



An
Bord
Pleanála

Inspector's Report ABP-302979-18

Development

Retention permission for alterations to the driveway entrance and permission for the demolition of 2 no. existing one storey extensions to the rear and side and the construction of a one and a half storey extension to the side of the existing bungalow and all ancillary site works.

Location

'Hove', Hartlands Road, The Lough, Cork

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

18/38004

Applicant(s)

Brian O'Reilly and Caroline O'Leary

Type of Application

Permission

Planning Authority Decision

Grant Permission with Conditions

Type of Appeal

Third Party

Appellant(s)

Patrick Wash and Anne McSwiney

Observer(s)

None

Date of Site Inspection

18th January 2019

Inspector

Elaine Power

1.0 Site Location and Description

- 1.1. The subject site accommodates a single storey detached dwelling 'Hove' located to the rear of no 32 Hartland's Road. Hartlands Road is a residential cul-de-sac situated north of the Lough, in the south central suburb of Cork City. There are a variety of house types on Hartland's Road, including detached, semi-detached and some backland developments.
- 1.2. Access to the existing house is from Hartland's Road via a laneway approx. 3.2m in width by 37m in length. Car parking is provided to the side (east) of the house adjacent to the party boundary with no 32 Hartland's Road.

2.0 Proposed Development

- 2.1. It is proposed to retain alterations to the access. The alterations comprise the removal of 1no. pillar and the amalgamation of a pedestrian and vehicular access to improve sightlines and vehicular access.
- 2.2. Permissoin is also sought for alterations and an extension to the existing bungalow. The works comprise the demolition of 2 no. existing single storey extensions (approx. 14sqm) to the rear and side and the construction of a part single / part two storey extension (approx 74sqm) to the side (west) of the existing bungalow to provide a 144sqm (gross floor area) house.
- 2.3. Further information was sought regarding clarity on the vehicular access arrangements. The response did not result in any alterations to the development.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to conditions.

- Condition 1 clarifies that permission is granted for the development submitted by way of further information.
- Condition 2 clarifies that the external finishes and materials shall be as shown on plans and particulars submitted.
- Condition 3 requires that the dwelling shall be used as a single residential unit.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report from the Area Planner (21st September 2018) and the Senior Executive Planner (24th September 2018) raise no objection in principle to the alterations and extension to the existing house. However concerns were raised regarding the retention of alterations to the vehicular access and further information was requested regarding the following.

- A scaled drawing showing the dimensions of the vehicular and pedestrian gates and clarity whether they would be manually or mechanically operated.
- Confirmation if the gates would infringe or impact on any existing rights of way.

A final report was prepared by the Area Planner (11th October 2018) and the Senior Executive Planner (16th October 2018) which concluded that concerns regarding the access arrangements were adequately addressed and it was recommended that permission be granted subject to 8 no. conditions.

3.2.2. Other Technical Reports

Roads Design (Planning) Report: No objection

Drainage Report: No objection.

Environment Report: No objection

3.3. Prescribed Bodies

Irish Water. No objection.

3.4. Third Party Observations

2 No. objections were received by the Planning Authority from (1) Jacinta Reynolds and Sean Higginson of 'Dun Barra', 32 Hartland's Road and (2) Patrick Sheehan Solicitor on behalf of Patrick Walsh and Anne McSwiney of 'Kearsney' 30 Hartland's Road. The concerns raised include the following:

- The potential negative impact on the structural integrity of the adjoining property during the construction phase.
- Car parking on the laneway would impact on an existing right of way over the laneway. Access to the right of way should be provided at all times. The applicants are attempting to privatise the laneway / right of way.
- Intensification of vehicular movements on the laneway and no turning area on site would result in a traffic hazard.

4.0 Planning History

4.1. Subject Site

None

4.2. Adjoining Site – 'Dun Barra' 32 Hartland's Road.

PL 28.239391 / Reg. Ref. 11/34820: Permission was granted in 2011 for the demolition of an existing single storey extension and the construction of a new part single / part two storey extension to the rear and an attic conversion at 'Dun Barra' 32 Hartlands Road, located to the south of the subject site.

5.0 Policy Context

5.1. Cork City Development Plan 2015 - 2021

The site is located in an area zoned Z0 4 – ‘Residential, Local Services and Institutional Uses’ with the associated landuse objective *‘to protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 3’*. Section 15.10 states that the provision and protection of residential uses and residential amenity is a central objective of this zoning, which covers much of the land in the suburban area.

Part D of Chapter 16 relates to residential extensions and vehicular accesses. The relevant sections include the following: -

- Section 16.72 Extensions.
- Section 16.73 Residential Entrances / Parking in Front Gardens.

5.2. Natural Heritage Designations

There are no relevant designated areas in the immediate vicinity of the site.

6.0 The Appeal

6.1 Grounds of Appeal

This is a third-party appeal submitted by Patrick Sheehan Solicitor on behalf of Patrick Walsh and Anne McSwiney of ‘Kearsney’ 30 Hartland’s Road, which is located to the east of the site, against the Planning Authorities decision to grant planning permission. The main grounds of the appeal are detailed below.

- There is a right of way over the 3.5m wide lane which provides vehicular access to an adjoining site. The applicants are attempting to privatise this access lane.
- The proposed new gate will restrict access to the right of way.

- The proposed layout does not include car parking. Therefore, vehicles will park on the laneway and will block the right of way.
- A turning area has not been provided on site. The intensification of vehicular movements and parking on the lane, would require vehicles to reverse down the lane and onto the public road which would result in a traffic hazard.

6.2 Applicant Response

6.2.1 A response by Coakley O'Neill Town Planning was prepared on behalf of the applicants. It requests that having regard to Section 138 of the Planning and Development Act, 2000 (as amended) the Board consider the merits of the third party appeal.

6.2.2 Notwithstanding the request to have the Board dismiss the appeal, a detailed response to the grounds of appeal has been submitted. The following issues have been addressed: -

- The applicant's note that following a detailed review of the application Cork City Council granted permission as the development is in accordance with Development Plan policies. The grounds of the appeal are almost entirely legal issues. Details of a number of cases which have been dismissed by the Board on legal matters are included.
- The character of the area is entirely residential. The design ensures that the development does not result in overshadowing, overlooking or have an overbearing impact on adjoining properties. It is in keeping with the design of dwellings in the area and will not have an adverse impact on the character of either adjoining properties or the immediate vicinity.
- There is no significant material change to the vehicular access. A single pillar has been removed however there is no change to the overall width and both a vehicular and pedestrian gate have been retained. The proposed

development does not restrict access to the laneway. Examples of a number of vehicular accesses on Hartland's Road have been included.

6.3 Planning Authority Response

No further comments.

7 Assessment

In the response to the appeal documents the applicants have asked the Board to dismiss the appeal under Section 138 of the Planning and Development Act, 2000 (as amended). In my opinion the appeal raises valid planning issues relating to traffic. Legal Issues, Appropriate Assessment and Environmental Impact Assessment are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Traffic.
- Legal Issues.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.2 Traffic

7.2.1 The subject site accommodates a single storey detached dwelling located to the rear of no 32 Hartland's Road. Access to house is provide via a laneway approx. 3.5m in width by 37m in length. There is a right of way over this laneway to the rear of no 32 Hartland's Road.

7.2.2 The development includes the retention of alterations to the boundary gates on Hartland's Road. The original access comprised a 2.6m wide vehicular access and a separate 1m wide pedestrian access. The accesses were separated by a 0.25m wide central pillar. The central pillar and gates were removed. It is proposed to retain the removal of the pillar to create a 3.9m wide shared access with gates. Following concerns raised by the Planning Authority regarding how the gates would function

additional information was submitted stating that the gates would be manually operated and would not impact on the right of way over the access laneway.

7.2.3 It is noted that Section 16.73 Residential Entrances / Parking in Front Gardens of the Cork City Development Plan recommends that vehicular accesses should be a maximum of 3m in width and no more than 50 percent of the width of the front boundary. The vehicular access is 3.9m in width and is the entire width of the front boundary. It is noted that the Area Engineer raised no objection to the width of the access. As this is an existing access that serves a backland development, it is considered that the alterations do not impact on the residential and visual amenities of the area. In addition, it is noted that there are double yellow lines located adjacent to the vehicular access therefore the development will not impinge on any on-street car parking.

7.2.4 Concerns were raised by Patrick Sheehan Solicitor on behalf of Patrick Walsh and Anne McSwiney regarding the impact the development would have on the right of way over the laneway. In particular vehicles parking on the laneway which would infringe on the right of way and the potential traffic hazard generated by vehicles reversing out of the laneway. During a site visit on the 18th January 2019 it was noted that 1 no vehicle was parked to the side (east) of the house, adjacent to the party boundary with no 30 Hartland's Road. It is considered that there is sufficient space to the side of the dwelling to accommodate a minimum of 2 no. vehicles without infringing on the laneway. In addition, there is potential to park to the front of the house and there is an on-street car parking scheme on Hartland's Road. Having regard to the provision of available car parking it is considered that the development would not generate sufficient overspill car parking onto the laneway to impact on the right of way.

7.2.5 Having regard to the limited number of vehicular movements that would be generated by a single dwelling and as there are no physical boundaries separating the front and rear gardens of the house it is considered that there is sufficient space within the site to accommodate any required turning movement to allow vehicles to

gress the site in a forward motion. Therefore, it is considered that the proposed development would not result in a traffic hazard. It is also noted that the Area Engineer had no objection to the proposed development.

7.3 Legal Issues

Concerns were also raised in the third party appeal regarding the impact of the development on the right of way. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states, 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. As issues in relation to rights over land are ultimately civil / legal issues it is considered that the issue of a right of way should not form the basis of a refusal of permission / retention permission.

7.4 Appropriate Assessment

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

7.5 Environmental Impact Assessment

Having regard to the nature and small scale of the proposed development and the location of the site, it is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8 Recommendation

It is recommended that permission be granted subject to conditions.

9 Reasons and Considerations

Having regard to the residential zoning objective for the site, the provisions of the Cork City Development Plan 2015-2021, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

10 Conditions

1. The development shall be carried out, retained and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. The external finishes of the proposed extension, including roof tiles / slates shall be the same as those of the existing dwelling in respect of colour and texture, unless otherwise agreed in writing with the Planning Authority.

Reason: In the interest of visual amenity.

3. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the extension in the interest of residential amenity.

4. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity

5. Water supply arrangements shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

6. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The formation of the vehicular access to the site including alteration of the existing public footpath shall be constructed in accordance with the requirements of the planning authority.

Reason: In the interest of orderly development and traffic safety

Elaine Power
Planning Inspector

7th February 2019