



An
Bord
Pleanála

Inspector's Report ABP 300964-18

Development	Single storey dwelling and associated works.
Location	Site to the rear of Nos. 6 to 11 Beaumont Lane, Beaumont Drive. Ballintemple, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	17/37421
Applicants	Des Collins & Joanne O'Driscoll
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	Elaine & Pat O'Donoghue & Others
Observer(s)	None
Date of Site Inspection	28/06/18
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site, which has a stated area of 0.0561 hectares, originally formed part of the rear garden of the Temple Inn public house that fronts onto Blackrock Road.

Pedestrian access is available through the gated rear yard area of the public house.

The site is roughly rectangular in shape, overgrown and is to the rear of a terrace of single and two storey dwellings that front onto Beaumont Lane. The dwellings are served by small rear yard/garden areas with the boundaries onto the site comprising a mix of low timber fences and block walls. It is bounded by a two storey dwelling that fronts onto Beaumont Drive to the south with the boundary delineated by a stone wall. The rear garden area associated with Nos. 31-33 Blackrock Road bounds the site to the east with trees and stone wall delineating the shared boundary.

The site is also served by a c. 3 metre wide gated access at the end of Beaumont Lane. The lane runs parallel to Beaumont Drive. A high stone wall delineates the boundary between the two roads. On street parking occurs on one side immediately outside the dwellings. The lane exits onto Blackrock Road in close proximity to its junction with Beaumont Drive.

2.0 Proposed Development

The application was lodged with the planning authority on the 16/05/17 with further plans and details submitted 22/11/17 following a request for further information dated 10/07/17. Clarification of further information was submitted on the 20/12/17 following a request for same dated 18/12/17.

As amended, the proposal entails the construction of a single storey dwelling with a stated floor area of 156.54 sq.m. The dwelling is to have a ridge height of 3.75 metres with external finishes comprising a mix of plaster and stone with a low pitch zinc or asphalt roof. A setback of 2.2 metres is proposed to the rear gardens of the houses fronting onto Beaumont Lane with a 2 metre high palisade fence to be erected along the full extent of the boundary.

Vehicular access is proposed via the existing entrance off Beaumont Lane with one parking space to be provided. There is an established right of way. By way of

further information, it is stated that the omission of vehicular access is not an option due to the applicant's medical requirements.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the above described development subject to 12 conditions. Of note:

Condition 2: Permission granted for pedestrian access only. Revised site layout plan including landscaping scheme to be submitted for agreement prior to commencement of development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 07/07/17 states there is no objection to the house design and it is not considered that it would give rise to overlooking or overshadowing. There is concern about the proximity of the dwelling to the rear boundaries of Nos. 9 and 10 Beaumont Lane (1.1 metres). There is scope for a greater setback. There is no objection to the open space configuration to the front of the dwelling in view of its context. The issues raised in the Road Design report summarised below are reiterated. Given the extent of the site which is large enough to accommodate a single dwelling and the proximity to services, it would be reasonable to permit same without carparking allowing for pedestrian access only. Further information on removal of the parking provision, provision of a pedestrian access only, details of access during construction, setback from the boundary with dwellings on Beaumont Lane and site landscaping recommended.

The 2nd report dated 14/12/17 (endorsed by Senior Executive Planner) considers that the FI does not address the issues raised with respect to vehicular access.

Clarification of further information is recommended. The 3rd report dated 23/01/18 following clarification of FI states that the planning authority has made it clear to the applicant that vehicular access is not viable. A refusal of permission is recommended for one reason.

Subsequent reports from the Senior Executive Planner and Senior Planner endorse the recommendation. The Director of Services in a memo dated 25/01/18 refers to a meeting with the applicant and her willingness to accept a grant of permission with pedestrian access only. A direction for a grant of permission detailed.

3.2.2. Other Technical Reports

Road Design in a report dated 29/06/17 notes that the junction between Beaumont Lane and Beaumont Drive does not meet the current road safety and design standards. Visibility in all directions is limited and turning movements are highly irregular and confusing for drivers. Vehicles parked on the lane must either reverse in or out as there is insufficient turning area. The proposed entrance is very narrow and it is not clear that there is sufficient turning space available to access the driveway. The lane is not a public road and the application has failed to show that there is a right of way to allow access. Beaumont Lane does not have the capacity to facilitate the development. The access as proposed is unsafe. A refusal of permission for two reasons is recommended. The 2nd report dated 22/01/18 following further information reiterates comments made in the 1st report. In addition, the proposal would constitute an intensification of use of the lane. The turning area into the development itself from Beaumont Lane is very restrictive. An autotrack analysis was run which shows that even a small vehicle, unobstructed by parked cars, would be unable to make the turn in one movement. A refusal of permission is recommended.

Drainage and Environment have no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water has no objection subject to conditions.

3.4. Third Party Observations

The issues raised in the objections submitted to the planning authority are comparable to those set out in the 3rd party appeal as detailed in section 6 below.

4.0 Planning History

The recent planning history on/in the vicinity of the site is detailed in the 1st Planner's report on file and pertains to the Temple Inn public house.

5.0 Policy Context

5.1. Development Plan

The site is within an area zoned ZO4 the objective for which is to protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 2.

Section 16.58 - Single units including corner/garden sites

The planning authority will have regard to the following criteria in assessing proposals for the development of single units:

- The existing character of the area/street;
- Compatibility of design and scale within the adjoining dwelling paying particular attention to the established building line, form, heights and materials etc. of adjoining buildings;
- Impact on the residential amenities of adjoining areas;
- Open space standards;
- The provision of adequate car-parking facilities and a safe means of access and egress to and from the site;
- The provision of landscaping and boundary treatments;
- Trees and gardens which make a significant contribution to the landscape character of an area are retained and unaffected by the proposal.

The site is located within an Architectural Conservation Area.

Objective 9.29 – to seek to preserve and enhance the designated ACA's in the City.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The 3rd party appeal by residents of Beaumont Lane against the planning authority's notification of decision to grant permission, which is accompanied by supporting detail, can be summarised as follows:

- The validity of the application is queried on the basis of the site address given, information given on the planning history and use of the site as required on the planning application form.
- Access by owners of the Temple Inn is by licence reached by agreement for maintenance of the commercial premises, only. This access is not transferable to a 3rd party. The applicants do not have vehicular or pedestrian access rights across Beaumont Lane.
- The fire escape route from the pub would be lost.
- Beaumont Lane is a private laneway and is not taken in charge by the City Council. The surface is substandard and would not support increased traffic, even of a temporary nature.
- Any additional vehicular movements would have a detrimental impact on the health and safety of residents and would affect the enjoyment of their home.
- The junction of the lane with Blackrock Road is poorly aligned and is at a very busy junction with Beaumont Drive.
- There are no provisions made by the planning authority for access to the site during the construction phase and for emergency services.
- There are concerns about access and parking by visitors, deliveries, service vehicles etc.
- The planning authority has not shown how the issue of access will be monitored during the construction phase and onwards.

- Material has been dumped on the site.
- The proposal would undermine the structural integrity of existing dwellings.
- The proposal would impact on the amenities of adjoining property. It would give rise to overshadowing, would be overbearing and is of an inappropriate design and scale. The proposed finished floor level could be considerably higher than shown in the drawings given the nature of the ground to be built on.
- Servicing of the site could adversely impact on adjoining dwellings.
- The proposal is contrary to objective 6.1 of the development plan which seeks to protect and, where necessary, enhance the amenities and the environment of existing residential areas and does not accord with the requirements for single units (including garden sites) and infill housing.
- The planning authority failed to consider the proposal in the context of the Ballintemple and Blackrock ACAs.
- The proposal will result in the loss of a garden. Gardens are considered an important part of the natural heritage and biodiversity of Cork City and are recognised as such in the City Development Plan.

6.2. Applicant Response

The submission by McNamara & Partners on behalf of the applicants, which is accompanied by supporting detail, can be summarised as follows:

- The proposal fully accords with the policies and objectives of the development plan.
- All planning reports agree that a pedestrian, only, accessible dwelling could be supported on the site.
- Condition 2 prohibits vehicular access. A revised drawing showing pedestrian access, only, accompanies the response.
- The assertion that the application is invalid is refuted.
- The site has not been used as a dump.

- The site which is owned by the applicants has a long established right of way. The appellants' assertion that the right of way was ceded to William & May O'Driscoll is completely incorrect.
- The dwelling has been carefully designed with a low pitch zinc or asphalt roof with a predominant southwest aspect. The design took cognisance of its setting and was designed so as not to impact on the existing houses on Beaumont Lane. The house will be 2.2 metres from the rear boundary fences.
- The proposal does not involve the loss of trees. There is no loss of ecological habitat.

6.3. **Planning Authority Response**

No further comment

6.4. **Further Responses**

The applicants' response was circulated to the relevant parties for comment.

6.4.1. Planning Authority

No further comment.

6.4.2. Appellants Elaine & Pat O'Donoghue & Others

In addition to reiterating a number of points made in the original appeal submission the following are noted:

- It is not practicable for a building of this scale to be constructed on the site without proper safe access. Pedestrian access, only, is not a workable or logical solution.
- Construction and demolition waste in addition to general rubbish are buried at the site.
- In view of the procedures carried out in terms of meetings held by the planning authority, the validity of the application is queried.

- The house design and layout is tailored for the applicant and not the residents of Beaumont Lane. The building will be too close to existing houses and will have a visual impact.
- Due to the westerly orientation and excessive height it would cause extreme overshadowing. The additional window on the eastern elevation, which is not present on the original drawings, coupled with the inclusion of a gated concrete pathway along the same elevation, raises issues of loss of privacy.
- Construction will result in dust, noise and nuisance.
- The City Council has produced a document on biodiversity in the city, 'Nature in the City a Guide to Biodiversity in Cork City - An Action of the Cork City Biodiversity Plan 2009-2014'.

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings.

- Principle of Development
- Access and Traffic
- Impact on Amenities of Adjoining Property
- Miscellaneous Issues
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The site is within an area zoned ZO4 in the current Cork City Development, the objective for which is to protect and provide for residential uses, local services, institutional uses, and civic uses having regard to employment policies. The proposal, entailing the clearance of the site and construction of a dwelling, accords with the said zoning provisions.
- 7.1.2. I consider that the site has the characteristics attributable to a backland location. Whilst the development plan does not specifically set out parameters for development in such locations I consider that the issues arising with respect to single

units including corner/garden site as set out in section 16.58 would be largely applicable. With regard had to same a balance needs to be struck between the site constraints, the pattern of development in the vicinity, the need to attain a balance between the reasonable protection of the amenities and privacy of adjoining dwellings and the need to provide for additional residential development. I propose to address such matters in the following sections.

7.2. Access and Traffic

- 7.2.1. As noted above the site, which originally formed the rear garden of the Temple Inn which fronts onto the Blackrock Road, is to the rear of the 11 dwellings on Beaumont Lane. The lane runs parallel to Beaumont Drive. The appeal site is served by a gated entrance at the end of the lane which is accessed via a 90 degree right turn around the flank wall of No.11. The entrance is gated and is approx. 3 metres wide. The lane, itself, is narrow at less than 6 metres in width, with the terraced dwellings served by on street parking, only, which is fully subscribed. There is no footpath along the lane. The lane's boundary to Beaumont Drive is delineated by a stone wall.
- 7.2.2. Beaumont Lane exits onto Blackrock Road in very close proximity to its junction with Beaumont Drive. Sightlines for vehicles entering/exiting the lane are particularly problematic due to the awkward arrangement. In addition, as a consequence of the on-street parking along the lane vehicular turning movements cannot be accommodated resulting in vehicles having to back in/out of the lane onto Blackrock Road.
- 7.2.3. The lane is not in public ownership and there is a lack of agreement between the parties to the appeal as to the right of access. The appellants contend that access by the owners of the Temple Inn is by licence reached by agreement for maintenance of the commercial premises, only. The applicants dispute this and contend that the applicants have an established right of way. Legal documentation in support of the assertions accompany both submissions.
- 7.2.4. It is not the function of the planning process to resolve such legal disputes and that resolution of same should be via the appropriate legal channels. On balance, I submit that the applicants have provided evidence of sufficient legal interest to lodge

the planning application. Notwithstanding should the Board be disposed to a favourable decision the applicants should be advised of the provisions of Section 34(13) of the Planning and Development, Act, 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development.

- 7.2.5. In view of the width of the existing access to the site, the flank wall of No.11 resulting in a sharp 90-degree turn, the constrained width of the lane and the prevailing on street parking patterns right up to the site access, vehicular access both into and out of the site would be problematic. I note reference in the 2nd Road Design report following the further information request to the Autotrack Analysis undertaken which showed that even a small vehicle, unobstructed by parked cars, would be unable to make the turn in one movement. I consider that the proposed access arrangement is seriously constrained and cannot accommodate the development.
- 7.2.6. The omission of vehicular access appears to be eventually conceded by the applicants (reference to acceptability of pedestrian access, only, in the memo from Director of Services) and is required by condition 2 attached to the planning authority's notification of decision. However, I submit that this does not address issues in terms of access for emergency and services vehicles which would be prejudiced by the constrained access and existing substandard conditions along the lane. The application and the appeal response are silent in this regard. To allow for such an arrangement would, in my opinion, constitute a substandard form of development. In addition, I would also express reservations that a dwelling, although precluded from providing vehicular access would not, in itself, result in further parking demands and vehicular movements along the lane which would further exacerbate the congestion experienced in terms of parking and the conflicting vehicular movements at the junction of Blackrock Road thereby aggravating the traffic hazard that exists. As such I consider that the proposal does not comply with the criteria to be met for single dwellings units as set out in Section 16.58 of the in terms of the requirement to provide for adequate carparking and a safe means of access and egress to and from the site. I therefore recommend refusal on this basis.

7.3. Impact on Amenities of Adjoining Property

- 7.3.1. The terraced dwellings that back onto the site are served by small rear yard/garden areas ranging in depth between 4.5 and 6.5 metres with the rear boundaries delineated by a mix of low timber and concrete panel fencing.
- 7.3.2. The site, whilst overgrown, has comparable levels to the lands bounding it. The proposed finished floor level of 6.78mOD is marginally lower than the finished floor levels of the dwellings which range between 7.02 and 7.11mOD. Should the development secure permission it would be required to comply with the details given therein notwithstanding any concerns regarding the potential for increased floor levels arising from the nature of materials, if any, deposited on the site.
- 7.3.3. The proposal, as amended, provides for a single storey dwelling with a ridge height of 3.75 metres and a setback from the shared boundaries of 2.2 metres with a 2 metre high fence proposed along same. I submit that there is insufficient space or separation distance to allow for effective additional landscape screening at this location. Notwithstanding, overlooking and loss of privacy will not arise although I acknowledge that the proposed dwelling and its open space provision will, itself, be overlooked by the existing dwellings. In addition, I do not consider that there is substance in the concerns expressed relating to overshadowing in view of the low height of the dwelling as proposed.
- 7.3.4. Whilst construction works can give rise to issues with regard to noise, dust etc. such works are, by their nature, temporary in duration. A condition requiring the preparation of a construction management plan, which would also address the removal of construction and demolition waste, could be required by way of condition should the Board be disposed to a favourable decision. I note that the issues raised with respect to site access would also be pertinent to the construction period.
- 7.3.5. I consider that the proposed house design and layout is generally acceptable having regard to its location and, save for the access and parking proposals, meets the development management requirements for single dwelling units as set out in section 16.58.

7.4. Miscellaneous Issues

- 7.4.1. As noted by the appellants and delineated on Map 6 of the City Development Plan the site is within an Architectural Conservation Area. Development within ACAs is required to be carried out in a manner sympathetic to the distinctive character of the area (objective 9.29). By reason of the backland location of the site it will not be visible from the public realm. The house design is considered acceptable and would not compromise the integrity or character of the area.
- 7.4.2. The site is not within a designated site and is in an inner suburban location. As noted it originally constituted the rear garden area of the Temple Inn and is now overgrown with trees delineating the western site boundary only. None are subject of a tree preservation order and it is proposed to assess same and consider whether their retention is feasible. I consider that the site's development for residential purposes would not contravene the current City Development Plan policies and objectives relating to biodiversity.
- 7.4.3. The appellants have questioned the validity of the application citing discrepancies in the address given and the absence of planning history details given on the planning application form. I note that the Planning Authority was satisfied that the said details were in accordance with the requirements of Articles 18 to 23 of the Planning and Development Regulations 2001, as amended, and therefore deemed the application to be valid. As the appellants have engaged in the planning process culminating in this appeal I submit that their 3rd party rights have not been compromised.
- 7.4.4. The manner in which the planning authority carried out its assessment of the application and meetings held with officials is not a matter for comment at this appeal stage.

7.5. Appropriate Assessment

- 7.5.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, the location of the site in an urban, zoned and fully serviced area and the separation distance to the nearest European sites, 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

Having regard to the above assessment I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

The site is accessed from a minor laneway which is inadequate in width and which provides for unrestricted on-street parking on one side. The Board is not satisfied that vehicles, including emergency and service vehicles, can safely turn into and exit the site from the lane. The proposed development would, therefore, constitute a substandard form of development, would give rise to further on-street parking and exacerbate the serious traffic congestion along the lane and would increase the conflicting vehicular movements, both for access and egress onto Blackrock Road. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

July, 2018