



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308855-20

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| <b>Development</b>                  | Permission for the demolition of existing warehouse and construction of 6 dwellings. |
| <b>Location</b>                     | Site adjacent to 16 & 17A, Bourke Avenue, Limerick.                                  |
| <b>Planning Authority</b>           | Limerick City and County Council   |
| <b>Planning Authority Reg. Ref.</b> | 20466  |
| <b>Applicant(s)</b>                 | Cherry Fox Developments Ltd.   |
| <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>                 | Rafal Wasik.   |
| <b>Observer(s)</b>                  | None.  |
| <b>Date of Site Inspection</b>      | 15 <sup>th</sup> February 2021.  |
| <b>Inspector</b>                    | Bríd Maxwell   |

## 1.0 Site Location and Description

- 1.1. This appeal relates to a site of 0.072 hectares located adjacent to 16 and 17A Bourke Avenue, a predominantly residential area to the west of Lord Edward Street in Limerick City. The surrounding area is characterised by two, three and single storey detached, semi-detached and terraced residential properties. Colbert Train Station and the Bus Station are located within 300m to the north east and the People's Park within 130m to the north. The main retail core of Limerick City is located within 500m to the northwest.
- 1.2. The appeal site is occupied by two industrial / commercial type buildings located along the southern site boundary. The site was formerly in use as a bus yard and more recently for car maintenance and car valeting services. Access is by way of a right of way between 16 and 17A Bourke Avenue which are two storey terraced properties. The appeal site is surrounded by residential dwellings which include two storey dwellings on Meaghar Avenue, a single storey terraced crescent at Meaghar Close and two storey dwellings fronting onto Hyde Road

## 2.0 Proposed Development

- 2.1. The application as submitted initially involved permission for the development of 8 dwellings including 4 no 1-bedroom apartments and 4 no 2 bedroom duplex units, the demolition of existing warehouse building, landscaping and ancillary works.
- 2.2. In response to the Council's request for additional information the proposal was revised to 6 dwellings including 3 no 1-bedroom apartments at ground floor level and 3 no 2-bedroom duplex units. Four car parking spaces and twelve cycle spaces are provided on site.
- 2.3. I note that modified drawings are submitted with the first party response to the appeal which include for external storage units to serve the three ground floor apartments and additional window to both the northern and southern elevation to provide dual aspect to the living rooms areas.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 12<sup>th</sup> November 2020 Limerick City and County Council issued notification of its decision to grant permission and 25 conditions were attached which included the following of note:

Condition 2 Development Contribution €3,080.00 in accordance with the development contribution scheme.

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

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

Initial Planner's report notes concern regarding potential loss of amenity to adjacent dwellings on Bourke Avenue. 8 units would constitute overdevelopment of the site. A request for additional information sought a reduced number of units and revisions to the design. Right of way to be demonstrated and provision for emergency access. Parking, public lighting and surface water drainage and foul water details.

Following additional information, the report asserts that having regard to the sympathetic nature of the revised design detail the proposal by reason of its size scale and mass is acceptable.

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

Environmental Services Report. A refurbishment demolition asbestos survey to be carried out in accordance with Section 8 of the Health and Safety Authority Asbestos Guidelines. Waste management.

Fire and Emergency Services report - concerns regarding fire access. Access road does not meet the minimum requirements in relation to gateway width, road width and clearance height. Auto track submitted does not allow for on street parking or other obstructions. Means of ventilation to bedroom on top floor to be demonstrated.

Following submission of additional information report indicated no objection subject to Fire Safety Certificate, a Disability Access Certificate and compliance with Building Regulations 1997-2019 and Building Control Regulations 1997-2018

Roads report - Requirement for 0.5 parking space per apartment. No objection subject to conditions.

### **3.3. Prescribed Bodies**

Irish Water – submission notes pre-planning engagement. Revised wastewater layout is required in order to ensure that the external facade of any new sewer should be at least 3.0m from the external face of any building or development infrastructure to allow future access for maintenance. Survey to confirm that the foul sewer is of sufficient capacity and suitable for connection.

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

A number of third-party submissions from the following local residents:

- Marian McLoughlin 25 Bourke Avenue
- Mrs Mary Roche 17 Bourke Avenue
- Gary Savage, Claire Savage, Kieran Galvin 17A Bourke Avenue
- Wioletta Wasik, Rafal Wasik and Jakub Wasik 16 Bourke Avenue
- George Ryan and Mary Ryan 19 Bourke Avenue
- Joseph and Mary O Connor 15 Bourke Avenue
- Fionbarr O Reilly 10 Bourke Avenue

The submissions raise common ground of objection which I have summarised as follows:

- Excessive density
- Overlooking and loss of light and loss of privacy
- Parking and traffic congestion

- Refuse and waste collection issues
- Health and safety issues
- Emergency vehicle access issues
- Structural impacts on adjacent dwellings. Construction impacts.
- Plans inaccurate with regard to the distance between 16 Bourke Avenue and the new property shown as 1m when it will be directly adjacent
- No capacity for additional housing
- Reliance on right of way questionable
- Japanese knotweed on the site
- Security and safety issue

## 4.0 Planning History

**04/770545** Refusal of permission to demolish existing dwelling (No 16) and warehouse to construct a three-storey apartment block over basement car parking consisting of 12 no 2 bed apartments together with entrance and associated works

**17/7014** Part 8 Development Regarding Upgrade of existing dwelling units.

**0770025** Conditional permission to demolish front boundary wall and construct an entrance. 15 Bourke Avenue

## 5.0 Policy Context

### 5.1 National Policy

#### 5.1.1 Project Ireland 2040 – National Planning Framework

5.1.2 The National Planning Framework Section 2.6 highlights the importance of securing compact and sustainable growth. National Policy Objective 3a seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing

settlements. National Policy Objective 3(b) seeks to deliver at least half of all new homes that are targeted in the five cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford within their existing built-up footprints.

Objective 13 states that in urban areas, planning and related standards including in particular building height and car parking, will be based on performance criteria that seek to achieve well designed high-qualified outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

Chapter, No. 6, entitled 'People Homes and Communities' - Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages. Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

## **5.2 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

### 5.3 Development Plan

5.3.1 The Limerick City Development Plan 2010-2016 as extended refers.

The site is zoned SO2A Residential.

The site is within the Edward Street / Janesboro– Landscape Area Profile. Described as follows:

The area consists of a primarily residential area stretching from the City Centre at Edward Street/the Railway Station to the north, to the Childers Road to the south, the regeneration area to the east and the Ballinacurra Road to the west. This area is substantially residential in character with a high proportion being former public housing. The area has suffered economically over the past decade which has seen a large number of local commercial premises closing. Some new development has been constructed in the vicinity of the park consisting largely of residential apartment with some commercial uses where the occupancy rate to date has been low. The existing recreational facilities in the area consists of the Peoples Park and Caledonian Park and adjacent lands. The main issue identified for the area is the need to identify its role in the fabric of the City and to ensure that it is not by passed by the developments in the regeneration areas nor by other developments in the City Centre.

#### Key Objectives

***The City Council will be guided by the following specific objectives in relation to the Edward Street/Jansboro Area:***

- o To promote a high standard of urban design with a clear sense of place and architectural quality that respects the existing character;

- o To ensure the provision of infrastructure appropriate to the needs of the area;
- o To ensure that the regeneration programmes do not adversely impact on the amenities of the area;
- o To ensure an appropriate mix of uses in the area to support the primary residential function of the area these include specific supports for the population of the area;
- o To ensure that an appropriate transportation system serves the area. **Chapter 5 Transportation** sets out the objectives to provide adequate pedestrian, cycling and public transport throughout the area;
- o To seek the development of the existing underutilised lands in the area in particular those lands under the control of the City Council;
- o To support the development of recreational facilities

#### **5.4 Natural Heritage Designations**

The site is not within a designated area. The River Shannon and River Fergus Estuaries SPA (Site Code 004077) and Lower River Shannon SAC (Site Code 002165) lie approximately 800m to the north west of the site.

#### **5.5 EIA Screening**

On the issue of Environmental Impact Assessment screening having regard to the limited nature and scale of the development, nature of the receiving environment no likelihood of significant effects on the environment arises from the development. The need for environmental impact assessment can, therefore, be excluded.

## **6 The Appeal**

### **6.1 Grounds of Appeal**

6.1.1 The appeal is submitted by Rafal Wasik, 16 Bourke Avenue. Grounds of appeal reiterate previous submissions to the local authority and are summarised as follows:

- Proposed building will be 2.5m higher than 16 Bourke Avenue and within 1m of the house



- Overshadowing and loss of light
- Disabled people living in the neighbourhood have not been taken into consideration
- Noise pollution and disturbance
- Negative impact on security and privacy
- Fire risk - Access width 3.08m inadequate for fire brigade
- Pedestrian vehicle conflict
- Bourke Avenue has no capacity for additional development
- Obstruction of ventilation duct outlet from wetroom rear extension of 16 Bourke Avenue
- Three storey buildings are out of character
- Balconies and obscure windows will not resolve overlooking concerns
- Parked cars adjacent to bedroom will impact on residential amenity
- Construction / disturbance impacts
- Bins and waste management unresolved

## **6.2 Applicant Response**

6.2.1 The response by HRA Planning on behalf of the first party is summarised as follows:

- Modified drawings are included to ensure compliance with Design Standards for New Apartment Guidelines. These provide for external storage sheds for the apartment units at ground floor level. Two additional windows one on the eastern and one on the western elevation at ground floor level proposed thereby ensuring that a minimum of 33% of the units are dual aspect. Dedicated storage areas within the duplex units within the kitchen. The Board is invited to consider these slightly modified drawings.

- Revised development proposal is a more appropriate response to the site location and context and has been designed with due regard to the proximity and amenity of the appellant's property and the surrounding area.
- Change of use is more compatible in residential area.
- Design takes its visual queues from the newly refurbished houses on Hyde Road and 1-21 Bourke Avenue. The building comprises a modest A pitched roof of similar height and in keeping with surrounding dwellings. A plaster finish is proposed with brick panels, boxed out metal window surrounds and a dark grey roof slate tile.
- Regarding height the existing industrial /commercial structure on the site has a height of 7.7m and is positioned a maximum of 1.6m from the southern site boundary and a maximum of 2.9m from the western boundary. The proposal is 2.5 storeys with upper floor of the duplex units in the attic space with obscured velux rooflights providing lighting to the bedroom and kitchen. Overall height of 11.4m is generally reflective of the existing buildings heights on adjoining properties.
- There is a pinch point where the gable end of the proposed building is located 1.1m from the adjoining northern boundary wall however as the garden narrows the separation distance quickly increases to a maximum of 5.6m. Existing industrial structure is only a maximum of 7.1m from the adjoining boundary wall and extends along the full extent of the adjoining site to the north and its rear garden.
- Existing high boundary wall separates the site from the adjoining property to the north. Proposed building has gable end addressing the property to the north and save for single window at ground level to the rear no windows therefore no overlooking arises.
- Development seeks to make efficient use of existing underutilised brownfield site.
- Proposal is likely to enhance the existing residential amenities of the area rather than detract from them.

- Presently the site has a 31m long 7.7m high industrial commercial building extending along the full southern site boundary. Proposed building is positioned at the centre of the site with rear dedicated as private open space.
- Proposal will not have negative impact on amenities.
- Proposed change of use likely to result in reduction in current operational noise level. Construction noise level will be appropriately mitigated.
- Fire tender can park on Bourke Avenue and extend a hose from the public road into the site which are situated less than 46m distance.
- Four parking spaces provided on the site no likely adverse impacts arising from access.

### **6.3 Planning Authority Response**

The Planning Authority did not respond to the grounds of appeal or first party response.

### **6.4 Further Responses**

6.4.1 The response of the third-party appellant to the response of the first party to the appeal is summarised as follows:

- Proposed arrangement will result in significant shading of appellant's property.
- Height of the building remains a significant concern. The current garage is 7.7m tall and is circa 8m-20m from the appellants property. The proposed building will be 11.7m tall and 1m from the property.
- Proposal will not resemble surrounding buildings in any way it will be much taller and have balcony and stairs.
- Significant disturbance and inconvenience during construction following on from recent inconvenience when 1-12 Bourke Avenue was refurbished.
- Applicant attached site notice to entrance pillar without permission.

- Entrance is too narrow 3.08m at narrowest. No footpaths.
- Negative impact on the residential amenity.

## **7 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.
- Traffic Access and Parking
- Quality of design and layout.
- Impact on Established Residential Amenity.
- Appropriate Assessment and Other matters.

### **7.2 Principle of development**

7.2.1 As regards the principle of development, the site is zoned ZO-21A the objective “to provide for residential development and associated uses”. The National Planning Framework advocates more compact growth utilising existing infrastructure, improving the visibility of public transport and services and creating an urban environment which facilitates more healthy and sustainable trip patterns such as cycling and walking. The established commercial use on the site for car repair garage and valet service is a non-conforming use and is surrounded by residential development. I consider that the proposal to provide for residential development on the site is appropriate in terms of this zoning objective. As regards the proposed density, I note that the site is well-located in close proximity to all amenities and to public transport and therefore the proposal is in accordance with the general policy desirability to increase densities within serviced urban areas in the interest of efficient land use resources and economies of scale. I consider that the principle of re-development of the site for residential use is generally welcome and therefore the focus for assessment is on the

detailed nature of the development with particular reference to design and impact on the streetscape, impact on established residential amenity and traffic impact.

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

7.3.1 As regards the issue of the residential amenity of the proposed dwelling units, I note that the floor areas of the proposed dwellings meet the minimum standards in terms of floor areas and private open space provision and provide for an adequate standard of residential amenity. I note the revisions to the proposal submitted in the first party response to the appeal including provision for storage sheds to serve the ground floor apartment units.

7.3.2 As regards the proposed design which is contemporary in character the scheme draws from its context. The structure reads as two storey in height with second floor level provided within the roof space above.

7.3.3 On the matter of the quality of the design and layout and impact on streetscape, I consider that the proposed design provides for an appropriate infill intervention to the streetscape and presently positively. Given the unique characteristics of the site and the character of established development in the vicinity I consider that this proposal is appropriate and a degree of flexibility in regard to quantitative standards for public open space is appropriate having regard to the zoning and context of the site. On balance I conclude that the proposal will result in better use of the zoned residential land.

### **7.4 Traffic and Access.**

7.4.1 A significant common concern raised in the appellant's and other third-party submissions to the local authority relates to the issues of traffic hazard and congestion and concern that the proposal will give rise to overspill parking. As regards parking it

is proposed to provide only four car parking spaces within the site. I consider that this is a reasonable approach given the central location of the site. Given the extent of traffic arising from the proposal and having regard to the established vehicular access, on balance I consider that the proposed development is acceptable from a traffic perspective. On the basis of my assessment, I consider that the issue of access and traffic is not an impediment to the development of the site.

## **7.5 Impact on Established Residential Amenity.**

7.5.1 As regards overlooking and overshadowing, I note the relationship to 16 and 17A Bourke Avenue. I note that the given the orientation and siting of the proposed building it is not likely to give rise to undue impact in terms of overshadowing and as the appellants dwelling is bounded by walling any change to the existing shadow environment is likely to be minor. I note that the proposal will give rise to an altered context for these established dwellings however I consider that overlooking is appropriately mitigated and the proposal will not give rise to any undue loss of residential amenity. On balance I consider that the design and layout appropriately mitigates negative impacts on established residential amenity and the proposed development represents an appropriate infill development of the site.

7.5.2 On the issue of structural impacts on existing dwellings impacts arising will be appropriately mitigated by good standards and practice. Whilst given its context, I note that the development of the site will give rise to a degree of disruption during the construction period, I note that this will be of limited duration and can be appropriately mitigated by standard good construction practice.

## **7.6 Other Matters and Appropriate Assessment**

7.6.1 As regards servicing, technical reports on file raised no specific concerns in terms of public sewer capacity and public water supply. On the matter of appropriate assessment, having regard to nature and scale of the proposed development the fully serviced nature of the site and proximity to the nearest European site, no appropriate

assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site

**8.0 RECOMMENDATION**

Having considered the contents of this application in detail, the decision of the planning authority, the provisions of the Development Plan, the national guidelines, the grounds of appeal, my site inspection and my assessment of the planning issues, I consider it appropriate to recommend to the Board that permission be granted subject to the following:

**REASONS AND CONSIDERATIONS**

Having regard to the location of the site on zoned lands, the 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 not be prejudicial to public health and would be acceptable in terms of traffic safety. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

**CONDITIONS**

- 1 The proposed development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further information submitted on 16<sup>th</sup> October 2020 and the amended plans submitted to the Board on 14<sup>th</sup> January 2021 except as may otherwise be required in order to comply with the following conditions

Reason: In the interest of clarity.

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

Reason: In the interest of orderly development and in the interest of visual amenity.

- 3 Prior to the commencement of development, details of soft and hard landscaping scheme and boundary treatment details for the site shall be submitted to the Planning Authority for agreement.

Reason: In the interest of residential amenity,

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/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.



6. Entrance from the public road and the internal road network serving the development including turning bays, parking areas, footpaths, verges and kerbs shall be in accordance with the detailed requirements of the planning authority for such works.

Reason: In the interest of amenities and public safety.

7. 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 development.

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

8. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to the planning authority for agreement prior to the commencement of development.

Reason: In the interest of amenity and public safety.

9. Rear gardens shall be bounded with 1.8m high concrete block walls suitably capped and rendered on both sides, or by 1.8m high timber fences with concrete posts.

Reason: In the interest of residential and visual amenity.

10. Prior to the commencement of development the developer shall submit and obtain the written agreement of the planning authority to a plan containing details for the management of waste within the development.

Reason: In the interest of the residential and visual amenities of the area.

11. 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 "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.

Reason: In the interest of sustainable waste management.

12. 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. The plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction and demolition waste.

Reason: In the interest of public safety and residential amenity.

13. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company or by the local authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

- 14 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting the 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. 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 Development

Contributions Scheme made under section 48 if the Act be applied to the permission.

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or other security to secure the provision and satisfactory completion of roads, footpaths, water mains. Drains, open space and other services required in connection with the development coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination,

Reason: To ensure the satisfactory completion of the development.

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Bríd Maxwell  
Planning Inspector  
23<sup>rd</sup> March 2021