



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307399-20

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<b>Development</b>	To erect a dwelling unit together with all ancillary site development works.
<b>Location</b>	Rear of 32,33 and 34 Lower Midleton Street, Kilgarvan, Cobh, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	196270
<b>Applicant(s)</b>	Aaron Keogh.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Christian Jeuken.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	31 July 2020.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site comprises a courtyard area to the rear of 32, 33 and 34 Lower Midleton Street, in the centre of Cobh, Co Cork. The site extends to 0.016 hectares and incorporates a ruined structure (former two storey dwelling) towards its southern end comprising two no free standing stone walls along the southern boundary and south western boundary and a stone wall built into the natural rock cliff face to the east. To the west are the rear of terraced two and three storey dwellings on Lower Midleton Street. Lower Midleton street slopes from north to south however the appeal site is level and the southern and western walls function as retaining structures. Access to the appeal site is from Lower Midleton Street between houses 32 and 33 via an access passageway circa 2m wide and 2.1m high under house 33.
- 1.2. On the eastern side of the site there is a high cliff face which supports a wall on top. The cliff face and wall forms the boundary between the site and a roadside garden at the significantly higher level opposite the Cobh Cathedral entrance gates. This railed off garden is not openly accessible by the public. The cliff face has been reinforced and relief drainage built into the face. The southern part of the cliff has a masonry wall which formed part of the original dwellinghouse on the site.

## 2.0 Proposed Development

- 2.1. The proposal involves the construction of a single storey dwellinghouse extending to 52m<sup>2</sup> to be located towards the northern end of the site. The proposed dwelling incorporates plastered blockwork walls with stone cladding to part of the front elevation visible from the street and a flat roof with standing seam effect grey coloured PVC coated metal cladding. Private amenity space is provided on the southern side of the site within the remnant stone walls. The proposal as submitted to the local authority provides for the erection of an 800mm railing with treated timber hit and miss fence on the boundary with rear yards to dwellings 31 and 32 to protect privacy.
- 2.2. The new building will be setback 0.7m from the drain at the foot of the cliff on the eastern side of the site. A raft foundation on screw piles taken down to bedrock is proposed.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 9<sup>th</sup> April 2020 Cork County Council issued its decision to grant permission and 11 conditions were attached thereto including the following of particular note:

Condition 2. No building over Irish Water Infrastructure, therefore any such infrastructure within the site boundary to be protected and the applicant to engage with Irish Water in respect of any necessary diversion agreement.

Condition 4. Supplementary development contribution €322.56 in respect of the Cobh/Midleton Rail Project.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Planner's report considers that the single storey nature and scale of the proposal ensures no significant impact on visual or residential amenity and addresses concerns regarding impact on the character of the ACA. Further information required regarding watermain diversion. Second planning report recommends permission subject to condition.

#### **3.2.2. Other Technical Reports**

Water Services Report. A separate foul connection to the main combined line. Connection agreement with Irish Water.

Area Engineer's report indicates no objection subject to conditions.

### **3.3. Prescribed Bodies**

Irish Water. Existing adjacent dwellings are supplied via a common backyard watermain and this needs to be diverted to cater for the dwelling. Feasibility of watermain diversion to be demonstrated and detailed design agreed with Irish Water. Connection agreement to be entered into.

### 3.4. **Third Party Observations**

Submission by Christian Jeuken, 33 Lower Midleton Street. Concerns regarding impact on established level of natural light and views. Noise and other disturbance arising from proposed access.

## 4.0 **Planning History**

Planner's report notes the following history. History files have not been provided on the Board's file.

**18/4819** Application for permission for a two bedroom partially single storey and partially two storey dwellinghouse with amenity space on roof. Refused on grounds of overdevelopment and detrimental impact on the character of the Architectural Conservation Area.

**16/7068** Refusal of permission for construction of a three storey dwellinghouse incorporating stone walls of ruined dwelling and ancillary site works with pedestrian access from Lower Midleton Street. Refused on grounds of overdevelopment and impact on character on the ACA.

**06/52087** Application for dwelling, Withdrawn.

## 5.0 Policy Context

### 5.1 S28 Ministerial Guidelines.

Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities. Department of Environment, Heritage and Local Government, May 2009.

Urban Design Manual A best practice Guide. May 2009.

Design Manual for Urban Roads and Streets, DMURS

The Planning System and Flood Risk Management (including the associated 'Technical Appendices') Dept Environment Heritage and Local Government November 2009.

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – Department of Housing Planning and Local Government March 2018

Urban Development and Building Height Guidelines, Department of Housing Planning and Local Government, December 2018

### 5.2 Development Plan

The site is within lands designated as Existing Built up Area as per 2013 Cobh Town Development Plan 2013.

Housing Policy is addressed in Chapter 5 of the plan. At 5.9.3 in relation to residential infill it is noted that a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill. Proposals for development involving the intensification of residential uses within existing residential areas such as houses in side gardens will need to clearly demonstrate that the

proposal respects the existing character of the area and would not harm the amenity value of adjoining properties.

Where such development relates to an Architectural Conservation Area all proposals will be considered on a case by case basis and will have to clearly demonstrate that such development will not negatively impact on the character of the architectural conservation area.

**HOU-05** Objective to maintain and enhance overall standards of amenity within existing residential areas.

**Hou 08 Infill Development.** It is an objective, normally, in residential areas, to ensure that proposals for 'infill' development, preserve or enhance both the character of the area as a whole and the setting of any original buildings on the site.

**HE27** It is an objective of the Plan to conserve and enhance the special character of the Architectural Conservation Areas included in this plan. The special character of an area includes its traditional building stock, material finishes, spaces, streetscape, street and plot layout, landscape, settings, public spaces and important aspects and views.

**HE28** It is an objective of the Plan to ensure that all new development located within or adjacent to designated Architectural Conservation Areas will respect the established historical and architectural character of that area and will contribute positively to the existing built environment in terms of design, scale, setting and material specifications. This will be achieved by promoting a contemporary design of high architectural quality within Architectural Conservation Areas. The special character of Architectural Conservation Areas will be maintained through the protection of structures from demolition, non sympathetic alterations and the securing of appropriate in fill developments.

**HE29** It is an objective of the Plan to protect all buildings, structures, and groups of structures, sites, landscapes and all features that are considered to be intrinsic elements to the special character of Architectural Conservation Areas. This will be achieved by promoting the sensitive and appropriate reuse and rehabilitation of buildings and sites located within Architectural Conservation Areas and by prohibiting alterations, development or demolition of structures and features that contribute to the character of the Architectural Conservation Area or any relevant protected structure or monument included in the Record of Monuments and Places.

## 5.1. **Natural Heritage Designations**

The Cork Harbour SPA (Site Code 004030) is located approximately 2.9km west of the site. Great Island Channel Special Area of Conservation is also within 3.5km to the north.

## 5.2. **EIA Screening**

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The appeal is submitted by Christian Jeuken, 33 Lower Midleton Street. Grounds of appeal are summarised as follows:

- Proposal will have detrimental impact on natural light levels to 33 Lower Midleton Street
- Impact of use of access passageway on property overhead in terms of noise and disturbance.

### 6.2. **Applicant Response**

The response by Michael G Cummins, Architect and Chartered Building Surveyor on behalf of the first party is summarised as follows:

- The level of light and view from the Rear of No 33 is already compromised by cliff face and the remains of the two storey house and the impact of the proposed development is not significant.
- In order to mitigate potential impact it is proposed to omit fencing and parapet on the roof for the entire section of the new building behind no 33.

- It is not intended to park a car within the site.
- Proposed design is not intrusive and does not visually interfere with the existing conservation area.
- Suitable infill within a dense urban area.
- Design provides living space and amenities in accordance with national guidance.
- No intrusive impact on neighbouring properties.

### 6.3. **Planning Authority Response**

The Planning Authority did not respond to the grounds of appeal.

### 6.4. **Further Responses**

The appellant in response to the first party response to the appeal maintains that in spite of the proposed amendments in terms of the omission of the fence and elimination of the parapet roof, the proposal will have a significant impact on light on ground floor of appellant's dwelling and outdoor flat roofed terrace which is the primary amenity area to the property.

Notwithstanding the intention not to provide vehicular access the proposal will result in noise pollution and other disturbance. There is only a timber floor separation between the access passageway and the middle floor section of the appellant's property, and therefore unless structural measures are taken to reinforce the separation noise pollution will be significant.

## 7.0 **Assessment**

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider that the key issues arising in this appeal can be considered under the following broad headings



## **Principle of Development**

### **Quality of Design and Layout and Impact on Established Residential Amenity Servicing and Appropriate Assessment**

#### **7.2 Principle of Development**

7.2.1 As regards the principle of development the site is zoned Existing Built up Area in and the Development Plan in line with National Policy is supportive of infill residential development and densification within the urban area where the character of the area and setting is enhanced and established residential amenity protected. Therefore the principle of development is welcome and it is appropriate to assess the merits of the proposal in its detail.

#### **7.3 Quality of Design and Layout**

7.3.1 On the matter of the quality of the design and layout and impact on the streetscape the proposal is a modest structure and given the unique circumstances of the site is not readily visible from the wider area. Notwithstanding the limitations of the site in terms of its location between the backyards of properties on Lower Midleton Street and the cliff face to the higher ground level opposite Cobh Cathedral I consider that the proposed dwelling provides for a reasonable standard of residential amenity. External finishes include plastered blockwork, stone and grey pvc coated metal cladding. As regards the impact on the Architectural Conservation Area given the siting design and small scale of the structure I consider that the impact on the character of the ACA is acceptable.

7.3.2 As regards impact on established residential amenity I note that the design seeks to mitigate impact arising in terms of overlooking of the rear yard of no 31 and 32 Midleton Road Lower by way of provision of a fence on the site side of the boundary wall to protect the privacy of the rear yards. No windows oppose No 33 therefore overlooking does not arise. As regards overshadowing given the site context adjacent to the imposing cliff face the visual or light impact arising from the proposed single storey structures is not significant. I note the revisions to the proposal as set

out in response to the appeal including elimination of parapet roof behind no 33. I consider that the impact in terms of visual amenity and light is acceptable in the context of the site within the built up urban area. I consider that the impact arising in terms of visual amenity and light will not give rise to undue negative impact on established residential amenity.

7.3.3 The third party appellant cites concern with regard to noise and other disturbance arising from the use of the access passageway to the site. I consider that the level of disturbance arising from a one bedroom dwelling is unlikely to give rise to significant disruption in terms of noise and passage. As outlined within the first party response to the appeal the access is intended as a pedestrian access only and is unlikely to give rise to nuisance. I consider that the impact does not constitute an undue loss of amenity given to the built-up character of the area. On the basis of the foregoing I do not consider that the proposal will result in an undue loss of amenity, sufficient to justify a refusal. I consider that the design is appropriate and the impact on established residential amenity is appropriately mitigated in terms of the design and boundary treatment.

### **7.3 Appropriate Assessment**

7.4.1 Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any 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.

### **7.5 RECOMMENDATION**

7.5.1 I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

## **REASONS AND CONSIDERATIONS**

Having regard to the land use zoning of the site of the proposed development, the size of the site, the pattern of development in the area, the design and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and would be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans and particulars received by the planning authority on the 18<sup>th</sup> March 2020 and submission to the Board on 7<sup>th</sup> July 2020 as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. Prior to commencement of construction of the house, details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to the planning authority for agreement.

**Reason:** In the interest of orderly development and the visual amenities of the area.

3. All service cables associated with the proposed development (such as electrical, communal television, telephone, and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of orderly development and the visual amenities of the area.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

5. The applicant or developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

6. Existing Irish Water infrastructure within the site boundary shall be protected and the applicant shall engage with Irish Water in respect of a diversion agreement prior to commencement of development.

Reason: In the interest of public health.

7. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard the developer shall –

- (a) Notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) Employ a suitably qualified archaeologist who shall monitor all site excavations and other excavation works, and
- (c) Provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authorities considers appropriate to remove.

In default of any of these requirements the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction / demolition waste.

**Reason:** In the interests of public safety and residential amenity.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal

of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

10. The developer shall pay to the planning authority a financial contribution in respect of the Cobh /Midleton – Blaney suburban rail project in accordance with the terms of the Supplementary Development Contribution Scheme made by the Planning Authority under Section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Bríd Maxwell

Planning Inspector

22 September 2020