on the front elevation shall not be used as a means of access to the flat roof overhead the ground floor. The flat roof shall

not be used as a balcony or otherwise be accessible from the first floor for such purposes.

Condition 8. The entire dwelling shall be occupied as a single residential unit.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planners Report considers the proposal acceptable in principle, subject to condition, having regard to the nature, location and context of the site and surrounding area, the policies and objectives of the Cork City Development Plan 2015 – 2021 and the nature and scale of the proposed development.

Road Design Report: No objection subject to condition.

Drainage Report: No objection subject to condition.

Conservation Officer: Report on file drafted prior to FI and CFI states that permission should be refused. However, the Planning Officers Report dated 05.05.2017, states that the file was referred to the Conservation Officer, “who states that it is not considered that the revised development would have a negative impact on the architectural character of the ACA, however, the front living room window should be revised to raise the cill level, relative to the footpath. It is also recommended that specification, method statements and schedules of works be prepared by an experienced, registered architect”.

3.3. **Third Party Observations**

Objections were submitted to the planning authority, concerns raised are similar to those raised in the third party appeal, summarised in detail below.

3.4. **Prescribed Bodies**

The file was referred by ABP to DAU Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, An Comhairle Ealaion, An Taisce, The Heritage Council and Fáilte Ireland, no response was forthcoming / on file.

4.0 Planning History

4.1. **Reg. Ref. TP15/36696** Permission refused for the construction of a part single storey part two storey dwelling on site, as it was considered that the proposal would be visually obtrusive, would compete with the adjacent Evergreen Buildings and would be detrimental to the architectural setting of Evergreen Buildings, which is located within an ACA. It was also considered that the proposed dwelling would result in excessive overshadowing and visual overbearing of adjoining residential property located on Barrack Street. The dwelling which at first floor was set off the north-western boundary had a proposed ridge height which matched the the adjoining gable fronted property, no. 42.

4.2. **PL 28. 204030 / P.A. Reg. Ref.: 03/27142** Permission Refused for demolition of existing garage and construction of a three-storey dwelling house at 42(a) Evergreen Buildings, Barrack Street, Cork

The reason for refusal stated

'It is considered that, by reason of its design, excessive height and scale, the proposed development on a restricted site would be out of character with the pattern of development in the vicinity and would result in overshadowing of adjoining residential properties on lower ground at Barrack Street to the north. The proposed development on a restricted site would seriously injure the amenities of the area and depreciate the value of property in the vicinity on lower ground at Barrack Street to the north of the restricted site, and would, therefore, be contrary to the proper planning and sustainable development of the area'.

4.3. **Reg. Ref. T.P. 98/22691** Permission granted, to the current applicant on the current site for a two-storey house to replace the existing garage. The design was in keeping with the existing terrace and the ridge height matched the adjoining gable fronted property, no. 42. This house had 2 bedrooms and a depth of c. 6.4 m.

4.4. **Reg. Ref. T.P. 92/17899** Permission granted at 42A to a Paul Yim for a two-storey house to replace existing garage. The file is unavailable."

Adjoining Planning History of Relevance:

- 4.5. **Reg. Ref. T.P. 98/22108** Permission granted for a single-storey extension with 2 no. rooflights to the rear of 42 Evergreen Buildings. This is the adjoining property to the east of the current application.

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 located on lands zoned as part of the 'Inner City Residential Neighbourhood' where it is the policy of the Council 'To reinforce the residential character of inner city residential neighbourhoods, while supporting the provision and retention of local services, and civic and institutional functions.'

Section 13.32 and Section 13.33 on City Living are of relevance, excerpts attached as appendix to this report.

The site is located within the Friar Street ACA

Objective 9.29 Architectural Conservation Areas is of relevance. It aims 'to seek to preserve and enhance the designated ACA's in the City.'

Objective 9.30 Demolition in ACA's is of relevance

Objective 9.32 Development in ACA is of relevance

Policy on residential development is set out in Chapter 16: Development Management, excerpts attached as appendix to this report.

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised are summarised as follows:

Residential Amenity

- The proposed height, mass, scale and bulk would give rise to Overshadowing and Overlooking to rear of houses on Barrack Street, in particular, number 22
- Private open space to the rear of Barrack Street is confined
- Proposal would give rise to a complete change in the use and enjoyment of the appellants dwelling (number 22 Barrack Street)
- Failure of the First Party to provide analysis of shadow projection
- Negative Impact Upon Residential Amenity currently enjoyed by the residents of Barrack Street

Sensitivity of the Location

- Barrack Street is located within the Cultural Precinct
- The appeal site is located in the Commercial Core Area and is also in an ACA
- The replacement building conflicts with Development Plan policy on replacement buildings within ACA's
- Proposal conflicts with the setting of the site and policy, objectives and guidance set out in the City Development Plan and DOEHLG Guidelines and Best Practice Guide.

Validity of the Application

- Queries the Validity of the application and accuracy of drawings which do not include ridge height dimensions, proposal to include a lift is, somewhat, unclear in terms of need for such a provision.
- Absence of an alternative and considered design approach conflicts with policy and planning history of the site.

- Appellant was not given the opportunity to respond to the FI or CFI response.

Planning History

- The proposal has not been properly assessed by the p.a.
- Full cognisance should be had to reasons for refusal of Reg. Ref. 15/36696 and to reports attached to that planning application.

Buildability

- Very tight drawn boundaries
- Failure to have regard or respect for adjoining properties and boundaries

Fire Safety

- Should the development go ahead the means of escape from the commercial building / restaurant would be cut off.
- The proposed new building would also be open to an unacceptably high level of risk in the event of a fire occurring.

Appeal accompanied with:

- Letter of acknowledgement of observation from the p.a.
- Observation submitted to the p.a. dated 11.08.2016

6.2. First Party Response:

- Several steps have been taken in the subject application to overcome issues of design, visual/residential amenity and protection of architectural character of the area, raised in Reg. Ref. 15/36696
- The application was validated by Cork City Council planning authority and is therefore deemed valid.
- All drawings submitted are to scale and were made accessible.
- The height, bulk, scale and mass of the proposal has regard to the previous refused application. From a previous proposed increase of 2.75m ridge height to an increase of 1.2m, only.

- The increase in the volume of 40 m³ does not seem unreasonable, and the visual bulk impact the proposal would have on surrounding properties is minimised, while still being practicable for a proposed domestic use.
- Consideration has been taken to reduce overshadowing partly, by implementation of a lean-to and a new, but, recessed proposed pitched roof.
- Albeit, a degree of overshadowing is inevitable it will be minimised by the amended design.
- The flat roof will not be used as a balcony and therefore it will not have a negative impact upon adjoining properties, in terms of overlooking, loss of privacy.
- Both first floor windows to the rear will be opaque.
- Fire safety issues raised are vague at best and do not offer a sound objection.
- Fire safety is dealt with under a separate code of legislation. Compliance with Building Regulations is reviewed by the Building Control Officer for the Cork City area.

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**
- **Residential amenity**
- **Other Issues**
- **Appropriate Assessment**

7.2. Principle of the Development on the Site

The appeal site is located within an area zoned as part of the 'Inner City Residential Neighbourhood', where it is the policy of Cork County Council, 'to reinforce the residential character of inner city residential neighbourhoods, while supporting the provision and retention of local services, and civic and institutional functions.'

The site directly abuts lands zoned 'City Centre Commercial Core Area' comprising Barrack Street and notably which contains the appellant's property, number 22 Barrack Street located to the north-west.

The proposed development, for a dwelling on a corner site attached to an existing end of terrace dwelling, is compatible in principle with this zoning objective, subject to compliance with development management criteria set out in the Development Plan.

7.3. I note the Planning History on the appeal site and the permission previously granted (Ref. TP 22691/98) for a two-storey house. The plans and elevation drawings for which are attached to PL28.204030 / Reg. Ref.03/27142, history file, attached to the subject case. Planning permission was granted, to the current applicant, on the current site for a two-storey house to replace the existing garage. The design was two storey and gable fronted in keeping with the adjoining gable fronted property, no. 42. The permitted house had a similar frontage and depth to the adjoining house and similar ridge height (some 7m). The house had 2 bedrooms at first floor and a depth along the north-western boundary of c. 6.4 m.

7.3.1. The subject proposal is for an infill dwelling, within an urban context, on lands zoned for 'Inner City Residential Neighbourhood' use, where, residential development is considered a permissible development and where it is reasonable to expect that developments of this nature would normally be located.

7.4. Regard is had to the design approved on foot of Ref. TP 22691/98 and the design refused on foot of Reg. Ref. 15/36696 and Reg. Ref. 03/27142 / PL.28.204030. I consider, that the amended design proposed in the subject appeal application, given the diverse character of the streetscape along Evergreen Buildings, with a variety of

alterations having being carried out to roof profiles and front facades, of the traditional single storey cottages along the street, will not detract from the unique qualities and special character of this designated ACA.

- 7.4.1. I am overall satisfied that the principle of the development is acceptable. I intend to access impact upon residential amenity in the preceding section of this report.

7.5. Residential Amenity

- 7.5.1. The subject appeal relates to demolition of an existing single storey shed / garage and construction of a part single storey part two-storey dwelling. The site lies directly to the south / rear of the houses on Barrack Street and the appellants dwelling at number 22 Barrack Street.
- 7.5.2. Cognisance being had to the change in levels in the area, the site is on higher ground than the houses on Barrack Street. The concerns raised with respect to overshadowing and overbearing by the appellants at number 22 Barrack Street, I consider that the amended design has less of an impact upon the residential amenity currently enjoyed by the rear gardens of properties on Barrack Street (namely 20 – 22 Barrack Street), than that approved on foot of Ref. TP 22691/98 and the design refused on foot of Reg. Ref. 15/36696 and Reg. Ref. 03/27142 / PL.28.204030.
- 7.5.3. The pattern of development in the area comprises low rise, high density, terraced dwellings, of compact form, with virtually no conventional private open space when measured by modern standards. The site is severely constrained in terms of site size, proximity and orientation of adjoining dwellings / commercial premises to its rear. The planning application form submitted states that the area of the site to which the application relates as 0.007 ha from my calculations the site area is approx. 69.5 sq. m
- 7.5.4. Section 16.59 of the Cork City Development Plan 2015-2021 relating to Infill Housing is of relevance to the appeal case. It states:

‘To make the most sustainable use of existing urban land, 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. In general, infill housing should comply with all relevant development plan standards for

residential development, however, in certain limited circumstances; the planning authority may relax the normal planning standards in the interest of developing vacant, derelict and underutilised land. 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’.

- 7.5.5. Third party concern is raised with respect to overshadowing and overlooking. I note the location of the site to the east of / the rear of properties 19 – 22 Barrack Street. The proposed height, scale and bulk has been reduced from that previously permitted on the appeal site. The proposed house has no windows facing north west and the two rear, north facing, first floor windows, which serve a landing and en-suite are proposed to be obscure glazed.
- 7.5.6. The proposal is for an infill dwelling with a ridge height of some 5.35m. The two storey element is set back from the front (south) and side (north west) by way of being stepped back and comprising a sloping / lean-to roof. The depth of the dwelling along the north-western boundary is some 8.8m with the two storey element running along the boundary with the rear of houses on Barrack Street for approx. 3.8m. The sloping zinc roof of the first floor directly abuts the rear boundary of numbers 20 and 21, only. The first floor is set off the appellant’s boundary (number 22) by some 1.65m.
- 7.5.7. Consideration being had to the foregoing, I am of the opinion, that neighbouring houses would not be overlooked or be overshadowed to any significant degree by the proposed house, such that would warrant a refusal of permission.
- 7.5.8. The site layout plan submitted indicates a rear yard / garden depth of 4.1m with a gross area of approx. 20 sq. m. It is confirmed by way of F.I that use of the rear yard is solely for the occupants of the proposed dwelling. The restaurant premises to the rear would use the yard as a means of emergency exit, only, and not for storage of bins.

- 7.5.9. The proposed dwelling size (one bedroom of 55.3 sq. m) and internal accommodation proposed, generally meets the criteria set out in Table 5.1 Space provision and room sizes for typical dwellings set out in the Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes and Sustainable Communities (DoEHLG 2007)
- 7.5.10. Overall I am of the opinion that the proposed development is satisfactory with respect to impact upon residential amenity.

Other Issues

- 7.5.11. Concerns raised regarding validity of the application, buildability, trespass and fire safety are noted. The third party has concerns with respect to the adequacy / accuracy of drawings, the non-dimensioning of ridge heights, clarity with respect to 'proposal for platform access lift', together with level of Planning Authority assessment of the scheme. However, it is not for An Bord Pleanála in this instance to determine whether the application was in breach of the Planning and Development Regulations. Validation of a planning application comes within the sole remit of the planning authority.
- 7.5.12. I am satisfied that there is adequate information available on the appeal file, in particular on the drawings submitted, to consider the issues raised in the appeal and to determine this application.
- 7.5.13. I would also point out for the purpose of clarity that the development proposed is considered "de novo". That is to say that the Board considers the proposal having regard to the same planning matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and inter departmental reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application.
- 7.5.14. Fire Safety is dealt with under Technical Guidance Document B of the Building Regulations which is a separate code of legislation to planning. Compliance with Building Regulations is reviewed by the Building Control Officer for the Cork City area.

7.5.15. I agree, proposed platform access lift, as proposed, on Drg. PLA-03 submitted by way of Clarification of F.I. is somewhat unclear. It is located at ground floor over which there is no first floor accommodation. It may be that this lift is to accommodate a change in level at ground level for mobility use. This is not strictly a relevant planning consideration at this point. All internal floor plans of buildings must comply with relevant Building Regulation's and any alteration to the external façade of the building, would require a separate grant of planning permission.

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).

7.6.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1.1. I recommend that the decision of the planning authority be upheld and planning permission be Granted to the proposed development.

9.0 Reasons and Considerations

9.1.1. Having regard to the land-use zoning of the site "City Centre Commercial Core Area", 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 development, would be acceptable in terms of residential impacts, architectural heritage and impact upon the streetscape. 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 08.03.2017 and the 11.04.2017, 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. Prior to commencement of any development the following shall be submitted to and agreed in writing with the planning authority.

- (a) Revised front elevation showing the cill level of the ground floor front window raised so that it is not less than 700mm over the footpath level.
- (b) Full details including samples of the proposed external finish.

Reason: In the interest of the residential and visual amenity.

3. The landing and en-suite bathroom windows at first floor on the northern elevation shall be glazed with obscure glass,

Reason: To prevent overlooking of adjoining residential property.

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. Specifications, method statements and schedules of works for the exterior envelope shall be prepared by an experienced registered architect qualified to at least RIAI conservation grade III who shall certify upon completion that the works have been carried out in accordance with good conservation practice.

Reason: In the interest of the protection of archaeological heritage of the area.

6. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation and protection of any archaeological remains that may exist within the site.

7. The timber fence along the northern boundary shall be no lower than 1.8m in height on the applicant's side. The rear yard / private open space shall be used for the occupants of the dwelling and no access to the space from the adjoining premises to the northeast shall be provided, save as in the case of emergencies.

Reason: In the interest of the residential amenity.

8. The first floor bedroom window on the front elevation shall not be used as a means of access to the flat roof overhead the ground floor. The flat roof shall not be used as a balcony or otherwise be accessible from the first floor for such purposes.

Reason: In the interest of the residential amenity.

9. 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.

10. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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

11. 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, noise management measures and off-site disposal of construction/demolition waste.

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

12. 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.

Fiona Fair
Planning Inspector
07/09/2017