



An
Bord
Pleanála

Inspector's Report

ABP-304376-19

Development	House
Location	10 Westgate Road, Curraheen Road, Bishopstown, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	19/38267
Applicant(s)	Patrick O'Donovan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Ballineaspaig Firgrove Westgate Residents Association Kevin Fitzgerald
Date of Site Inspection	25 th July, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 0.032 hectare site of the proposed development comprises the western side of the garden of No. 10 Westgate Road, Curraheen Road, Bishopstown in Cork City. No. 10 is a two-storey, semi-detached house with a side, front and rear garden. The garden space to the west side forms the proposed site. It is flanked by semi-detached houses.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a detached dwelling, a new entrance, off-road car parking, modifications to a site boundary and associated site works. The house would have a gross floor area of 123.9 square metres and would comprise a three bedroom, part single-storey / part two-storey house.
- 2.2. Details submitted with the application included a Design Report.

3.0 Planning Authority Decision

- 3.1. Decision

The Director of Services, in response to the Planner's report, submitted that there is sufficient space on the site for the development, the zoning is correct for the development, and the design of the house is consistent with the design of the area. He also stated that he is cognisant of the policies of the National Planning Framework, specifically National Policy 35 and concluded he was satisfied to grant permission.

On 16th April, 2019, Cork City Council decided to grant permission for the proposed development subject to 13 conditions.

- 3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The Planner noted the site's planning history, development plan provisions, reports received, and third party submissions made. It was considered that the proposal had been marginally redesigned over that previously refused permission. It was submitted that the proposal to insert a detached house between a pair of semi-detached houses would be out of character with the pattern of development in the vicinity and would set an undesirable precedent. A refusal of permission was recommended.

3.2.2. Other Technical Reports

The Environment Section had no objection to the proposal subject to conditions.

The Drainage Engineer had no objection to the proposal subject to conditions.

The Roads Engineer requested further information on sightlines and requested an auto track analysis.

A second Roads Engineer's report set out the development contribution that would be required.

3.3 Prescribed Bodies

Irish Water had no objection to the proposal.

3.4 Third Party Observations

Objections to the proposal were received from Kevin Fitzgerald, Eamonn Griffin, and Ballineaspaig Firgrove Westgate Residents Association. The grounds of the appeals and the observations reflect the range of concerns raised.

4.0 Planning History

P.A. Ref. 02/2600

An application for planning permission for a two-storey house was refused permission for one reason relating to the development being out of character with the pattern of development in the area and setting an undesirable precedent.

P.A. Ref. 17/37343

An application for planning permission for a two-storey house was refused permission for one reason relating to the proposal being out of character with the existing pattern of development and contravening development plan objectives in relation to single units in garden sites.

5.0 Policy and Context

5.1. Cork City Development Plan 2015-2021

Zoning

The site is zoned 'Z04 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."

Single Units Including Corner/Garden Sites

The planning authority is required to 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 with 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.

5.2. **Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3. **EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 **The Appeals**

6.1. **Grounds of Appeal by Ballineaspig Firgrove Westgate Residents Association**

The grounds of appeal may be synthesised as follows:

- The proposed house would be located in the garden of an existing semi-detached house. Both of the existing houses are used for student accommodation and the proposed house is for similar use. High density student accommodation in three houses on the site is an erosion of family life in residential areas around C.I.T. and U.C.C.
- The proposal is not even on a corner site.

6.2. **Grounds of Appeal by Kevin Fitzgerald**

The appellant resides at No. 8 Westgate Road. The grounds of appeal may be synthesised as follows:

- To inject a detached unit into the middle of a semi-detached development would without doubt have to be out of character with the existing pattern of development.

- The over-riding factor in the planning authority's decision was National Policy 35 of the National Planning Framework. National policies should not in themselves be used to over-ride all other relevant matters.
- The application did not meet the criteria identified at the pre-application consultation with the planning authority.
- The proposal, while slightly smaller in area to that refused under P.A. Ref. 02/26000, is larger than that refused under P.A. Ref. 17/37343 and the design allows for a future extension over the living room area.

The appellant provided further details on the context for the proposed development and the site's planning history, submitting that the proposal fails to counteract any of the previous grounds for refusing planning permission in the above referenced planning applications. A copy of the appellant's submission to the planning authority was also attached, which raised concerns relating to negative impact on the natural light entering his home, dampness occurring on the eastern side of his property, increase in noise levels, depreciation of property value, the proposal being out of character with the pattern of development in the area, and the adverse impact of student occupancy of No. 10 and the adjoining house. A critique of the Design Report submitted as part of the application is also provided.

6.3. Applicant Response

The response to the appeal by Ballineaspaig Firgrove Westgate Residents Association may be synopsised as follows:

- There is no basis to discriminate between groups of people who are in housing need. The neighbourhood is within walking distance of the city's two largest third level institutions.
- The comment about a corner site is unclear. The Planner and Director of Services have decided in favour of the zoning and policy application.
- If the Board finds it reasonable to discriminate against the use of the dwelling by students then the applicant would rather the Board grant permission with a condition that the dwelling be for single-family use only.

The response to the appeal by Kevin Fitzgerald may be summarised as follows:

- The adequacy of the separation distances and relationship with No. 8 have been determined to not be materially detrimental.
- There is no evidence to support a likely depreciation in property value.
- The applicant's existing houses have 5 bedrooms each and hold an average of six students each.
- The claim that the development is out of character has been refuted by the City Architect.
- The proposal is a desirable precedent and the establishment of a precedent that applies the National Planning Framework to overturn previously conservative local authority decisions is welcome.
- The existing two screening trees for retention are a site-specific factor which allows a decision that the trees mitigate any perceived detrimental visual intrusion of an infill detached house in the semi-detached context. The trees assist in successfully integrating the proposed development.
- The claim that the design is not compatible is rejected. A deviation in type is acceptable when the scale, building lines, general use, materials, and general shape are all compatible with the context.
- There is no basis to discriminate between groups of people who are in housing need. If the Board finds it reasonable to discriminate against the use of the dwelling by students then the applicant would rather the Board grant permission with a condition that the dwelling be for single-family use only.
- There is no evidence offered that referenced anti-social behaviour events occurred.
- The application of National Policy Objective 35 in granting permission is a correct application of the NPF.
- The housing use is in accordance with the zoning, the student use is compatible with this, the design is appropriate, and the scale/proximity to context is proportionate.

- The proposal is not out of character, the site is not prominent and is set back and screened from the Curraheen Road.
- The Design Report shows how the building line and eaves height are related to the two buildings either side.
- In the context of amenity, it has been determined that there is sufficiency of space for the proposal.
- Appendix 4 of the appeal is not relevant and has been superceded.

6.4. Planning Authority Response

The planning authority submitted that it had no further comments to make.

7.0 Assessment

7.1. Introduction

7.1.1 I consider that the principal planning issues relating to the proposed development are the policy context and the nature of the occupancy of the proposed development.

7.2 Policy Context

7.2.1 I note that the planning authority has relied upon National Policy Objective 35 of the National Planning Framework as part of its reasoning for deciding to grant permission for the proposed development. What is particularly notable is that there are specific provisions set out in the Cork City Development Plan 2015-2021 against which the development of single dwelling units in side gardens are required to be measured against when deciding on development of this nature and at no time in the determination of this planning application did the planning authority undertake such an assessment.

7.2.2 National Policy Objective 35 of the NPF is as follows:

“Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.”

One can hardly determine that the proposed development is an infill development ‘scheme’. I would suggest to the Board that this high level national policy provision should not be utilised as the key planning provision to promote a single house in a side garden and is not meant to be used in such a manner. It is my submission that the planning authority’s reliance on such a loose, unrelated national policy objective is at best misplaced.

7.2.3 In my opinion, there can be no doubt that the proposed development of a house in the side garden of No. 10 Westgate should most appropriately be measured against the local level plan provisions designed to assess developments of this nature and scale, namely the provisions under the heading “Single Units Including Corner/Garden Sites” clearly set out in the current Cork City Development Plan.

7.2.4 Under this section of the Plan, the planning authority is required to have regard to a number of specified criteria in assessing proposals for the development of single units. My considerations on these are as follows:

The Existing Character of the Area/Street

7.2.5 The proposal constitutes a detached, two-storey house that would be sited between a pair of semi-detached, two-storey houses. I acknowledge that there is a part two-storey/part single-storey commercial block fronting onto Westgate Road and Curraheen Road immediately east of the neighbouring pair of semi-detached houses. There is a dormer-type commercial unit on the opposite side of Curraheen Road and flat-roofed, two-storey houses west of this unit opposite the appeal site. To the west of the appeal site lies two pairs of semi-detached, two-storey houses. Immediately west of this lies detached, two-storey houses. There are semi-detached, two-storey houses north of the appeal site. It is my submission to the Board that there is a wide range of house types and other structures in the immediate vicinity of this site. There is no defined character to the area or street at this location to which

all structures adhere to. It is reasonable to conclude that the proposed detached, two-storey house would not conflict with the character of this area or street.

Compatibility of Design and Scale with the Adjoining Dwelling

7.2.6 The proposed development provides for a two-storey house that is reflective of the two-storey height of the dwellings which flank the appeal site, inclusive of the adjoining house which forms No. 10. The materials proposed for the finishes of the house are compatible with those of the adjoining houses. Fenestration detailing is also compatible with those of adjoining dwellings. The roof design would not be incongruous with the established form of adjoining dwellings. It is also noted that the building line proposed for the new house is appropriately set with due regard to the building lines of the flanking dwellings. Overall, it would be unreasonable to determine that the design and scale of the proposed house in this side garden would be inconsistent with the design and scale of the adjoining dwelling.

Impact on Residential Amenities

7.2.7 The proposed development is designed to meet the amenity provisions of the Cork City Development Plan for the occupants of the proposed house, while retaining adequate provisions for the occupants of No. 10. The proposed development provides for front and rear garden space and off-street car parking. The remaining area to the front and rear of No. 10 is adequate to meet the needs of the occupants of this existing house in terms of amenity space and parking provisions.

7.2.8 The proposed house has been designed to ensure that there would be no concerns relating to overlooking of neighbouring properties, with the western gable elevation facing the appellant Kevin Fitzgerald's house having solely toilet and bathroom windows at ground and first floor levels on this elevation. There are no concerns relating to any overshadowing of neighbouring properties having regard to the orientation of the site and layout and siting of the proposed development. The proposal could not be construed as having an overbearing impact on either of the houses flanking it, being reflective of the established scale of development and having regard to separation distances provided either side of the proposed

development. It is noted that the proposed development allows for adequate flank boundary provisions to separate the curtilage of the proposed house from that of No. 10 and to maintain over a metre between the western gable of the proposed house and the site's western flank boundary. There is no intrusion on the appellant's property and no reason to suggest that the proposed development would affect that house by way of reducing natural light entering it or causing dampness on its eastern side.

7.2.9 Overall, I conclude that the proposed development would not have any significant adverse impact on the amenities of residential properties.

Open Space Standards

7.2.10 The proposed development would provide approximately 93 square metres of private open space and would retain approximately 90 square metres of private open space for the existing house. The Development Plan minimum requirements for three bed detached and semi-detached houses is between 60 and 75 square metres. The proposed development meets with open space standards.

Provision of Adequate Car Parking and Safe Access and Egress

7.2.11 The proposed development provides ample curtilage to provide off-street parking to serve a three bedroom, detached house. The development provides for a recessed entrance similar to adjoining properties which open out onto Westgate Road prior to this estate road gaining access to Curraheen Road. The proposed development at this location, in making adequate off-street parking provisions and compatible access arrangements, would not likely cause any more notable traffic or parking concerns over that of established residential uses.

Landscaping and Boundary Treatment

7.2.12 The proposed development seeks to retain existing trees along the site's frontage such that this would aid in the screening of the proposed building. The setting back of the house as proposed and the front boundary arrangements, inclusive of siting of

the vehicular entrance, should ensure that such established features would be retained. There is ample scope to provide suitable fencing, planting, landscaping, etc. along the flanks and rear of this site. Such details could readily be agreed with the planning authority.

Trees and Gardens Contributing to Landscape Character

7.2.13 There are no trees and gardens at this location which specifically contribute to the landscape character of this site or the wider area. It is again noted that trees along the frontage are proposed to be retained to assist in screening the development.

7.2.14 Overall, I consider that one must reasonably conclude that the development proposed for a single dwelling unit in the side garden of No. 10 Westgate is compliant with the specific provisions set out in the Cork City Development Plan for a development of this nature.

7.3 Occupancy of the Proposed Development

7.3.1 It must be recognised that the Board is determining if a dwelling is appropriate on this site or not, having regard to the proper planning and sustainable development of this area. This site and adjoining land is zoned for residential purposes in the Cork City Development Plan. This zoning does not discriminate between occupation by families, single persons, students or any other persons or groupings.

7.3.2 From the third party submissions to the planning authority and the Board, it is apparent that the occupancy of the proposed development by students forms a key concern of the residents of the area. It is evident that students occupy the applicant's existing properties at this location. This location is reasonably accessible to both University College Cork and Cork Institute of Technology. While various incidents have been cited in submissions relating to the existing house, these form public order issues and matters to be addressed elsewhere and not under the planning code.

7.3.3 The applicant has suggested to the Board in response to the appeals that, if the Board finds it reasonable to discriminate against the use of the dwelling by students,

then the applicant would rather the Board grant permission with a condition that the dwelling be for single-family use only. I note again the zoning provision for this site and the content of the relevant provisions of the Cork City Development Plan. This provision does not discriminate against the nature of residential occupancy. I consider that it would be wholly inappropriate to seek to exclude one particular category of resident, i.e. students, from occupancy of any new house on this site when there are clearly no verifiable reasons for so doing.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons, considerations and conditions.

9.0 Reasons and Considerations

Having regard to the zoning provisions for the site as set out in the current Cork City Development Plan and to the design, character and layout of the development proposed, it is considered that the proposed dwelling would not adversely impact on the residential amenities of adjoining properties, would be acceptable in terms of visual impact and traffic safety, and would otherwise be in accordance with the provisions of the current Cork City Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out 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. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the of the proposed dwelling without a prior grant of planning permission.

Reason: In the interest of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

4. The site shall be landscaped in accordance with a comprehensive scheme of landscaping and boundary treatment, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

5. Water supply and 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.

6. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Kevin Moore
Senior Planning Inspector

29th July 2019