



An
Bord
Pleanála

Inspector's Report ABP-308385-20

Development	Demolition of existing dwelling, construction of new two storey dwelling house, new boundary walls, new connection to existing public sewer and all ancillary works.
Location	Hillside, Flynn's Cross, Ballincollig, Co. Cork
Planning Authority	20/39412
Planning Authority Reg. Ref.	Cork City Council
Applicant(s)	Jung Woon & Ciaran Ryle
Type of Application	Permission
Planning Authority Decision	Grant, subject to 14 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Callanan Family
Observer(s)	None
Date of Site Inspection	18 th December 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located 0.7 km to the west of Ballincollig in a residential area, interspersed with fields, to the south of Main Street (R608) and on the eastern side of Flynn's Road (L2212), which runs on a north/south axis between the R608 and Greenfield's Road/Castle Road. This site is accessed directly off Flynn's Road, as is the appellant's site, which lies to the north-east.
- 1.2. The site is of irregular shape and it extends over an area of 0.07 hectares. This site rises upwards across its depth from west to east. It is elevated above the adjacent public road and it presently accommodates a cottage with a full width lean-to rear extension (combined area of 60 sqm). This cottage is sited within the south-eastern quadrant of the main body of the site. To its rear, the site projects towards the south-western corner of the appellant's bungalow to the north-east and it projects over an elongated strip further to the east along the southern boundary to the appellant's site. The cottage is vacant at present and the site is overgrown.
- 1.3. The access to the site is via an ungated entrance and a ramped drive-in that is angled in relation to the public road. The front boundary to the site is denoted by a stone retaining wall with a hedgerow above it and that portion of the northern boundary which abuts the appellant's driveway is denoted by a stone wall with a concrete post and railing fence above it. Elsewhere, hedgerows denote the remaining boundaries with, in addition, an embankment to the eastern boundary with the appellant's site.

2.0 Proposed Development

- 2.1. The proposal would entail the demolition of the existing cottage on the site and the construction of a new, two storey, three-bed dwelling house (235 sqm). This dwelling house would be sited in a similar position to the cottage. However, as it would have a larger footprint, it would cover a greater proportion of the main body of the site. The dwelling house would be of modern design and appearance. Its front elevation would present to Flynn's Road as single storey under a deep roof and its rear elevation would be staggered alignment to allow the two storey form of the dwelling house to be visible over its southern portion.

- 2.2. The dwelling house would be served by a re-sited access from Flynn's Road to the south of the existing access. This access would be accompanied by a new retaining wall, which would be sited in a setback position from the existing one to facilitate both the provision of a future public footpath and improved sightlines. It would connect to a ramped drive-in and a parking/turning area in the northern portion of the site.
- 2.3. The dwelling house would be served by a new connection to existing public sewer and its grounds would be the subject of hard and soft landscaping proposals.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 14 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See decision.

3.2.2. Other Technical Reports

- Irish water: No objection, standard observations.
- Cork City Council:
 - Contributions: No objection, subject to levy condition.
 - Environment: No objection, subject to standard conditions.
 - Drainage: No objection.
 - Area Engineer: No objection, subject to standard conditions.

4.0 Planning History

- TP19/38869: Similar proposal to the current one: Refused on the grounds of inadequate northern sightline and failure of applicant to demonstrate sufficient legal interest in the site.

- Pre-planning consultation occurred on 9th October 2019.

5.0 Policy and Context

5.1. Development Plan

Under the Ballincollig Carrigaline Municipal District Local Area Plan 2017 (LAP), the site is shown as lying within an “Existing built-up area”. Paragraph 3.2.4 elucidates that this Zone allows for “a more positive and flexible response to proposals for the reuse or redevelopment of underused or derelict land or buildings particularly in the older parts of the main town.”

Under the Cork County Development Plan 2014 – 2020 (CDP), the Objective, ZU 3-1, for such areas is to “Normally encourage through the LAP’s development that supports in general the primary land use of the surrounding built up area...” Paragraphs 14.3.1 – 6 further advise on development in these areas.

5.2. Natural Heritage Designations

- Cork Harbour SPA (004030)
- Great Island Channel SAC (001058)

6.0 The Appeal

6.1. Grounds of Appeal

- Attention is drawn to a previous application reg. no. 19/38869, which failed to demonstrate sufficient sightlines, and which encroached upon the appellant’s land without its consent.
- The current application fails to exclude the appellant’s land and the Planning Authority failed to require such exclusion.
- As before, the appellant’s consent has not been obtained for the current application and so it, too, is in breach of Article 22 of the Planning and Development Regulations, 2001 – 2020.

- Likewise, alterations to facilitate the proposed site access would impinge upon the appellant's existing site access.
- While the appellant accepts the principle of a dwelling house on the site, they are adamant that the above deficiencies should be remedied, and the project proceed on a mutually agreeable basis. Until then it is premature.
- The appellant continues to have difficulty with the east facing windows in the proposed dwelling house, which would lead to overlooking.

6.2. Applicant Response

- The specific area of concern to the appellant, in the north-eastern corner of the site, is highlighted by means of a blue edge on drawing no. PP02A, which was submitted at the appeal stage. The applicants propose to adjust their site boundary treatments to exclude this area, until legal clarification on it is obtained.
- The foregoing blue edge addresses the appellant's Article 22 concern.
- The alteration identified lies within the applicants' site. It would benefit the applicants and the appellants insofar as both egresses would be served by improved sightlines. Attention is drawn in this respect to the Planning Authority's response set out below.
- The applicants signal their willingness to engage with the appellant in resolving the boundary issue between them.
- The existing single storey cottage on the site has windows that face east. The proposed replacement two-storey dwelling house would have ground and first floor windows which would face east, but which would correspond with the long eastern portion of the applicants' site. Furthermore, the lower level of the site and existing and proposed planting would mitigate any overlooking.
- The proposal is not premature as evidenced by the Planning Authority's permission.

6.3. **Planning Authority Response**

- The proposed access has been moved further south and altered from that which was proposed under application reg. no. 19/38869.
- The site presently accommodates an existing dwelling house. The proposed access would improve the sightlines that accompany the existing access and so, while they would not achieve the standards set out in DMURS, they would be acceptable in these circumstances. Its layout would also be improved.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the Cork County Development Plan 2014 – 2020 (CDP), the Ballincollig Carrigaline Municipal District Local Area Plan 2017 (LAP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) The principle of redevelopment, amenity, and access,
- (iii) Water, and
- (iv) Appropriate Assessment.

(i) Legalities

7.2. The appellant states that the application site encroaches upon land that is in its ownership and yet it has not given consent, under Article 22 of the Planning and Development Regulations, 2001 – 2020, for the application to be made. The applicant has responded, at the appeal stage, by submitting a site plan (drawing no.

PP02A), which shows by means of a blue edge the portion of the site that is in dispute. This portion lies within the north-eastern corner of the site and it does not include land upon which the proposed dwelling house would be sited. The red edge of the site has contracted to exclude the disputed portion. The applicant has undertaken to adjust the proposed boundary treatments to the site, until legal clarification has been received on this disputed portion. Any Article 22 issue that may pertain would thereby be resolved.

7.3. I note that the above dispute was rehearsed at the application stage and that the case planner drew attention to Section 34(13) of the Planning and Development Act, 2000 – 2020, which states that “A person shall not be entitled solely by reason of a permission under this section to carry out any development.” I consider that further light has been shed on this dispute at the appeal stage and an appropriate way ahead has been identified by the applicants.

7.4. I conclude that there are no legal impediments to the Board assessing and determining the proposal in the normal manner.

(ii) The principle of redevelopment, amenity, and access

7.5. The parties to this appeal accept the principle of redevelopment on the site and so the proposed demolition of the existing cottage and its replacement by a new dwelling house is not contested. I note in this respect that this site is shown as lying within an “Existing built-up area” in the LAP, wherein redevelopment is encouraged.

7.6. The appellant does however express concern over the proposed dwelling house on the grounds that it would lead to overlooking of its bungalow to the north-east. The applicants have responded to this concern by drawing attention to windows in the rear elevation of the existing cottage that overlook the adjoining site. Under their proposal, the northern portion of the new dwelling house would have ground floor windows in its rear elevation, one of which would be a bedroom window, and the southern portion, which would be recessed, would have ground and first floor windows, the majority of which would serve habitable rooms. These windows would correspond with the elongated portion of the site, which runs to the south of the appellant’s site. Overlooking would be mitigated by the fact that the applicants’ site is at a lower level than the appellant’s site and the presence of existing and proposed planting to the boundaries between these two sites.

- 7.7. During my site visit, I observed the change in levels between the two sites. I note that the bedroom window in northern portion of the dwelling house would look out onto an embankment/landscaping and so the opportunity to overlook the appellant's site would be satisfactorily mitigated. I note, too, that the recessed form of the southern portion of the dwelling house would reduce acutely angled lines of sight from the nearest windows and the further away windows would benefit from a greater separation distance. Ground floor windows would also be affected by the embankment/landscaping along the site boundary and first floor windows would be partially screened in time by mature landscaping.
- 7.8. The appellant also expresses concern over the proposed access to the site insofar as it would fail to be accompanied by sightlines exhibiting the requisite dimensions under DMURS, i.e. $y = 45\text{m}$, and it would impinge upon its access. The applicants have responded by drawing attention to the poor sightlines that accompany both their existing access and that of the appellant's. While their replacement access would fall short of the normally required y distance for a new access, it would enjoy greatly improved sightlines over those that pertain at present, i.e. to the north, the y distance would increase from 4m to 32m and, to the south, the y distance would increase from 3m to 30m. These improvements would also benefit users of the appellant's access, which, while unused at present, could be anticipated to be reused in the future. In these circumstances, the Area Engineer supports their proposal, and he notes, too, that the layout of the replacement access would facilitate greater ease of movement to the from the site than pertains at present.
- 7.9. I accept that, as the proposed access would be a replacement one, to require the full DMURS standard would be unreasonable. I accept, too, that the proposal would achieve access arrangements, which would be of better alignment to the public road and which would be accompanied by two off-street parking spaces and sufficient manoeuvring space to facilitate forward gear movements to and from this public road.
- 7.10. I conclude that the principle of the redevelopment of the site is acceptable, the proposed dwelling house would be compatible with the amenities of the area, and the proposed access arrangements would be a significant improvement on those which pertain at present.

(iii) Water

- 7.11. The site is served by the public water mains and the applicants propose to make a new connection to the public sewerage system. To this end they have made a pre-connection enquiry and received advice from Irish Water on what would be involved in making such a connection, i.e. the existing system would need to be extended a further 30m along Flynn's Road to the site.
- 7.12. Surface water run-off from hard surfaces would be dealt with on site by means of a proposed soakaway. Provided the site entrance is fitted with a grating to intercept surface water run-off from the drive-in/parking/turning area, the Area Engineer raises no objection.
- 7.13. Under the OPW's flood maps, the site is not shown as the subject of any identified flood risk.
- 7.14. I conclude that the proposal would be capable of being served satisfactorily by the public water mains and sewerage system. Likewise, it would be capable of being served satisfactorily by means of a proposed on-site soakaway. The site is not the subject of any identified flood risk.

(iv) Appropriate Assessment

- 7.15. The proposal is for an urban site that, following its redevelopment to provide a replacement dwelling house, would be fully connected to public utilities. There is no independent source/pathway/receptor route between this site and the nearest Natura 2000 sites in Cork Harbour and the route via the public sewerage system is by means of Ballincollig Wastewater Treatment Plant, which is operating within capacity and under environmental regulations.
- 7.16. Having regard to the nature, scale, and location of the proposed development and the nature of the receiving environment and the proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. That permission be granted.

9.0 Reasons and Considerations

Having regard to the Cork County Development Plan 2014 – 2020 and the Ballincollig Carrigaline Municipal District Local Area Plan 2017, the Board considers that the proposed redevelopment of the site would accord with its inclusion in an existing built-up area. Subject to conditions, the proposed replacement dwelling house would be compatible with the amenities of the area and access arrangements to it would be satisfactory. This dwelling house would be capable of being satisfactorily served by the public sewerage system. No Appropriate Assessment issues arise. The proposal would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 6th day of November, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) The proposed surface water drainage system shall be augmented by the installation of a grating to the foot of the access ramp to the site, along with a discharge pipe to a soakaway, and</p> <p>(b) The proposed landscaping scheme shall be revised to reflect the contraction in the site in its north-eastern corner and to remove trees and all but low-level shrubs from the proposed southerly visibility splay.</p>

	<p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of road safety.</p>
3.	<p>Prior to commencement of development, the developer shall enter into a wastewater connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>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.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
6.	<p>Subject to Condition 2(b), the landscaping scheme shown on drawing no. LP-01, as submitted to the planning authority on the 20th day of July 2020, shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of</p>

	<p>the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of residential and visual amenity.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution of €10,524 (ten thousand, five hundred and twenty-four 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.</p> <p>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.</p>

Note: A person shall not be entitled solely by reason of a permission under Section 34 of the Planning and Development Act, 2000 – 2020, to carry out any development.

Hugh D. Morrison
Planning Inspector

23rd December 2020