



An
Bord
Pleanála

Inspector's Report ABP 304393-19

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| Development | Retention of extension to rear of dwelling. |
| Location | 6 Sawmill Lane, Sawmill Street, Cork City |
| Planning Authority | Cork City Council |
| Planning Authority Reg. Ref. | 18/38102 |
| Applicant | Veronica O'Brien |
| Type of Application | Retention permission |
| Planning Authority Decision | Grant subject to conditions |
| Type of Appeal | 3 rd Party v. Grant |
| Appellants | Patrick & Eileen Corcoran |
| Observer(s) | None |
| Date of Site Inspection | 24/06/19 |
| Inspector | Pauline Fitzpatrick |

1.0 Site Location and Description

No.6 Sawmill Lane is an end of terrace dwelling accessed via a narrow laneway off Sawmill Street in Cork city centre. The general vicinity is a mix of residential and commercial properties with O'Shea's coal yard bounding the site to the west.

The dwelling to which a small extension has been erected is served by a small rear yard area, the boundaries of which are delineated by high walls to the west and south and by a recently constructed timber fence to the north. No.5 immediately to the north has been extended with high level service piping noted along the length of the extension.

2.0 Proposed Development

The application was lodged with the planning authority on the 22/10/18 with further plans and details submitted 20/03/19 following a request for further information dated 12/12/18.

The proposal is seeking permission to retain a single storey flat roofed extension with a stated floor area of 7.1 sq.m.

By way of further information land registry, site levels and drainage details were submitted.

3.0 Planning Authority Decision

3.1. Decision

Grant retention permission subject to 7 conditions including:

Condition 3: All drainage to be separated. All paved and roofed areas to discharge to the storm drainage system. All toilets, sinks, showers etc.to discharge to the foul drainage system.

Condition 4: Drainage shall be on separate systems connected at last manhole within the development.

Condition 5: All storm runoff to discharge to existing storm drains located within the site boundary. There shall be no new connection to the public sewerage.

Condition 6: Submission of flood risk assessment within 4 weeks of date of grant of permission.

Condition 7: Financial contribution

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Executive Planner's report dated 11/12/18 recommends a request for further information on the site boundary, legal rights of way in view of the previously shared rear back yards, details of previous and current finished floor levels of the rear yard and whether adequate surface water drainage has been provided on site. The 2nd report dated 10/04/19 following further information recommends a grant of permission subject to conditions.

The report from the Senior Executive Planner dated 10/04/19 endorses the recommendation. She notes that the additional condition recommended by the Drainage section in relation to flood risk was not requested prior to the request for further information. It is recommended that the details be sought within 4 weeks of the date of the decision. This is further endorsed by the Senior Planner.

3.2.2. Other Technical Reports

Drainage Section in a report dated 29/11/18 has no objection subject to conditions including drainage to be separated. A 2nd report dated 03/04/19 reiterates no objection. An additional condition seeking a flood risk assessment recommended.

Environment Section in a report dated 03/04/19 has no objection.

Roads Design in reports dated 11/12/18 & 02/04/19 has no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water in a letter dated 02/12/18 has no objection subject to conditions.

3.4. Third Party Observations

An objection to the application received by the planning authority is on file for the Board's information. The issues raised are comparable to those in the 3rd party appeal summarised in section 6 below.

4.0 Planning History

I am not aware of any previous planning applications on the site.

5.0 Policy Context

5.1. Development Plan

Cork City Development Plan 2015

The site is within an area zoned ZO 3 the objective for which is to reinforce the residential character of inner city residential neighbourhoods while supporting the provision and retention of local services and civic and institutional functions.

5.2. Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

The 3rd Party appellants own No.5 Sawmill Lane adjoining the appeal site. They have no objection to the extension. The grounds of appeal can be summarised as follows:

- It is unclear whether conditions 3, 4 and 5 attached to the decision will address the drainage problems arising. The manner in which the drainage pipework has been constructed is having and will continue to have a detrimental effect on their property.

- The new combined foul and surface water sewer line leaves the property and discharges via. No.6. The line has been connected into the old original pipe which was designed to take surface water from the rainwater shore in the yard. It is contended that the new foul sewer should not be connected here. It should be connected directly to the local foul manhole like other properties. Nos. 3, 4 and 5 all run their foul waste direct to the local manhole located to the rear of No.5. The waste then runs out to the manhole in O'Shea's coal stores and onto the public sewer.
- In view of the connection raw sewage is discharging into their rear yard. Necessary conditions should be added to address this. It is requested that the foul pipe be modified to connect to the newer sewer system and at an appropriate depth to give adequate pipe cover as it enters and traverses the adjoining yard.
- The new fence and vertical sewer pipe have blocked access to their rear yard area. Alterations to the pipe so that it turns 90 degrees horizontally at high level before dropping to ground level requested. Also, the newly constructed boundary fence to be modified to run inline from the corner of the new extension for a minimum distance of 1 metre before stepping out

6.2. Applicant Response

The submission by JWPM on behalf of the applicant, which is accompanied by supporting documentation, can be summarised as follows:

- The old stormwater pipe is situated at the back of 5 Sawmill Lane. All storm water from the 6 houses ran into this and out to Rutland Street through O'Shea's coal yard. This was altered with pipe works to the main sewer system prior to her purchasing the dwelling. The works carried out do not interfere with this system. There is a 4" wavin sewer pipe connecting her dwelling into this system in place since 2012. The new AJ is connected to this pipe.
- The old pipe work is still in place from the back of No.5 Sawmill Lane to the sewer box in O'Shea's coal yard with a new line from here connected to Rutland main sewer. There is a dip in the line in O'Shea's coal yard that is causing a backup and problems to all properties in Sawmill Lane.

- It is not the fault of the No.6 that the sewer backs up to all the houses.
- The appellants are not blocked from accessing their rear yard. They have a rear extension with a door in the side that goes onto her property. There is no right of way or access to their property. The door would have to be relocated to the rear.
- The garden wall and fencing will not be removed.

6.3. Planning Authority Response

No further comment.

6.4. Further Responses

The applicant's response to the grounds of appeal were circulated for comment by way of a section 131 notice.

6.4.1. Appellants' Response

- The newly constructed foul line has been connected by breaking into an old pipeline which was never intended or designed to act as a foul line. The original pipeline was constructed in a manner to only collect run-off rainwater from the yard surface only.
- The new foul line could easily have been connected to the existing manhole designed for this purpose. The introduction of foul waste into the surface water line adjacent to a rainwater shore is where the problem is occurring.
- The applicant was informed that the previous owner of the property had incorrectly connected his foul water into the old surface water line by the yard shore and, as a consequence, No.6 has been incorrectly discharging foul waste to the surface water line since 2012. The new owner has the responsibility to correct this and to connect to the foul network. The applicant was advised how to run his new foul waste line across the appellants' yard to tie correctly into the existing foul manhole similar to all other properties. This existing manhole takes foul waste directly from properties 3, 4 and 5. No.6 should also be connecting directly into the manhole.

- The line that had the dip in O'Shea's coal yard was replaced by the remedial works undertaken in 2012. This line is no longer the cause of a backup of sewerage in the line.
- The private sewer line is not the responsibility of Cork City Council.
- Only properties 3, 4 and 5 contributed to replace the section of defective dipped pipe in the private sewer line.
- The fence and pipework have been stepped out in a manner to essentially block access to their rear yard area. They have used the ground to come out of the rear side door and walk along the side of their extension and get access to the rear yard for over 54 years.
- They are seeking to formally establish their right of way.

6.4.2. Planning Authority has no further comment.

7.0 Assessment

The site subject of the appeal is within a small enclave of terraced dwellings accessed via a cul-de-sac lane off Sawmill Street in Cork City centre within an area zoned ZO 3, the objective for which is to reinforce the residential character of inner city residential neighbourhoods while supporting the provision and retention of local services and civic and institutional functions. Whilst an extension to the existing dwelling is acceptable in principle there is an obligation to reconcile the need to meet the requirements of the applicant seeking to maximise accommodation with the requirement that such works should not compromise the residential amenities of adjoining property.

No.6 is at the end of the terrace served by a small rear yard which backs onto O'Shea's commercial premises and yard to the west. The single storey flat roofed rear extension comprises a floor area of 7.1 sq.m and is modest in scale. It is setback from the shared boundary with No.5 to the north and has a depth comparable to the extension to the rear of No.5. There is no objection to the extension as constructed.

The issues arising concern the boundary treatment and drainage arrangements.

In terms of the former the applicant has constructed a low block wall with timber fencing over along the shared boundary with No. 6 to the north. I also note the high level service pipe arrangement which is replicated within No.5.

It would appear that historically that there was no boundary delineation between the properties and that the appellants crossed the applicant's site to access their rear yard from the door is the side elevation of their rear extension. They contend that such an access arrangement has been in place over 54 years.

The applicant has provided detail by way of land registry documentation to confirm that she has sufficient interest to erect the fence on the line as marked and that no right of way exists. In view of the constrained nature of the access available and the modest nature of the said fence I consider that it is acceptable and would not give rise to an adverse impact on the amenities currently enjoyed as to warrant a refusal of permission. Any further issue between the property owners and contention as to right of way would constitute civil matters best resolved through the appropriate channels. I recommend that the applicant be informed 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.

In term of drainage, the applicant in response to the grounds of appeal states that following the installation of a new AJ the situation as existing on the ground was replicated into which both storm and foul water discharge. The appellants contend that the works undertaken in 2012 which were funded by Nos. 3, 4 and 5 Sawmill Lane resulted in foul discharge being directed to the existing manhole on the main line. The then owner of No.6 chose not to be involved in the works and that the works undertaken by same incorrectly connected his foul waste into the old surface water line. It is asserted that the works on the appeal site entail a newly constructed combined foul and surface water line into an original line which was not originally designed to receive any foul or surface water and was most likely to serve the rainwater shore in close proximity. The problems with the current arrangement manifest themselves by the backup of raw effluent in the surface water shore and into the yard.

Whilst I note that the applicant in defence states that the works carried out replicate what prevailed on the site prior to the development there is sufficient evidence on file to support the appellants' assertion that the situation as prevailing has resulted in unsatisfactory consequences in terms of foul effluent back up in their yard. It appears that this could be satisfactorily addressed by a new sewer line connected into the existing foul manhole in the rear yard of No.5 similar to other properties and to which consent would be forthcoming. Whilst I note the applicant's assertion in terms of the status quo being maintained the extension for which permission to retain is being sought results in the extent of development on the constrained site being altered requiring the need to put in a new AJ. I consider that in the interests of public health a condition requiring a report by a suitability qualified person confirming that the optimum drainage connection arrangements have been put in place to be entirely reasonable and appropriate. I note that the sewer is private to which the City Council would have no obligation. Any further issue between the property owners would constitute a civil matter best resolved through the appropriate channels. Again, I recommend that the applicant be informed 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.

I note that the planning authority by way of condition 6 requires the submission of a site specific flood risk assessment due to the dwelling's location within Flood Zone A. As per section 5.28 of the Guidelines on the Planning System and Flood Risk Management the development subject of this appeal is unlikely to raise significant flooding issues but requires that a commensurate assessment of risk of flooding should be undertaken. On this basis the condition requirement is considered appropriate.

Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to 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.

8.0 Recommendation

Having regard to the foregoing I recommend that retention permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the existing zoning objective for the area which seeks to protect the residential character of inner city residential neighbourhoods, the pattern of development in the vicinity and the scale, nature and design of the extension to be retained, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the amenities of the area or of property in the vicinity and would not be prejudicial to public health. 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 retained in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 20th day of March, 2019, 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. 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. A report from a suitability qualified person confirming that satisfactory drainage connection arrangements have been carried out

shall be submitted to the planning authority within two months of the date of this order.

Reason: In the interest of public health.

3. A site specific flood risk assessment shall be submitted to and agreed in writing with the planning authority within two months of the date of this order.

Reason: In the interest of public health.

4. 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.

Pauline Fitzpatrick
Senior Planning Inspector

July, 2019