



An
Bord
Pleanála

Inspector's Report

ABP-312177-21

Development	Home Improvements
Location	Locmor, 1 Fairy Lawn, The Lough, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2140269
Applicant(s)	Christine and Seán Russell
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party Appeal
Appellant(s)	Anne and Carmel Ellis
Observer(s)	Kathleen Quinn Mary and Ben Forde
Date of Site Inspection	5 th May 2022
Inspector	Susan Clarke

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1.0 Site Location and Description

- 1.1. The appeal site, which measures 0.031ha, comprises a two-storey dwelling, with a single storey rear and side extension and a single storey attached garage to the side within the established Fairy Lawns residential development, which is located off the Lough Road, approximately 1.8 kilometres south-west of the city centre. This site lies within a residential area that comprises a mixture of house types, sizes, and designs. There are single storey residential dwellings located east and west of the site within the Fairy Lawns development. The Cork Lough water feature is located further west of the site on the opposite side of the Lough Road.
- 1.2. There is a vehicular double gated access to the south of the property.

2.0 Proposed Development

- 2.1. The proposed development would comprise:
 - the demolition of an attached single storey garage to the side (western elevation) and a single storey side and rear extension (west and north elevations) (28.2 sq m),
 - construction of a new three storey extension to the rear elevation (northern elevation) and a single storey side extension (west elevation),
 - New roof and increase in ridge height from 8.693m to 8.948m,
 - Dormer window at Second Floor Level and a projecting front bay window at Ground Floor Level all to the front elevation (south elevation), and
 - Associated works.

The following key amendments were included in a response to a **Request for Further Information**:

- the rear projecting pitched roof was replaced with a parapet and flat roof over the first floor extension, but includes a projecting dormer type build out at the 2nd floor to maintain a fourth bedroom. The proposed Second Floor area was reduced from the original proposal of 47.1 sq m to 35.4 sq m in the RFI Response.

- The side extension was reduced in length (by 1.2m) to align with the main rear wall of the adjoining single storey dwelling.
- A pitched roof was provided over the footprint of the original garage with the additional depth covered by a flat roof.
- Fenestration alterations, and
- Omission of the proposed projecting front bay window.

The following key amendments were included in a response to a **Request for Clarification of Information**:

- The Second Floor Level extension was reduced further in depth
- Reduced window size on the western elevation at First Floor level.

The overall floor area was originally proposed to be 208.6 sq m, but was reduced to 193.8 sq m at RFI stage and further reduced to 190.5 sq m at CFI stage.

3.0 **Planning Authority Decision**

3.1. **Decision**

Cork City Council granted planning permission for the proposed development on 24th November 2021 subject to 10 conditions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports (29th July 2021, 11&12th October 2021 and 23rd November 2021)

The Planning Officer raised concerns regarding the scale of the proposed development have regard to the restricted nature of the surrounding sites, potential for overbearing and overlooking impacts and loss of light.

On receipt of the response to the Request for Further Information, a different Planning Officer considered that the Second Floor extension would be visually overbearing and there would be a potential for a loss of light and overshadowing to adjoining neighbours and recommended that Clarification of Further Information be sought. In addition, it was recommended that the west facing window at First Floor Level be at a high-level to prevent overlooking of the adjoining neighbour.

Following the receipt of a response to the Clarification of Further Information, the Senior Executive Planner stated that on balance having regard to the scale of the extension, separation distances, pattern of development and the urban context of the site, the revised extension is considered acceptable and would not have a significant impact on the established residential amenity. The Officer recommended that planning permission be granted subject to standard conditions.

3.2.2. **Other Technical Reports**

Road Design (Planning): No objection, subject to conditions.

Drainage Division (16th July 2021): No objection, subject to conditions.

Environment Report (21st July 2021): No objection, subject to conditions.

Contributions Report (7th October 2021): No objection, subject to conditions.

3.3. **Prescribed Bodies**

Irish Water (19th July 2021): No objection, subject to conditions.

3.4. **Third Party Observations**

Three Third-Party Observations from local residents were made in respect of the application. The key points from the Observations can be summarised as follows:

- Overlooking and a loss of privacy
- Overbearing
- Loss of light/overshadowing
- Unauthorised development on the subject site
- Negative visual impact
- Potential stability issues.

4.0 Planning History

Subject Site

CCC Ref. TP19/38559, ABP Ref. 306299-20: In March 2020, An Bord Pleanála upheld Cork City Council's decision to grant permission for (a) Demolition of existing garage and single storey extension to the side and rear of the dwelling house, respectively, (b) Construction of single storey side extension and two-storey rear extension, (c) Alterations to the existing dwelling house, and (d) All associated site works. Copies of Board's Order and Inspector's Report and the planning application drawings are attached to this Report for ease of reference.

Woodbine Cottage, The Lough, Cork (neighbouring property to the west of the subject site)

CCC Ref. 20/39058, ABP Ref. 308428-20: In February 2021, An Bord Pleanála upheld Cork City Council's decision to grant permission for the construction of a first-floor extension (51.29 sqm) and a front porch.

5.0 Policy Context

5.1. Cork City Development Plan 2015-2021

5.1.1. Zoning

The site is zoned Z04 Residential, Local Services and Institutional Uses where the objective is: *To protect and provide and /or residential uses, local services and institutional uses, having regard to employment policies outlined in Chapter 3.*

Residential uses are acceptable within this zone also.

5.1.2. Alterations to Existing Dwellings

The design and layout of extensions to houses are required to have regard to the amenities of adjoining properties particularly as regards sunlight, daylight and privacy. The character and form of the existing building should be respected and external finishes and window types should match the existing.

5.1.3. Section 16.72 of the Plan sets out the requirements in relation to extensions and alterations to dwellings.

Extensions should:

- Follow the pattern of the existing building as much as possible;
- Be constructed with similar finishes and with similar windows to the existing building so that they will integrate with it;
- Roof form should be compatible with the existing roof form and character. Traditional pitched roofs will generally be appropriate when visible from the public road. Given the high rainfall in Cork the traditional ridged roof is likely to cause fewer maintenance problems in the future than flat ones. High quality mono-pitch and flat-roof solutions will be considered appropriate providing they are of a high standard and employ appropriate detailing and materials;
- Care should be taken to ensure that the extension does not overshadow windows, yards or gardens or have windows in flank walls which would reduce the privacy of adjoining properties.

5.2. Natural Heritage Designations

- Cork Harbour SPA (004030)
- Great Island Channel (001058)

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third-party appeal has been lodged by Anne and Carmel Ellis of Woodbine Cottage, The Lough, Cork, who reside in the neighbouring single storey residential dwelling to the west of the application site. The grounds of appeal can be summarised as follows:

- The proposed development by reason of overlooking/loss of light and visual obtrusiveness would be seriously injurious to the residential amenities of adjoining properties to the west.
- The proposed three storey element by reason of its scale and design would be totally out of character with adjoining single storey properties.

- The proposal will overwhelm the neighbouring properties and cause loss of sunlight, loss of light, and loss of outlook.
- The proposal, due to its height and scale, will dominate and overshadow the aspects enjoyed by neighbouring residents to the west of the site.
- The Planning Authority's initial concerns regarding the proposal have not been addressed.
- The proposed development contravenes Section 16.72 of the Development Plan.
- No daylight or shadow projections were submitted with the planning application.
- The Appeal includes copies of the planning application drawings with annotations highlighting the concerns outlined above.
- The proposed development is not comparable to the permitted development 19/38559.
- Query why additional glazing and the balustrade were not proposed along the northern elevation, rather than the western elevation.
- No justification has been provided for the window on the western elevation at First Floor Level.
- No legal interest/legal right to alter boundary walls/fencing has been submitted.
- Suggest that rooflights would be more appropriate.

6.2. Applicant Response

A First Party Response to Third Party Appeal was submitted to the Board on 11th January 2022. The key points from the Response can be summarised as follows:

- An overview of the discussions and correspondence between the Applicant and Planning Officer's is provided. There was no attempt to defy or ignore any request for design changes from the Planners, but rather what occurred was an unfortunate sequence of events where information did not transfer between the different Planners assessing the application.

- The Appellant's permitted development (Ref. 308428) had a detrimental impact on the Applicant's original proposal (Ref. 306299). The subject proposal sets back the western wall of the main rear extension to maximise the sunlight that will inevitably be lost/significantly reduced should the Appellants construct their First-Floor extension as planned. The subject proposal is far less overbearing to the adjoining property.
- Inaccuracies in the Third-Party Appeal with respect to the location and positioning of the windows on the western wall of the rear extension are highlighted.

6.3. Planning Authority Response

No response received.

6.4. Observations

Two Observations were made to An Bord Pleanála in respect of the appeal case from Mary and Ben Forde and Kathleen Quinn, respectively.

Mary and Ben Forde, owners of Loughview House, key points can be summarised as follows:

- The proposal will overlook living rooms and the side of the neighbouring property.
- Concerns regarding what impacts the groundworks could have on neighbouring sites.
- The extension is not in keeping with the character of the area.

Kathleen Quinn's, owner of Lake View, key points can be summarised as follows:

- Due to the elevated nature of the site, the proposal will destroy the privacy of Lake View and directly overlook the property including bedrooms and bathrooms.

6.5. Further Responses

A Further Response from Anne and Carmel Ellis was received by the Board on 7th February 2022. The key points can be summarised as follows:

- The RFI revised proposal was unacceptable to the Local Authority's Planning Officers. The redesign did not include the omission of bedroom four.
- A shadow analysis has not been prepared by the Applicant.
- The Applicant has not complied with the RFI.
- The proposal will cause loss of daylight and overshadowing.
- The only detrimental effect the permitted development Ref. 308428 will have on the permitted development for the subject site (CCC Ref. TP19/38559, ABP Ref. 306299-20) is that the planned view of the Lough over the roof of Woodbine Cottage would be gone and this is the reason for the design for a three storey element.
- A 1.8m boundary fence may be normal, but this does not apply in this case.
- No legal interest/right to alter/clarification has been submitted.
- The stability of the ground is questionable.
- The proposal is visually overbearing and will result in overshadowing and loss of daylight and sunlight.

A Further Response from Mary and Ben Forde was received by the Board on 3rd February 2022. The key points can be summarised as follows:

- Windows facing north on the Lough will overlook neighbouring properties.
- The proposal will tower over neighbouring properties.
- Concerns regarding what impacts the groundworks could have on neighbouring sites.

A Further Response from Kathleen Quinn was received by the Board on 3rd February 2022. The key points can be summarised as follows:

- There are discrepancies shown on Appendix C attached to the First Party Response to Third Party Appeal with respect to the legal boundary on the western side and the actual timber fence and concrete posts erected.

7.0 **Assessment**

My assessment considers the planning application as lodged with the Planning Authority de novo. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the planning application and Third-Party Appeal, First Party Response to Third Party Appeal, Observations, Further Responses and inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

1. Principle of Development
2. Impact on Residential Amenities
3. Structural Works
4. Legal Matters
5. Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. **Principle of Development**

- 7.1.1. The proposed development comprises an extension to an existing residential use in an area zoned for residential amenity in the current Development Plan. The proposed development is acceptable in principle.

7.2. **Impact on Adjoining Property**

Concerns are raised over the scale of the proposed development and its visual impact on the residential amenity of the area. In terms of the overall scale and architectural treatment of the proposed development, I do not consider the proposal excessive having regard to its location in an urban area and the extant permission relating to the site (TP19/38559/ ABP-306299-20). Whilst I do not concur with the Appellants that no regard should be had to the extant permissions relating to either the subject site or the property to the west in the assessment of this case, I am satisfied that the proposal

does not constitute overdevelopment, irrespective of the extant permissions. On the contrary, I consider the overall scale and massing of the proposal is more sympathetic of the neighbouring properties than the permitted development relating to the site. Having regard to the setbacks proposed at Second Floor Level, the proposal to provide a flat roof as proposed at RFI and CFI stage, and the separation distance between this Level and the neighbouring properties, I do not consider that it will have significant overbearing impacts. The increase in the roof's ridge height by 0.433m from 8.675m to 9.108m is marginal having regard to the existing height difference between the subject property and the two adjoining single storey bungalows. Having regard to the topography of the street, there is no consistent ridgeline. The property is not a Protected Structure, nor are there any such Structures in the area. Furthermore, the area is not an Architectural Conservation Area.

- 7.2.1. At present, the single storey garage is located on the mutual property boundary. It is proposed to convert the garage to a utility/store and construct a single storey extension with pitched and flat roof along this boundary wall to accommodate a playroom/bedroom. As a result the single storey element will extend 6.951m along the western boundary. There are no windows proposed along this boundary at Ground Floor Level. Having regard to the scale of this element of the proposal, I do not consider it will adversely impact the residential amenity of the neighbouring property.
- 7.2.2. The proposal includes for the demolition of the kitchen and the construction of a three storey extension to the rear of the house. The Ground and First Floor Level are c.3m and c4.7m from the jagged western boundary. The Ground Floor Level has glazed sliding doors along the western elevation. Due to the topography, this level sits almost one storey above the Ground Floor level of Woodbine Cottage. There is c.1.8m boundary fence between the two properties and as such, I do not consider that there will be direct overlooking from this aspect of the proposal on the neighbouring property as it is currently constructed today. However, I also note that there are no windows at First Floor Level along the eastern elevation for the permitted extension to Woodbine Cottage.
- 7.2.3. In terms of the proposed First Floor extension on the subject site, it includes windows along the western and northern elevations. The window on the western elevation has a high cill level as illustrated on Dwg. '*Proposed Elevations & Typical Section Rev. 2*' submitted at CFI stage. Due to the size and position of this window, there will be no

significant overlooking of the nearby residential properties, but rather this window will provide distant views of the Lough. Should the Board be minded to grant permission for the development, I recommend that the size and position of this window be agreed with the Planning Authority prior to the commencement of the development.

- 7.2.4. Having regard to the position of the First and Second Floor windows on the northern elevation, the separation distance between the extension and neighbouring properties, and the orientation of the site in the context of the neighbouring properties, I do not consider that significant overlooking will occur that would reduce the area's residential amenity. Due to the fact that these windows do not directly overlook the neighbouring properties, they will not cause a loss of privacy.
- 7.2.5. The proposed materials for the extensions will match the existing property, and as such they will be in keeping with the character of the area and not cause any adverse visual impacts.
- 7.2.6. The grounds of appeal express concern that having regard to the scale of the proposal it will restrict daylight penetration to neighbouring properties, including living accommodation and will result in significant overshadowing. The subject property and proposed extensions are located east of the Appellants and southeast of the Observers. Having regard to the orientation of the two properties in question and to the pathway of the sun, the existing and proposed separation distances between the properties and the existence of the 1.8m boundary fence separating the properties, I am satisfied that no undue loss of light or overshadowing would occur to the neighbouring property. Furthermore, I am satisfied that the proposed development will not alter the quantum of daylight to such a significant degree that would adversely affect amenities enjoyed by the occupants of neighbouring dwellings.
- 7.2.7. In conclusion, I do not consider that the proposed architectural design will negatively impact the area's architectural character or amenities and is compliant with Section 16.72 of the Development Plan, where applicable. I consider that the proposed development would result in no undue overbearing impacts, overshadowing or loss of privacy on the neighbouring properties or adversely impact the area's residential or visual amenities.

7.3. Structural Works

- 7.3.1. I note the Observers concerns regarding the stability of the ground conditions. Whilst the ground slopes down in a western direction towards the Lough, there is nothing unique or particularly challenging about the proposed development. I consider that the proposed works are acceptable and that subject to the implementation of standard construction techniques, the integrity of the adjoining properties can be protected.

7.4. Legal Matters

- 7.4.1. In relation to the concerns raised by Ms Quinn regarding the legal boundaries between the subject site and neighbouring sites, I highlight that the Development Management Guidelines (at 5.13) make the point that where issues of sufficient legal interest arise in relation to carrying out proposed development that further information should be requested from the applicant and that only where it is clear from the response that the applicant does not have sufficient legal interest to carry out the development should permission be refused on that point.
- 7.4.2. Item 6 of the RFI requested the Applicant to submit “*details of legal interest in all boundary walls/fencing and the current treatments of all rear/side boundaries and whether these are to remain/be altered including any necessary legal interest to alter same where located on an intervening boundary*”. The Applicant responded stating that no part of the proposed development will overhang into the adjoining properties.
- 7.4.3. I note from the drawing entitled ‘Site Layout Rev 4’ (dated January 2022) Appendix C submitted with the First-Party Response to Third-Party Appeal that the timber fence along the western and northern boundaries (amber dashed line) does not align with the legal boundary of the site (solid red line). Whilst there are no works proposed at this location, I highlight Section 34(13) of the *Planning and Development Act 2000 (as amended)* states: “*A person shall not be entitled solely by reason of a permission under this section to carry out any development.*” As such, should the Board be minded to grant permission for the development, it is the Applicant’s responsibility to ensure sufficient legal interest exists to implement the permission.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not

considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1.1. I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the residential land use zoning of the site, the nature and scale of the proposed development, and the site's planning history, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential amenities of the area or of property in the vicinity in terms of overlooking, overbearing or overshadowing impacts. 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 15 th September 2021 and 28 th October 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 details of the size and position of the window on the western elevation of the rear extension at First Floor Level shall be submitted and agreed with the Planning Authority prior to the commencement of the development.

	Reason: In the interest of residential amenity.
3.	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.
4.	The external finishes of the proposed extensions shall be consistent with those of the existing dwelling on site. Reason: In the interest of visual amenity.
5.	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 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.
6.	Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 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

	<p>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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Susan Clarke
Planning Inspector

6th May 2022