



An
Bord
Pleanála

Inspector's Report PL28.249009

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| Development | Permission for the retention of change of use of Citadella House from residential to office use and retention of side vehicular access including two car parking spaces. |
| Location | Citadella, Bulls Lane, Blackrock Road, Knockree, Cork. |
| Planning Authority | Cork City Council |
| Planning Authority Reg. Ref. | 17/37296 |
| Applicant(s) | Citidwell Homes Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Citidwell Homes Ltd. |
| Observer(s) | <ol style="list-style-type: none">1. Sheila Kenny & Pierce Noonan2. Deirdre Keane & Anthony O'Brien3. Ann Casey |
| Date of Site Inspection | 24 th October, 2017 |
| Inspector | A. Considine |

1.0 Site Location and Description

- 1.1. The site the subject of this appeal is located to the south east of the centre of Cork City, in the Blackrock area. The area in the vicinity of the subject site is predominantly residential in its nature and Aston Secondary School bounds the site to the east. Access to the site is via Bull's Lane, which is a narrow road servicing a small number of residential properties. To the rear of the building, to the south, there is a small residential development comprising 4 detached houses with accommodation over three floors.
- 1.2. The two storey building, the subject of this appeal, is currently being used as commercial offices and the area to the front of the house has been laid out to provide for 3 car parking spaces. To the eastern side of the house, an area over previously designated open space has been paved and is used for car parking while a gated entrance and road has been provided to the rear of the building. The site has a stated floor area of 0.13ha.

2.0 Proposed Development

- 2.1. The application to Cork City Council was for permission to retain the change of use of Citadella House from residential to office use, as well as the retention of a side vehicular access to the east of the dwelling (with electric gate and constituent wall). The application includes retention of two no. car parking spaces permitted as open space under planning permission TP 07/32173 to the east, as well as retention of three no car parking spaces to the north-west. The planning application includes, but is not limited to, the works as outlined above and all associated site works.
- 2.2. In the course of the planning authority assessment of the proposed development, the applicant consented to an extension of the prescribed period for consideration of the application for a period of three months. It is advised that 'the extension of time is required to enable the applicant to prepare and submit amended drawings which will address some of the issues on site'. I note that no request for further information issued, but that the further information submitted by the applicant was advertised as significant further information.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, following receipt of unsolicited further information which was advertised as significant further information, decided to refuse planning permission for the proposed development, for 3 reasons as follows:

1. Having regard to the provisions of the Cork City Development Plan 2015-2021, specifically Paragraph 15.10 which states that office uses are not generally permitted in the area zoned Residential, Local Services and Institutional Uses and Objective 3.10, which designates specific locations for office development, it is considered that the development to be retained would materially contravene the objectives of the Plan, would depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the deficient capacity of the local road network, it is considered that the development to be retained, by reason of its use, scale and density, would result in unacceptable traffic congestion and consequent traffic hazard on Bull's Lane and would set an undesirable precedent for similar future development in the area. The proposed development would, therefore, endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.
3. The proposed development would materially contravene the provisions of the Cork City Development Plan 2015-2021, specifically Objective 11.7(b), with regard to development on an open space which formed part of an executed planning permission (TP07/32173) and was identified for the purposes of recreation / amenity open space. It would therefore seriously injure the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report formed the basis of the planning authority's decision to refuse permission. Appropriate Assessment and Sub-Threshold EIS are also dealt with within the reports. The report concludes that the development to be retained materially contravenes the provisions of the City Development Plan with regard to the use, would result in a traffic hazard and results in the removal of part of the area designated for public open space. The development is therefore considered undesirable and refusal of permission is recommended.

3.2.2. Other Technical Reports

Environment Section: No objection

Drainage Section: No objection subject to compliance with conditions.

Roads Section: Recommends that permission be refused as Bull's Lane is unsuitable for the additional traffic generated by commercial use. Issues are also raised in relation to the landownership / right of way issues.

The submission of amended drawing did not alter the recommendation of the Roads Section.

County Archaeologist: No necessity for archaeological considerations.

3.3. Prescribed Bodies

Irish Water: No objection.

3.4. Third Party Observations

There are seven third party submissions noted on the Planning Authority's file from four of the neighbouring property owners. Three of the submissions were submitted following the submission of further information. The issues raised are summarised as follows:

- The validity of the consent from the management company to make the application is disputed. The applicant does not have sufficient legal interest in the communal areas to make the application.
- Roads and traffic issues as Bull's Lane is a narrow laneway for residential access only. The level of traffic from the commercial use is high
- Issues in relation to the need to protect listed structures.
- Unlawful use of land owned by the owners of nos 1-4 Citadella to create car parking spaces. Loss of amenity space
- Concerns raised in relation to privacy and security of residents and their property. Only the residents should have access to the security code of the gates, which would change if the commercial use is permitted.
- Implications in relation to insurance and liability.
- Non-compatible use within a strictly residential area.

4.0 Planning History

4.1. Subject site:

The following is the relevant planning history associated with the subject site:

PA Enforcement file ref E7727: Issues relate to a change of use from residential to commercial / office use and unauthorised development to the east and south of cottage, not in compliance with conditions of permission TP 07/32173.

PA ref TP 07/32173: Planning permission granted for the demolition of existing out buildings and the construction of 4. No. dwellings and associated site works.

Three further applications for development of the wider Citadella site, PA ref 06/31549, 06/31141 and 94/19002 were either refused or withdrawn prior to a decision issuing.

4.2. Adjacent lands;

PA ref 10/34495: Permission granted for the construction of a new three-storey, 30 classroom school building, at Ashton School, Blackrock Road, Cork.

5.0 Policy Context

5.1. Development Plan:

- 5.1.1. The Cork City Development Plan 2015 – 2021 is the statutory Development Plan for the city of Cork. The subject site is located within an area of Cork City which is zoned ZO4, Residential, Local Services and Institutional Uses, where it is the stated objective of the zoning to ‘protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 3.’
- 5.1.2. The supporting text, at section 15.10 of the Plan provides that ‘other uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, provided they do not detract from residential amenity and do not conflict with the employment use policies in Chapter 3 and related zoning objectives.’ However, the Plan goes further and states that ‘the employment policies in Chapter 3 designate particular locations for offices, office based industry, major retailing development and these uses are not generally permitted in this zone.’
- 5.1.3. Chapter 11 of the City Plan deals with Recreational Infrastructure and Objective 11.7 deals with Public Open Space and states as follows:
- a. To protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes;
 - b. There will be presumption against development on all open space in residential estates in the city, including any green area/public amenity area that formed part of an executed planning permission for development and was identified for the purposes of recreation/ amenity open space, and also including land which has been habitually used as public open space. Such lands shall be protected for recreation, open space and amenity purposes;

5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).

6.0 The Appeal

This is a first party appeal from the applicant against the decision of the planning authority to refuse retention permission for the development.

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The City Development Plan indicates that that office use is open to consideration within the zoning designation. The proposed development will not detract from the residential amenity in the area.
- There are other offices in the area.
- The open space provision for the overall site, including the 4 houses to the south, as per the amended drawings stand at 14% which is in excess of the development management standard of 10%. The application reverts the green open space to that permitted under TP 07/32173.
- If the LA was dissatisfied with a rear access to the dwelling the applicant would have considered a condition in relation to this aspect.
- The office use is for a temporary period of five years and the building will be reinstated to residential. The traffic generated from the development is unlikely to be in excess of that for residential use.
- The car parking requirement for the dwelling is similar to office use.
- It cannot be considered that there will be a difference between the traffic generated from the use of the dwelling for residential use or office use, contrary to the consideration of the Roads Engineer.

- In relation to the issues raised regarding the Management Company, it is submitted that the owners of 1-4 Citadella are not directors. It was envisaged that the owners of the 5 properties would be shareholders, the director of which, is Mr. Forde. The Director of the Management Company issued consent for the purposes of the planning application.
- A pre-planning meeting was refused due to the active enforcement case associated with the site.
- Citidwell Homes is a new start-up company and if required to move from the subject location, it would have a severe affect to the day to day running of the business, interfere with progress and jeopardise jobs.

6.2. Planning Authority Response

The PA has responded to this third party appeal, advising no further comments other than to point out the repeated misquotation of Section 15.10 of the Cork City Development Plan 2015-2021 in the appeal.

6.3. Observations

Four observations were submitted from the residents of Citadella, of which three were valid. One was deemed invalid due to being late. The issues raised in the valid observations reflect those concerns raised during the planning authority assessment of the proposed development. These issues are summarised as follows:

- References to permitted offices in the area are not relevant to the current appeal and the precedence referred to is not relevant.
- The argument in relation to the over-provision of open space as part of the permitted residential development is refuted. Permission was granted for the proposed development and it is not appropriate now to cherry pick items of the permitted development to add or remove elements.
- In relation to the issue of conditions, it is submitted that there was no inclusion of a rear access in the permitted plans and therefore no permission for such a use.

- Any future planned change of use would be subject to a separate planning application and should not influence the request for a five-year temporary retention permission.
- The development does not meet the car parking requirements. There is no justification for the suggestion that the development will not result in an intensification of traffic.
- In relation to the Management Company, it is submitted that it was a condition of purchase contract that they execute the appropriate form to become directors of the management company. This was never filed with the Companies Registration Office by Mr. Forde.
- The applicant has no legal right of way to access the unauthorised side vehicular entrance or car parking spaces and is not entitled to the permission for retention of planning sought.

7.0 Assessment

Having undertaken a site visit the Board will note that I could not gain access to the rear of the property. Having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Compliance with the Cork City Development Plan
2. Other Issues
3. Appropriate Assessment

7.1. Compliance with the Cork City Development Plan 2015-2021:

7.1.1. The development before the Board seeks the retention of the following:

- A change of use of a residential property to office use
- Side vehicular access with electric gate and constituent wall;
- Car parking spaces

Change of use of Building:

- 7.1.2. The subject site is located within an area of Cork City which is zoned ZO4, Residential, Local Services and Institutional Uses, where it is the stated objective of the zoning to 'protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 3.' The supporting text, section 15.10 of the Plan advises that while other uses are permitted, provided that they do not detract from residential amenity, offices are not generally permitted in this zone. The Board will note that the first party appears to have misquoted the City Development Plan, the relevant section is appended to this report.
- 7.1.3. The appellant has also sought to establish precedent for office uses in a residential area in the appeal documents. While I acknowledge same, I would not agree that the examples given would represent an appropriate precedent, or warrant a deviation from the zoning objectives of the Cork City Development Plan. Notwithstanding the indication by the applicant that the proposed use of the house for offices would be for a temporary period, I consider that the principle of the change of use from residential to office use does not accord with the zoning objectives afforded to the site and would, if permitted, materially contravene the objectives of the City Development Plan.

Side vehicular access & car parking spaces on permitted open space:

- 7.1.4. Chapter 11 of the Plan deals with Recreational Infrastructure including public open space. Objective 11.7 of the Plan advises that it is the objective of the planning authority 'to protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes.' The Board will note that the area to the east of the building the subject of this appeal, forms part of the roads and open space provision for the previously permitted Citadella residential development. In this regard, it is clear that this element of the development to be retained does not accord with the objectives of the Cork City Development Plan. A grant of retention permission for the side vehicular access and the car parking spaces to the east of the building would materially contravene the objectives of the

City Development Plan and would be contrary to the proper planning and sustainable development of the area.

7.2. Other issues:

Owners Management Company:

7.2.1. The Board will note that the area to the east of the building the subject of this appeal, forms part of the roads and open space provision for the previously permitted Citadella residential development. This development of 4 detached properties, was permitted under PA ref TP07/32173. As part of that decision, condition 7 refers, and prior to the commencement of development, the applicants were required to submit to and agree in writing with the Planning Authority full details of a legally incorporated management company.

7.2.2. I note in a letter dated 28th May, 2015, that the Planning Authority advised that insufficient detail for achieving compliance with condition 7 was provided. It was advised that full details of the management company would be required. Any issues of non-compliance with conditions of planning permission are a matter for the planning authority and not the Board. The issue raised by the third parties in this regard, is a civil matter.

7.2.3. In terms of the issue of sufficient legal interest and consent for the making of the planning application, and given the non-compliance issue, I would also be concerned. However, and noting that the works have already been carried out on the site, I refer the Board to Section 34(13) of the Planning & Development Act, 2000 as amended, which states as follows:

“A person shall not be entitled solely by reason of a permission to carry out any development.”

Roads & Traffic Issues:

7.2.4. Access to the site is via a narrow laneway which services the 10 existing residential properties, including the subject site and no. 3 Bull's Lane which is currently unoccupied and overgrown. The overall site presented in the subject appeal includes an extensive area of Citadella, which is a gated residential development. In this regard, access to this area is restricted with electronic gates. There are 3 car parking

spaces provided to the front (north) of the building the subject of the change of use and on the date of my inspection, access to the lands to the west was available, and required, in order to turn my car. While I acknowledge the submission of the first party in terms of traffic, I would concur with the City Council that the access is significantly substandard to accommodate commercial traffic. In addition, and having regard to the gated nature of Citadella, I would be seriously concerned that adequate car parking cannot be accommodated within the site.

- 7.2.5. I conclude that a grant of planning permission would result in a significant traffic hazard on the narrow residential lane of Bull's Lane, which is deficient in terms of width and capacity, and would endanger public safety.

Non-compliance with Previous Permission:

- 7.2.6. The first party appellant has submitted that 'if the local authority were dissatisfied with a rear access to the dwelling, the applicant would have considered a condition in relation to this aspect.' In response to this I would refer the Board to the previous grant of planning permission for 4 detached properties, TP 07/32173 refers. I have considered the permitted site layout for this development, and it is clear that the site plan clearly excludes any rear access from the residential development to the existing house on the site. The site layout plan provides for extensive planting and an open space area immediately adjacent to the boundary wall.

- 7.2.7. The current applicant has constructed a driveway for rear access to the building and has constructed the parking area within this permitted area of landscaping. Condition 1 of the grant of planning permission for TP 07/32173 requires that the development be carried out in accordance with the plans and particulars submitted. I refer to my comments above in relation to the non-compliance with condition 7 of the grant of planning permission in terms of the management company. I note that there appears to be a number of other conditions which have not been complied with but this is a matter of enforcement for the Planning Authority.

Impact on residential amenity:

- 7.2.8. Having regard to the layout of the site and the nature of the commercial use of the property, I am satisfied that a grant of planning permission in this instance would

negatively impact on the existing residential amenities of the Citadella estate, contrary to the proper planning and sustainable development of the area.

7.3. Appropriate Assessment

7.3.1. The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058). Having regard to the nature of the site, being a developed residential site, together with the minor nature and scale of the works proposed, 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

I recommend that planning permission be refused for the proposed development for the following stated reasons.

9.0 Reasons and Considerations

1. Having regard to the provisions of the Cork City Development Plan 2015-2021, specifically Paragraph 15.10 which states that office uses are not generally permitted in the area zoned Residential, Local Services and Institutional Uses together with Objective 3.10, which designates specific locations for office development, it is considered that the development to be retained would materially contravene the objectives of the Plan, would depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the deficient capacity of the local road network, it is considered that the development to be retained, by reason of its use, scale and density, would result in unacceptable traffic congestion and consequent traffic hazard on Bull's Lane and would set an undesirable precedent for similar future development in the area. The proposed development would, therefore, endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

3. The proposed development would materially contravene the provisions of the Cork City Development Plan 2015-2021, specifically Objective 11.7(b), with regard to development on an open space which formed part of an executed planning permission, TP07/32173 refers. This area of the residential site was identified for the purposes of recreation / amenity open space and landscaping. It would therefore seriously injure the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.

A. Considine
Inspector
3rd November, 2017