



An
Bord
Pleanála

Inspector's Report ABP-306714-20

Development	25 student apartments
Location	Victoria Cross Road, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	19/38385
Applicant(s)	Kevin Lynch
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First & Third Party
Appellant(s)	Colette & Nonnie Eames Kevin Lynch
Date of Site Inspection	19 th May, 2020
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 0.1413 hectare site comprises the former Kelleher's Tyre service centre on the east side of Victoria Cross Road approximately 2.5km west of Cork city centre. There is a former industrial workshop and its associated yard area on the site. The site has access onto Victoria Cross Road and there is a secondary access to the south leading to Ashbrook apartment complex. The Glasheen River adjoins the eastern boundary of the site. Adjoining development comprises a four storey HSE building to the south and a two-storey car showroom to the north. Detached houses are located to the east of the Glasheen River on Orchard Road behind the site. Development on the opposite side of Victoria Cross Road includes blocks of up to four and five storeys over street level.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a residential development of 25 student apartments consisting of 154 bed spaces and all ancillary site works. The development would include the demolition of the existing commercial building on the site and the construction of an eight storey block. The apartment block would provide 4 no. four bedroom apartments, 3 no. five bedroom apartments, 8 no. six bedroom apartments, 5 no. seven bedroom apartments, and 5 no. eight bedroom apartments. The development would also include a common room and office reception, plant/service rooms, a bin storage area, laundry facility, bicycle storage, a rear vehicle service entrance, shared garden areas, a rooftop terrace, and a riverside amenity area. The gross floor area of the new development would be 4,239 square metres.
- 2.2. The proposed development would constitute an alteration to a development permitted by Cork City Council under P.A. Ref. 18/37795 to include an additional 5 student apartments to an original proposal for 20 apartments, increasing the number of permitted apartments from 18 to 25. This would result in an increase in the number of bedrooms from 114 to 154. This would be achieved by increasing the building in height from five storeys plus one set back storey to eight storeys, with the upper two storeys set back.

2.3. Details submitted with the application included a Design Statement, a Planning Statement, an Infrastructure Report, a Flood Risk Assessment, and a Visual Impact Assessment.

3.0 Planning Authority Decision

3.1. Decision

On 5th February 2020, Cork City Council decided to grant permission for the proposed development subject to 15 conditions.

Condition 2 of the Decision was as follows:

2. *Prior to the commencement of development revised drawings shall be submitted to and agreed in writing with the Planning Authority which show the omission of the top two set back floors – i.e. the sixth and seventh floors as shown on Drawing 17040_A10-02 submitted to the Planning Authority on 09.05.2019. This will result in the omission of 4 apartments and 18 bed spaces from the development.*

Reason: *In the interests of the visual and residential amenities of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history, planning policy and guidance, reports received and third party submissions. It was considered that the proposed density and plot ratio were excessively high and amenity space was found to be inadequate. It was further considered that at least the top two floors should be omitted and possibly the fifth floor. A request for further information was recommended relating to the omission of at least the top two floors and an increase in the roof garden area, a revised visual impact assessment, site sections, compliance with the Urban Development and Building Heights Guidelines, a daylight/sunlight and overshadowing study, landscape drawings and plans, clarity on the proposed 'amenity/technical' areas, revisions to the layout at the proposed riverside walkway,

an updated Draft Student Accommodation Management Plan, and the details requested by the Transport Engineer.

3.2.2. Other Technical Reports

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

A Second Environment Section report sought further information in the form of landscaping proposals.

The Water Services Section set out water requirements to be met.

An Internal Consultant's Report, appearing to relate to ecology, stated there was no objection to the proposal and set out a schedule of conditions.

The Drainage Engineer had no objection to the proposal subject to the attachment of a condition.

The Transport Engineer sought further information relating to a Road Safety Audit, bicycle spaces, a construction management plan, street lighting, and access.

The Roads Design Engineer had no objection to the proposal subject to a schedule of conditions.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

3.4. Third Party Observations

An objection to the proposal was received from C. and N. Eames raising concerns relating to the design, impact on residential and visual amenity, drainage, and traffic. A further submission was received from Gerald Lyons raising concerns relating to impact on residential amenity, visual impact, and building height.

A request for further information was sought on 3rd July 2019 and a response was received from the applicant on 3rd October 2019.

A further third party submission was made in response to the further information from C. and N. Eames and this reiterated the concerns previously raised.

The reports to the planning authority following the receipt of further information were as follows:

The Transport Engineer requested clarification on the Road Safety Audit, the construction management plan, and entrance details.

The Environment Section had no objection to the proposal.

The Roads Design Engineer had no objection to the proposal subject to the attachment of a condition.

The Planner considered that clarification should be sought on proposed amenity space, photomontages, sections, overshadowing, the riverside walkway layout, and the issues raised by the Transport Engineer.

A request for clarification was sought on 6th November 2019 and a response to the request was received on 20th December 2019.

The reports to the planning authority were as follows:

The Roads Design Engineer had no objection to the proposal subject to a schedule of conditions.

The Transport Engineer had no objection to the proposal subject to a schedule of conditions.

The Environment Section had no objection to the proposal.

The Planner noted the clarification received. The amenity space provision was considered to be acceptable in quantitative terms. Having regard to the submitted photomontages, it was considered that the 8 storey structure would be excessively high and visually overbearing on surrounding properties, including Ashbrook apartments and houses on Orchard Road. The increase in height of one full floor over that previously permitted was considered acceptable in visual terms. In terms of overshadowing, the impacts on surrounding residential development were seen as acceptable, having regard to the limited times of day/year when impact occurs. A

recommendation to grant permission, with the omission of the proposed two top floors, was recommended.

4.0 Planning History

ABP Ref. PL 28. 202776 (P.A. 03/26860)

Permission was sought for a five-storey building consisting of 17 student apartments. The Board granted permission for the development. Condition 1 required the omission of two apartments on the fourth floor and all of the apartments from the third floor. This resulted in a part three storey / part four storey block.

ABP Ref. PL 28.215123 (P.A. Ref. 05/29844)

Permission was sought for a commercial unit and 25 apartments in a seven-storey development. The Board granted permission for a five-storey building,

ABP Ref. PL 028.223713 (P.A. 06/31044)

Permission was sought for a mixed development of 77 apartments and 5 houses in a scheme ranging from 2-5 storeys, with a basement car park. The site included lands to the north of the current appeal site. The Board granted permission for 70 units. The structure was five-storeys in height to Victoria Road and four storeys to the river.

P.A. 18/37795

Permission was sought for a residential development of 20 student apartments in a five-storey block. The planning authority granted permission for 18 apartments in a five storey block.

5.0 Policy Context

5.1. Cork City Development Plan 2015-2021

Zoning

The area of the site on which the proposed building would be constructed is zoned '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". The area along the eastern boundary is part of the SW2 Landscape Preservation Zone which is subject to a specific objective to provide a riverside walkway/cycle way.

Student Accommodation

When dealing with planning applications for such developments a number of criteria are required to be taken into account including:

- The location and accessibility to educational facilities and the proximity to existing or planned public transport corridors and cycle routes;
- The potential impact on local residential amenities;
- Adequate amenity areas and open space;
- The level and quality of on-site facilities, including storage facilities, waste management, bicycle facilities, leisure facilities (including shop/café uses), car parking and amenity;
- The architectural quality of the design and also the external layout, with respect to materials, scale, height and relationship to adjacent structures. Internal layouts should take cognisance of the need for flexibility for future possible changes of uses;
- In all schemes the applicants will be required to provide written documentary confirmation for a 'Qualifying Lease' as defined in the Guidelines on Residential Developments for third level students published by the Department of Education and Science in May 1999, to prove that the accommodation is let to students within the academic year.

All permissions for student housing are required to have a condition attached requiring planning permission for change of use from student accommodation to other type of accommodation. Future applications for this type of change of use are to be resisted except where it is demonstrated that over-provision of student accommodation exists in the city.

Building Height in Suburban Areas

The site of the proposed development is located within an area of the city defined as the South-Western Suburbs.

Within the suburban areas of the city (developed after 1920) low rise buildings will be considered appropriate (including cases where demolition and replacement of existing buildings occurs) except in the following areas:

- Major development areas identified in this development plan for which a local area plan or Development Brief will be prepared;
- Larger development sites – sites of greater than 0.5 hectares (or one residential block) which are capable of accommodating their own intrinsic character without having an adverse impact on their neighbours.

Buildings of between 3-5 storeys will be considered appropriate in principle in major development areas and larger development sites, subject to normal planning considerations. In exceptional circumstances local landmark buildings may be considered with a height of up to 20-23 metres (approximately 6-7 storey equivalent). Building heights greater than this will only be considered where specifically identified in a local area plan.

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 Appeal

6.1. Grounds of First Party Appeal

The grounds of the first party appeal relate to the attachment of Condition 2 with the decision of the planning authority seeking the removal of the top two floors in the proposed development. The grounds of the appeal may be synthesised as follows:

- The height of the proposal at 8 storeys (6 + 2 setback) is justified in light of emerging national policy and in the context of recently permitted developments in the vicinity of the site. The previously permitted development pre-dated the publication of the Urban Development and Building Heights Guidelines.
- The visual impact assessment carried out as part of the proposal demonstrated that, while long term moderate negative impacts to nearby residential properties would occur, the proposal was not considered to be more overbearing than the previously permitted scheme nor did it increase the instance of overlooking to any significant degree. The omission of the top two setback floors is largely immaterial in terms of limiting any impact to rear gardens along Orchard Road.

6.2. Grounds of Third Party Appeal

The third party appellants reside at 'The Kiln', No. 1 Orchard Road behind the proposed development. The grounds of the appeal may be synthesised as follows:

- It is vexing that there isn't any high rise student accommodation being built on the UCC campus where there is a large amount of idle green space.
- Neighbours will suffer a terrible invasion of privacy and trespass should the planning application proceed.
- There would be serious overlooking of the appellants' living areas, balcony and garden.

- The design made no attempt to consider impact on neighbours. For example, a solid gable wall could have been chosen to face neighbouring properties with the windows facing in a different direction or angle-type windows to blinker the view away.
- The proposal would have significant impact on local traffic. There is a huge traffic congestion problem on Victoria Cross Road and there would be a serious traffic management issue as it doesn't have a suitable set-down or relief area.
- The proposal would result in considerable shadowing of Victoria Cross Road, having a serious impact on pedestrian and vehicular traffic safety.

The Board is also asked to take into consideration the appellants' original submission to the City Council.

6.3. Applicant Response to Third Party Appeal

The applicant's response to the third party appeal may be synthesised as follows:

- The proposed development will pose little additional impact to existing residents along Orchard Road when compared to the previously permitted development. The visual impact assessment confirms this.
- It is not feasible or financially viable for public Higher Education Institutes to fund student accommodation developments in isolation.
- The proposal has been accompanied by extensive assessments, is consistent with similar nearby developments, and has been justified on policy grounds.
- In the context of the significant expansion of Cork City projected in the coming years and the emerging planning policy context, the character of the area is undoubtedly in transition. Emerging policy envisages higher density, larger scale and compact urban forms of development to compliment significant transport infrastructure investment.
- Given the difference in scale between the proposal and the appellants' property, a degree of visual impact is inevitable. The planning authority no

doubt recognised this potential for impact when the previous five storey development was permitted on the site.

- The proposal does not include for any parking provision in recognition of the sustainable location of the development within walking distance of UCC, along a high frequency bus corridor and future light rail transit corridor, with regular access to the city centre and CIT. Car ownership among residents will neither be practical or required. The proposal will not contribute in any appreciable manner to increases in traffic along Victoria Cross Road. The Draft Student Accommodation Management Plan addresses need for proposed use by private car when students move in or out of the residence.
- The appellants' concerns relating to the potential shadowing impact on road conditions is not warranted, with Victoria Cross Road being one of the main thoroughfares in the city subject to gritting during winter weather events.

6.4. Third Party Response to Applicant's Appeal

The third party appellants referred to the excess scale of the proposed development on Victoria Cross Road, to vehicular and pedestrian traffic impacts, overlooking and overshadowing of their home and wider residential impact, and to the impact on the views from their house. It was requested that permission be refused for the additional three floors.

6.5. Planning Authority Response

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

7.0 Assessment

- 7.1. The proposed development comprises an amendment to a recently approved student apartment block permitted under P.A. Ref. 18/37795. The permitted development comprised the construction of a five storey block. The amendment proposes the construction of a further three storeys, consisting of one complete additional floor and two setback floors. This would increase the number of

apartments from the permitted 18 to 25 and would increase bed space numbers from 114 to 154.

- 7.2. Having regard to the third party appeal submission, I submit to the Board that any proposal to reconsider the principle of a student apartment block on this site cannot reasonably be merited based on the recent outstanding permission. This would include reconsidering the land use proposed, traffic impact, flooding concerns, ecological issues, etc. What requires to be considered is whether an additional one, two or three storeys make any definable material difference in terms of the impact on residential amenity, in terms of policy guidance, and in terms of being consistent with decision-making relating to this site.
- 7.3. Taking the latter issue first, it is evident that, under previous Board decisions and planning authority decisions relating to this site, five-storey development has been considered to be acceptable at this location. I note the decisions relating to ABP Refs. PL 28.215213, PL 28.223713, and P.A. Ref. 18/37795. In considering the Board's previous assessments of proposed developments on this site, I particularly note ABP Ref. PL 28.215213 because this was a development that was subject to substantial changes in height as the proposal underwent review following assessment by the planning authority and the Board. This proposal originally comprised a seven-storey block that was then revised to five storeys with a sixth floor setback during consideration by the planning authority. The Board decided that the development should be reduced in height to five storeys by way of condition. Condition 2 of that permission required the omission of the entire second floor of the block. It is pertinent to note that the Board's reason for reducing the height of the proposed building was: "In the interest of the residential amenity of adjacent property." I put it to the Board that the context of the adjacent residential properties to the rear of this site has not altered. In my opinion, the Board must reasonably be consistent when adjudicating on the current proposal. I am firmly of the opinion that there is not scope for substantially increasing the block on this site by a further three storeys. Indeed, I suggest that allowing an additional floor, as permitted in the planning authority's decision, appears unwarranted given the previous considerations of apartment development on this site, inclusive of ABP Ref. PL 28.215213 and the recent decision of the planning authority under P.A. Ref. 18/37795, and regard being given to neighbouring residential properties. In light of

these considerations, I am of the view that the proposed development should be refused. Further to this, I see no merit in tinkering with the block design to achieve a five storey height under the current proposal when there is outstanding permission for a five storey block that can reasonably be pursued.

- 7.4. Further to the above, I note that the permitted five storey building is a development of a height that, while not particularly common in the immediate vicinity, has been determined to be able to be accommodated. This may reasonably be understood when regard is had to some development that has occurred on the opposite side of Victoria Cross Road, i.e. of four and five storeys over street level. Incrementally adding height to the proposed structure invariably erodes the ability of that structure to be more satisfactorily integrated into this streetscape and its residential context. This is particularly so where there is no revision to the design of the overall block and the alteration ultimately comprises add-ons on top of a structure similar to that previously granted permission. Furthermore, such increases in the building's height invariably increases overshadowing of neighbouring properties and, undoubtedly, introduces an increased intensity of overlooking of neighbouring residential properties as openings and private amenity spaces are increased in number, and where such neighbouring properties are in close proximity such that the overbearing impact increases also. Thus, the impact of such an alteration to the previously permitted development on this site worsens the effect on the amenity of residents in this area, in particular for residents of Orchard Road and for the occupants of Ashbrook apartments, three-storey residential development on lower ground immediately behind the site. I submit that, in light of the Board's previous considerations on development on this site, the context of this development requires to be respected. The residential context demanding that care is taken to respect residential amenity has not altered in any material manner, notably in relation to properties on Orchard Road and Ashbrook apartments. I acknowledge that the site fronts onto a main road, a principal entry to the city centre, and that four and five storey development over street level has been incrementally developed on the opposite side of this road. However, it must also be acknowledged that it is sited in suburban Cork City, i.e. within the designated 'South Western Suburbs', and it immediately bounds suburban housing of significantly lower scale, with the rear elevations and back gardens of the houses on Orchard Road being located very

close to the proposed building and the front elevation of an apartment block in Ashbrook narrowly separated from the site by the internal access road. I put it to the Board that superimposing any relatively taller structure on this site in this location merits a careful and balanced judgement to maximise the accommodation on this serviced site while seeking to maintain some degree of respect for the established neighbouring properties. Previous applications for development on this site have sought an array of different building heights. It has been deduced that a five storey building could be tolerated on this site in a manner that would continue to respect the amenities of the long established residential properties of this area. There are no material changes to the circumstances that would warrant a move away from previous determinations and the allowance of a substantial material change to the building height of the structure on this site. Indeed, compatibility with recent development proceeding on the opposite side of Victoria Cross Road would be a desirable, consistent and orderly approach to development on this site.

- 7.5. I note that the applicant has made reference to the *Urban Development and Building Heights Guidelines for Planning Authorities*, published by the Department of Housing, Planning and Local Government in 2018, to support the allowance of additional floors in the student block. It is notable that the Guidelines advocate the scope to consider general building heights of three to four storeys, coupled with appropriate density, in locations outside what would be defined as city centre areas and which would include suburban areas. It is again acknowledged that the site of the proposed development is located within a suburban area of Cork City, designated the 'South Western Suburbs', and which is some 2.5km west of the city centre. The Guidelines do not advocate adding one, two or three storeys to five storey buildings permitted in suburban areas to allow buildings up to eight storeys in height and it would be mistaken to conclude this. I further note that the Guidelines advocate that, in relation to the assessment of individual planning applications and appeals, it is Government policy that building heights must be generally increased in appropriate urban locations. The permitted five storey development on this site clearly meets with this policy in this suburban location, being a distinctly higher building proposal when compared to much of the established development within the immediate vicinity. I suggest to the Board that the permitted five storey block is wholly in keeping with the Guidelines and that the addition of a further three floors,

which would increase adverse impacts on residential amenity, does not constitute sustainable development.

7.6. Further to the above, I note the City Development Plan's provisions relating to suburban areas and building height. Low rise buildings are considered appropriate except in major development areas identified in this development plan for which a local area plan or development brief is to be prepared and in larger development sites of more than 0.5 hectares which are capable of accommodating their own intrinsic character without having an adverse impact on their neighbours. Buildings of between 3 and 5 storeys are considered appropriate in principle in major development areas and larger development sites. In exceptional circumstances local landmark buildings may be considered with a height of up to 20-23 metres (approximately 6-7 storey equivalent). Building heights greater than this will only be considered where specifically identified in a local area plan. I note that the permitted five storey development is in excess of that generally provided for within the suburban areas of Cork City. I also note that this site is not located in a major development area nor is it a large development site. It is not known to be identified in any local area plan or development brief to distinguish it as a site designated for a building of increased height nor is it determined that this site has been designated as a location in which a landmark building would be encouraged to be developed. The proposed development of an eight storey block on this site does not have any basis to be permitted within the context of the City Development Plan.

8.0 Recommendation

8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the planning history associated with the site, the policy on building heights in suburban areas as set out in the Cork City Development Plan 2015-2021, and the pattern of residential development in the immediate vicinity, it is considered that the proposed development, located on a site within the South Western Suburbs that is not designated a major development area, a larger development site or a

landmark building site, and due to the intensification of adverse impact on the amenities of residential properties adjoining the site arising from increased overlooking, overshadowing and overbearing impact by the addition of a further three storeys to a permitted five-storey student accommodation block, would conflict with the provisions of the Development Plan as they relate to building heights in suburban areas, would seriously injure the residential amenities of the area and of property in the vicinity, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

27th May 2020