



An
Bord
Pleanála

Inspector's Report

ABP-308749-20

Development	Construction of 3 dwellings and all ancillary and associated site works
Location	Chapel Hill, Sleveen East, Macroom, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	196997
Applicant(s)	Carrigaline Holdings Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party
Appellant(s)	John Hinchion.
Observer(s)	None.
Date of Site Inspection	4 th February 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an infill site located in the town of Macroom, Co Cork. The site takes its access via The Orchard Estate off Chapel Hill which is south of the N22 National Road running through the town centre. The appeal site has a stated area of 0.59 hectares and comprises open ground to the rear of established residential dwellings fronting onto Chapel Hill (located to the west) and Main Street (to the north). To the east is Macroom Boys Senior National School and to the east of this an *Aldi* foodstore. To the south of the site is the Orchard Housing Estate. Macroom Convent National School and St Colman's Catholic church are located to the western side of Chapel Hill.
- 1.2. The Orchard Housing Estate was initially developed under planning permission ref 06/54023 (extended under 11/54011). Notably the overall site originally incorporated the current appeal site. The permission 06/54023 was for 37 houses in total and the public open space to serve the overall Orchard Housing Estate was to be provided on the current appeal site adjacent the eastern boundary with the school. The permitted layout included approximately 10 dwellings on the remaining area of the appeal site¹). Subsequently permission 16/06005 relating to the southern part of the original (06/54023) site provided for a revised layout including reduced site works to cater for the existing 24 houses constructed as phase 1 & Phase 2. Subsequently a permission 07/54068 was granted for a single house in place of 2 houses (now house no 1) which resulted in the overall number being reduced to 36 houses.
- 1.3. The elevated nature of the lands means that the Orchard development is characterised by extensive retaining walls. Originally permitted house numbers 19 and 20 adjacent to the entrance to the estate from Chapel Hill within phase 2 were not developed and this area is currently laid out as open space². The number of dwellings developed within the Orchard Estate therefore is 24.
- 1.4. Levels on the current appeal site fall sharply northwards with a fall over 11m from south to north. As the site had been used to facilitate development on the adjoining lands to the site there is filled soil towards the western boundary of the site and it is

¹ Boundary to the north-western extent of the current appeal site lies circa 6-7m east of original site boundary 06/54023.

² Also shown as green area on layout plans of permission 16/06005.

evident that recent regrading works have been carried out. Existing site boundaries are defined by a mix of block walls to the southwest, tree line to the north and metal palisade fence to the east. The appeal site boundary with the curtilage of the adjacent dwelling to the northwest *Avila* (the appellant's dwelling) is undefined as it lies circa 6m east of the defined boundary along which there is an existing timber post and wire fence and mature planting³.

2.0 Proposed Development

- 2.1. The initial application proposal sought permission for three detached dwellings on the overall site the northernmost of which was to be served by way of a proprietary treatment system. No public open space area was provided. The proposed layout was revised in response to the Council's request for additional information with the new layout providing for an increase in the overall density on site to 6 dwellings units including 5 terraced dwellings located to the western side of the site and one detached dwelling on the northern part of the site, with provision for an open space area towards the south-eastern part of the site. All dwellings proposed to be connected to public foul sewer. Site layout shows a controlled sliding gate at the entrance to the site.
- 2.2. Application details outline that the site formed part of an overall development site on which permission was granted for the construction of 37 no dwellings. This permission lapsed in November 2016. Subsequently permission 16/06005 was granted modifying and regularising the southern elements of the scheme as constructed. The stated intention of the 16/06005 application followed consultation and agreement with the Planning Authority and was intended to regularise and complete the partly developed estate so that it could be taken in charge by the local authority. Under the permission two of the permitted dwellings no 19 and 20 were replaced by a green area adjacent to Chapel Hill.

³ The explanation for the resultant land strip was queried by the planning authority in the request for additional information however the first party responded indicating that the appeal site boundaries conform to the landownership boundary. As noted above this strip was previously incorporated within the original Orchard Housing Development 06/54023.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 27th October 2020 Cork County Council issued notification of the decision to grant permission subject to 37 conditions. I note that the Manager's Order refers to the development as initially described "*Construction of 2 no dwelling with detached domestic garage and wastewater treatment unit and polishing filter and construction of 2 no dwellings with detached domestic garages and all ancillary and associated site works.*"

3.1.2 The conditions however specify that development would be in accordance with drawings submitted with the application as amended by revised documentation and drawings received by the Planning Authority on 30/09/2020 and 6/10/2020.

Condition 2 specified.

"This development is for 3 residential units only including one detached unit (no 1) and two terraced units (no's 6 and 5). Residential units 2,3 and 4 shall be omitted. Prior to the commencement of development, a revised site layout plan making provision for omission of these units shall be submitted for the written agreement of the planning authority."

Condition 3.

The area released by the omission of residential units 2, 3 and 4 shall form a new planning application. The development of residential unit 1 shall not commence until a valid planning application for units 2, 3 and 4 has been lodged with the planning authority.

Condition 4 Development Contribution €11,167.44

Condition 8 Barrier north of the entrance to the site including sliding pedestrian gate and fence/boundary shall be omitted completely and shall remain unbarriered in perpetuity. Exact size/area of the public open space shall be identified on plan and before development commences or at the discretion of the Planning Authority revised drawings making provision for the above shall be submitted and agreed with the planning authority.

Condition 9 Development described in Class 1 and Part 1 of Schedule 2 of the Planning And Development Regulations shall not apply to dwellings 5 and 6.

Condition 10 The green/grassed areas (to the east of units 2 to 6 and south of unit 1) shall be provided as public open space and retained in perpetuity for this purpose.

Condition 11⁴. *“Dwelling no. 1 (detached unit) shall not be occupied until (a) dwellings 6 and 5 have been substantially completed and (b) until the public open space area is constructed and laid out as per details submitted on 30/09/2020.*

Reason: To ensure an appropriate density and to ensure a satisfactory amenity area is in place to serve the development.”

Condition 36⁵. *“Notwithstanding any details submitted with the planning application in relation to boundary treatments, before any development commences or at the discretion of the planning authority, within such further period or periods of time as it may nominate in writing, details of the boundary treatments surrounding and within the development shall be submitted and agreed in writing with the Planning Authority. These details shall provide for the following (a) the provision of a 2m high wall or agreed written alternative between the rear gardens of opposing properties (except that with regard to the rear gardens addressing shared private space, a pedestrian gateway through the said wall shall also be provided, (b) the provision of a 2metre high wall in materials consistent with the external finishes of the adjacent / adjoining structures, along boundaries between any public open space, public road, or public footpath and a residential property, (c) details of a suitable boundary treatment along the dividing property line between adjoining dwellings, and (d) proposed treatments for any other boundaries not covered in the above.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner’s initial report notes the low density proposed while also acknowledging the difficulty in providing for increased density development adjacent to an existing low-

⁴ Referenced for specific mention in first party response to the third party appeal.

⁵ Note substantive grounds of third party appeal relate to boundary treatment.

density estate and at a location which is sloping and to the rear of numerous existing properties. The report notes that the green space for the permitted units lies within the appeal site. Proposed on site wastewater treatment not appropriate. Issues with regard to separation distance of house 2 and concerns regarding overlooking from balcony feature and windows. A request for additional information sought revisions to the layout and design, omission of on-site wastewater treatment plant, provision for public open space and a reasoned justification for low density. Entrance to the site to be splayed at both sides in the context of the potential future local route. Details were also requested in relation to footpaths, lighting, landscaping, and boundary treatment. The applicant was also requested to clarify intentions with regard to the land strip between the western boundary and established third party boundaries.⁶

3.2.1.2 Following submission of additional information the Planner's report noted that in light of the increased density now proposed a new application would be required for additional units. Permission was recommended for three units subject to conditions as reflected in the decision. The omission of the proposed sliding gate at entrance was recommended to ensure that open space area would be available to the overall Orchard estate.

3.2.2. Other Technical Reports

3.2.2.1 Public Lighting report – Further information required regarding public lighting design. Following submission of additional information permission recommended subject to conditions.

3.2.2.2 Area Engineer's report. Notes transport concept map within the Macro Development Plan which indicates a proposed local route at the entrance to the site. While there are no immediate plans to provide this local route the entrance to the site should be splayed on both sides to allow for east turning movements if required in the future. Following additional information submission report indicates no objection

⁶ Boundary to the north-western extent of the current appeal site lies circa 6-7m east of original site boundary 06/54023.

subject to conditions including provision of silt traps upstream of proposed stormwater soakaways.

3.2.2.3 Estates report. No objection subject to conditions.

3.3. Prescribed Bodies

3.3.1 Irish Water. No objection subject to connection agreement, subject to capacity requirements and in accordance with Irish Water Standards codes and practices.

3.4. Third Party Observations

3.4.1 Submission by Mr John Hinchion resident of Aoila the adjacent dwelling site to the north west. Notes informal agreement with the previous developer regarding a 2.5m high plastered concrete wall to be provided between the site and his property. A 1.8m fence not acceptable. Concerns arise regarding overlooking of main reception rooms and rear garden. Development is at variance with Macroom Local Area Plan in terms of density and open space.

3.4.2 Submission by Lynch and Associates Consulting Engineers on behalf of Peter and Una Cronin, Chapel Hill. Originally houses in this area had a floor level of 90.00mOD and 89.8m OD where at present the level of the proposed house is 90.5m OD. Floor level should remain as originally granted.

4.0 Planning History

A number of previous planning decisions are relevant to the current appeal.

Adjoining land to the south

16/6005 John J Fleming (In Receivership) permission for revised site layout to that permitted for residential development granted under 06/54023 comprising reduced site works to cater for the existing 24 houses constructed as Phase 1 and 2 of

06/54023 together with revised site boundaries green areas, road layout landscaping and associated site works. I note that condition 6 required the removal of building materials waste from the lands to the north of houses 21-25 (i.e the current appeal site) and area to be suitably graded and reinstated to the planning authority's satisfaction. I note that the current appeal site was outside the redline boundary but shown within the landholding.

11/54011 Permission granted John J Fleming Construction Co for extension of duration of 06/54023

06/54023 Permission granted for 37 no dwelling units and all associated site development works including new vehicular entrance from Chapel Hill relocation of existing pedestrian gate arch and vehicular gateway on the western boundary wall within the curtilage of the adjoining protected structures Mountain View RPS Macroom No 40 to the north of the site. a new vehicular access on the eastern site boundary to connect to adjoining mixed use development permitted under 04/54029 and a set down area consisting of 8 no car parking spaces.

Notably condition 15 required that houses 29-38 would not commence until the developer demonstrates that the level of the existing foul / storm services is adequate to accommodate all 11 properties by gravity.

07/54068 Permission for construction of dwelling (new parochial house)⁷

05/54009 Outline Permission granted to Peter Cronin for the construction of 39 no dwelling units and all associated site development works.

Site to the east 04/54029 Permission granted to Thomas McCarthy. To demolish existing school building and ancillary outbuildings, to carry out site development works including temporary site entrance and exit for construction purposes, to construct a two storey school building including playing field and ancillary works, a single storey pitched roof, discount food store including enclosed dock leveller, signage and car parking, 2 separate blocks incorporating 8 retail outlets and a restaurant with 4 no. apartments and 8 no. duplex apartments over, a 3 storey creche facility, a 3 storey medical centre, a 3 storey office facility, an additional 3 storey office facility over basement car park, 14 no. 3 storey town houses, and

⁷ In lieu of 2 houses permitted within the Orchard Estate. Now house no 1.

additional 8 no. town houses over 4 no. lower ground floor apartments, 5 no. semi-detached town houses, 35 apartments on 3 storeys over basement car park, site entrance roads, internal road network, site service works, car parking and all associated site development works including signage, bin stores and E.S.B. substations.

5.0 Policy Context

5.1. National Planning Context

Project Ireland 2040 National Planning Framework (2018)

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DECLG, 2018)

Urban Development and Building Heights, Guidelines for Planning Authorities (2018)

Design Manual for Urban Roads and Streets 2019

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) 2009

Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)

5.2. Development Plan

Cork County Development Plan 2015-2021

Macroom is identified as a Ring Town.

Within the Macroom Town Development Plan 2009 -2015 the Site is Zoned RE the objective to “Protect and Enhance Residential Amenity”

The Transport Concept Map Fig 11 Shows an indicative local route running east west to the south of the site.

5.3. **Natural Heritage Designations**

The site is not within a designated area.

The nearest such sites are The Gearagh SAC (Site Code 000108) and The Gearagh SPA (Site Code 004109).

5.4. **EIA Screening**

- 5.4.1. Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1 The third-party appeal is submitted by John Hinchion, *Avila*, Chapel Hill. located to the northwest of the appeal site. Sharing an extensive boundary with the appeal site facing both east and south. A 2m high block boundary is proposed by the developer which is insufficient to protect the appellant's residence and gardens. The original developer when building the site boundary around adjacent dwelling Mountain View to the south built the wall in a stepped fashion at heights of between 2.75m and 2.5m. This should be replicated around Avila to maintain the symmetry of boundary heights and to preserve the privacy of the appellant's residence and gardens.

6.2. **Applicant Response**

- 6.2.1 The response by Coakley O Neill Town Planning on behalf of the First Party is summarised as follows:

- Request that the Board sets aside the grounds of appeal.

- Proposal is to construct residential dwellings within the development boundary of a designated settlement.
- In terms of the design and quality the proposal meets all the qualitative standards for new housing set out in Departmental Guidelines including Quality Housing for Sustainable Communities 2007.
- The appellant's request for a wall of 2.75-2.5m on the western boundary of the site with Avila is unnecessary and there is no planning reason or basis for the provision of such a wall.
- The red line boundary of the site reflects the ownership folio of the applicants and does not reflect the existing boundaries which currently comprise a block wall on the boundary of the property Mountain View and a timber post and wire fence on the boundary of the property Avila. In this regard the potential for impact on these properties may not be as envisaged by the appellant. the boundaries are characterised by existing planting which provides for screening and enhanced privacy and security.
- Dwelling no 1 at the northern part of the site is to be 12m from the western boundary with the property Avila. Avila itself is a further 10m west of the sites boundary. Dwelling 12 is single storey at its western side and the two storey elements is 16.8m away. Dwellings 2, 3 and 4 are located at their nearest point over 22m away from the property Mountain View and further from Avila.
- The suggestion that a 2m high block wall on the boundaries will not provide adequate security or privacy is strongly contested.
- In light of the Board's de novo consideration of the development the first party questions the necessity and relevance of condition no 11 regarding substantial completion of houses 5 and 6 and green area in advance of occupation of dwelling 1.
- In light of the requirements in respect of planning conditions as set out in the Development Management Guidelines for Planning Authorities June 2007 it is submitted that condition 11 is unduly restrictive unnecessary to ensure the proper planning and sustainable development of an area, interferes with property rights and is not proportionate to the objective to be achieved.

- It is submitted that the density and extent of public open space is clearly established by the plans and particulars submitted and that the completion of these are already ensured by Condition 1 of the permission. Conditions 26 and 27 regarding bond and satisfactory completion of the development.
- Conditions 1, 26 and 27 adequately and comprehensively address the satisfactory completion of the development to make condition 11 unnecessary and unreasonable.
- Supreme court has previously held that a planning authority may not rely on its broad discretion under section 45(1) of the Planning Acts to justify imposing a more severe restriction on an applicant than one already expressly permissible under section 34(4).
- Condition 11 at best amounts to an unnecessary duplication of restrictions upon the applicants without an express purpose.
- Question whether it is enforceable particularly if subsequent changes are made to the area of land relating to these dwellings. If for example a further application amends dwelling sites 2 and 3 how could condition 11 be applied.
- If land were sold with the benefit of planning permission now owner may not progress the dwellings in timely fashion and dwelling 1 cannot be occupied.
- Condition introduces an unacceptable level of uncertainty and unnecessarily so.
- No specific rationale behind the imposition of Condition 11 is set out in the various reports.

6.3. Planning Authority Response

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

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 the key issues to be:

- Principle of development
- Density, design and layout
- Impact on established residential amenity.
- Condition 11
- Appropriate Assessment.

I note in relation to procedural issues that despite the change in nature of the proposed development with the amendment to a proposed (eventual⁸) density from 3 dwellings to 6 dwellings and the altered site layout the applicant was not requested to submit revised public notices and therefore the question arises as to whether third parties were adequately advised in relation to the nature of the proposal. In light of this I consider that in the event that the Board were to uphold the decision of the Council and confirm a grant of permission revised site notice might be required.

7.2 Principle of Development in the context of the planning history on the site and the policy context

7.2.1 I note that having regard to the infill nature of the site, the residential zoning objective pertaining and in the context of the planning history of the site where it formed part of the original Orchard Housing development 06/54023 (extended under 11/54011) the principle of development for housing purposes is welcome. The National Planning Framework Project Ireland 2040 refers to the priority of achieving effective density and consolidation as opposed to urban sprawl. National Policy Objective 18a seeks

⁸ Condition 2 specified that that the permission related to 3 dwellings while the remaining 3 were to be addressed by way of a future planning application.

to: *Support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.* It also provides that: *It is necessary to tailor the scale, design, and layout of housing in rural towns to ensure that a suburban or high-density urban approach is not applied to a rural setting and that development responds to the character, scale and density of the town.* However, it notes the issue of historically low-density housing development in rural towns and in general seeks to increase well designed residential density to increase efficiency and sustainability.

7.2.2 I note the 'Sustainable Residential Development in Urban Areas' (May 2009).

Chapter 6 of these Guidelines refers to Small Towns and Villages (pop. 400 - 5,000 persons). This includes that each residential scheme within a small town or village should be designed to make the most effective use of the site, make a positive contribution to its surroundings, have a sense of identity and place, provide for effective connectivity, include a design approach to public areas such as streets and open spaces and encourage a safe sense of place. In this case having regard to section 6.9 of the Guidelines, the site is considered to be an 'Centrally located site' *where densities to a range of 30-40 dwellings per hectare will be appropriate.* There is also the potential for schemes of particularly high architectural and design quality to suggest densities higher than the range suggested above. Whilst I note that the Planning Authority considered that a reduced density might be appropriate having regard to the proximity of the site to established low density development to the south and the topography of the site, I am not satisfied that the proposed density of 8.5 units per hectare can be justified particularly in regard to the central location of the site which backs onto the Main Street. I acknowledge the steep fall in levels at the northern extremity of the site with Main Street however I consider that this low-density is unsustainable and I am of the opinion that given its zoning, the delivery of residential development in a compact form is required in order to ensure consistency with the policies of the Development Plan the NPF and Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness.

7.3 Density, design and layout

7.3.1 As regards the issue of residential amenity of the proposed dwelling units, I note that the floor areas of the proposed dwellings provide for adequate internal space standards and provide for a reasonable standard of residential amenity. I consider that the layout to proposed house 1, to which a site area of .246 is allocated is somewhat at odds with the layout of proposed houses 2-6. I consider that a more innovative and integrated layout is required to make the most effective use of this site, make a positive contribution to its surroundings, create a sense of identity and place, provide for effective connectivity, include a design approach to public areas such as streets and open spaces and encourage a safe sense of place as set out within the Sustainable Residential Development in Urban Areas' (May 2009). I note that a gated entrance is indicated on the site layout plan which was removed by condition in the decision of the Planning Authority. In light of the fact that the appeal site provides an open space for the overall Orchard development this is clearly inappropriate.

7.3.2 As regards design the proposed design of house 1 is contemporary in character while houses 2-5 adopt a traditional terraced format. I consider that the proposal fails in terms of creating a strong positive addition to the identity of the locality and it is not distinctive. I consider that the nature and size of the site presents the opportunity for the development to establish its own character in terms of design. In my view the proposal fails to provide for an appropriate infill. As regards the performance of the proposal in terms of the 12 criteria for sustainable urban development as set out in the Urban Design Manual, I am not satisfied that the proposed layout performs positively. I consider that the piecemeal development of the site is not appropriate and a holistic approach to the development of the site is required.

7.4 Impact on Established Residential Amenity.

7.4.1 The third-party appellant expresses concerns with regard to the boundary treatment with adjacent Avila in the context of potential loss of privacy and overlooking. He

notes an informal agreement with the previous developer to the provision of a 2.5m high plastered concrete wall along the boundary. I have noted above the anomaly with regard to the boundary with the appellant's dwelling whereby the current site boundary lies circa 6-7m east of the original site boundary 06/54023 which is defined by fencing and landscaping. The explanation for the apparent vacant land strip was queried by the planning authority in the request for additional information however the first party responded indicating that the appeal site conforms to the landownership boundary.

7.4.2 As regards the potential for overlooking and loss of privacy I note the separation distance of circa 18m of side elevation of proposed house 1 to the appellants dwelling and that the western extremity of house 1 is single storey. I do not consider that undue overlooking or loss of privacy arises. As regards the appellants consideration that a boundary wall of 2.5m should be provided I consider that this would be visually inappropriate and unnecessary. I note that the existing development is characterised by extensive retaining walling and in my view a more gradual and natural boundary treatment should be sought. I consider that detailed landscaping and boundary treatment should form part of future planning application on the site.

7.5 Condition 11.

7.5.1 I note that the first party did not appeal the conditions of the permission however in response to third party appeal and in the context of the Board's de novo consideration of the development took the opportunity to express the view that condition 11 is unduly restrictive, unnecessary, interferes with property rights and is not proportionate to the stated objective and not enforceable in any meaningful way. The condition and stated reason for same is as follows:

"Dwelling no. 1 (detached unit) shall not be occupied until (a) dwellings 6 and 5 have been substantially completed and (b) until the public open space area is constructed and laid out as per details submitted on 30/09/2020.

Reason: To ensure an appropriate density and to ensure a satisfactory amenity area is in place to serve the development.”

7.5.2 I consider that whilst the stated desire to achieve an appropriate density on the site and provide for the amenity open space is appropriate, the first party's charges with regard to the condition have some validity. I consider that the condition is indicative of the disjointed approach to the development on the site in terms of the ill at ease relationship between the proposed detached dwelling and the terraced units and the difficulties arising in terms of permitting 2 of the terraced units with the remaining 3 to be addressed by way of a future application.

7.6 Appropriate Assessment

7.6.1 Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to 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

I recommend that permission is refused for the following reasons and considerations below.

Reasons and Considerations

1. Having regard to the configuration, overall design, scale, layout, and low density it is considered that the proposed development fails to provide for adequate density and provides for a poor distribution of space and perpetuates the piecemeal development of this town centre site. It is therefore, considered that the proposed development fails to respond appropriately to the unique characteristics of the site and would provide for a poor living environment for future residents and would not comply with the criteria in the Urban Design Manual A best practice guide 2009 or Section 6.9 of the Guidelines for Planning

Authorities on Sustainable Residential Development in Urban Areas 2009, relative to density for town centre sites. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

24th February 2021