



An
Bord
Pleanála

Inspector's Report PL.28.249308

Development	House.
Location	2 Dominick Place, Mahony's Place, Dominick Street, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	17/37495
Applicant(s)	Bree and Cullen Allen
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Parties
Appellant(s)	Martin and Margaret Purcell. Yong Zhen
Observer(s)	None
Date of Site Inspection	21 st November 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is situated within the Shandon area of Cork's north inner city located approximately 900 metres north of the River Lee North Channel.
- 1.2. The local area is largely characterised by two-storey and single storey terraced period housing with no front gardens.
- 1.3. The appeal site is located at the end of an cul-de-sac, i.e. Mahony' s Place, and the site itself is accessed via a pedestrian gate.
- 1.4. There is an existing two-storey house on the appeal site. The existing house is currently in poor condition and unoccupied.
- 1.5. The existing house has a single aspect orientation facing southwards and overlooking Cork city.
- 1.6. A gable elevation of the existing two-storey house faces onto O'Mahony's Place. The existing gable elevation has no windows.
- 1.7. The site of the existing house is situated at a lower level than O'Mahony's Place and the main entrance to the existing house is accessed from external steps.
- 1.8. The topography of the local area falls steeply to the south.
- 1.9. The garden area is currently overgrown and there is a balcony / terrace garden situated to rear (east) of the garden

2.0 Proposed Development

- 2.1. The proposed development includes the demolition of an existing two-storey dwelling and the construction of a two-storey house in its place.
- 2.2. The overall floor area of the proposed house is approximately 96 sq. metres. The floor plan comprises of two bedrooms at ground floor level and dining / sitting room at first floor level.
- 2.3. The proposed house has a single aspect orientation which is south facing. The south facing orientation provides for extensive views over Cork city.

- 2.4. The proposed development provides for open space provision which is situated to the immediate front of the proposed house and to the immediate east of the proposed house.
- 2.5. The proposed house design is contemporary in character with a large glazing element availing of the southern aspect and the views.
- 2.6. The proposed house will be served by the public water mains and a public sewer connection.

3.0 **Planning Authority Decision**

Cork City Council decided to **grant** planning permission subject to 13 conditions. The conditions are standard for the nature of the development proposed.

3.1. **Planning Authority Reports**

- 3.1.1. The main issues raised in the SEP's report are as follows;

Senior Executive Planner

- The site is located within the Shandon ACA.
- The existing house is visible along the Quays of the City Centre.
- Conservation Officer has no objection to demolition of existing house.
- The objections in relation to the impact of the proposal on existing views are noted.
- However private views are not a legal entitlement.
- The proposal would therefore not seriously injure residential amenities.
- A window and a gentry structure have been constructed on the property boundary to the north i.e. no. 16 Dominick Street. However, these structures are unauthorised.
- The planning system has no control over disputes in relation to property ownership. Section 34(13) of the Act is noted in this regard.

- 3.1.2. Archaeologist; - No objection subject to conditions.
- 3.1.3. Environmental Waste Management and Control; - No objections.
- 3.1.4. Conservation; - The site is located within the Shandon ACA. No objections.
- 3.1.5. Drainage; - No objections.
- 3.1.6. Roads Design; - No objections.

3.2. **Third Party Observations**

There are four third party submissions and the issues raised have been noted and considered.

3.3. **Submissions**

There is a submission from Irish Water who have no objections.

4.0 **Planning History**

- No recent relevant planning history.

5.0 **Policy Context**

5.1. **Development Plan**

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

The appeal site is zoned '*3-Inner City Residential Neighbourhood*'. The objective is 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 subject site is located within the Shandon Architectural Conservation Area.

Part C – Chapter 16 sets out guidance in relation to residential development.

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

5.2. National Guidelines

Sustainable Residential Development in Urban Areas, 2009

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.

6.0 Observations

None

7.0 Appeal

The following is the summary of a third-party appeal submitted by Martin and Margaret Purcell of no. 16 Dominick Street.

- The proposed development will encroach on the appellant's property. The proposal will therefore obstruct windows, restrict light and overlook existing amenities.
- There is no objection to the development but to the height of the development.
- It is contended that there was a meeting between the applicant and the appellant who both agreed that the proposal would not block views and in return the appellant would remove the gantry structure. However, this did not happen.
- The submission includes photographs which illustrate the site.

Patrick A Cullinane, Architectural and Planning Consultant, submitted a third party appeal on behalf of Mr. Yong Zhen. Mr. Yong Zhen is the owner of no. 17 Dominick Street.

- The appellant's property is 3-storey with a single storey annex to the rear.
- The single storey annex abuts the appeal site.
- The proposed house is significantly larger than the existing house.
- The proposed house will be built right up against an existing window.
- The submitted planning application failed to locate the existing window.
- The subject window has been in use for a significant period.
- It is submitted that the Planning and Development Regulations require that planning applications should identify all neighbouring windows.
- The planning application failed to identify all neighbouring windows.
- It is questionable whether the local authority carried out a site inspection.
- The window in question has been in use prior to the introduction of the Planning Act.
- The planner's report refers to a 'right to a view' however there is no reference to a right to use a window or a right to natural light.
- The purpose of the planning legislation is to protect existing amenities.
- In conclusion, the proposed house will extend well beyond the footprint of the existing house.
- This will result in a new building been constructed right up against an existing window.

8.0 Responses

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

- There was no opening to the rear elevation at no. 17 Dominick Street at the time of submitting the current planning application.
- No. 17 Dominick Street was previously used as a public house.

- Previous planning applications for no. 17 Dominick Street (L.A. Ref. 05/30262) illustrates the rear wall was solid and built up entirely without any openings.
- The existing property at no. 17 Dominick Street was vacant during the design and planning process and there was no opening in the rear boundary wall between no. 2 Dominick Place and no. 17 Dominick Street during planning surveys.
- It is submitted that the opening was only cut out in recent times and this is illustrated in submitted photographs.
- The reuse of no. 2 Dominick Place is impractical due to its condition and scale. This was agreed with the Local Authority.
- The proposed house is carefully designed to respect its setting.
- The proposal falls short of overlapping the rear of 16 Dominick Street.
- The applicant has no objection to the owners of no. 16 Dominick Street availing of the views from their garden or from an extension to their house.
- The appeal property was surveyed on the 1st December 2016 and no window was recorded to the rear of no. 16 Dominick Street. The site was photographed on the 6th January 2017 and no opening in the boundary wall was identified between no. 2 Dominick Place and no. 16 Dominick Street.
- It is contended that the owners of no. 16 Dominick Street have altered the boundary wall between no. 2 Dominick Place and no. 16 Dominick Street without permission or agreement. It is now considered a matter of planning enforcement.
- The applicant's have no objections to the owners of no. 16 and no. 17 Dominick Place availing of their views.
- All proposals should be in accordance with required safety measures.
- It is considered that these objections in relation to openings in the boundary wall are misleading.

9.0 Assessment

- Principle of Development
- Impact on Established Residential Amenities
- Residential Amenities for Future Occupants
- Conservation

9.1. Principle of Development

The appeal site is zoned '3-Inner City Residential Neighbourhood'. The objective is *'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 appeal site is located outside the City Centre Commercial Area and the City Council is committed to protecting the residential stock in these city centre areas.

There is an existing two-storey house situated on the appeal site and it is proposed to replace the existing house with a new build. Having regard to the location of the proposed development which is an inner city residential area and given that the principle of residential development is established on the appeal site I would consider that the principle of the proposed development would be acceptable. I would conclude that the proposal would be acceptable in principle provided that there is adequate residential amenity and that the proposal adequately safeguards the amenities of the adjoining properties.

9.2. Impact on Established Residential Amenities

I would note that the owners / occupiers of no. 16 and no. 17 Dominick Street have appealed the proposed development largely on the grounds that the proposal will adversely impact on two south facing windows.

In relation to no. 16 Dominick Street, the southern boundary wall of the rear yard / garden adjoins the appeal site. This rear yard / garden is located on higher ground relative to the appeal site and as such the rear yard / garden of no. 16 Dominick Street has panoramic views over Cork city. On the date of my site inspection the rear (southern) boundary wall of the rear yard / garden of no. 16 Dominick Street had an external window in situ. This window provides an amenity to the existing residents in terms of views however its location is contentious as the applicant argues that the window is newly constructed without permission. The location of the external window is situated on a boundary wall for which permission or consent would be required and there is no documentary evidence on the file confirming that permission has been granted for this window. The applicant argues that this external window was not in existence at the time of making their current planning application and has been cut out in recent times and furthermore the window does not have consent. This claim cannot be categorically verified however the local authority planner's report considers that the window structure and the gantry structure along the boundary wall have been constructed without the benefit of planning permission.

In addition, the owner of no. 17 Dominick Street argues that the proposed development is located right up against an existing boundary wall and this will impose on an existing window. As before the applicant submits that this window is a new opening and contends that a previous planning application on the site, i.e. L.A. Ref. 05/30262 in relation to no. 17 Dominick Street, illustrates that there was no rear window to no. 17 Dominick Street. It is not possible to determine, from the information available, whether the window opening is a new opening or whether the window has been in place for a significant period. During my site inspection I did note that the window was in place. However it is evident from the submitted drawing in relation to L.A Ref. 05/30262 that there was no rear window to the annex of no. 17 Dominick Street. I would also note that there is no evidence of a permission for a rear window subsequent to L.A. Ref. 05/30262

I would concur with the views of the planning authority that there is no legal entitlement to a private view and therefore concerns in relation to impacts on private

views are a matter for a civil action. The Board, in accordance with the provisions of the Planning and Development Act, 2000 (as amended), have no enforcement powers and therefore are unable to adjudicate on whether a development is or is not authorised. 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'. There is therefore an obligation on the applicant to ensure that they have full legal title before proceeding with any permitted development. As there is no documentary evidence available confirming the permission for the two external windows I would assume that they are unauthorised development. The important issue for the Board, in my view, is whether the proposed development would be injurious to established amenities. I would consider, based on the lower levels pertaining to the appeal site, and as such the proposed development, relative to no. 16 and 17 Dominick Street and given the established house on the appeal site, that the proposed development would not be injurious to established amenities.

I would conclude in planning terms that the proposed development will not adversely impact on established amenities in terms of overlooking, overshadowing or visual impacts. As such the proposed development, in my view, is acceptable and would not be injurious to established amenities in the local area.

9.3. **Residential Amenities for Future Occupants**

The proposed house will replace the existing house on the appeal site.

Notwithstanding that the proposed house has a single aspect orientation the proposal will offer several improvements to the amenity of the property relative to the established house on the appeal site.

The proposed house represents an increase in the footprint of approximately 34 sq. metres as the existing house has a floor area of 62 sq. metres. This would offer a significant improvement in residential amenity. The proposal has floor to ceiling high

glazing with panoramic views over Cork city and a south facing orientation which would offer a high standard of amenity to future occupants.

The private open space provision is similar to that currently available, apart from the loss of open space due to the additional footprint proposed. The overall size of the private open space provision is relatively small however having regard to the city centre location, the exceptional views that the site offers and the southern aspect of the private open space I would consider that the amenity space on offer is acceptable.

Overall I would conclude that the residential amenities for future occupants would be acceptable.

9.4. **Conservation**

The appeal site is located within the designated Shandon Architectural Conservation Area. The City Development Plan Objective 29 states *'to seek to preserve and enhance the designated Architectural Conservation Areas in the City'*.

The proposed development will not be visible from Mahony's Place and is consistent with the Objective 32 of the City Development Plan 'Development in ACA's' which requires development to take account of recommended criteria. I have reviewed the submitted 'Photographic Impact Studies' and I would consider that the proposal integrates well to the urban landscape and will have no serious impact on established views from the City towards the Shandon area.

I would also note the report from the Conservation Officer which recommends that the proposal is acceptable. I would consider that the proposal makes a positive contribution to the local area.

10.0 Recommendation

10.1. I have read the submissions on the file, visited the site, had due regard to the City Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

11.0 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 and the pattern of development in the area, 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.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans lodged with the application, except as may otherwise be required to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed.

Reason: In the interest of clarity.

2. The glazing on the southern elevation of the dwelling shall be of non-reflective type and design.

Reason: In the interests of visual amenity.

3. Prior to commencement of development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

4. The site shall be landscaped in accordance with a scheme of landscaping, details of which, including details of vegetation to be retained, shall be submitted to the planning authority for agreement before development commences.

Reason: In the interest of visual amenity.

5. Prior to the commencement of development, the developer shall submit details of all boundary treatment, including planting, and implementation of timeframes for the agreement of the planning authority.

Reason: In the interest of residential privacy.

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 (in-situ or by record) and protection of any archaeological remains that may exist within the site.

7. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

8. That all necessary measures be taken by the contractor to prevent 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.

9. Water supply and all 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.

10. 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 the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of waste.

Reason: In the interest of amenities and public safety.

11. Prior to the commencement of development, the developer shall submit, and obtain written agreement of the planning authority for the following (a) a plan containing details of the management of waste (and recyclable materials) within the development including the provision of facilities for the separation and the collection of the waste and recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for appropriate management of waste and recyclable materials, in the interest of protecting the environment and the amenities of the area.

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.

Kenneth Moloney
Planning Inspector

16th January 2018