



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312963-22

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| <b>Development</b>                  | Partial demolition of shed and construction of house with garage and associated site works. |
| <b>Location</b>                     | Albert Street, Clonmel, Co. Tipperary   |
| <b>Planning Authority</b>           | Tipperary County Council  |
| <b>Planning Authority Reg. Ref.</b> | 211691  |
| <b>Applicant(s)</b>                 | Benny Forte   |
| <b>Type of Application</b>          | Permission  |
| <b>Planning Authority Decision</b>  |   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Benny Forte   |
| <b>Observer(s)</b>                  | Residents of Albert Street and St Mary's Place  |
| <b>Date of Site Inspection</b>      | 24.04.23  |
| <b>Inspector</b>                    | Una O'Neill   |

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## 1.0 Site Location and Description

- 1.1. The subject site is located on the southern side of Albert Street in Clonmel town centre, County Tipperary. Albert Street is a narrow single carriageway street comprising a number of dwellings, some have front gardens and some are built up to the street edge. At the western end of Albert Street is a CBS school and gaelscoil. Parallel to Albert Street to the south is Irishtown street, which comprises a mix of commercial properties.
- 1.2. The site, which has a stated area of c.039ha, comprises an existing building/shed. The shed has a lean-to roof, with its front wall bounding the street/positioned at the footpath edge, with two roller shutter doors, one of which allows for a vehicular entrance and the other a pedestrian entrance. The shed covers the entire site. To the east of the site are the rear gardens of six of the single storey terraced dwellings which front onto St. Mary's Place to the east. The western boundary is shared with the side boundary of no. 1 Albert Street and its rear garden. No. 1 is a two-storey end of terrace dwelling, with its side elevation built up to the side elevation of the shed on the appeal site, with no gap between them, and the existing shared garden boundary wall with the site is tall in height, built up to the mid-level of the second floor window of dwelling no. 1. The southern boundary is shared with the outbuildings of a commercial unit which fronts onto the parallel street of Irishtown. To the north of the site/on the opposite side of the street is a terrace of two storey dwellings and to the northwest are sports grounds.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - Partial demolition of existing shed and
  - Construction of a dwelling house, garage, entrance and all associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission REFUSED for the following reason:

The proposed development, by reason of the location of the proposed dwelling on the site and the development design, would give rise to overshadowing impacts on the adjoining residential properties in St Mary's Place to the east and Albert Place to the west. The proposed development would therefore seriously injure the amenities of the properties in the vicinity and be contrary to the proper planning and sustainable development of the area.

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

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

- The PA requested Further Information (FI) on 18<sup>th</sup> January 2022 in relation to issues of overlooking of St. Mary's Place to the east/southeast due to a proposed balcony, and overshadowing on the properties in Alberts Place to the west. The applicant was requested to mitigate impacts by moving the dwelling forward on the site, omitting the on-site parking space forward of the dwelling, provision of more accommodation at ground level and omission of a first floor balcony. FI was also requested in relation to existing boundary treatments to be retained and proposed boundary treatments.
- FI was received from the applicant on 8<sup>th</sup> February 2022. The Planning Officer's report notes the balcony was omitted from the design, but that no change was proposed in terms of the positioning of the dwelling on the site or reconfiguration of the design.
- In terms of boundaries, the FI received indicated the existing boundary walls along the southern, eastern and western boundaries are to be retained and the front boundary is to comprise a 1.4m high wall with a plastered finish and sliding gate.
- While the principle of redevelopment is welcome, the planner's report considers that the amended design presented as further information is unacceptable due to overshadowing impacts.
- The planners report generally reflects the decision of the Planning Authority to refuse permission.

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

District Engineer – Proposal for a sliding gate is acceptable; proposal to dispose of surface water is acceptable; no sight visibility issues; no requirement to dish the footpath.

### 3.3. **Prescribed Bodies**

None.

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

Two observations were received, one from the residents of Albert Street and St. Mary's Place and one from Laura, Patricia and Stephen Kavanagh. Cllr John Fitzgerald is the nominated representative on the file.

The following is a summary of the issues were raised:

- Impact of the development, in particular the balcony, on privacy and residential amenity through overlooking and noise.
- On street parking would cause traffic hazard.
- Overshadowing of 1-3 Albert Place. Impact on natural light in existing rear yards.
- Overshadowing of gardens.
- Applicant owns a flat and does not have a requirement for a primary home.

## 4.0 **Planning History**

None.

## 5.0 **Policy Context**

### 5.1. **National Policy**

- Project Ireland 2040 National Planning Framework (2018)
- Regional Spatial and Economic Strategy for the Southern Region 2020-2026 (January 2020)

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007)

## 5.2. Tipperary County Development Plan 2022-2028

### Chapter 4 Settlement Strategy

- **Policy SO-2** – To facilitate and promote the development of Clonmel, Nenagh and Thurles as Key Towns, economic drivers and significant population and service centres for the Southern Region.
- **Table 4.1. County Settlement Plan Hierarchy:** Clonmel is a Level 1 Key Town.
- **Section 4.2.1** - As stated in the Core Strategy, the current Town Development Plans and LAPs will remain applicable until they are replaced with LAPs, in accordance with the framework and timeline as set out in Table 4.2.
- **Table 4.2** – Clonmel and Environs Development Plan 2013 (as extended) – LAP preparation to commence in 2022.

### Chapter 5 Housing

Policy 5-4 Support and encourage proposals for public and private sector housing involving the reuse and refurbishment of disused and derelict buildings in towns and villages.

### Volume 3, Development Management Standards.

## 5.3. Clonmel and Environs Development Plan 2013

- Site is governed by zoning objective Town Centre, the objective of which is ‘To preserve, enhance and/or provide for town centre facilities, and new development should comprise of mixed retail use, office, service, community and / or residential’.
- Policy INF 15: Flood Risk Assessment
- Policy AH 5: Lower River Suir SAC

- Policy INF 8: Surface Water Management

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

The Lower River Suir SAC (002137) is located 116m south of the appeal site (as the crow flies). Nier Valley Woodlands SAC (000668) is 10km to the south and Comeragh Mountains SAC (001952) is c.12km to the south.

In terms of NHAs, Marlfield Lake is located 2.7km to the east, Toor Wood is 10km to the southeast, Kilsheelin Lake is 7km to the east and Grove Wood is 10km to the north.

#### 5.5. **EIA Screening**

Having regard to the minor nature and scale of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, 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. **First Party Grounds of Appeal**

The appeal is submitted by Will Mc Garry & Associates Consulting Engineers on behalf of the applicant. The grounds of appeal are summarised as follows:

- Client brief was to design a single bedroom first floor apartment over archway to facilitate vehicular access to a rear storage shed and to demolish part of the shed to facilitate same.
- Design proposal is modest in size and scale with low pitch and flat roofs to minimise negative impacts on adjoining properties.
- The maximum height of proposal is 6.9m. The height at the western boundary is 6.15m, rising into the site and is a distance of 1.35m from the western boundary. The height at the side of St. Mary's Place/eastern boundary is



6.5m. The shed has a height of just over 5m on the western boundary (mono pitch roof to the shed with highest point at western side).

- See Section 2.2.4 of Site Layout Planning for Daylight and Sunlight by Paul Littlefair – the St. Mary's Place residences are far enough away that any overshadowing impact is minimal. House no. 6 is 15.5m from the wall – calculations: height of  $(6.5\text{m} - 1.5\text{m}) \times 3 = 15\text{m}$ .
- The western boundary wall is c. 5m in height. The proposal is 6.15m at a distance of 1.35m from the boundary. 45 degree line indicated from the corner of the proposed development to the site. Using the 45 degree approach as per section 2.2.15 of the guidance Site Layout Planning for Daylight and Sunlight by Paul Littlefair, the 45 degree line does not encroach on the rear of the properties. The proposed development will cast a shadow over the wall in early morning but from midday on there is no impact.
- The proposal does not cause overshadowing of any significant degree to the adjoining properties.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

One observation was received from the residents of Albert Street, Albert Place and St. Mary's Place. The observation is summarised as follows:

- The three dwellings at Alberts Place are north facing and set back 2m from the footpath and as they are between two buildings there is no sunlight/daylight any hour of the day.
- St Marys Place housing are east facing on a narrow street that gets the morning light. Development has been permitted to the east of the houses which will overshadow them from the front.
- The existing height of the boundary wall/shed to the east is 3.38m high and to the west is 4.5-5m high. Proposed dwelling is 6.5m high and is 8m from St. Mary's Place. Proposal will cast a long shadow over rear gardens of St.

Mary's Place at an earlier time in the afternoon and at a much faster rate eliminating the sun at least twice as fast if not sooner.

- Alberts Place was built in 1999. Only have back gardens. The site was formally a warehouse/tyre depot/shed similar to the applicant's site, with a 4/4.5m boundary wall surrounding the rear of the properties. The proposed dwelling at 6.9m high is over 2m higher than the existing wall with Albert Place and the dwelling is twice the length of the residents' backyards. The overshadowing is stated by the applicant to be increased up to 12 noon. Residents do not consider the overshadowing will be minimal but a huge increase.
- Photos of rear yard to no 3 Albert Place and photos of St. Mary's Place included.
- No overshadowing study/diagram submitted.
- Moving the house forward on the site would still allow for off street parked under the archway or to rear of the dwelling.
- Similar infill development on the next street, O'Neill Street, was developed using an archway.

#### 6.4. Further Responses

None.

### 7.0 Assessment

#### 7.1. Introduction

Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Layout and Design
- Residential Amenity of Neighbouring Properties

- Traffic and Car Parking
- Appropriate Assessment

## 7.2. Layout and Design

- 7.2.1. The appeal site comprises a vacant and run-down commercial unit. Residential development is permissible on Town Centre zoned lands. Policy 5-4 of the development plan is to 'Support and encourage proposals for public and private sector housing involving the reuse and refurbishment of disused and derelict buildings in towns and villages'. The proposed development is acceptable in principle.
- 7.2.2. The appeal site is long and narrow, being 8.2m wide and 46-48m deep. It is proposed to remove the shed from over half the site, with a portion of the shed at the rear being retained (124sqm in area). That portion of the shed is 16.4m deep and is the full width of the site. The height of the shed is stated to be as per existing, 3.7m-5m high (mono-pitch roof with highest end being at the western boundary), with a new roof and front elevation proposed. The proposal is for a detached standalone dwelling on the front portion of the site (116.8sqm in area), with a rear garden area, over half of which is proposed to be paved and a portion of which will be under grass and will include a soakaway.
- 7.2.3. The proposed dwelling is 8.1m wide, 13.9m deep, with an overall height of 6.99m at its highest point. The proposed dwelling is set 6.5m back from the street edge and c. 6m behind the front building line of the neighbouring dwelling no. 1 Albert Place. A gap of c.1.5m wide remains on the western side of the site, with the proposed dwelling built up to the eastern boundary. As per the FI received, a balcony is no longer proposed as part of the dwelling. The open space area to the rear is c. 67sqm and includes a paved area, which is indicated will allow for vehicular access from the front to the rear of the site to the rear shed – roller doors to front and rear elevation of dwelling. The dwelling comprises a study, hall and utility room on ground level with undercroft parking space (accessed internally from the hall), and at first floor level is a kitchen/living room, bathroom and bedroom.
- 7.2.4. While the grounds of appeal described the proposal as an apartment, it is appropriately described in the description of development as a dwelling and given its

design, I assess the internal dimensions as per standards of a house and not an apartment. The scale of the garden is in accordance with development plan standard for a one bedroom house. The floor area of the dwelling at 116.8sqm and the room dimensions are in accordance with best practice as set out in Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007). Given the orientation of the dwelling relative to neighbouring properties there are no directly opposing windows at first floor level.

7.2.5. I note the undercroft parking area is of sufficient size for two cars.

7.2.6. In terms of the overall scale and architectural treatment of development, I do not consider the proposal excessive for the site or surrounding area and I am satisfied that the overall design of the proposed dwelling is satisfactory.

### **7.3. Residential Amenity of Neighbouring Properties**

7.3.1. The PA reason for refusal relates to overshadowing of properties to the east at St. Mary’s Place and to the west at Alberts Place, by reason of the location of the dwelling on the site and the development design. The observer submission also raises serious concerns in relation to overshadowing of Alberts Place and St. Mary’s Place.

7.3.2. The applicant in their grounds of appeal states that the issue of overshadowing has been considered with regard to BRE guidance and no issues arise given the height of the boundary wall to the west and application of 45 degree rule. In terms of dwellings to the east, no issues are stated to arise given distances to the dwellings to the east, as per BRE guidance.

7.3.3. The observers raise concerns that a sunlight-daylight analysis was not submitted.

7.3.4. Having regard to the limited scale of the development proposed and having regard to the orientation of the site relative to the path of the sun, based on my professional planning opinion, a sunlight-daylight study would not be warranted in this instance. I have sufficient information before me to assess this proposal in terms of sunlight and daylight impacts.

7.3.5. I note the neighbouring property to the west, no. 1 Albert Place, has an existing high shared boundary wall with the appeal site, c.5m high. While the proposed dwelling is

higher than the shared wall, I do not consider the proposal, given the height of the existing wall and orientation relative to the path of the sun (being west of proposed dwelling) will result in significant adverse overshadowing in the morning over what exists at present. Given the orientation of the site, there will be no impact on the afternoon or evening sunlight and daylight. I do not consider significant overshadowing of no. 1 Albert Place will occur over what exists and given the increased separation distances to nos. 2 and 3 Albert Place, I do not consider significant overshadowing of nos. 2 and 3 will occur. In relation to the visual impact, I consider the dwelling should be repositioned 2m forward on the site to support a stronger street presence. I note the undercroft parking space can cater for two cars and the design also provides for vehicular access to the rear of the site, therefore the loss of the front parking space is not in my opinion significant. Should the Board be minded to grant permission, I consider a condition in this regard would be warranted.

- 7.3.6. With regard to potential overshadowing of St. Mary's Place, I note the existing dwellings of nos. 5, 6 and 7 have rear garden depths of 14.5m/15.3m/16.5m. These gardens are bounded by the appeal site. The height of the proposed dwelling along this boundary is c. 6.99m, with this side of the building having a mono-pitch roof (rising from 6.3m at the boundary to 6.99m). I have had regard to BRE guidance in relation to separation distances, as examined in the applicant's submission. I am satisfied there will be no significant impact on daylight to existing windows in the dwellings in St. Mary's Place. In relation to impact on the garden area, while there will be some impact on evening light at the rear end of their gardens, I note the length of these gardens and I consider no undue loss of light or overshadowing will occur.
- 7.3.7. Having regard to all of the information before me, including the layout, design and separation distances involved, and the reports of the planning authority and submissions made, I am satisfied that the proposed development would not alter the quantum of daylight to neighbouring properties or result in overshadowing to such a significant degree that would adversely affect amenities enjoyed by the occupants of neighbouring dwellings to the east and west.

#### 7.4. Appropriate Assessment

- 7.4.1. The planning authority carried out AA Screening and determined that significant adverse impacts on European sites could be ruled out.
- 7.4.2. The site description and proposed development are set out in Section 1.0 and 2.0 above. I note the site will be connected to the public surface water and foul drainage networks. The site is not located within or directly adjacent to any European site and there are no proposals for works to any European site. There are no hydrological connections from the proposed development to a European site.
- 7.4.3. The proposed development is minor in scale and is surrounded by urban development. Having regard to the nature and scale of the proposed development and the location from any designated 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 the conservation objectives of any European site.

#### 8.0 Recommendation

- 8.1. I recommend that permission is granted, subject to the conditions outlined below.

#### 9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objective, the design, layout and small scale of the development, and to the existing pattern of development in the area, it is considered that subject to compliance with conditions below, the proposal would not seriously injure the amenities of the area or of property in the vicinity, in terms of overlooking, overbearing or overshadowing impacts and would be satisfactory in the context of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

#### 10.0 Conditions

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| 1. | The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the |
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|    | <p>further plans and particulars submitted on 3<sup>rd</sup> February 2022 to the planning authority, 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.</p> <p><b>Reason:</b> In the interest of clarity.</p> |
| 2. | <p>The proposed development shall be amended as follows:</p> <p>(a) The dwelling shall be repositioned two metres to the north on the site. A revised site plan showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of visual and residential amenity.</p>   |
| 3. | <p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>   |
| 4. | <p>The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.</p> <p><b>Reason:</b> In the interest of orderly development.</p>   |
| 5. | <p>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.</p>   |

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|    | <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>  |
| 6. | <p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p> <p><b>Reason:</b> To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.</p>   |
| 7. | <p>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 access arrangements for construction traffic, hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>                                      |
| 8. | <p>All public service cables associated with the proposed development (such as electrical, television, telephone and broadband cables) shall be located underground within the site.</p> <p><b>Reason:</b> In the interest of visual and residential amenity, and of sustainable development.</p>   |
| 9. | <p>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</p> |



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| <p>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><b>Reason:</b> 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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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Una O'Neill  
Senior Planning Inspector

27<sup>th</sup> April 2023