



An
Bord
Pleanála

Inspector's Report

ABP-309299-21

Development	Demolition of 2 no. garages, excavate existing embankment and erect retaining wall, alterations to site boundaries and all ancillary works
Location	9, 11 & 13 Cathedral Road, Cavan, Co Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	20343
Applicant(s)	Shane Mulligan & Edward O'Hanlon
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	Third Party
Appellant(s)	Carol Brady and Sheila McGinnity
Observer(s)	None
Date of Site Inspection	18 th of May 2021
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The existing development is located on the Cathedral Road, in Cavan town. The site has direct access from the existing entrance off the Regional Road, R212. There is set back parking for these properties along the site frontage with Cathedral Road. While within the urban speed limits, this is a fast busy road, with a cycleway on either side. There is a public park on the opposite side of the road.
- 1.2. The site contains 3no. 2 storey terraced houses and their rear gardens slope steeply upwards. Nos. 9 and 11 form the northern part of the terrace with no.7 to the south. The latter is not included in the subject site. No.13, which also forms part of the site as shown in the red line boundaries, is an end of terrace to the north. There is an access between nos. 11 and 13 to 2no. garages at the rear. These are built into the embankment and appear in poor condition. There is a wider rear yard area to the rear of nos. 13 and 15 than the narrow one to the rear of nos. 9 and 11. There is a timber fence along the garden boundary with no.15, which is outside but adjoins the subject site. There are steps from no. 9 and no.15 up to the steeply upward sloping rear garden areas.
- 1.3. The rear gardens extend uphill in an easterly direction to Keadue Lane, which is on a considerably higher level at the rear. There is a house to the east with access to Keadue Lane, which appears to be partially shown within the redline boundary of the subject site.

2.0 Proposed Development

- 2.1. This proposal seeks permission for the following:
 - To demolish 2no. existing domestic garages, excavate existing embankment and erect retaining wall;
 - Alterations to site boundaries and all ancillary works.

All at nos. 9, 11 & 13 Cathedral Road, Cavan.

- 2.2. Drawings including a Site Layout Plan and Sections and Elevations showing the proposed works have been submitted.

3.0 Planning Authority Decision

3.1. Decision

On the 8th of January 2021, Cavan County Council, granted permission for the proposed development subject to 5no. conditions, which included regard to the plans and particulars submitted and to construction related issues, including provision for a retaining wall.

Condition no.5 is of note and is as follows:

All new retaining walls within the proposed development shall be designed, supervised and certified by a Chartered Civil or Structural Engineer.

Reason: In the interest of proper planning and sustainable development and to ensure a satisfactory standard of development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner had regard to the locational context, planning history and policy and to the submissions made. Their Assessment included the following:

- They considered the principle of development acceptable in this residential zoning. However, they were concerned that the scale of the proposal may be out of character with the scale of existing development on the site and on adjacent sites along Cathedral Road.
- They are concerned that the proposed works which would involve extensive removal of the embankment, would significantly alter the character of the area.
- They have note of the submission made and concerns that the proposal, particularly the proposed upper garden area would lead to loss of residential amenity by way of overlooking.
- The scale and nature of the proposal does not warrant an appropriate assessment screening.

- The Planner originally recommended refusal on the grounds of loss of privacy and residential amenity on adjacent houses by way of overlooking the rear of no. 15 Cathedral Road and of being contrary to the zoning objective for the residential area in the Cavan & Environs DP 2014-2020.
- However, further information was subsequently sought as below.

Further Information request

The Planning Authority's request included the following:

- They considered that the level of hard infrastructure required to facilitate the proposed development excessive from the viewpoint of residential and visual amenity. Furthermore, they noted that inadequate details have been submitted regarding the increase in traffic and surface water treatment associated with the proposed development. The applicant was requested to submit proposals to address the concerns of the Planning Authority in this regard.

Further Information response

Michael Fitzpatrick Architects response on behalf of the Applicants includes the following:

- They provide an updated site layout plan which indicates the proposed drainage layout for the removal of surface water from the proposed infrastructure.
- There will be no traffic increase however construction traffic will be required for a small period.
- They enclose updated plans showing the steel railing and fencing.
- They refer to a sample image relative to materials for the proposed retaining wall – Basalt Grey.
- They provide details of a timber screening fence to the related neighbouring garden.

Planner's Response

The Planner had regard to the F.I response including the revised drawings submitted and to the Submission made and their response included the following:

- They considered that issues of concern including drainage, traffic, access and screening had been addressed.
- The concerns raised in the submission regarding legal right of way is a civil rather than a planning matter.
- The proposed works are not liable for development contributions in terms of the requirements of the Development Contributions Scheme.
- They considered that the proposal would be in accordance with the proper planning and sustainable development of the area and recommended planning conditions.

3.3. Other Technical Reports

Municipal District Engineer

The Planner's Report notes they have no comments to make.

3.4. Prescribed Bodies

None requested.

3.5. Third Party Observations

A letter of objection was received from local residents Carol Brady & Sheila McGinnity. As these are the subsequent, Third Party Appellants, their concerns and grounds of appeal are noted in the Assessment below.

4.0 Planning History

None noted on file.

5.0 Policy Context

5.1. Cavan County Development Plan

Section 2.5.1 provides the Settlement Hierarchy and notes that Cavan Town as the County Towns is at Tier One at the top of the hierarchy. It has been classified as a hub town in the NSS and the BRPG. The town is of strategic importance within the Border Region and has excellent transport linkages nationally, regionally and locally. It is classified as a Large Town in the census with a population in excess of 12,000. The Cavan Town & Environs Development Plan provides greater details and specific policies and objectives with regards to this town.

5.2. Cavan Town and Environs Development Plan (2014-2020)

This defines the subject site as being located within the area zoned as 'Existing Residential'. The Objective being: *To improve existing Residential*. The Vision being *To promote the development of balanced communities and ensure that any new development in existing residential would have a minimal impact on existing residential amenity. Infill development should be of a sensitive design which is complementary to their surroundings.*

Development Management Standards

These are set out in Chapter 9 and include policies and objectives for the provision of high-quality housing design and layout within the plan area.

Section 9.1.6 refers to Private Open Space.

- All houses should have an area of private open space behind the building line in accordance with Urban Design Manual 2009.
- Private open space should be useable for residents. Long narrow rear gardens, difficult gradients or awkward shapes are not acceptable.
- Details of boundary treatment should be indicated on planning applications.

5.3. Natural Heritage Designations

The site is located (c.3 kms) of Lough Oughter and Associated Loughs SAC (site code: 000007) and SPA (site code: 004049).

5.4. EIA Screening

Having regard to the nature and scale of the proposed development on residentially zoned lands and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. 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

Carol Brady and Sheila McGinnity of no. 15 Cathedral Road, Cavan have submitted a Third Party Appeal expressing their concerns about the proposal. Their Grounds of Appeal include under the following headings:

Application is Invalid

- The information provided on the drawings is fundamentally incorrect and should be invalidated.
- The site runs from east to west and not north to south as shown on the drawings.

Structural Integrity and Impact on Amenity

- Concerns about the proposed works relative to structural integrity – failure and adverse impact on the neighbouring property.
- The applicant proposed excavating approx. 4m into the soil without considering the structural impact on their property.
- Inadequate details have been submitted. The Applicant has not shown a retaining wall parallel to their property despite a 4m drop.

- They have not considered the design requirements to carry out the works safely.
- A proposed 2 tier garden will create overlooking directly into their property.
- Photographs showing the existing scenario and extracts from the drawings/sections showing that proposed are included with their appeal.
- The extent of hardsurfacing is excessive and this and overlooking towards their property has not been addressed in the F.I submission.
- The F.I submitted did not address the hard landscaping or the overlooking.
- They note that the Planner's Report initially recommended refusal, and that this was overturned by the Senior Planner. The F.I has not been addressed sufficiently.

Summary

- The application is invalid and should not have passed the Council's checklist.
- Details required to analyse the impact on adjoining properties have not been provided.
- A retaining wall parallel to their property has not been shown despite a 4m drop.
- The design considerations to carry out the works safely have not been considered.
- The applicant has not addressed the F.I. sufficiently.

6.2. First Party Response

Michael Fitzpatrick Architects response on behalf of the First Party includes the following:

Public Health & Amenity

- The plans submitted to the P.A clearly indicate a proposed drainage system connecting to the existing drains. They also note connections to the surface water drainage system.

- Condition no. 3 of the Council's permission requires such drainage works to be carried out.

Residential Amenities

- The upper garden area is to be provided with a 2m screen fence. This will mitigate overlooking adjoining property.
- They do not consider that there is an issue with overlooking. They note separation distances and that there are no windows overlooking.

Lack of Clarity

- They note the Board may seek further conditions relating to slope stability, landscaping and boundary treatment.
- It is their case that the development as proposed will not raise such issues and that there is an adequacy of information and clarity to allow for a decision to grant with conditions if necessary.

Conclusion

- They ask the Board to consider a grant of permission subject to conditions on the grounds that the proposal will not seriously prejudice public health and safety, nor adjoining neighbour's residential amenities.
- They consider that this proposal which includes the removal on the unsightly garages to the rear of the existing houses (nos. 9, 11 & 13) and the provision of a rear garden area will be beneficial for these properties.
- The garden area's landscaping and better ongoing management of this presently underused upper area of the site to the rear will result in a significant improvement of the visual amenities of the area.

6.3. Planning Authority Response

They refer to the Planner's Reports and to the F.I submitted and their response includes the following:

- The proposed works are regarded as ancillary to the main dwelling.

- They do not consider that the proposal will give rise to additional concerns regarding overlooking as the area of the upper garden is currently accessible and useable albeit limited.
- They refer to Condition no.5 of the Council's permission and consider that this would mitigate against any damage to neighbouring properties.
- That additional measures to ensure privacy of the adjacent garden includes the construction of a 1.8m timber panel fence to form screening between the upper garden area and the garden of the neighbouring property.
- They ask the Board to uphold their decision and grant permission.

7.0 Assessment

7.1. Context and Rationale for Proposed Development

- 7.1.1. The site is within the urban boundaries of Cavan, within land zoned 'Existing Residential'. Therefore, the principle of development which is ancillary to the existing residential properties is acceptable provided it would not adversely impact on the residential amenities of adjoining properties or the character of the area.
- 7.1.2. This application concerns 3no. properties, facing but well set back from Cathedral Road. Nos.9, 11 are adjoining at the end of a terrace of 3 no. 2 storey houses and no. 13 is at the end of a separate terrace to the north of these. There is an access from the public road that serves the rear of nos. 9, 11,13 and 15. There are 2no. garages set within the embankment that serve nos. 9 and 11. There is a wider yard area to the rear of nos.13 and 15, with a narrower extent to the rear of nos. 9 and 11 as these properties are further set back. The rear gardens of these properties comprise a very steep sloping grassed embankment. Keadue Lane to the west is on a much higher level.
- 7.1.3. It is noted that this application seeks to demolish 2no. existing garages, excavate the existing embankment and erect a retaining wall. It also proposed to provide alterations to site boundaries and all ancillary site works at Nos.9, 11 and13 Cathedral Road, Cavan. The First Party provides that this is to upgrade the appearance of the area to the rear of the existing house nos. 9,11 and 13. They

provide that the removal of the unsightly and dilapidated garages and the provision of a garden area will provide for a better more beneficial use of the area for the residents of nos. 9,11 and 13. They submit that the garden area's landscaping and better ongoing maintenance of this presently underused upper area of the site to the rear will result in a significant improvement of the visual amenities of the area.

7.2. Administrative issues

- 7.2.1. The Third Party consider that the application is invalid. They note that the applicant must include a north point on the drawings, which is not as shown correctly on those submitted. The site runs from West to East and not North to South as per the Architects drawing. This refers to the Site Layout Plan submitted.
- 7.2.2. Regard is had to Article 23 (1) of the Planning and Development Regulations 2001 (as amended) which refers to: Requirements for particulars to accompany an application under article 22. Sub-article (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections and maps or plans referred to in paragraph (g) of the sub-article. The latter refers to the Ordinance Survey Maps. While it is noted that while the North point is incorrectly indicated on the Site Layout Map, the Site Location Map is based on the OS mapping and this clearly shows that the site is in a west-east orientation.
- 7.2.3. The First Party response refers to the Development Management Guidelines 2007. Section 3.8 refers to Application documentation and notes that Article 22A of the Regulations permits Planning Authorities to seek additional specific information as part of a decision. This includes that the absence of such specified information *cannot be a cause of invalidation of the application*. It is noted that the Planning Authority did not refer to this issue of the north point in their F.I request.
- 7.2.4. It must be noted that the issue of validation of the application is within the remit of the Planning Authority and is not within the remit of the Board. Therefore, it would not be appropriate for the Board to consider the validation of this application by the Planning Authority.

7.3. Excavation Works and Retaining Wall

- 7.3.1. The Third Party are concerned that the proposed works to the upper garden are to be constructed by cutting approx.4m of soil from the embankment (72.00 OD to the proposed flat level by approx. 68.00 OD), located at a distance of 2m from their boundary. They note that their ground level is still 72.00 OD yet there is no retaining wall being proposed to run parallel to their boundary on the upper tier. Instead, the architect proposes to grade the soil. This results in a 63 degree sloped embankment which is not feasible. They contend that this detail has not been considered and that a contiguous elevation, or a longitudinal cross section has not been submitted to show the impact on their property to identify this issue. They refer to the drawings submitted and consider that no detail has been shown, which would show a 4m cut located 2m away with no retaining wall. They consider that there is not an understanding of the detail required to construct the retaining wall.
- 7.3.2. The revised plans submitted at F.I stage note proposals in relation to the provision of steel railing and fencing they refer images of the proposed picket fencing in a timber finish. They include a section and also provide that in relation to the retaining wall, they include a sample image of the proposed colour 'Basalt Grey'. In relation to screening from neighbouring garden they provide an image of timber fence (1.8m high) screening to be provided along the rear garden boundary with no.15.
- 7.3.3. The Planner's response refers to condition no. 5, relative to all works for the new retaining wall being supervised and certified by a Chartered Civil or Structural Engineer. Having regard to the issues presented, I would consider that an engineered solution as to how the works are to be carried out to ensure stability of the embankment and no adverse impacts on the rear yard or garden area of no. 15 can be undertaken. I note the Council's Condition no. 5 in this respect and if the Board decide to permit would recommend that a similar type condition be included.

7.4. Impact on the Character and Amenities of the Area

- 7.4.1. The Third Party are concerned that the proposed development will create a two-tier garden that will overlook directly to their property. That the proposal to create an extensive upper garden space would potentially impact on their property. This differs from the current scenario, with the steeply sloping garden. It will also mean that there

will be a significant difference in levels between their upper garden and that of the neighbouring property.

- 7.4.2. However, while this difference is noted, having viewed the proposal on site, and had regard to the existing situation, I would not consider, that additional overlooking will ensue. There are no rear windows from no.15 looking directly towards the space, and in view of the current situation with the steeply elevated rear garden area, I would not consider that this proposal will adversely affect the privacy of no.15, as their garden is set on the higher level. As shown on the Site Layout Plan the raised upper rear garden will be c.20m from the rear of no.15. The revised plans also show that a 1.8m high timber fence is to be provided along the side garden boundary with no.15, which will assist in providing screening and in reducing overlooking to their private amenity space.
- 7.4.3. I note that as shown in the revised plans the retaining wall is to be c.3m in height in basalt grey with a fence on top providing a barrier along the front elevation resulting in c.4m in height between the upper and lower gardens. It is noted that there are to be steps up to the upper rear garden area sited c.1m from the side boundary with no.15. This property also has steps up (albeit a smaller number) to their sloping rear garden area. A new location for steps to the side of no. 9 is also proposed in close proximity with the adjoining property no.7. The First Party response refers to landscaping and boundary treatment, they also provide that the development will not seriously prejudice public health and safety, nor seriously prejudice the adjoining neighbour's amenities. If the Board decides to permit, I would, also recommend that it be conditioned that a 1.8m high timber fence also be put along the boundary with no.7 to provide screening and to prevent overlooking from the proposed upper garden area.
- 7.4.4. I would have no objection to the demolition and removal of the existing garages which appear in poor condition, although it is of interest how they have been built into the embankment. In view of its set back from the public road, and its location at the rear of the subject properties, the proposed development will not have any impact on the character of the area, relative to views from Cathedral Road. It will result in a more usable lower rear garden area for nos. 9,11 and 13, which will be beneficial for those properties.

7.5. Drainage issues

- 7.5.1. The Third Party are concerned about drainage issues resulting from the proposed construction works and from the proposed development. This includes that the proposed drainage pipe will not work for the top of the retaining wall (2.5m). The Architect's response to the Council's F.I request referred to their updated Site Layout Plan which indicates the proposed drainage layout for the removal of surface water from the proposed infrastructure.
- 7.5.2. The First Party response provides that the surface water can be collected by a surface water system and discharged to the existing drainage systems to the public road drainage system. They provide that the plans submitted clearly indicate a proposed drainage system connecting to existing drains. Reference is had to Condition no. 3 of the Council's permission relative to provision for surface water drainage. If the Board decides to permit, I would recommend the inclusion of a similar type condition to ensure that the proposal does not present issues relative to surface water drainage.

7.6. Construction issues

- 7.6.1. In view of the excavation and demolition elements involved and the concerns of the neighbouring property, I would recommend if the Board decide to permit that a Construction and Waste Management Plan be submitted. This would also provide details of construction traffic, hours of operation etc.

7.7. Other issues

- 7.7.1. While not referred to in the Third Party grounds of Appeal, I note that the red line boundaries of the site, appear to include part of a house to the east fronting onto Keadue Lane. While no representations have been made regarding this as an issue, it is noted that the current proposal in view of its locational context would not impact on this property.
- 7.7.2. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission*

under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*" In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

7.8. Screening for Appropriate Assessment

- 7.8.1. The appeal site is to be connected to public services, is within the residential zoning, and is not within or in close proximity to any Natura 2000 sites. The nearest such sites are at a considerable distance, and there are no watercourses within or proximate to the site. Subject to standard good practice construction methods and having regard to nature and scale of the proposed development, the nature of the receiving environment and the distance to the nearest European sites, 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

- 8.1. I recommend that permission be granted subject to conditions for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the established residential land use zoning, to the form and character of the established dwellings with steeply sloping rear garden areas, to the design of the proposed development, to the pattern development in the area, 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 and would be in accordance with the provisions of the current Cavan Town and Environs Development Plan 2014-2020 (as varied). The proposed

development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 27th day of November 2020 and the 11th day of December 2020, by the further plans and particulars received by An Bord Pleanála on the 25th day of February, 2021, 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.

Reason: In the interest of clarity.

2. The construction of all new retaining walls within the proposed development shall be designed, supervised and certified by a Chartered Civil or Structural Engineer, and the works shall be subject to the written agreement of the Planning Authority.

Reason: In the interests of clarity and to ensure a satisfactory standard of development.

3. A 1.8m timber fence shall be erected along the side boundaries of the proposed lower and upper rear garden areas between nos.7 and 9 and 13 and 15 Cathedral Road.

Reason: In the interests of the residential amenity and privacy of neighbouring properties.

4. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. No surface water from the proposed development, shall discharge onto the public road or adjoining properties.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

5. Construction (including deliveries) or demolition works shall be carried out between the hours of 08.00 – 18.00 Monday to Friday and 09.00am to 14.00 on Saturdays.

Reason: In the interests of residential amenity.

6. 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 include details of excavation works and of traffic management and shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

Angela Brereton
Planning Inspector

26th of May 2021