



An
Bord
Pleanála

Inspector's Report ABP-304401-19

Development	Two storey dwelling house to replace existing dwelling house remains and all necessary ancillary works
Location	Davis Street, Dungarvan County Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	18516
Applicant(s)	Raymond Lannen
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Collette O'Connell
Observer(s)	None.
Date of Site Inspection	27th September, 2019.
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on the western side of Davis Street in Dungarvan and comprises part of a larger site that incorporates No.3 Stephens Street immediately to the west. The site is located in what is primarily a residential area and is currently vacant.
- 1.2. The site was previously occupied by a dwelling of which all that remains are the stone boundary walls and gables / chimneys on the northern and western sides of the front part of the site. The front and rear parts of the site are separated by a wall with an archway in it. The site and existing boundaries including the remaining gables / chimney structures are heavily overgrown and clear views of the exact relationship with the adjoining properties are therefore difficult to obtain.
- 1.3. To the west, the site is bounded by the yard area to the rear of No.3 Stephens Street which is in the same ownership as the appeal site. To the north, the site adjoins residential properties at Nos.12 and 13 Stephens Street which are sited at right angle to the street. These properties are separated from the appeal site by a high wall of c. 2.5 metres in height and significantly higher where the remains of the chimney / gable from the original house remain. Similarly, to the south, the site is separated from the property by a wall that is in excess of 2 metres high and higher at the front of the site.
- 1.4. The layout of Davis Street is that the southern part of the street including the area in the vicinity of the appeal site is characterised by a narrow street width of approximately 5 metres with buildings fronting directly onto a narrow footpath with the road beyond that located at approximately the same level of the concrete footpath. To the immediate north of the appeal site the layout and character of the street changes significantly with relatively recent predominately two storey residential development with footpaths, some set back of the building line and a wider street.
- 1.5. The stated area of the site is 0.013 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a two storey house on the front (eastern) part of the site. The front building line of the house would be onto the street and the building would extend to the northern and southern boundaries of the site. The proposed development therefore involves the removal of the existing site boundary walls and ruined gables / chimneys that exist on site.
- 2.2. A patio and further area of open space is proposed to the rear of the house and access to this area is proposed to be via an enclosed passageway along the northern side of the building at ground floor level. The accommodation comprises a family room facing the street with kitchen / diner to the rear at ground floor level and three bedrooms and bathroom at first floor level. There are not proposed to be any windows in the side (north and south facing) elevations however the windows facing the street at first floor level serve bedrooms and are located such that the separation to the windows in the building opposite on Davis Street is only c.5 metres.
- 2.3. The development is proposed to be connected to the public water supply and drainage networks via new connections. No off street parking is proposed to serve the development.
- 2.4. The stated floor area of the proposed dwelling is 98.6 sq. metres.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a Notification of decision, the Planning Authority requested further information on the following issues:

- Clarification regarding ownership that enables development to be undertaken. Specifically relating to the impact of development on a shared boundary.
- Submission of additional elevation and section drawings.
- Submission of Irish Water pre connection enquiry.
- Request to consult with the area engineer regarding storm water.

- Invited to make application for section 97 certificate (social housing exemption).

The following is a summary of the responses / amendments contained in the response to further information:

- Solicitors letter submitted regarding legal interest stating that the applicant has sufficient interest to undertake the development.
- Additional drawings submitted,
- No pre connection enquiry response from Irish Water submitted,
- No consultation with area engineer undertaken,
- Application for social housing exemption submitted.

3.2. **Decision**

The Planning Authority issued a Notification of Decision to Grant Permission subject to 11 no. conditions. The following is an outline of what are considered to be the most notable of these conditions:

- Condition No.4 specifies that no development shall commence until such time as the developer has obtained a connection agreement from Irish Water.
- Condition No.5 requires that all surface water runoff shall be collected and disposed of within the site.
- Condition No.9 requires that all bathroom windows shall be fitted with obscure glazing.

3.3. **Planning Authority Reports**

3.3.1. Planning Reports

The initial report of the planning officer considers the principle of development acceptable and that there will not be a significant impact on residential amenity. Further drawings showing contiguous elevations and clarification regarding ownership and Irish Water consent are recommended to be requested. A second

report subsequent to the submission of further information recommends a grant of permission consistent with the notification of decision which issued.

3.3.2. Other Technical Reports

None on file.

3.4. **Third Party Observations**

Two submissions were received, as follows:

- That the previous dwelling on site was single storey and the replacement should also be single storey.
- The development would result in the loss of an existing stone wall that is a party boundary.
- Insufficient legal interest to undertake development.
- Overshadowing of adjoining property.
- Traffic congestion.
- Inadequate drawing to show existing scale and contextual elevations.

4.0 **Planning History**

There is no planning history relating to the appeal site referenced on the appeal file. The report of the Planning Officer does note a number of applications relating to Nos. 4 Davis Street and No.4 Stephen Street however these are not considered relevant to the subject assessment.

5.0 Policy Context

5.1. Development Plan

The applicable plan is the *Dungarvan Town Plan, 2012* as amended. This plan has been extended under s.11A of the *Planning and Development Act, 2000* due to the amalgamation of Waterford City and County Councils.

The appeal site is zoned '*Residential – Medium*' under the provisions of the plan and a new build or replacement dwelling is therefore a permissible use on lands so zoned. The site is located immediately to the west of lands that are zoned for Town Centre use with the eastern side of Davis Street being zoned Town Centre.

Section 4.7 of the plan relates to building re use and brownfield site development.

5.2. Natural Heritage Designations

The site is not located in or close to any European sites. The closest site is the Dungarvan Harbour SPA that is located c.400 metres to the east of the appeal site at the closest point.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party grounds of appeal:

- That the development cannot be constructed without the destruction of the gable walls on both sides of the site. The owner of the property to the south has not given consent to such demolition and the party wall contains a chimney.
- That the wall going west from the southern gable is a masonry wall and is shared with the appellant's property. No consent to works which would interfere or damage this structure.

- That no drawing submitted by the applicant indicates the side gables with their chimneys still intact following the development.
- That there is a bedroom window in No.3 Stephen Street to the west of the site that directly overlooks the site.
- That there is a low gable on the north boundary of the site.
- That there are two houses located immediately to the north of the site, (Nos. 13 and 14 Davis Court). The proposed development would block light from these properties. The existing height of gable from the ruined building has a very limited impact on light to these properties.
- That the proposed height is 9 metres when the original dwelling had a height of c.5 metres.
- That the road in the vicinity of the site is at the same level and the concrete footpath and the site fronts directly onto this surface. The development would open directly onto this surface that is used by both vehicular and pedestrian traffic.
- That the street narrows significantly from the appeal site south and there is a visible gable located on the northern part of the site. New development to the north has been set back from the original line (that on the appeal site) by c.3.85 metres and kerbed footpath provided in this area.
- The houses in Davis Court to the north of the appeal site have a minimum set back from the original road line of 2 metres. The Davis Mews apartment development on the eastern side of Davis Street has a set back of 3.6 metres from the original road edge.
- That Table 10.4 of the plan states that 150 sq. metres of open space is required for a detached house.
- That the restricted width of Davis Street in the vicinity of the site is such that there would be opposing first floor windows at a separation of 6.25 metres from No.4 Davis Street. The separation at the rear between the proposed development (first floor) and the rear of buildings on Stephen Street is only 11 metres. These first floor windows would also overlook the rear of the single

storey dwelling to the south west 'the mews' (the property of the third party appellant).

- That parking provision in the area is insufficient for the existing development and no additional parking is proposed with the development. No exemption for the payment of a contribution in lieu of car parking exists.
- Policy DM1 of the plan requires new development to comply with the relevant development management standards set out in Chapter 10. The proposed development does not meet a number of these standards including minimum separation between gables of 4 metres, separation between directly opposing first floor windows of 22 metres, open space standards set out in section 10.4 and the parking requirements set out at 10.9.
- That the development does not meet the requirements of Part M of the building regulations regarding level access and the room sizes do not appear to meet the requirements of Quality Housing for Sustainable Communities.

6.2. Applicant Response

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That the site is currently in a usable condition. It is noted that the building remains that are on site are in an unstable condition.
- That the gable remains on the site are not individual structures but were part of the original house and constructed as 'an integrated building unit'.
- It is the applicant's intention to put the site into use before it is placed on the derelict sites register.
- It is the intention of works that they would pre-empt any designation of the site by the local authority as a dangerous structure.
- That the proposed replacement of a house with a new house is low density and accords with the zoning of the site.
- That careful consideration was given to the design prior to making the application for permission. The development was designed in accordance

with the requirements of the Urban Design Manual and Quality Housing for Sustainable Communities.

- That the drawings that will be submitted prior to commencement that demonstrates compliance with the requirements of the building regulations.

6.3. **Planning Authority Response**

There is no record on file of a planning authority response to the appeal being received by the Board.

7.0 **Assessment**

7.1. The following are considered to be the main issues in the assessment of the appeal:

- Principle of Development and Legal Issues
- Impact on Residential and Visual Amenity
- Drainage and Site Servicing
- Other Issues
- Appropriate Assessment

7.2. **Principle of Development and Legal Issues**

7.2.1. The appeal site is located on lands that are zoned 'Residential – Medium' under the provisions of the plan and a new build or replacement dwelling is therefore a permissible use on lands so zoned. The site is located immediately to the west of lands that are zoned for Town Centre use, with the eastern side of Davis Street being zoned Town Centre. The site was previously in residential use with a single storey cottage on the site and there is no objection to the principle of a replacement residential use. The proposed use is consistent with the zoning matrix in the plan.

- 7.2.2. Section 4.7 of the plan relates to building re use and brownfield site development and it is stated that the council *will ‘...encourage the utilisation and redevelopment of vacant and obsolete sites by developers where possible in a sustainable manner in preference to green field development’*. The proposed development, comprising the re development of a currently vacant site, is in my opinion consistent with this provision of the development plan.
- 7.2.3. One of the main reasons for the third party objection to the proposed development relates to legal title and whether the first party has sufficient legal interest in the site to enable the development to be undertaken. Specifically, the third party note the existing gable to the ruined cottage which forms part of the southern boundary of the site and the boundary wall that extends west from this gable. It is contended that these structures are shared with adjoining sites, that it is not feasible to construct the proposed development without the removal of these shared boundary features and that no consent to their removal is provided.
- 7.2.4. In response to a request for further information issued by the Planning Authority, the first party submitted a solicitors letter indicating that they are the full owner of both No.3 Stephen Street and No.26 Davis Street (appeal site) and attaching a map indicating ownership which includes both of these properties. The submitted information does not include land registry documents. From an inspection on site I note that the gable areas in question were clearly connected with the previous house on the appeal site however it is not clearly evident that they were shared with adjoining properties. It is difficult to be conclusive on this issue however, given that adjoining sites no longer have development contiguous to the appeal site and the fact that both gables, as well as significant parts of the site boundaries, are heavily overgrown and therefore not clearly visible. On the basis of the information presented by the parties to the appeal I do not consider that there is sufficient basis to refuse permission on the basis that the applicant has insufficient legal interest to undertake development and I note the fact that a grant of permission does not entitle the first party to undertake development that involves works outside their ownership or control.

7.3. **Layout and Impact on Residential and Visual Amenity**

- 7.3.1. The proposed development incorporates development up to the eastern site boundary which is the existing building line. The appellants make the case that all development that has occurred on Davis Street to the north of the appeal site has been the subject of an increased set back and provision of widened footpath and provision for on street parking. From an inspection of the area, it would appear that the change in building line to the north was feasible due to the comprehensive re development which occurred in this area. In the case of the appeal site, the potential for the widening of the southern end of Davis Street from the site to its junction with O Connell Street is compromised by the layout of existing buildings including that opposite the appeal site and at the southern end of the street in the vicinity of the junction with O'Connell Street.
- 7.3.2. The basic design and form of development proposed is in my opinion acceptable with no windows in the north or south facing gable elevations. To the east, the first floor windows would be close to the building opposite which is currently under renovation and appears to be in residential use however I do not consider that the distance is such as to lead to a significant loss of residential amenity or be unacceptable in a town centre environment. Similarly, to the rear (west facing) elevation, the separation distance to the rear site boundary is proposed to vary between c.7.7 and 9.7 metres and that to the property to the rear at No.3 Stephen Street between c.15.5 and 17.5 metres. These separation distances are in my opinion acceptable given the town centre context of the site and the existing proximity of buildings.
- 7.3.3. I note the specific concerns relating to overlooking expressed by the residents of No.4 Stephen Street to the north west of the appeal site and 'The Mews' Stephen Street to the south west. In the case of No.4, the stepped line of the rear elevation of the proposed house would in my opinion prevent overlooking in this direction from the first floor bedroom window. In the case of 'The Mews' on Stephen Street, I do not see that the proposed development would have a negative impact on the residential amenity of this property by virtue of overlooking or visual intrusion.
- 7.3.4. The third party appeal submission contends that the proposed development would also have a potential impact on the properties to the north at Nos.12 and 13,

particularly in terms of overshadowing and increased scale / visual intrusion. Given their relative positions with the proposed development south of these properties and the increased height of the gable proposed in the development relative to those existing on site, some loss of light to the south facing elevations of Nos. 12 and 13 is likely, however it is not considered to be such as to justify refusal of permission particularly given the previous development on the appeal site and its infill nature within a town centre location.

- 7.3.5. The layout of the proposed residential unit indicates an area of private amenity space to the rear of the building line of c.65 sq. metres. This is below the standard of c.90-100 sq. metres specified in section 10.4 of the Dungarvan Town development Plan, 2012 however it is in my opinion appropriate for a three bedroom house in a town centre infill location. Reference is made in the third party appeal to the development not being in accordance with the Building Regulations, particularly with regard to level access, and that the layout is not consistent with the requirements of Quality Housing for Sustainable Communities. No specific details are provided by the third party appellants on these issues and it is not apparent to me how the proposal is not compliant with either the building regulations or national housing policy.

7.4. Drainage and Site Servicing

- 7.4.1. As part of the request for further information issued by the Planning Authority, the applicant was requested to submit evidence of a pre connection enquiry to Irish water that confirms that there is capacity to cater for and connect the proposed development to the networks. In response what the first party submitted is a copy of the pre connection enquiry and not any response from Irish Water. It is not therefore clear what the position is regarding water and drainage connections, however I note that the Planning Officer notes in his report that the principle of the proposal was discussed with the Water Services Section of the council who had no objection to the principle of a connection. It is therefore considered appropriate that permission would be granted subject to a condition requiring no development to be undertaken until a connection agreement has been obtained from Irish Water.

7.4.2. The request for further information also sought that the applicant would consult with the district engineer regarding the disposal of storm water on the site. It would appear that no such consultations were undertaken and the application form indicates that storm water would be disposed of to the public sewer / drain. It is not clear if this is acceptable to the Planning Authority however, given the scale of the site alternative disposal of surface water on site may be feasible. It is considered appropriate that permission would be granted subject to a condition requiring the disposal of surface water to be agreed with the Planning Authority prior to commencement of development.

7.5. Other Issues

7.5.1. It is noted that the development does not incorporate any off street parking and that no parking provision off site is proposed to be provided. As noted by the third party appellant, the Notification of Decision to Grant Permission issued does not include any reference to car parking or the payment of a financial contribution in lieu of parking provision. The report of the Planning Officer (report 2 dated 8th April, 2019) includes a handwritten comment that a contribution in lieu of parking is not warranted as the proposal is for a replacement dwelling. The scale of the proposed development is such that the relevant parking provision as per Table 10.4 of Chapter 10 of the Dungarvan Town Plan is the provision of a minimum of 2 no. parking spaces within the curtilage of each dwelling house. Notwithstanding the fact that the proposal is for a replacement dwelling on the site, given the maximisation of the site for new development it is in my opinion appropriate that the first party be required to make a financial contribution in lieu of the provision of on site parking which would enable the improvement of parking within the town. In this regard, I note that provision for the payment of such a contribution at a rate of €2,100 per space is provided for under Paragraph 6(c) of the Waterford City and County Council Development Contribution Scheme, 2015-2021. In the event of a grant of permission it is recommended that payment in lieu of 2 no. parking spaces would be required by way of condition. In accordance with the application of section 8 of the adopted contribution scheme by the Planning Authority in the Notification of Decision to Grant Permission, a 50% reduction in the contribution is applicable on the basis that the proposal relates to an infill or gap site. In the attached schedule of

conditions I have therefore increased the contribution sought by the council by an additional €2,100.

- 7.5.2. It is noted that the site is located on lands that are zoned for development and that the provisions of Part V of the Planning and Development Acts may therefore be applicable as the first party owns contiguous lands. The report of the Planning Officer notes that this issue was assessed and that a s.97 certificate was issued (social housing exemption).

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions:

9.0 **Reasons and Considerations**

Having regard to the residential zoning objective for the area, the urban infill nature of the site and pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the residential or visual amenities of the area or 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 carried out in accordance with the plans and particulars lodged with the application and received by the planning authority on the 13th of July 2018 as amended by the revised plans and particulars received by the Planning Authority on 19th March, 2019, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. 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.

3. 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 orderly development.

4. The applicant or developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development. No further development shall be undertaken on site until such time as these agreements are in place and copies of same submitted to the Planning Authority.

Reason: In the interest of public health.

5. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

6. The developer shall pay to the planning authority a financial contribution of €3,600 (three thousand six hundred euro) 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. The application of any indexation required by this condition 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.

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.

Stephen Kay
Planning Inspector

14th October, 2019

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Planning Inspector

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