



An
Bord
Pleanála

Inspector's Report ABP-304451-19

Development	Partial demolition of existing dwelling, construction of extensions including a rear balcony, refurbishment of existing house, new retaining walls, upgraded vehicular entrance and all associated site works.
Location	Mini Manor, The Ramparts, Town-plots, Kinsale, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/6956
Applicant(s)	Seamus and Sharon Palmer.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v. Grant
Appellant(s)	David and Angela Doyle.
Observer(s)	None
Date of Site Inspection	29 th July 2019
Inspector	Elaine Power

1.0 Site Location and Description

- 1.1. The subject site is located on 'The Ramparts' at the edge of the town centre of Kinsale. 'The Ramparts' is a residential street with a variety of house styles.
- 1.2. The subject site has a stated area of 327sqm and currently accommodates a two-storey house. Due to the level difference on site the front elevation of the house presents as a single storey and the rear elevation presents as two-storey. There are external steps from the side of the house, at ground floor level to the lower level.
- 1.3. There is an elevational difference of approx. 14m between the subject site and the site located to the east (rear) of the site and a level difference of approx. 2m with the adjoining site to the north (side). The site is level with the public road to the west (front) and the adjoining property to the south (side). The rear garden has extensive views over Kinsale Harbour.
- 1.4. Access to the site is from 'The Ramparts' and off street car parking is provided for 2 no. cars.

2.0 Proposed Development

- 2.1. It is proposed to demolish a substantial part of the existing house, (approx. 48.2sqm). and construct a new two-storey extension with a gross floor area of 249sqm, in this regard 99sqm at ground floor level and 150sqm at lower ground floor level. The western section of the house which abuts 'The Ramparts' would be retained. It is also proposed to refurbish and alter the existing house. The revised two-storey house would have an overall gross floor area of 292sqm.
- 2.2. The proposed extension is contemporary in design with large windows and a flat roof. It has a maximum height of approx. 7.2m from the garden level and approx. 6.2m from the existing lower ground floor level. The extension has a maximum width of approx. 13m and sits at the boundary walls with both adjoining neighbours to the north and south. It is located a minimum of approx. 6m from the rear (eastern) boundary wall. Steps are provided from the rear garden to the ground floor level.

2.3. The existing vehicular and pedestrian gates from 'The Ramparts' would be retained and upgraded with no alteration to the existing 2 no. off street car parking spaces.

2.4. ***Further Information lodged 28th March 2019***

A revised proposal was submitted by way of further information which resulted in minor amendments to the extension. In this regard the extension was relocated away from the northern boundary by approx. 1m, and partly away from the southern boundary by approx.0.2m. The overall depth of the extension was reduced by approx.1.2m and height of the extension reduced by approx. 0.3m.

A report entitled 'stability and ability of ground conditions and existing retaining walls' was submitted.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 8 no. standard conditions.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The initial Area Planners report raised concerns regarding the proposed development and recommended that further information be sought regarding the following: -

- Address concerns regarding the scale and bulk of the proposed extension.
- A shadow study is required to fully assess the proposal. The study shall accurately indicate the location of windows on adjoining properties.
- To lessen the visual impact of the retaining wall on the northern boundary, its height shall be reduced. Consent of the adjoining land owner or sufficient legal interest in the land shall be submitted.
- Address concerns regarding structural stability of the site.

- Details of connection to services through adjoining property, to the rear (east) on Lower O'Connell Street.

3.2.2. **Other Technical Reports**

Area Engineers Report: No objection in principle.

Archaeologist's Report: The site is located within a zone of Archaeological Potential. No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water: No objection.

3.4. **Third Party Observations**

A submission was received from David and Angela Doyle, whose property is located to the north of the subject site. The concerns raised in the submission are similar to those in the third-party appeal submission.

4.0 **Planning History**

Subject Site

None

Adjoining Sites

ABP 302817-18, Reg. Ref. 18/6043: Permission was refused in 2018 for the demolition of an existing house and shed and the construction of 1 no. house and 5 no. apartments on a site located to the east (rear) of the subject site and fronting onto Lower O'Connell Street.

5.0 Policy Context

5.1. Kinsale Town Development Plan, 2009-2015 (as extended)

The subject site is located in an area zoned 'Established Residential' with the associated land use objective *to protect, preserve, enhance and develop existing residential areas, to support appropriate infill residential development, to provide new and improved ancillary community, social and recreational facilities*. It is also located within an Architectural Conservation Area with following objectives: -

1. *To conserve, restore and rehabilitate the existing building stock in the area.*
2. *To ensure that all proposed developments are carried out in a manner sympathetic to the special character of the area.*
3. *To ensure a high standard of urban design within Architectural Conservation Areas.*

Policy ERR1 which relates to an extension to or refurbishment of a residential dwelling and Chapter 7 – Development Management and Land Use Standards are considered to be relevant.

'The Ramparts' is a designated Amenity Walk and the site is located within a zone of Archaeological Potential.

5.2. Cork County Development Plan, 2014

Policy Objective HE 4-5 of the Plan relates to developments in Architectural Conservation Areas.

Making Places: A design guide for residential estate development, 2011 is also considered relevant.

5.3. Natural Heritage Designations

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

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal was received from David and Angela Doyle. The issues raised are summarised below: -

- There is a level difference between the subject site and the appellants, which is located to the north. Therefore, the proposed height of the extension would have a disproportionate impact on the adjoining property and garden and would result in significant overshadowing. The shadow analysis submitted by way of further information was insufficient and unclear.
- The proposed extension is excessive. The revised proposal is similar to the original and does not address concerns raised by the third party and the initial Area Planners report.
- Additional windows were provided on the revised layout. These windows would result in undue overlooking of adjoining properties.
- Legal issues and structural concerns are raised regarding works to the boundary wall.
- Impact of construction traffic on the public road and on the ACA.
- There are scenic views towards the site and 'The Ramparts' is a designated Amenity Walk. The impact of the development on these designations has not been addressed by the Planning Authority.
- There are no services available to the site as permission was refused by An Bord Pleanála for a development on the adjoining site (ABP 302817-18).

6.2. Applicant Response

The applicant's response is summarised below: -

- The applicants have clarified that they recently (2016) bought the property and have consulted with the adjoining landowners regarding the proposed development.
- The shadow analysis is clear and to scale. Due to the topography of the appellants site, it is already overshadowed. The proposed extension would not impact on any habitable windows.
- The extension would not result in overlooking of the appellants site. The proposal would actually remove an existing window and balcony at ground floor level, which currently overlooks the appellants site. In addition, a 2.6m high screen is proposed along the northern boundary.
- The proposal is in compliance with the objectives of the ACA to rehabilitate the existing housing stock. The western elevation onto 'The Ramparts' is retained. The proposed development would not have a negative impact on the ACA.
- The scale of the development is not out of character with the area. Permission was refused for 6no. residential units (ABP 302817-18) on an adjoining site. This recent refusal is not comparable to the proposed development.
- The high-quality design would not result in a negative impact on the existing residential or visual amenities of the area.
- The site is located within an serviced urban area. Having regard to the relatively minor scale of the development it would not generate significant levels of construction traffic or cause disruption.
- A structural report was submitted by way of further information. The proposed development would not impact on the structural integrity of the existing boundary walls.
- All works would be carried out on lands in the ownership of the applicants.

6.3. **Planning Authority Response**

The Area Planner clarified that the Conservation Officer did not provide a report or an opinion on the proposed development.

7.0 **Assessment**

7.1. As indicated the appeal refers to the layout and design of the extension as submitted by further information on the 28th March 2019. The main concerns in this appeal relate to the grounds of the appeal. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Residential Amenity
- Visual Impact
- Construction Phase
- Legal Issues
- Appropriate Assessment

7.2. ***Residential Amenities***

7.2.1. The existing two-storey house has a gross floor area of approx. 126sqm. It is proposed to demolish a substantial portion of the existing house (approx. 48.2sqm) and construct a two-storey extension. The extension, as submitted by way of further information, is generally rectangular in shape with a gross floor area of approx. 206sqm. It accommodates an open plan kitchen / living / dining room at ground floor level with a balcony along the entire eastern (rear) elevation. At lower ground floor level, the extension accommodates 2 no. bedrooms with en-suites. The proposed ground floor level projects approx. 12.3m (including proposed balcony) beyond the existing rear building line and the proposed lower ground floor level projects approx. 7m beyond the existing rear building line.

- 7.2.2. The proposed extension has a flat roof with a maximum height of approx. 6m. Due to the level differences the height of the extension is approx. 7m above the sites garden level and approx. 8.8m above the garden level of the adjoining property to the north. The site is generally level is the adjoining neighbour to the south and approx. 14m above the adjoining site to the east (rear).
- 7.2.3. Concerns were raised in the appeal that due to the scale and bulk of the proposed extension, and the level differences between the site and adjoining properties, it would negatively impact on existing residential amenities in terms of overlooking, overshadowing and would result in an overbearing impact.

Overbearing

- 7.2.4. The extension is located approx. 1m from the northern boundary with the appellants site, a maximum of 0.2m from the southern boundary and a minimum of approx. 6m from the eastern (rear) boundary wall. It is proposed to provide external stairs from the garden level to the ground floor level. The stairs sit at the northern boundary of the rear garden. A louvre is proposed along the stairs at the northern boundary and along the southern boundary.
- 7.2.5. The subject site is bound to the north, south and east by residential properties. A 3-storey house with a similar ridge height of the proposed extension, is located approx. 10m to the north of the site. A 2-storey house, with a similar ridge height to the extension, is located approx. 5m to the south of the site. There is a 2-storey house located approx. 18m east (rear) of the proposed extension. The site to the east is approx. 14m lower than the subject site.
- 7.2.6. Having regard to the proximity of the extension to the boundary walls, its height in the context of the adjoining sites and in my view, the excessive depth of the ground floor level, I would have serious concerns that the proposed development would result in an overbearing impact on adjoining properties, in particular on the adjoining property to the north.

Overlooking

- 7.2.7. With regard to concerns raised regarding overlooking it is noted that there are no windows proposed on the northern elevation. The revised scheme provides 3 no. windows along the southern elevation, 2 no. windows serve bathrooms and 1 no. window serves a bedroom. Drawing no. P.25 submitted by way of further information shows the provision of a retaining wall along the southern boundary. However, the retaining wall has windows, which would undermine the integrity of the proposed retaining wall. The proposed bedroom window is located a maximum of 0.3m from the southern boundary and partly at the boundary. If a retaining wall is proposed I would have serious concerns regarding access to natural light for the bedroom. If windows are proposed I would have serious concerns regarding overlooking of the adjoining property to the south. It is considered that the bathroom windows could be omitted by way of condition.
- 7.2.8. The layout provides for a large balcony at ground floor level. The balcony is located approx. 6m from the rear boundary wall. There is a level difference of approx. 14m between the proposed rear balcony at ground floor level and the adjoining site to the east (rear) of the property. Having regard to the proximity of the balcony to the rear boundary wall and the level difference between the two sites I would have serious concerns regarding the potential for undue overlooking. It is noted that louvres have been provided along the northern and southern boundaries to reduce the impact of overlooking from the balcony on adjoining properties.

Overshadowing

- 7.2.9. Concerns were raised in the appeal regarding the potential overshadowing of adjoining sites. The Planning Authority also raised concerns of overshadowing of the adjoining property to the north of the subject site. A sun study and associated Drawing no. P34 were submitted by way of further information which indicates the impact the proposed development would have in terms of overshadowing.
- 7.2.10. The information submitted indicates that the proposed development would not result in undue overshadowing. Having regard to the orientation of the site and the distance from adjoining properties it is my opinion that the proposed development would not result in undue overshadowing of adjoining properties.

Conclusion

7.2.11. In conclusion, having regard to the sites location within the settlement boundary of Kinsale and the pattern of development in the area, it is my view that an appropriately designed, high quality extension could be accommodated at the subject site, however having regard to the bulk and scale, and in particular the excessive depth, of the proposed extension it is considered that it would result in an overbearing impact and would unduly overlook adjoining properties. It is recommended that permission be refused on this basis.

7.3. ***Visual Impact***

7.3.1. Concerns were raised in the appeal that the proposed development would negatively impact on the ACA and on scenic views towards the site. The subject site is located within an ACA and 'The Ramparts' is a designated Amenity Walk. The subject site is not located on any scenic views as set out in the development plan.

7.3.2. The site boundary with 'The Ramparts' comprises the western elevation of the house and a vehicular and pedestrian gate. The proposed development would not have a significant impact on the existing western boundary treatment. It is considered that having regard to the size and height of the proposed extension it would be visible from the public road. However, in my view it would not negatively impact on the ACA or on the Amenity Walk.

7.4. ***Construction Phase***

7.4.1. Having regard to the level differences on site and with adjoining sites, the appellants raised concerns regarding the structural stability of the northern boundary wall. In my opinion, the structural adequacy of the wall and its foundations are not matters that would be appropriate for the Board to adjudicate on. It is considered that the onus is on the applicants and their contractors, to ensure that the construction phase is undertaken in a safe manner, in accordance with their obligations under separate codes, and I further note that the granting of permission would not relieve the applicants of their responsibilities in this regard. It should be noted that under section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development.

7.4.2. In conclusion, I consider that the disputes between the parties in relation to matters of structural integrity, construction methods and resultant health and safety risks that may or may not arise are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

7.4.3. Concerns have also been raised in the appeal regarding the negative impact that construction traffic would have on the ACA. Having regard to the limited scale of the development, which is located in an urban area, it is my view that the proposed development would not generate significant number of vehicular movements during the construction phase to have a negative impact on the surrounding road network or on the ACA.

7.5. ***Legal Issues***

7.5.1. Concerns were also raised in the appeal that the applicant does not have the consent of the appellants to alter the boundary wall between the two sites. In response the applicant has stated that the proposed design and layout of the development, as submitted by way of further information, does not require any alterations to the boundary wall. 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'.

7.6. ***Appropriate Assessment***

7.6.1. Having regard to the nature and small scale of the proposed development within a serviced urban area 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.

8.0 Recommendation

It is recommended that permission be refused for the reasons stated in the attached schedule.

9.0 Reasons and Considerations

1. Having regard to the pattern of development in the area and the significant level differences both within the subject site and with adjoining sites, it is considered that the proposed extension, by reason of its scale, bulk and proximity to site boundaries, would seriously injure the residential amenities and depreciate the value of adjoining properties by reason of overlooking and overbearing impact. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Elaine Power
Planning Inspector

20th August 2019