



An  
Bord  
Pleanála

## Inspector's Report PL04.249311

### Development

The removal of Condition No. 16 of residential development planning Reg. No. 08/5912 which specified that 'the pedestrian linkage with Dewberry, as provided on the site layout, shall be provided as an integral part of the development'. This application seeks to allow for the omission of this linkage.

### Location

Dewberry / Dunkerrin, Mount Oval Village, Rochestown, Co. Cork.

### Planning Authority

Cork County Council

### Planning Authority Reg. Ref.

17/5778

### Applicant(s)

O'Flynn Construction Co. Limited

### Type of Application

Permission

### Planning Authority Decision

Refusal

### Type of Appeal

Third Party v. Decision

### Appellant(s)

Maurice & Mary Bergin

### Observer(s)

None.

**Date of Site Inspection**

27<sup>th</sup> January, 2018

**Inspector**

Robert Speer

## **1.0 Site Location and Description**

1.1. The proposed development site is located in Rochestown, Co. Cork, approximately 550m east of the N28 National Road and 1.6km south of the N40 Southern Ring Road, where it occupies an infill position within the predominantly residential area of Foxwood / Mount Oval Village which forms an outer suburb of Cork City. The surrounding area is characterised by a variety of conventionally designed semi-detached / detached / terraced dwelling houses with the adjacent cul-de-sac of Dewberry to the immediate northeast of the application site being typical of the wider pattern of suburban development. However, in the context of the subject proposal, it is of relevance to note the presence of a recently constructed national school (Scoil Phadraig Naofa) on the adjoining lands to the immediate east of the application site. The site itself has a stated site area of 0.81 hectares, is irregularly shaped, and presently comprises a parcel of land where works are on-going as regards the construction of a small scheme of detached dwelling houses. The route of the pathway in question will traverse an area of public open space located at the end of the cul-de-sac formed by Nos. 35-46 Dewberry and will subsequently connect into the footpath network within the housing scheme presently under construction on site.

## **2.0 Proposed Development**

2.1. The proposed development involves the omission of Condition No. 16 of the grant of permission issued in respect of PA Ref. No. 08/5912 which requires the provision of a pedestrian linkage between the approved housing development and the neighbouring cul-de-sac of Nos. 35-46 Dewberry.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 4<sup>th</sup> September, 2017 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following reason:

- The proposed development would contravene materially condition no. 16 of Planning Permission Reg. No. 08/5912 which required that pedestrian linkage with Dewberry, shall be provided as an integral part of the development. This condition is considered to be reasonable and in line with policy objectives (for example, TM 2-1 and TM 2-2) of the Cork County Development Plan, 2014. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Whilst it is acknowledged that the footpath in question may give rise to increased volumes of traffic within the adjacent cul-de-sac of Dewberry during drop-off and pick-up times at the nearby school, the Planner's Report notes that the provision of this link was expressly required as a condition of the grant of permission issued in respect of PA Ref. No. 08/5912. It is further noted that the housing development permitted under PA Ref. No. 08/5912 (which the pathway in question forms part of) was approved following the Board's determination of PA Ref. No. 08/4919 / ABP Ref. No. PL04.229199 and that the requirement to provide the pedestrian link was applied in order to maximise permeability. Accordingly, having regard to the site location within the overall Mount Oval development, it was recommended that the pathway in question should be retained in the interests of encouraging permeability and connectivity and that the subject proposal should be refused permission on the basis that it materially contravenes Condition No. 16 of the grant of permission issued for PA Ref. No. 08/5912.

#### **3.2.2. Other Technical Reports:**

*Area Engineer:* States that the purpose of the linkage is to increase connectivity and to reduce the need for car-borne trips. Accordingly, it is recommended that the condition in question be retained as already imposed.

*Estates Primary:* Concurs with the recommendation of the Area Engineer.

### **3.3. Prescribed Bodies**

*Irish Water:* No objection.

### 3.4. Third Party Observations

A total of 2 No. submissions were received from interested parties and the principle contents of same can be summarised as follows:

#### 3.4.1. Mr. Maurice J. Bergin (in favour of the proposed omission of the pathway):

- The proposal will maintain the existing quality of life within Dewberry.
- The omission of the pathway in question will serve to eradicate anti-social behaviour in the area.
- The proposal will protect the privacy and security of local residents / properties.
- The omission of the pathway will prevent the cul-de-sac of Dewberry from being used as a pick-up / drop-off point serving the local primary school.
- It will avoid any potential conflict between local residents and casual vehicular traffic.
- Avoidance of the devaluation of property associated with the proposed pathway.
- The proposal will serve to minimise the potential traffic hazard to local children.
- The proposal will avoid increasing the risk of vehicular damage consequent on the increased traffic volumes utilising the cul-de-sac.
- The omission of the pathway finds support in the reporting inspector's assessment of PA Ref. No. 08/4919 / ABP Ref. No. PL04.229199.
- The subject proposal will serve to protect the natural biodiversity of the area.

#### 3.4.2. Mr. Bryan Riney (in opposition to the proposed omission of the pathway):

- The omission of the proposed pathway will give rise to unnecessarily long walking / cycling distances with the loss of permeability in the neighbourhood.

- The proposal is inconsistent with national and local policy as regards connectivity, permeability and sustainability within residential development, with particular reference to the *'Design Guide for Residential Estate Development'* (as published by Cork County Council), the Cork County Development Plan, 2014, the NTA's *'Permeability - Best Practice Guide'*, the Design Manual for Urban Roads and Streets, and the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities'*.
- The provision of the pedestrian link with Dewberry will provide a safer walking and cycling route for local residents.
- The pathway will benefit the residents of Dunkerrin and will promote sustainable travel options.
- The omission of the pathway will materially contravene Condition No. 16 of the grant of permission issued in respect of PA Ref. No. 08/5912.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. 08/5912. Was granted on 13<sup>th</sup> March, 2009 permitting O'Flynn Construction Co. Ltd. permission for a residential development of 14 No. two-storey detached dwellings & associated site development works.

- PA Ref. No. 144014. Was granted on 27<sup>th</sup> February, 2014 permitting O'Flynn Construction Co. an 'Extension of Duration' of PA Ref. No. 08/5912 until 12<sup>th</sup> March, 2019.

### 4.2. On Adjacent Sites:

PA Ref. No. 08/4919 / ABP Ref. No. PL04.229199. Was granted on appeal on 17<sup>th</sup> October, 2008 permitting the Minister for Education and Science permission for the construction of phase one of a 24 classroom primary school. Phase one consists of a 1,086.7m<sup>2</sup> two-storey building comprising eight classrooms, staff and pupil facilities, teaching support rooms, ancillary spaces and all associated site works including play areas, ball courts, paths, internal road with school bus/parents set down area, car parking, perimeter boundary fencing, secure fencing, retaining wall structures, and

two number vehicular entrances from the public road within the existing Foxwood Housing Estate, at Foxwood, Mountovel, Rochestown, Cork, Co. Cork.

PA Ref. No. 11/5912. Was granted on 7<sup>th</sup> March, 2012 permitting the Minister of Education and Skills permission for the proposed development of a 2 storey extension onto the existing 8 classroom school comprising of 8 classrooms, staff room, set rooms, library/resource room, sanitary and ancillary accommodation which is linked to the existing school building. Also provision of new canopy over main entrance. Proposed site works to include for an additional 16 no. car parking spaces via re-aligned vehicular access road with improved set down and turning facilities, relocation of 4 no. bicycle racks, 2 no. new junior play areas, landscaped garden areas and boundary treatment. Further site works include retention of existing ramp access to southern boundary and formation of new vehicular turning space with set-down provision in adjoining housing development. All at Foxwood, Mounthovel, Rochestown, Co. Cork.

## 5.0 Policy Context

### 5.1. National and Regional Policy:

The *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* generally encourage more sustainable urban development through the avoidance of excessive suburbanisation and the promotion of higher densities in appropriate locations. More notably, the encouragement of sustainable travel patterns is a key aspect of sustainable residential development and in this regard the Guidelines aim to create high quality places which prioritise walking, cycling and public transport. Further credence is given to the concepts of *'Connections'* and *'Inclusivity'* both within and throughout new residential development in the companion document to the Guidelines entitled the *'Urban Design Manual: A Best Practice Guide'*.

### 5.2. Development Plan

#### **Cork County Development Plan, 2014:-**

#### **Chapter 3: Housing:**

### Section 3.3: *Delivering Sustainable Residential Communities*

#### *HOU 3-1: Sustainable Residential Communities:*

- a) Ensure that all new development within the County supports the achievement of sustainable residential communities. The Council will have regard to the provisions of the Guidelines on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual, in development plan preparation and in assessing applications for development through the development management process.
- b) Promote development which prioritises and facilitates walking, cycling and public transport use, both within individual developments and in the wider context of linking developments together and providing connections to the wider area, existing facilities and public transport nodes such as bus and rail stops.
- c) Following the approach in chapter 10 of this plan, ensure that urban footpaths and public lighting are provided connecting all residential developments to the existing network of footpaths in an area and that the works required to give effect to this objective are identified early in the planning process to ensure such infrastructure is delivered in tandem with the occupation.

#### *HOU 3-2: Urban Design:*

- a) Ensure that all new urban development is of a high design quality and supports the achievement of successful urban spaces and sustainable communities. The Council will have regard to the provisions of the Guidelines on Sustainable Residential Development in Urban Areas, the accompanying Urban Design Manual and the Council's Design Guide for Residential Estate Development in development plan preparation and in assessing applications for development through the development management process.
- b) Provide additional guidance, including principles and policies, on urban design issues at a local level, responding to local

circumstances and issues. Where appropriate Local Area Plans will consider the need for the provision of additional guidance in the form of design briefs for important, sensitive or large scale development sites.

- c) Require the submission of design statements with all applications for residential development in order to facilitate the proper evaluation of the proposal relative to key objectives of the Development Plan with regard to the creation of sustainable residential communities.
- d) Require developers to take account of the Design Manual for Urban Roads and Streets (DMURS).

Chapter 14: Zoning and Land Use:

Section 14.3: *Land Use Zoning Categories: Existing Built-Up Area*

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.

**Ballincollig Carrigaline Municipal District Local Area Plan, 2017:**

Land Use Zoning:

The proposed development site is located on lands zoned as 'Existing Built Up Area'.

Other Relevant Sections / Policies:

Section 1: *Introduction*

Section 1.7: *Overall Approach - Key Policies*

Section 2: *Local Area Plan Strategy*

Section 3: *Main Towns and Key Assets:*

Section 3.5: *Cork City South Environs*

### 5.3. Natural Heritage Designations

The following Natura 2000 sites are located in the vicinity of the proposed development site:

- The Cork Harbour Special Protection Area (Site Code: 004030), approximately 900m north of the site.
- The Great Island Channel Special Area of Conservation (Site Code: 001058), approximately 5.0km northeast of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Cork County Council has failed to engage with the residents of Nos. 35-46 Dewberry in order to address their concerns as regards several incidents of anti-social behaviour which previously occurred in the area when there was no pathway present and that are likely to be exacerbated should a formal pathway be provided.
- The Planning Authority has effectively approved the use of the Dewberry cul-de-sac as an access point for the adjacent primary school and in this respect it is unacceptable for the Council to assert the need for 'permeability' without acknowledging the concerns of local residents.
- The refusal of the subject proposal is in direct conflict with the assessment of PA Ref. No. 08/4919 / ABP Ref. No. PL04.229199 wherein a proposed pedestrian access to the school was recommended for omission by the reporting inspector as follows:  
*'the pedestrian links suggested would involve cul-de-sac development or housing areas where no provision is made for such an increase in traffic from parent's cars'.*
- The pathway in question will result in the creation of an alternative route for pick-ups / drop-offs associated with the adjacent primary school. In this respect it should be noted that there is already a pathway from Mount Oval

into the school and that major traffic problems are experienced during both pick-up and drop-off times.

- The proposed pathway will result in a serious increase in traffic with a consequential heightened potential for damage to the vehicles of local residents.
- Increased vehicular traffic along the existing cul-de-sac will pose an increased risk to the safety of local children etc.
- The provision of the proposed pathway would be contrary to the Cork County Development Plan, 2014, with specific reference to Policy TM3-3: '*Road Safety and Traffic Management*' as follows:
  - a) *Where traffic movements associated with a development will have a material impact on the safety and free flow of traffic on a National, Regional or other Local Routes, to require the submission of a Traffic and Transport Assessment (TTA) and Road Safety Audit as part of the proposal.*
  - d) *Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.*
  - f) *Promote road safety measures throughout the County, including traffic calming, road, signage and parking.*

In light of the foregoing, it would appear that the Planning Authority has not undertaken a risk assessment and has also failed to identify those steps which will be put in place to avoid / minimise vehicular traffic thereby reducing the associated safety risks.

- No account has been taken of the steepness of the bank involved and how pedestrians would be discouraged from using the high level bank as an access point thereby increasing the prevalence for casual visitors looking straight into the bedroom windows of local residents.
- The steep bank involved will potentially pose a danger to cyclists (and the disabled / mobility impaired) – no impact statement has been carried out to minimise these dangers or the intrusiveness of a cycleway on the aesthetics of the roadway.

- Inadequate consideration has been given to the impact of the proposed pathway on the cul-de-sac of Dewberry.
- No details have been provided of the design / scale of the proposed pathway which is likely to comprise a very substantial steel and concrete construction similar to that between Kilbrody and Foxwood.
- The Local Authority has failed to detail the design and visual impact of the proposed pathway.
- It is unclear how any potential alterations to the road layout will impact on the access arrangements to surrounding properties and local vehicular / pedestrian passage.
- Whilst it is acknowledged that the principle of 'permeability' is embedded in the County Development Plan, the failure to create a proper roadway linking Mount Oval with Foxwood via Kilbrody has resulted in the traffic problems experienced during school times. Accordingly, it is submitted that the aforementioned failing should have been given consideration in the assessment of the subject proposal and its impact on vehicular traffic.
- Having regard to previous instances of anti-social behaviour arising as a result of the use of an unofficial route between Dewberry and Foxwood, there are concerns that the provision of a new dedicated pathway will serve to exacerbate same.
- The proposed pathway will have a detrimental impact on local biodiversity / wildlife considerations.
- The residents of Dewberry have a right to enjoy the privacy and comfort of their homes and would expect to be able to do so for future years in the absence of the pathway proposed which would have a detrimental impact on their quality of life.
- The proposed pathway will result in the devaluation of properties in the Dewberry area.

## 6.2. Applicant's Response

None.

## 6.3. Planning Authority's Response

None.

## 6.4. Observations

None.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. 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:

- The appropriateness of the proposed removal of an approved pedestrian pathway / link
- Appropriate assessment

These are assessed as follows:

### 7.2. **The Appropriateness of the Proposed Removal of an Approved Pedestrian Pathway / Link:**

7.2.1. From a review of the available information, it is apparent that the proposal to remove the need for compliance with Condition No. 16 of the grant of permission issued in respect of PA Ref. No. 08/5912 (thereby omitting the pedestrian link required by said condition between the cul-de-sac of Nos. 35-46 Dewberry and the housing scheme presently under construction on site) derives from the concerns of neighbouring residents as regards the potential detrimental impact that the approved pathway would have on the residential amenity of their properties. In this respect particular

reference has been made to the potential for the approved 'formal' pathway to exacerbate the current practice of attendees of the nearby national school (Scoil Phadraig Naofa) being dropped off or collected from within the cul-de-sac of Nos. 35-46 Dewberry due to the use of an informal 'short-cut' through the existing public open space / green area in order to access the school grounds. By extension, concerns have been raised as regards the likelihood of increased traffic volumes / congestion within this residential area during the morning and afternoon peak traffic periods, the associated endangerment of public safety (and property i.e. private cars etc.) by reason of traffic hazard, and the potential for overlooking / loss of privacy, reduced security and increased anti-social behaviour arising from the use of the proposed pathway / link.

7.2.2. Whilst I would acknowledge that the use of the cul-de-sac of Nos. 35-46 Dewberry as a pick-up / drop-off area for pupils of the local school is a cause of concern for local residents, there are clear difficulties in attempting to eliminate any such practice in its entirety (other than for the actual omission / physical closure of the pedestrian access). Accordingly, I am inclined to suggest that the appropriate response to any such problem at the outset would perhaps be to increase the 'desirability' of accessing the school grounds via alternative routes or means of transport and in this respect I would advise the Board that Condition No. 2 of the grant of permission issued for PA Ref. No. 08/4919 / ABP Ref. No. PL04.229199 (which approved the original school development) required the preparation of a 'green travel plan' to promote alternative modes of transport to the private car. Furthermore, it is of relevance to note that Condition No. 20 of PA Ref. No. 11/5912 (which approved the extension of the then existing school) requires the agreement of a Mobility Management Plan with the Planning Authority in order to promote alternative modes of transport to the private car and to identify proposals to encourage walking and cycling to school. Moreover, this Mobility Management Plan is to be subject to ongoing review whilst wardens are required to be appointed to marshal traffic on the school site and 'on adjoining estate roads'. Therefore, in my opinion, it would be appropriate to review the impact of the approved pedestrian pathway in the context of the ongoing review of the school mobility management plan and thus it would perhaps be premature to require the omission of the footpath / link at this time.

- 7.2.3. In addition to the foregoing, it is of further relevance to note that the requirement to provide the pedestrian link between Nos. 35-46 Dewberry and the housing scheme presently under construction on site (pursuant to Condition No. 16 of the grant of permission issued in respect of PA Ref. No. 08/5912) was imposed after the decision was made to grant permission for the school in the first instance. Therefore, the specific requirement to provide the link in question was seemingly taken in the full knowledge of the future development of the school grounds and thus the impact of this pathway on the surrounding area (and on the residential amenity of neighbouring properties) was likely assessed at that stage and held to be within acceptable limits.
- 7.2.4. Finally, whilst noting the concerns of the residents of Dewberry as regards a possible increase in vehicular traffic within their cul-de-sac, there must also be an acknowledgment that the pathway in question, notwithstanding any usage as a 'short-cut' to the local school, will serve to link two residential areas thereby providing a greater degree of connectivity and permeability throughout the wider area. In this respect the approved pathway complies with both local and national planning policy by fostering more sustainable travel patterns through shorter walking / travel distances for pedestrians and cyclists (including local residents and visitors to the area). Indeed, Policy Objective HOU 3-1: '*Sustainable Residential Communities*' of the Cork County Development Plan, 2014 aims to promote development which prioritises and facilitates walking and cycling both within individual developments and in the context of linking developments together and providing connections to the wider area. Similarly, the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' aim to create high quality places which prioritise walking and cycling whilst the companion document entitled the '*Urban Design Manual: A Best Practice Guide*' highlights the need for '*Connections*' and '*Inclusivity*' both within and throughout new residential development. Therefore, it is my opinion that the omission of the pathway required by Condition No. 16 of PA Ref. No. 08/5912 would be contrary to the proper planning and sustainable development of the area. Accordingly, given that the condition in question can be held to be reasonable, it is considered that the subject proposal would involve an unacceptable material contravention of a condition attached to an existing grant of permission.

7.3. **Appropriate Assessment:**

- 7.3.1. 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.

## 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 refused for the proposed development for the reasons and considerations set out below:

## 9.0 Reasons and Considerations

1. The proposed development would, by reason of the omission of an approved pedestrian linkage, contravene materially a condition attached to an existing permission for development namely, condition number 16 attached to the permission granted by Cork County Council on the 13<sup>th</sup> day of March, 2009 under planning register reference 08/5912.

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Robert Speer  
Planning Inspector

29<sup>th</sup> January, 2018