



An
Bord
Pleanála

Inspector's Report ABP-308779-20

Development	Construct a new dwelling house with new vehicular entrance off Briarfield and all associated site works.
Location	Briarfield, Ballea Road, Carrigaline West, Carrigaline, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	20/5935
Applicant(s)	Emily O'Mahony
Type of Application	Permission
Planning Authority Decision	Grant, subject to conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	William & Camillus Rosborough
Observer(s)	Brendan & Eleanor Daly Pat & Sally Cummins Colm & Helen Murphy Michael & Shelia Rowlands Michael Leneghan

Date of Site Inspection

18th February 2021

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located to the north-west of Carrigaline town centre in a position to the north of the R613, which runs between Ringaskiddy, in the east, and the N71 close to Ballinhassig, in the west. This site lies within an area of predominantly residential development. Other development includes a medical centre and a pharmacy. It forms the eastern portion of an existing residential curtilage to a two-storey dwelling house set within its own grounds.
- 1.2. The site itself is of triangular shape and it extends over an area of 0.098 hectares. This site is presently in use as part of a more extensive domestic garden. It is accessed via a driveway to the existing dwelling house on the adjoining land to the west. This driveway is accessed off Ballea Road (R613).
- 1.3. The site is bound to the east and north by either communal/landscaped space to the cul-de-sac, known as Briarfield Estate, or to gardens that serve dwelling houses on this cul-de-sac. These boundaries are denoted by solid fencing, which is accompanied by tree and shrub planting.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a two-storey four-bed dwelling house of rectangular form under a double pitched roof with a single storey element to the front and a two-storey element to the rear. This dwelling house would have a floorspace of 228.7 sqm and it would be sited in the northernmost portion of the site.
- 2.2. The proposal would also entail the construction of a new access to the site from the cul-de-sac known as Briarfield Estate. This access point would be towards the junction between Briarfield Estate and Ballea Road (R613) and so it would be sited before any of the dwelling houses on the cul-de-sac are reached. The access point would be set at a diagonal line with the cul-de-sac and it would be gated behind a vehicular refuge. An accompanying driveway would run along the western boundary of the site. It would rise initially with the topography of the site before largely levelling off.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 22 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See decision.

3.2.2. Other Technical Reports

- Irish Water: Further information requested concerning the feasibility of connecting to the public water mains and sewerage system.
- Cork County Council:
 - Area Engineer: No objection, subject to conditions.

4.0 Planning History

Site

- 18/7399: New dwelling house and vehicular entrance off Briarfield: Withdrawn.

Briarfield

- 94/0029: 8 dwellings: Permitted, subject to conditions, the first of which states:
Before the development is commenced, the developer shall submit and agree a revised site layout plan showing provision for a maximum of 8 no. dwellings and the dwellings repositioned so that adequate public open space is provided and the back to back distance between dwellings is at least 23 metres.
- 98/4249: Change of house type for Plot 7 (which appears to have been reduced in size to exclude the current site): Permitted.

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 the development boundary and in an existing built up area.

5.2. Natural Heritage Designations

Cork Harbour SPA (004030)

6.0 The Appeal

6.1. Grounds of Appeal

William & Camillus Rosborough at No. 3 Briarfield Estate

The appellants begin by stating that the site could be accessed via the applicant's family lands where there is an existing entrance from Ballea Road that could be utilised. Such access would be more appropriate, less disruptive, and it would avoid any conflict with existing users of Briarfield.

The appellants proceed to cite the following grounds of appeal:

The application conflicts with the precedent decision, which governs the development of Briarfield:

- Attention is drawn to Condition No. 1 attached to the permission granted to application 94/0029 (see under planning history above). This Condition was uncontested, and the permission was subsequently implemented, i.e. a maximum of 8 dwellings were constructed on lands that included the current application site.
- The description of the proposal fails to refer to the deletion/reversal of Condition No. 1 and so the current application should be invalidated.

- It is reasonable to assume that the development of Briarfield proceeded on the basis of an agreed revised layout and that the current application site was allocated as public open space.
- Briarfield has yet to be taken in charge: This matter has been the subject of correspondence with Cork County Council's Estates Department.
- The case planner refers to the loss of documents in an office flood in 2009. Consequently, she was not in a position to comment definitively on whether Condition No. 1 was complied with. The appellants anticipate that light could have been shed on this matter had the Planning Authority requested further information of the applicant.

The application is silent on the status of Briarfield:

- Attention is drawn to Irish Water's request for further information, which the Planning Authority failed to pursue. This is of concern as the relevant Irish Water utilities are in the Briarfield Estate Road, which has yet to be taken in charge and which is the subject of an outstanding snag list. Furthermore, insofar as the conditions attached to the Planning Authority's permission relate to this road, they are unreasonable and would be unenforceable.

The application is in conflict with the Sustainable Residential Development in Urban Areas Guidelines:

- The appellants consider that the applicant should share the existing access point to her family's lands from Ballea Road. Shared access points are a commonplace throughout the country and the view is expressed that the one in question would be capable of handling any additional traffic satisfactorily. Utilisation of this access would also obviate the need for involved excavation and reinstatement works that would be necessitated by the proposed means of access. Such works would lead to the loss of an attractively landscaped embankment towards the entrance to the Briarfield Estate.

The assessment of the application by the Planning Authority was inadequate and inappropriate:

- Attention is drawn to a letter from Irish Water that predates the one received as part of the consultation process to the current application. The Planning

Authority's reliance in this earlier letter is criticised, against the backdrop of the estate road not being "public".

- The Planning Authority does not appear to have properly assessed the alternative means of access to the site.

The proposal is premature and contrary to the proper planning and sustainable development of the area:

- The proposal is premature until such times as the estate road has been taken in charge.
- The provisions of permitted application 94/0029 remain relevant to ensuring the orderly development of Briarfield Estate.

6.2. Applicant Response

The applicant begins by describing the site within its context and summarising relevant national and local planning policies that promote compact urban settlements.

The applicant draws attention to application 18/7399, which she withdrew in order to address neighbour objections. Consequently, the current proposal is for the re-siting and redesign of the proposed dwelling house and the identification of a new access point, i.e. not via the open green within Briarfield, but from a point on the estate road towards its junction with Ballea Road. Notwithstanding the appellants claims to the contrary, these remain the only two access point options available to the applicant.

The applicant states that the appellants grounds of appeal fall short of identifying any substantive planning grounds for opposing her proposal. Nevertheless, she proceeds to respond to them as follows:

- Permitted application 94/0029 does not prohibit the further development of the lands in question. Clearly, the proposal accords with the national and local planning policies summarised by the applicant.
- A copy of the revised site layout plan, agreed pursuant to Condition No. 1 attached to permitted application 94/0029, is submitted. This plan shows the relocation of dwelling no. 7 from the south-east of the site to the north-west and the currently proposed access point being used in conjunction with this

house plot. Subsequently, under permitted application 98/4249, an alternative access for dwelling no. 7 was authorised, i.e. off the turning head to the estate road, while the currently proposed site access point continued to be shown.

- Aerial photographs illustrate that the current application site was never developed as part of the Briarfield Estate, i.e. it was excluded from the house plot developed to provide dwelling no. 7.
- A further access point adjacent to the junction between the estate road and Ballea Road was closed when the premises it served converted from residential to commercial use, under a permission granted in 2003. Thus, under the current proposal, there would be no net gain in accesses off the estate road.
- Attention is drawn to the fact that taking in charge is a separate legal process to that of obtaining planning permission. The status of the estate road is not therefore at issue only whether it would afford satisfactory access and services for the proposal. No objection was raised by the Area Engineer in either of these respects.
- Insofar as the applicant's parents continue to control the estate road and they have consented to the making of the current application on their land, no difficulties in gaining consent to connect to services is anticipated.
- Notwithstanding the above, the snag list for taking in charge has been attended to and it is anticipated that taking in charge is imminent.
- The applicant's engineer has submitted a report that confirms that the proposed access would be satisfactory.
- The appellants grounds of appeal fail to take account of current national and local planning policies that encourage infill development in the interest of urban compactness. They also attach a mis-placed emphasis on prematurity solely on the basis of the taking in charge question, when it is evident "on the ground" that Briarfield Estate is now a mature one having been completed in the early 2000s.

6.3. Planning Authority Response

None

6.4. Observations

Brendan & Eleanor Daly of No. 2 Briarfield Estate

Pat & Sally Cummins of No. 4 Briarfield Estate

Colm & Helen Murphy of No. 1 Briarfield Estate

Michael & Shelia Rowlands of No. 6 Briarfield Estate

These observers make the following observations:

- The appellants appeal is fully supported.
- The Board is requested to enquire after the taking in charge of the estate road.
- Twenty-five years have elapse and the estate road has still to be taken in charge.
- Consequently, this road and the utilities within it are not “public” and so the Planning Authority’s conditions that use this word are inaccurate and possibly unenforceable.
- In these circumstances, the proposal is premature.
- An extract from recent correspondence with Cork County Council’s Estate Department itemises the outstanding steps that need to be made if taking in charge is to ensue.

Michael Leneghan of 7 Westbrook Gardens, Douglas West

- Attention is drawn to a certified Land Registry folio CK17297F, which shows the site as lying within Briarfield rather than “Winnipeg”, i.e. the applicant’s family lands.
- Rights of way to the 8 dwellings are shown on this folio, as is a right of way to the formerly owned Foley’s entrance. No right of way to the proposed site access point is shown.

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the Sustainable Residential Development in Urban Areas Guidelines, the Ballincollig Carrigaline Municipal District Local Area Plan 2017, relevant planning history, the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, density, and planning history,
- (ii) Amenity,
- (iii) Access,
- (iv) Water, and
- (v) Appropriate Assessment.

(i) Land use, density, and planning history

7.2. Under the LAP, the site is shown as lying within the development boundary around Carrigaline and in an existing built up area. This site presently forms part of the curtilage to a dwelling house and so it is in residential use and the predominant use of the surrounding area is residential, too. Under the Sustainable Residential Development in Urban Areas Guidelines, the introduction of additional dwelling houses to infill sites in urban areas is encouraged. Accordingly, there is no, in principle, objection to the proposal from either land use or density perspectives.

7.3. The appellants and the observers object to the proposal on the basis of the planning history of the Briarfield Estate. They draw attention to the parent permission for this Estate, which was granted to application 94/0029 subject to conditions, including the first one which required the submission of a revised site plan showing a maximum of 8 dwelling houses and the repositioning of dwelling houses so that adequate public open space is provided, in the interests of orderly development. Briarfield Estate was developed in accordance with this permission and a subsequent one, granted to application 98/4249, which entailed a change of house type to plot 7. The appellants

and observers contend that the current proposal is in contravention of Condition No. 1 attached to permitted application 94/0029 and so reference should have been made to this contravention in its description. They also contend that it should be upheld.

- 7.4. The applicant has responded, at the appeal stage, by submitting copies of the original site layout plan and the revised site layout plan that was approved under Condition No. 1. The former plan shows 9 dwelling houses and the current site is shown as forming part of plot 8 with an access point from the cul-de-sac in the same location as is now proposed and a similar driveway. The latter plan shows 8 dwelling houses, i.e. the first dwelling house is omitted in favour of open space and the curtilage to the dwelling house on plot 8, which is now numbered plot 7, is reduced to exclude the current site: The dwelling house on this plot is now accessed off the turning head to the cul-de-sac. This plan also shows the retention of the access point to the current site: It does not show any other works to this site and it is silent on its use. Both site layout plans show an access from the cul-de-sac to a building that is now accessed from Ballea Road. This access has been closed and so the applicant's state that under their proposal no net increase in accesses off the cul-de-sac would arise.
- 7.5. During my site visit, I observed that Briarfield Estate has been laid out in accordance with the revised site layout plan. Thus, the originally proposed first plot has been omitted in favour of open space and the access to plot 7 is from the turning head. Likewise, the access to the building cited by the applicant has been closed. The only item that is "missing" is the access to the current site from the cul-de-sac.
- 7.6. In the light of the above, I consider that, with the approval and substantial implementation of the revised site layout, Condition No. 1 has been met. A comparison of the original and revised site layout plans clearly shows that the omission of 1 dwelling house was so that open space could be provided. The contraction of plot 7 and the revised access arrangements for it left the current site unaltered and effectively outside the site that was subsequently developed. In these circumstances, it is difficult to see how the current proposal would materially contravene Condition No. 1.

7.7. Nevertheless, even if the view is taken that the current proposal would contravene Condition No. 1, this need not necessarily be an issue. In this respect, national and local planning policies are different today from those that prevailed in 1994, e.g. there is a greater commitment to compact settlements and the attendant acceptance of infill development such as that comprised in the proposal. Furthermore, it is not automatically the case that the description of proposals needs necessarily to refer to any contraventions of previous permissions for them to capture the “nature and extent of the development”. I, therefore, take the view that the description of the proposal, which does not refer to what is at most a nominal contravention of Condition No. 1, is adequate.

7.8. I conclude that the proposal would be appropriate, in terms of land use and density, and that the planning history of the site does not require any augmentation to be made to the description of this proposal.

(ii) Amenity

7.9. The proposed two-storey dwelling house would be sited in the northern portion of the site. The nearest existing dwelling houses would lie to the north, south-east, and west.

- To the north, lies a dormer bungalow with a front gable: The proposed dwelling house would be sited a minimum of 22m to the south, i.e. the rear elevation would have a slightly offset relationship with the front elevation of the existing dormer bungalow,
- To the south-east, lies a two-storey dwelling house: Its north-western corner would be 17m away from the south-eastern corner of the proposed dwelling house on a west north-west/east south-east line, and
- To the west, lies a two-storey dwelling house: The proposed dwelling house would be sited a minimum of 9m to the east.

7.10. The northern and eastern boundaries to the site are denoted by a solid fence and accompanying trees and shrubs, which would be retained and augmented under the proposal. The rear (northern) elevation and main side elevations of the dwelling house would contain no habitable room windows at first floor level and the non-habitable room windows at this level would be glazed with opaque glass. (The minor

eastern side elevation to the two-storey rear element would have a first-floor bedroom window within it: However, this elevation would be set back from the main eastern side elevation of the dwelling house. The outlook from this window would be restricted to the south by this set back and to the north by the offset described under the first bullet point above). The relationship with the dwelling house to the south-east would also be mediated by the presence of an intervening garage. The relationship with the dwelling house to the west would be the strongest. However, any assessment of this relationship is framed by the knowledge that the applicant's parents reside within this dwelling house.

7.11. The proposed dwelling house would be of modern layout and design and it would afford an acceptable standard of amenity to future residents.

7.12. In the light of the above separation distances, the design of the proposed dwelling house, existing boundary treatments, and additional landscaping proposals, I am satisfied that the proposed dwelling house would not lead to any undue overshadowing or overlooking of existing residential properties and its presence would not be overbearing when viewed from within these properties.

7.13. I conclude that the proposal would be compatible with the visual and residential amenities of the area.

(iii) Access

7.14. Under the proposal, access to the site would be formed off the cul-de-sac to the Briarfield Estate. This access would be from the initial portion of this cul-de-sac, i.e. before it reaches the dwelling houses in this Estate. It would be of diagonal alignment and it would be gated behind a vehicular refuge. The side walls to the entrance way would be 1m in height, thereby facilitating, satisfactory accompanying sightlines.

7.15. The proposed access would be accompanied by a driveway and a parking/turning area beside the proposed dwelling house. Accordingly, forward gear vehicular manoeuvres to and from the cul-de-sac would be assured.

7.16. The appellants and the observers object to the proposed access and they insist that the site should be accessed by means of the existing access to the dwelling house adjacent to the site, which is the residence of the applicant's parents. They state that the sharing of this access would not be unusual.

- 7.17. The applicant has responded that the alternative means of access identified by the appellants and observers is not an option and so her site would be capable of being accessed either by means of a route through communal open space to the turning head at the end of the cul-de-sac or as proposed.
- 7.18. During my site visit, I observed the junction that is formed between the access identified by the appellants and the observers and Ballea Road (R613) and the junction that is formed between the access to the Briarfield Estate and this Road. While the sightlines at these junctions are comparable, the former access is to a driveway and the latter access is to a two-lane cul-de-sac. Consequently, the greater use of the latter, as proposed, would be preferable to the greater use of the former, in terms of traffic management and the free flow of vehicles.
- 7.19. The appellants and observers refer to the fact that the cul-de-sac has yet to be taken in charge and to Land Registry documentation, which does not show the proposed access. Neither of these two sets of considerations has a bearing on the planning question which is essentially to do with the physical suitability of the proposal to afford satisfactory access to the site in terms of traffic management and road safety.
- 7.20. I conclude that the proposed access to the site would be satisfactory.

(iv) Water

- 7.21. Under the proposal, the new dwelling house would be connected to the public water mains and waste water sewerage system. Surface water would be handled by means of a soak pit designed to BRE standards.
- 7.22. Irish Water, as a consultee, requested that the feasibility of the proposed connections be made the subject of a request for further information. However, the applicant submitted unsolicited further information that addressed this request, i.e. Irish Water had previously confirmed that connection would be feasible without any upgrade in infrastructure, and so it was not deemed necessary.
- 7.23. Insofar as the infrastructure concerned has yet to be taken in charge, the consent of the owner would be required, i.e. the applicant's parents. No difficulty is foreseen in this respect.
- 7.24. The OPW's flood maps do not show the site as being the subject of any identified flood risk.

7.25. I conclude that the proposal would raise no water issues.

(v) Appropriate Assessment

7.26. The site is not in a European site. The nearest such site is the Owenboy River, which flows through the southern portion of Carrigaline and which forms part of the Cork Harbour SPA (004030).

7.27. The proposal is to construct a dwelling house on the site, which lies in the northern portion of Carrigaline, a fully serviced urban area. This dwelling house would be connected to public services. In these circumstances, no Appropriate Assessment issues would arise.

7.28. Having regard to the nature, scale, and location of the proposal, 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 proposal 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 Sustainable Residential Development in Urban Areas Guidelines, the Ballincollig Carrigaline Municipal District Local Area Plan 2017, and the planning history of the site, the Board considers that, subject to conditions, the development of the site to provide a dwelling house would be appropriate in terms of land use and the density of the host residential area. This dwelling house would be compatible with the visual and residential amenities of the area and it would afford an acceptable standard of amenity to future residents. Access arrangements would be satisfactory. No water or Appropriate Assessment issues would 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, 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 site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>(a) Contoured drawings to scale of not less than 1:500 showing –</p> <p>(i) A survey of all existing trees and hedging plants on the site, their variety, size, age and condition, together with proposals for their conservation or removal, and</p> <p>(ii) The planting of trees and shrubs to augment existing planting along the site’s northern and eastern boundaries.</p> <p>(b) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established.</p> <p>(c) A timescale for implementation.</p> <p>Deciduous trees shall be planted at not less than two metres in height and evergreen species at not more than 750 millimetres in height. Species to be used shall not include either <i>cupressocyparis x leylandii</i> or <i>grisellinia</i>. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with</p>

	<p>others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In order to screen the development and assimilate it into the surrounding landscape, in the interest of visual amenity.</p>
3.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwelling house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>The disposal of surface water shall comply with the requirements of the planning authority for such works.</p> <p>Reason: In the interest of orderly development.</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>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>
7.	<p>The developer shall pay to the planning authority a financial contribution of €4621 (four thousand, six hundred and twenty-one euro) in respect of public infrastructure and facilities benefiting development in the area of the</p>

<p>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>

Hugh D. Morrison
Planning Inspector

31st March 2021