



An
Bord
Pleanála

Inspector's Report ABP-309571-21.

Development	Demolish shed and construction storey and a half type dwellinghouse, site entrance and all associated site works.
Location	Site to rear of Manfu House Chinese Take Away, Ballinlough Road, Ballinlough, Co. Cork.
Planning Authority	Cork City Council.
Planning Authority Reg. Ref.	20/39408.
Applicant	Michael Kang Yau Cheung.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Declan O'Flaherty.
Observer	None.
Date of Site Inspection	3 July 2021.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The subject site is in an inner suburban location and to the rear of a takeaway restaurant trading as 'Manfu House'. The subject site comprises a plot of 0.0413 ha located to the rear of the commercial premises. The land is presently accessed by way of vehicle gates parallel to the front elevation of Manfu House. At the opposite side of the premises there is also a separate pedestrian access gate to the rear. To the north and west of the site are dwellinghouses. The house to the west is a single-storey detached dwelling which has a ridge height of 95.990 m. The house to the north is a two-storey detached house with a ridge height of 98.416 m.

2.0 Proposed Development

- 2.1. The main element of the proposed development is the construction of a one and a half storey dwellinghouse which is of overall stated gross floor area of 166.55 m².
- 2.2. The stated floor area of the existing shed which is to be demolished is 24.7 m².
- 2.3. The application documents include a certificate of exemption ref. no. 19/1561 which was granted by Cork City Council on 28th of August 2019.
- 2.4. The entrance arrangements shown provide for a separate residential entrance to serve the dwelling house. Manfu House would retain the existing vehicular and pedestrian entrance gates.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to conditions including:

- Requirements relating to vehicle entrance and detail of public footpath.
- Construction phase requirements.
- All storm run-off from the proposed development shall be retained on site and soak way is designed in accordance with relevant standard or as approved by the planning authority.
- Financial contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information recommendation (8 September 2020) – there is insufficient information in relation to the entrance and vehicle access/egress.

In addition, the report references the following:

- The ABP inspector stated that the proposed development would not set an undesirable precedent for backland development.
- The principle of residential development is accepted and accords with the zoning.
- There is a variety of house types and styles in this location – the ridge height would exceed the heights of the buildings to the west and south and be lower than other houses referenced – the proposed development would not have a significant impact on the visual amenities of the area.
- The position of the house is relatively similar to a previously permitted dwelling on the site.
- There would not be an unacceptable degree of overlooking or overshadowing on the house to the west.
- The house to the north is at an angle and its rear elevation faces south-west. No windows are proposed at the first-floor level to the rear of the dwelling house with the exception of a velux rooflight serving a bathroom. This rooflight would not give rise to any undue overlooking or loss of privacy for the dwelling to the north. Given the location of the dwelling house to the north and its associated private amenity area the proposed development would not give rise to any adverse effects on residential amenity of this adjoining property by way of overlooking, overshadowing or overbearing.
- The proposed development meets the criteria for infill housing in paragraph 16.59 of the Cork City Development Plan.
- The proposed development complies with the development plan requirement for private amenity space and the room sizes indicated in 'Quality Housing for Sustainable Communities, 2007'.

Final report (1 February 2021) - permission is recommended.

3.2.2. Other Technical Reports

Contributions Report (6 August 2020) - recommends payment in the amount of €9355.31 under the GDCS.

Environment Report (11 August 2020) – no objection subject to conditions.

Drainage Report (24 August 2020 – no objection subject to condition relating to the retention of all stormwater from the proposed development within the site.

Urban Roads and Street Design (Planning) Report (25 August 2020) – recommends further information relating to driveway entrance widths, vehicle crossover and pedestrian priority, adequacy of vehicular access/egress including auto track analysis.

Urban Roads and Street Design (Planning) Report (25 January 2021) – recommends permission subject to conditions.

3.3. Prescribed Bodies

Irish Water sets out standard requirements.

3.4. Third Party Observations

The owner/occupiers of 15 Shrewsbury Downs object to the proposed development on the basis of the points which are reiterated in the appeal.

4.0 Planning History

ABP – 305466 – 19. This relates to a third-party appeal by Mr Declan O’Flaherty against a decision of the planning authority to grant permission for a one and a half story dwellinghouse of 166.5 m² at the site. The Inspector recommended permission. The Board refused permission for the reason summarised below:

- the proposed new vehicular access through the rear of the commercial premises would restrict the manoeuvrability of delivery/maintenance vehicles accessing/egress in the commercial premises and would be a safety hazard by reason of conflicting vehicular movements and pedestrian movements

between the residential dwelling and the existing commercial property and therefore in conjunction with the existing commercial premises is considered overdevelopment of the overall site. In deciding not to accept the inspector's recommendation to grant permission the Board had serious concerns with the adequacy and safety of the proposed access arrangement involving shared usage between the proposed residential dwelling in the existing commercial premises.

Reg ref 0833454 relates to a previous grant of permission at this site for a dormer house.

5.0 Policy Context

5.1. Development Plan

Cork City Development Plan 2015

The site is in an area zoned 'Residential, Local Services and Institutional Uses the objective of which is 'to protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 3'.

The policies relating to infill development are set out in section 16.59. The policy relating to corner/garden sites requires that the scale and design of the house be compatible with the adjoining dwellings and as detailed in section 16.58.

5.2. Natural Heritage Designations

The nearest European site is approximately 500 m from the site of the proposed development and is the Cork Harbour SPA (004030).

6.0 The Appeal

6.1. Grounds of Appeal

The appeal lodged by the owner/occupier of 15 Shrewsbury Downs includes the following points:

- Due to the proximity of the proposed development to our own house in particular the substantial highly glazed dining and sitting room of our house (6.5m from the proposed dwellinghouse) there be an appreciable compromise in residential amenity.
- Significant adverse impact on the enjoyment of our own very private rear garden and deck due to the dominant presence of the proposed dwelling.
- Overshadowing of house and garden by the wide footprint of the house which has a ridge height of 7 m.
- Inadequate separation between proposed dwelling and our own dwellinghouse, 6.5 m and ground-level and 10 m at first level approximately.
- Over development of the site.
- This is back land development and would set a dangerous precedent.
- Due to the overdevelopment there is little or no room available for necessities like a soakway.
- The Board previously refused the development on the basis that in conjunction with the existing commercial development it would constitute overdevelopment. There is no change in this respect.
- The Board also noted serious concerns with the adequacy and safety of access arrangements involving shared usage between the proposed residential and commercial premises and this also has not changed. Deliveries to the commercial premises currently endanger public safety and this would be further compounded.

6.2. Applicant Response

No response received.

6.3. Planning Authority Response

The decision is in accordance with legislative requirements and consistent with the development plan and the proper planning and sustainable development of the area. No further comments.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. I propose to assess the issues in this case under the following headings:

- Principle of development
- Residential amenity
- Access and parking arrangements
- Appropriate assessment.

7.2. **Principle of development**

7.2.1. The appellant describes the development as backland and states that it would set an undesirable precedent for the area and constitute overdevelopment of the site which is inconsistent with prevailing density and private open space provision. The applicant also indicates that there is inadequate space to make suitable arrangements for surface water drainage.

7.2.2. I note that the planning authority previously granted permission for development of a dormer dwellinghouse at this site and also that in its decision to refuse permission in 2019, the Board did not raise any issues relating to the principle of the development or the scale of development on the site. The reference to overdevelopment of the site was made strictly in the context of the vehicle arrangements, which are now revised. The Board's decision made no reference to the height or scale of the proposed house, its location relative to the commercial development or other developments on adjacent sites. The Board decided to refuse permission contrary to the Inspector's recommendation as it formed a view that the development due to conflicting residential and commercial traffic movements would give rise to traffic hazard and thus constitute overdevelopment of the site.

- 7.2.3. Regarding the private open space, I consider that it is appropriate to have regard to the configuration of the open space which includes a landscaped patio zone adjacent the main dining area and an area to the rear of approximately 4.6 m x 15 m. The residential area would be separate from the commercial premises and a substantial driveway/parking area is also to be contained within the site. The amount of open space provided was deemed to be in accordance with the development plan and otherwise met with the approval of the planning authority. I consider that having regard to the inner suburban location and the relationship of the open space to the dwellinghouse, the arrangements for private open space, including the amount proposed are suitable. I note in addition that there is considerable similarity with the previous proposal and that the Board did not indicate any concern with respect to open space or the level of development.
- 7.2.4. To conclude, I consider that the principle of development of this site which is located on zoned land in an inner suburban area is acceptable.

7.3. Residential amenity

- 7.3.1. With respect to the issues raised in the appeal, which relate primarily to residential amenity including overlooking, overshadowing and overbearing I deal with these items separately below.

7.4. Overlooking

- 7.4.1. The applicant submission is that the first-floor windows are located so as to prevent overlooking of adjoining properties. At first floor level facing the appellant's property it is proposed to install one velux rooflight. There is no significant difference in levels and no likelihood of overlooking from ground floor windows. I consider that there is no potential for overlooking of the appellant's house. A similar conclusion may be drawn with respect to the house to the west. The Board did not previously raise any issues regarding overlooking when considering the previous appeal at this site.

Overshadowing

- 7.4.2. The appellant has not presented any technical information to support the claim that there would be overshadowing of his house and garden by reason of the wide footprint of the house which has a ridge height of 7 m. I concur with the consideration of this matter as set out in the Inspector's report under the previous appeal. I note

that the proposed dwelling house is set back from the rear boundary and that the appellant's house is orientated to the south-west. Having regard to the relationship between the proposed house and the rear elevation and main amenity space associated with the appellant's house, it may be concluded that overshadowing would not significantly affect the house and gardens at 15 Shrewsbury Downs.

Overbearing

The applicant's case is that the house design is mindful of site context and that the narrow plan references traditional proportions and scale. Having considered the design and layout and the site context my conclusion is that while subject house will be visible from the appellant's house, it is of simple design and suitable external finishes and would not be out of character in this suburban area. For reasons related to the separation between the proposed house and the appellant's house and also the orientation of the appellant's house, I do not consider that the view of the proposed house from the appellant's house would give rise to overbearing impacts of sufficient degree to warrant a refusal of permission or a significant amendment to the house design proposed.

- 7.4.3. I conclude that the development is acceptable in terms of the impact on the residential amenities of the appellant's house and other houses in the vicinity. I note the Inspector's report under the previous appeal, included a recommendation with respect to exempted development and I consider that this is suitable in this case.

7.5. Access and parking arrangements

- 7.5.1. I consider that contrary to the claim presented in the appeal, the proposed development incorporates a substantial alteration in the form of a 3m gate to the west of Manfu House, which will solely serve the residential use. The applicant notes that the commercial property will continue to have access to its rear yard by way of the existing gate which will be used for removing waste bins for collection. There is no requirement for vehicular access to the rear of the restaurant and all deliveries are made by way of the front door at present and there is no change proposed in this respect. In my opinion the proposed layout overcomes the reason for refusal set out in the Board's previous decision. I consider that there is no potential for conflict between the residential and commercial uses.

- 7.5.2. I note in addition that during the consideration of the application by the planning authority detailed proposals were presented with respect to the access. This included submission of an auto track analysis which demonstrated the suitability of the vehicle access and egress. In addition, the consent of the local authority was obtained with respect to the provision of a Dutch kerb at footpath.
- 7.5.3. I note that within the curtilage of the site there is an indicated area for parking of two cars and there is ample room to undertake reversing movements within the site. I note in addition the indicated area for surface water drainage.
- 7.5.4. I conclude that the development is acceptable in terms of proposals for parking, access and surface water management.

7.6. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the likely emissions arising from the proposed development, the distance to the nearest European sites and the lack of hydrological connectivity, I am satisfied that 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 the Board grant permission for the reasons and considerations and subject to the conditions below.

9.0 **Reasons and Considerations**

Having regard to the zoning objective for the site, the provisions of the Cork City Development Plan, 2015-2021, the pattern of development in the area, and the nature, scale and detailed design 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 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.

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 details submitted on 11 January 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. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwelling houses without a prior grant of planning permission.

Reason: In the interest of residential amenity having regard to the restricted nature of the site.

3. The formation of the vehicular access to the house shall be constructed in accordance with the requirements of the planning authority. The proposed vehicular access shall be no more than 3m in width.

Reason: In the interest of orderly development and traffic safety

4. Proposals for a house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of clarity.

5. Site development and building works shall be carried out only between the hours of 0700 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

6. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: To ensure a proper standard of development.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

Mairead Kenny
Senior Planning Inspector

11 July 2021