



An
Bord
Pleanála

Inspector's Report

ABP-310474-21

Development	Construction of two storey house
Location	15 Limetree Avenue, Adare, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	21/34
Applicant(s)	Michael Toomey Homes Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeals	Third Party
Appellant(s)	Pat and Maria Mulvehill Rob Cussen and Joy Marshall.
Observer(s)	Ivor Doherty
Date of Site Inspection	13 th August 2021
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a vacant site located at 15 Limetree Avenue in Adare County Limerick. The appeal site has a stated area of 0.078 hectares and is adjoined to the north and east by residential dwellings and to the west by the designated green space serving this small enclave of detached dwellings. The appeal site roadside boundary and western boundary to open space are currently defined by a timber fence while the northern and eastern boundaries are defined by walling and hedging. An Irish Water foul sewer pipeline runs north south through the western part of the appeal site.
- 1.2. Access is south off The Avenue a residential cul-de-sac that also provides access to the rear gate of Adare Manor Estate. The road has a general carriageway width of c.5 metres and a narrow footpath on the southern side only. There is a pinch point for a short distance on the road close to the junction with the main road where the carriageway narrows to c.3.5 metres in width.

2.0 Proposed Development

- 2.1. The proposal involves permission for a new two storey house 316.5sq.m with glazed covered patio to one side. During the course of the application to the local authority and specifically in response to the request for additional information some modifications were made to the proposal with the overall ridge height reduced and dwelling relocated more centrally within the site. An initial proposal to revise the location of the entrance was also amended.

3.0 Planning Authority Decision

3.1. Decision

By order dated 18/5/2021 Limerick City and County Council issued notification of the decision to grant permission and 9 conditions were attached which included the following of particular note.

Condition 2. Development Contribution €6,330 in accordance with the Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report notes a previous refusal on the site on grounds of proximity to temporary wastewater treatment system serving the estate. Houses have now been connected to the public sewer. The site never formed part of open space. Applicant to be requested to provide details of wayleave running through the site and to address third party concerns.

Second report recommends permission subject to conditions.

3.2.2. Other Technical Reports

Mid-West National Road Design Office. No observations.

Roads report. Road opening license. Alterations to footpaths in accordance with TII standards.

Environment Report - No objection.

3.3. Prescribed Bodies

Transport Infrastructure Ireland – No observations.

Irish water. No objection subject to connection agreement and subject to the constraints of the Irish Water Capital investment programme. Prior to commencement of development existing Irish Water Services and connections within the site to be identified and protected and wayleaves maintained. Works in accordance with Irish Water Codes of Practice and standards.

3.4. Third Party Observations

Submission from Hutch O Malley, Consulting Engineers on behalf of Dr and Mrs Mulvehill, 14 Limetree Avenue. Object on grounds that the dwelling is out of

character. Development is contrary to development plan guidelines regarding public open space. Overlooking and loss of light. Overbearing impact and visual intrusion.

Submission from Hutch O Malley, Consulting Engineers on behalf of Yvonne & Charlie Curtin, Maria & Pat Mulvehill, Lesley & John O Donoghue, Rob Cussen & Joy Mulhall, Maurice & Joan Horan, Susanne & Pat Murphy, Aine Ui Chroimin, and Bernard & Helen Mackessy. Objection on grounds of excessive scale, loss of open space. Access laneway is substandard. Parking issues will be exacerbated.

Submission by Frank Ross, Consulting Engineer on behalf of Ivor Doherty adjoining neighbour to the west of the proposed development. No objection in principle however concerns arise regarding overlooking to the west. Wayleave encroaches on observer's property. Boundary screen walls should be provided.

4.0 **Planning History**

00/369 Refusal of permission for relocation of temporary sewage treatment plant and construction of two storey dwelling, site works and services. Refusal on grounds of proximity to temporary wastewater treatment system serving the overall site.

ABP Ref 130504 (Limerick County council ref 00/424) Permission granted for the construction of six number two-storey detached dwellings, entrances and site works including installation of temporary effluent treatment plant at Avenue Row, Adare, Co. Limerick. Condition 3 related to the current appeal site and required that proposed house number 15 be omitted and the proposed temporary sewage treatment plant relocated from the open space to the western part of site number 15. The condition stated that proposals in relation to development of site 15 may be the subject of an application for planning permission following decommissioning of the temporary sewage treatment plant.

5.0 Policy Context

5.1 Ministerial Guidelines

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) Section 5.9 relates to inner suburban / infill developments, promoting the provision of additional dwellings in such locations where it can assist in revitalising an area and utilise the capacity of social and physical infrastructure. For infill development (which includes backland areas) the Guidelines advise that a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

National Planning Framework - National Policy Objective 6: 'Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.' 2. National Policy Objective 11: 'In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.'

5.2 Development Plan

The Limerick County Development Plan 2010-2016 and Adare Local Area Plan 2015-2021 refer.

The site is zoned Existing Residential. The purpose of this zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas.

Objective H4: Infill Development, Restoration and Town Renewal It is an objective of the Council to: a) Encourage living in the village centre by the promotion of

residential uses over businesses. b) Promote sensitive infill developments on sites in the town centre that are not developed and are not required for access to backlands.

5.3 Natural Heritage Designations

The appeal site is not within a designated area. The Lower River Shannon SAC occurs within circa 700m to the north while the River Shannon and River Fergus SPA occurs within 7km to the north.

5.4 EIA Screening

The subject development is for a single house, on a site of 0.078ha, falling well below both of the applicable thresholds for mandatory EIA, as set out at Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended). In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, which comprises the construction a single house on serviced land, it is considered that 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

6.1.1 There are two third party appeals by neighbouring residents Pat and Maria Mulvehill, 14 Limetree Avenue and Rob Cussen and Joy Marshall, 10 Lime Tree Avenue. Appeals raise common and particular concerns which I have summarised as follows:

- Proposal is contrary to the development plan where open space in the order of 15% of site area would normally be required in any development. Useful open space within the estate will be reduced to 10%. Site has been actively used by children in the estate as a field for sports.
- Proposed dwelling is out of character with the shape and size of established houses in this estate. Proposed house is formed with one single massing to front elevation

with no relief as is a consistent feature of existing houses. Massing is 2.5 times that of the other houses on the estate.

- Windows will result in overlooking and are unnecessary.
- Proposal is overbearing and detrimental to living space and outdoor amenities by reason of visual obtrusion and overshadowing.
- Floor area is 30% bigger at 3,400sq.ft compared to floor area of 2,400 of existing houses.
- Sewer could be moved to allow movement of the dwelling away from adjoining house.
- Traffic safety and pedestrian risk. Laneway is a serious concern given that it is substandard. Larger vehicles entering /exiting have to drive on the footpath giving rise hazard to children and older pedestrians. At weekends the laneway is used by tourists / visitors for parking.
- Previous decisions 00/424 and 03/69 Council and An Bord Pleanála hinted at concerns regarding density and inadequate open space.

6.2. Applicant Response

6.2.1 The response by RPS Group on behalf of the applicant seeks to address the grounds of appeal as follows:

- Refute assertion of third parties that the site is open space. Ad hoc use by residents of the fenced off vacant site does not render the site as open space.
- Principle of long-term use of the site as a dwelling site was established under the Limetree parent permission.
- There is no planning or architectural design reasons why the development should exactly match that of the neighbouring properties.
- Proposed dwelling is compatible with existing character of the area. Bespoke design compliments the existing character of the area.
- Proposal adopts a common design aesthetic but merely introduces some variety in form. Architectural expression echoes that of the existing dwellings through the

materials and colours, solid to void ratio, glazing configuration, the inclusion of ground floor bay windows and upper floor dormer windows to the front, a generally asymmetric front elevation, hipped roofs and overall stepped built form.

- Contiguous elevation clearly illustrates comparable character.
- Overall ridge height was reduced in response to the request for additional information to 7.72m to match the overall ridge height of no 14.
- Overall scale and mass is comparable to No 14. Both dwellings are two storeys with same ridge height incorporating hipped roofs profile and dormer windows at first floor.
- Building materials and finishes reflect those of the existing dwellings at Limetree Avenue. Painted render with a black grey natural slate roof. Windows will be white timber and rainwater goods black aluminium.
- Introduction of design variety within an overall established aesthetic can enhance an area creating variety and vitality. A similar approach to variety in design was proposed and approved at No 5 Limetree avenue under 19/842. Position of the site at the end of a row adjacent to an area of open space makes it particularly suitable location for a bespoke design.
- Regarding potential for impact on privacy, amenity value to 14 Limetree Avenue as a result of overlooking, overbearing impact, overshadowing and loss of light there are only 3 windows proposed at first floor on eastern elevation (2 small ensuite bathroom windows and a staircase) Development cannot give rise to material overlooking and invasion of privacy of No 14 or its outdoor seating area to the side of the house. If the Board requires so a condition could be included requiring obscure glazing of the staircase window and use of restrictors to ensuite windows.
- Dwelling provides 5.6m separation distance to neighbouring property at No 14. Amended position is generous for urban estate development. Boundary fencing between the rear garden and no 14 of 1.8m height is proposed I line with CDP standards and will protect residential amenity.
- Regarding overshadowing and loss of light to no 14 Limetree Avenue as the site is to the west of no 14 it cannot overshadow no 14 until the sun moves into a south

westerly and westerly position in the afternoon. The proposed dwelling is set back from the boundary wall with no 14 which restricts the extent of shadow cast.

- Shadow analysis study by Studio Move Architects submitted as part of the further information response shows in relation to summer limited potential for shadowing late in evening affecting only a small part of the garden. Spring analysis shows overshadowing in mid-afternoon however boundary wall already casts a shadow and the additional area of shadow arising from the dwelling affects only a modest additional strip of the garden along the boundary. At this time no 14 is responsible for most overshadowing within the garden. In winter the proposed dwelling has greater potential for overshadowing however the dwelling itself already casts a shadow over the garden and patio for most of the day. The proposed dwelling at no 15 will very modestly increase the extent of shadow in part of the rear garden in the afternoon. Overall, the proposal will only have minor impacts in terms of increasing shadowing of the private space of no 14 beyond its current situation. The dwelling is sufficiently distant from no 14 that its shadow will not increase shadow at anytime on the windows of the western elevation at no 14 and will have no adverse impact on diffused daylight.
- No unreasonable impacts arise as to warrant a revised proposal based on a reduced floor space.
- Suggestion that foul sewer running through the site should be relocated into the area of open space in order to set the dwelling centrally within the site is inappropriate and unnecessary.
- Regarding the adequacy of the access road the principle of development was accepted by the Board and the Planning Authority. Proposal will result in minimal additional loading to a local road network. Control of illegal parking is a matter for the Council.

6.3. Planning Authority Response

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

6.4. Observations

6.4.1 Observations are submitted by Frank Ross on behalf of Ivor Doherty, Limetree Avenue, owner of the adjacent dwelling site to the west.

- Decision and conditions of permission did not take any cognisance of third-party submissions
- Appellant is directly impacted by the proposal.
- Specific wayleave details were not presented. Reliance is placed on lands within the observer's site for maintenance or repair to sewer line. Exact location and depth of pipe should have been traced at planning stage.
- Proposal should be treated as part of the estate and not a standalone house.
- Applicant is claiming existing hedging as boundary treatment whereas a wall should be provided. Hedge has been severely trimmed post further information exposing the dwelling to overlooking.
- Entire western elevation overlooks the observer's property.
- Screen walls 2m high should be provided on western and southern boundary within 22m radius zone from the house.
- House is oversized and too near wayleave.
- Exempted development or deviations from plans should be expressly prohibited.
- Road access is inadequate.

7.0 Assessment

7.1 Having inspected the site and considered the contents of the appeals and all submissions in detail, the main planning issues in the assessment of the appeal are as follows:

- Principle of development
- Scale, design and layout
- Residential amenity
- Traffic and Servicing
- Appropriate Assessment.

7.2 Principle of Development

7.2.1 The proposed development is consistent with the zoning objective Existing Residential as set out in the Adare Local Area Plan 2015-2021. Policy Objectives 6 and 11 of the National Planning Framework promote development patterns which result in more people and activity within existing cities, towns and villages and infill development to ensure the achievement of critical mass and the proposal is consistent with this policy. The principle of development was accepted by the Board in its previous decision 13/0504 whereby a house was omitted on basis of need for a temporary sewage treatment plant. The recommendation of the reporting Planning Inspector included the proviso that future development of the site could be accommodated following decommissioning and removal of sewage treatment plant. As this has now been completed and the dwellings are connected to the public sewer, the development of the site for residential purposes is appropriate. As regards allegations made by the third-party appellants that the site formed part of the designated open space area within the estate this is clearly not the case by

reference to the previous decision of the Board. I conclude therefore there is no objection in principle to the development of the site for residential purposes.

7.3 Scale, design and layout.

7.3.1 On the issue of scale and design the third-party appellants and observer contend that the proposed dwelling is excessive in scale and is out of character with the established dwellings in the estate, citing in particular the massing, lack of relief to the front elevation and size. I am inclined to concur with the first party that the location of the site at the end of a row and adjacent to the public open space area provides the appropriate context for a bespoke design which nevertheless adopts a consistent architectural expression and design aesthetic. I further concur that there is no planning policy reason which would dictate that the design should exactly match that of the neighbouring properties. The proposed house is in my view an appropriate addition to the streetscape which will not have any unacceptable impact on visual amenity or built heritage. I consider that the proposed dwelling can be accommodated on the site.

7.4 Residential Amenity

7.4.1 Concerns are raised by the third-party appellants with regard to overbearing impact and potential for overlooking and overshadowing and loss of light. On the allegation of overbearing impact, I consider that having regard to the context and size of the site the resultant setback from adjacent dwellings the proposal will not have an overbearing impact on adjacent dwellings. I note the contiguous elevation (Drawing 32A) and perspective drawing (Drawing 303) which demonstrate the context.

7.4.2 On the question of overlooking I note that the upper floor windows to the eastern site elevation opposing No 14 Limetree Avenue comprise two ensuite and a staircase window. I consider that subject to the provision of obscure glazing the potential for any potential or perceived overlooking can be appropriately mitigated. On the question of overlooking to the west and northwest of the proposed dwelling as raised in submissions on behalf of the observer given the distance and relative orientation and having regard to the nature of the proposed upper floor windows which serve

ensuite bathrooms the proposal does not give rise to undue levels of overlooking. As regards the adjacent dwelling to the north the separation distance between the dwelling houses is in the region of 24m ensuring no significant overlooking.

7.4.3As regards overshadowing of No 14 Limetree Avenue I note the sun path analysis by Studio Move Architects submitted in response to the appeal. The study shows that based on the relative orientation with the proposed dwelling being to the west of no 14, overshadowing can only occur in the afternoon. The analysis for summer shows limited potential for shadowing late in the evening however this would only affect a small part of the garden. Spring analysis shows overshadowing in the mid-afternoon however the boundary wall already casts a shadow and the additional area of shadow arising relates to a small strip of garden along the boundary. In winter the proposed dwelling has greater potential for overshadowing however the proposed dwelling only modestly increases the extent of shadow in the rear garden in the afternoon where the dwelling at no 14 itself already casts a shadow over the garden for most of the day. I note also the comparative analysis provided by the first party in the response to the request for additional information, which compares for potential overshadowing arising in respect of an alternative design similar to that on no 14. This demonstrates that the extent of shadowing arising would in fact be greater in the case of the alternative design and therefore it is suggested that the proposed design mitigates the level of overshadowing arising.

7.4.4I note that the BRE guidance 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice' (2011) recommends that for a garden or amenity area to appear adequately sunlit throughout the year, at least half of it should receive at least two hours of sunlight on March 21st. I am satisfied that the garden of no 14 will remain adequately sunlit throughout the year and that any overshadowing would be minor and not of an unacceptable degree. As regards the assertion that exempted development rights should be expressly restricted, I consider that having regard to the context this not necessary. On the basis of the foregoing having assessed the implications of the proposed development on established residential context I

conclude that the proposed development will not have any undue negative impact on established residential amenity.

7.5 Traffic and Servicing.

7.5.1 On the issue of the adequacy of road access and potential for the proposal to give rise to pedestrian vehicular conflict and traffic hazard it is acknowledged that The Avenue which serves as access to Limetree Avenue is of limited capacity however I consider that this would not be a barrier to development on the site. I consider that a suitably devised construction management plan can appropriately coordinate and mitigate traffic impact and access arrangements. As regards any issues of illegal or overspill car parking from the Main Street such matters are matters for the Local Authority and An Garda Síochána.

7.5.2 As regards the suggestion by the appellant that the existing Irish Water sewer pipe running through the site should be relocated I note that this is not within the control of the applicant and based on the details submitted Irish Water are satisfied with the proposal subject to maintenance of a 3m wayleave either side of the sewer line.

7.6 Appropriate Assessment

7.6.1 The site is located within 700m of Lower River Shannon SAC (site code 002165) and is within 5-7km of a further four European sites. Curraghchase Woods SAC (000174), River Shannon and River Fergus Estuary SPA (Site code 004077), Askeaton Fen Complex SAC (002279) Tory Hill SAC (000439). There are no known hydrological links to the protected sites.

7.6.2 The development involves the construction of a two storey dwellinghouse and all associated site works on a site with a stated area of .078 hectares. The development site is an infill site within the existing urban area and was formerly occupied by a temporary wastewater treatment plant. The site is served by the public water and

foul water networks. Foul drainage is proposed to drain to the public network and surface water is to be connected to the public drain.

7.6.3 Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on serviced urban lands, it is considered that no appropriate assessment issues are likely to arise. The development proposal would not generate any foul discharges or surface water pathways that would impact on the conservation objectives of the European sites. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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 is granted in accordance with the following reasons, considerations and conditions.

Reasons and Considerations

Having regard to the Limerick County Development Plan 2010-2016, the Adare Local Area Plan 2015-2021 and the pattern of development in the area, it is considered that, the proposed development, subject to compliance with the conditions set out below, would be appropriate from a land use perspective, would be capable of being accommodated within the existing streetscape, would not seriously injure the residential amenities of the area and would otherwise be in accordance with the proper planning and sustainable development of the area.

9.0 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 23rd day of April 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. Details of the materials, colours, and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The proposed upper floor windows on the eastern and western elevation shall be permanently glazed with obscure glass.

Reason: To prevent overlooking of adjoining residential property.

4. The developer shall enter into a water and/or wastewater connection agreement(s) with Irish Water, prior to the commencement of development.

Reason: In the interest of public health.

5. 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 noise management measures, control of surface water, and off-site disposal of construction/demolition waste.

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

6. 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.

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

7. 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.

Bríd Maxwell
Planning Inspector

24th November 2021