



An
Bord
Pleanála

Inspector's Report ABP-303702-19

Development	Permission for retention of alterations to an extension previously granted planning permission.
Location	24 Slieve Mish Park, Kinsale Road, Cork.
Planning Authority	Cork City Council.
Planning Authority Reg. Ref.	18/38129
Applicant(s)	Donncha Daly
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party
Appellant(s)	Donncha Daly
Observer(s)	John McCormick
Date of Site Inspection	13 th June 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 0.0344ha, is located at 24 Slieve Mish Park, on the eastern side of Kinsale Road to the west of South City Link Road to the south of Cork city centre.
- 1.2. The site comprises a semi-detached two storey dwelling within an established residential area. No 25 Slieve Mish Park forms the adjoining semi-detached dwelling to the east. The dwellings face north onto Slieve Mish Park and back onto an industrial estate to the south. A high solid block wall forms the southern, western and eastern rear boundary.
- 1.3. The surrounding area is predominantly residential in character, with the lands immediately adjoining to the north, east and west comprising two storey semi-detached dwellings.
- 1.4. No. 25, the subject dwelling, has been extended to the rear and west side by way of a part two storey, party single storey extension.

2.0 Proposed Development

- 2.1. The proposal comprises permission for:

Retention of alterations to an extension previously granted planning permission (16/36852) to an existing dwelling including modifications to:

- fenestration to the rear of the extension,
- realignment of the wall to the west,
- modifications to the ground floor layout,
- an overall reduction in area and
- reductions in heights of parapets.

Gross floor space of existing buildings is stated as 116 sq. m

Gross floor space of proposed works is stated as 110 sq. m

Gross floor space of any demolition is stated as 33 sq. m

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted subject to 8 number conditions.

Condition 2 states:

‘The single storey element of the extension should be altered as follows:

- a. The height of the single storey extension should be reduced to correspond with the previously granted single storey element (2.45m)
- b. The depth of this single storey element should be reduced to bring the rear wall of the single storey extension flush with the rear wall of the two storey extension.
- c. Revised drawings shall be submitted to the planning authority within four weeks from the date of grant of this permission and these works shall be carried out within a period of six (6) months from the date of grant of this permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners Report sets out that having regard to the nature, location and context of the site and surrounding area, the policies of the Cork City Development Plan 2015 – 2021 and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions that the proposed development would not seriously injure the residential or visual amenity of the area.

Drainage Report: No objection subject to condition.

Roads Planning: No objection subject to condition.

3.2.2. External Reports

Irish Water (IW): No objection

3.3. Third Party Observations

An objection was submitted to the planning authority. Concerns raised are similar to those raised in the third party appeal summarised in detail below.

4.0 Planning History

- TP 16/36852 Permission Granted to erect a two storey extension to the west gable wall of existing dwelling, a two storey and single storey extension to the south wall (rear) of existing dwelling and miscellaneous alterations at 24 Slieve Mish Park, Kinsale road, Cork.

Adjoining planning history of relevance:

- TP 18/38066 Permission Granted for alterations and extension to an existing dwelling, incl. reconstruction and conversion of attached garage to living accommodation at 26 Slieve Mish Park.
- TP 18/37834 Permission Granted for alterations to an existing dwelling, incl. single storey and rear extensions, elevational changes and associated site works at 52 Slieve Mish Park.

5.0 Policy Context

5.1.1. Sustainable Residential Development in Urban Areas, 2009

5.1.2. Quality Housing for Sustainable Communities, 2007

5.1.3. Development Plan

The site is governed by the policies and provisions contained in the Cork City Development Plan 2015-2021.

The site is zoned ZO 4 Residential, Local Services and Institutional Uses with the objective 'to protect and provide for residential uses, local services, institutional uses and civic uses having regard to employment policies outlined in Chapter 3'.

Residential Density

Section 16.72 of the Cork City Development Plan 2015-2021, relating to Alterations to Existing Dwellings, is of relevance.

6.0 The Appeal

6.1. Grounds of Appeal

The First-party appeal is summarised under the following headings:

Appeal Against Condition Number 2 of the grant of permission

- Precedent in the surrounding area for similar extensions
- The single storey extension if constructed as conditioned with the ceiling height of 1790mm would leave the area of the development inhabitable with ventilation issues and more.
- The massing and position of the extension is appropriate.
- Extensive solar study undertaken shows no significant additional shadowing of properties of 23 and 25 Slieve Mish Park
- Both 24 and 25 Slieve Mish Park have the rear of their properties facing south, both enjoy the maximum amount of sunlight.
- The extension as constructed does not constitute a significant injury to the sunlight levels to the neighbouring properties.

6.2. Applicant Response

6.2.1. A response was submitted it is summarised as follows:

- There is precedent for similar height extensions in the area.
- The building is constructed in the shape of that submitted for planning originally.
- Acknowledges that mistakes were made in terms of the height of the single storey extension.
- Condition 2 could set a restrictive constraint on the height of development of rear extensions to all dwellings.
- The new single storey extension as constructed on No. 24 Slieve Mish does as expected cast shadows into the rear of 25 Slieve Mish for some time

thorough out the year. These shadows are typically cast in the evening when additional lighting is required for tasks anyway.

6.3. Planning Authority Response

- Response received. No further comments to make. It is noted.

6.4. Observations

An observation was received from John McCormick it is summarised as follows:

- Loss of residential amenity to no. 25 adjoining attached dwelling, as the result of unauthorised development.
- Overshadowing of no. 25
- The single storey extension adjacent to the boundary wall is 3.35 m in height and not 3m
- The single storey extension is excessively high
- The unauthorised development is dominating and overbearing
- Negative impact to living room window and original patio area of no. 25
- The height of the extension as stated is incorrect, it is undersized.
- The height of the boundary wall is incorrect, it is oversized.
- It has been stated that the shadow cast from the extension is only marginally higher than that cast by the boundary wall even though the extension is nearly 1.5m higher than this wall.
- The applicant elected to construct the unauthorised extension in the full knowledge that he was in breach of planning and had every opportunity to reverse and stop the works during all the processes which followed.
- Even after the appeal containing these statements had been lodged money was still being spent on completing the unauthorised extension.

7.0 Assessment

- 7.1.1. I have read through the file documentation, the relevant provisions of the County Development Plan and have carried out a site inspection. I highlight that the subject appeal is a first party appeal, solely, against the attachment of a condition. Given the foregoing and having regard to section 139 (1) of the Planning and Development Act, 2000, as amended, I consider that a 'de novo' consideration of the development is not warranted in this instance.
- 7.1.2. In my judgement the principle factors for consideration in this appeal relate to evaluation of Condition no. 2 which states:
- 7.1.3. 'The single storey element of the extension should be altered as follows:
- a. The height of the single storey extension should be reduced to correspond with the previously granted single storey element (2.45m)
 - b. The depth of this single storey element should be reduced to bring the rear wall of the single storey extension flush with the rear wall of the two storey extension.
 - c. Revised drawings shall be submitted to the planning authority within four weeks from the date of grant of this permission and these works shall be carried out within a period of six (6) months from the date of grant of this permission.
- Reason: In the interest of residential amenity
- 7.1.4. It is submitted by the first party that there was an error in the dimensions of the original submitted application, that the increase in height is required to comply with Building Regulations and that the extension would not have any material impact upon day light / sunlight to the neighbouring gardens at No. 23 or No. 25 Slieve Mish.
- 7.1.5. The planners report notes that there are discrepancies between the outline of the previous permission (indicated with a yellow line on the drawings) and that which was applied for under Reg. Ref.16/36852 for a part single storey part two storey extension to the existing dwelling. The planners report highlights that the previously approved planning application included a single storey element which was indicated as being 2.45m in height, 5.915m in depth and 0.975 m from the eastern site boundary. The current single storey element is approx. 3.2m in height (from ground level), 7.08 m in depth and directly abuts the eastern site boundary. The third party

argues that the height of the single storey extension adjacent to their boundary is closer to 3.5m. It is noted that the floor plan submitted indicates that the single storey element extends 2m from the rear wall of the two-storey element, however, in the side elevation and section submitted the single storey element appears to extend only 1.6m from the two storey element.

- 7.1.6. The planning authority have concern relating to the impact of the single storey element on the adjoining property given its height, length and proximity to the adjoining boundary wall. Condition number 2 of the grant of planning permission seeks to restrict the parapet height of a single storey extension to 2.45m above the ground level and reduce the depth of the single storey extension in the interest of residential amenity. In the planners report it states that the single storey extension would have a negative impact on the residential amenity of the adjacent property, would result in over shadowing of the adjacent property and, as a result of its scale and bulk would be visually obtrusive when viewed from the adjoining property.
- 7.1.7. From my site visit, see photographs attached, I too would have concern with regard to the depth and height of the single storey element, in particular given its proximity to the eastern boundary and the orientation of No. 24 (the subject property) to the west of no. 25 Slieve Mish. The applicant has not carried out the permitted development in accordance with the grant of planning permission Reg. Ref. 16/36852. I am aware that amending the completed development will involve considerable cost. However, the applicant has not adhered to the permitted development, the amendments carried out are material and negatively impact upon the residential amenity of the adjoining property at no. 25. I am of the opinion that the level of overshadowing and overbearing is unacceptable and would devalue the adjoining property and therefore that condition 2 should stand.
- 7.1.8. The applicant should not be rewarded for failure to carry out a permission in accordance with the approved plans and drawings.
- 7.1.9. Given the foregoing I recommend that Condition 2 remain unedited.

8.0 **RECOMMENDATION**

- 8.1. Having read the submissions on file, had due regard to the provisions of the Development Plan, carried out a site visit and all other matters arising. I recommend

that the planning authority be directed under section 139 (1) of the Planning and Development Act, 2000, as amended, to Retain Condition 2 in its entirety.

9.0 REASONS AND CONSIDERATIONS

Having regard to-

- (a) The Cork City Development Plan 2015 - 2021
- (b) Planning permission granted on foot of Reg. Ref. 16/36852
- (c) Height, scale, depth and proximity of the single storey extension to the eastern boundary with appellants property No. 25 Slieve Mish and material impact on the residential amenity in terms of overshadowing and overbearing.

The Board considered that Condition 2 should be retained.

10.0 CONDITIONS:

Condition 2

'The single storey element of the extension should be altered as follows:

- a. The height of the single storey extension should be reduced to correspond with the previously granted single storey element (2.45m)
- b. The depth of this single storey element should be reduced to bring the rear wall of the single storey extension flush with the rear wall of the two storey extension.
- c. Revised drawings shall be submitted to the planning authority within four weeks from the date of grant of this permission and these works shall be carried out within a period of six (6) months from the date of grant of this permission.

Reason: In the interest of residential amenity.

Fiona Fair

Planning Inspector

01.07.2019