



An
Bord
Pleanála

Inspector's Report

ABP-313631-22

Development	Construction of 16 apartments.
Location	Old Fort Gate, Ballincollig, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2140554
Applicant(s)	O'Flynn Construction Company.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party versus condition.
Appellant(s)	O'Flynn Construction Company.
Observer(s)	None.
Date of Site Inspection	13 April 2022.
Inspector	Stephen Rhys Thomas

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	6
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.3. Natural Heritage Designations	9
5.4. EIA Screening	9
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Planning Authority Response	10
6.3. Observations	10
7.0 Assessment.....	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions	15

1.0 Site Location and Description

1.1. The application site is located on the northern side of Ballincollig town centre. The site is accessible from Old Fort Gate housing estate to the south and there is frontage along Powder mills Road to the north. The site slopes noticeably downwards from south to north, where it meets the road. The site is currently in grass with mature trees along its northern edge. A wire mesh fence forms the western and northern boundary, other boundaries are not defined on site.

2.0 Proposed Development

2.1. Permission is sought for the following:

- A four storey apartment block comprising 16 units, 10 one bed and 6 two bed.
- Two Bin Stores
- Two Bike Stores
- Landscaping, parking and vehicular access.

2.2. The application was subject to further information and a clarification of further information, this resulted in no significant changes to the development as proposed. However, the decision of the planning authority was to omit two ground floor units by condition and this has resulted in a development of 14 units.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Cork City Council issued notification to grant planning permission subject to 32 conditions.

Most conditions are standard in nature and include technical requirements of the planning authority and development contributions required.

Condition 7 (as corrected) requires the omission of units 2 and 3 and replacement with storage areas, in the interests of orderly development and residential amenity, the condition reads as follows:

7. The proposed development shall be amended as follows:

a) the lower ground floor units, namely unit 2 and unit 3, shall be omitted from the scheme and this space redesigned to provide for a storage space for bulky items which shall comply with all relevant standards in the Design Standards for New Apartments 2020, an internal access (both stair and lift) from upper floor levels to lower ground level, together with some communal space, and the revised elevations shall incorporate glazing and access and egress on the north elevation at lower ground level.

b) if required the external storage space (excluding the bicycle storage space) can be omitted, subject to the new bulky storage area complying the relevant standards in the Design Standards for New Apartments

c) the outer edge of the privacy strip to the north of unit 1 shall be bounded by a decorative railing on top of a low wall to a maximum height of 2m, or some other suitable permanent boundary treatment to be agreed with the Planning Authority and the interior area shall be soft landscaped. Revised plans and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interests of orderly development and residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis of the planning authority decision includes:

First Report

- Site description, planning history, zoning objective and planning policies are all outlined and the principle of residential development is accepted.
- Three third party submissions are noted and the issues include roads/traffic and residential amenity.
- Residential density of 60 units per hectare (net) and 31 (net) is acceptable.
- Layout is acceptable given the contours of the site.

- Building height of four storeys is assessed against the Building Height Guidelines and is acceptable.
- Unit mix and residential amenity are broadly acceptable. However, further information is required in relation to storage and sunlight/daylight concerns.

Further information in accordance with the Planner's recommendation was requested.

Second Report

- Sunlight and Daylight Report assessed and deemed not to have addressed all issues.
- The provision of inadequate storage areas has not been resolved.
- Other elements to do with privacy and relocation of a ground floor window are not clearly shown on plan.
- All other aspects of the further information requested are acceptable and conditions are recommended.

Clarification of further information in accordance with the Planner's recommendation was requested.

Third Report

- The sunlight/daylight still yields poor results with regard to VSC for units close to a sloped embankment and this is not satisfactory.
- Most other units perform well in terms of APSH and this is as a result of all units enjoying a dual aspect.
- Lower ground floor units in terms of sunlight areas and rear garden areas has not been adequately detailed.
- Sufficient storage areas have still not been provided.
- Units 2 and 3 should be omitted to meet residential amenity and storage concerns.

The recommendation of the Planner to grant permission and omit units 2 and 3 was followed by the planning authority.

3.2.2. Other Technical Reports

Area Engineer – further information required.

Drainage – no objections.

Environment - no objections.

Traffic - no objections.

Urban Roads - further information required.

3.3. Prescribed Bodies

Irish Water- no objections.

Inland Fisheries Ireland - no objections.

3.4. Third Party Observations

Three third party submissions are noted and the issues include roads/traffic and residential amenity.

4.0 Planning History

Subject Site:

PA ref 0810083 and ABP ref PL04.234320 – Amendments to planning ref. no. 03/122 comprising omission of a road, amendments to an amenity area and all ancillary works.

5.0 Policy Context

5.1. Development Plan

The Cork City Development Plan 2022-2028 is the operative plan for the area. The site is located on lands subject to zoning objective ZO 6 and a portion runs in to lands subject to ZO 1.

ZO 6 – Urban Town Centre, the objective of which is to consolidate and provide for the development and enhancement of urban town centres as primary locations for

mixed use retail, economic and residential growth which also act as a focus for a range of services.

ZO 1- Sustainable Residential Neighbourhoods, the objective of which is to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.

Relevant to this application for residential development, the following may apply:

Chapter 2 Core Strategy

Chapter 3 Delivering Homes and Communities

Chapter 4 Transport and Mobility

Chapter 11 Placemaking and Managing Development

Section 11.9 Apartment Design

Objective 11.4 - Daylight Sunlight and Overshadowing (DSO)

All habitable rooms within new residential units shall have access to appropriate levels of natural / daylight and ventilation. Planning applications should be supported by a daylight and sunlight design strategy that sets out design objectives for the scheme itself and its context that should be included in the Design Statement.

The potential impacts of the proposed development on the amenities enjoyed by adjoining properties will need to be assessed in relation to all major schemes and where separation distances are reduced below those stipulated. Cumulative impacts of committed schemes will also need to be assessed.

Daylight, Sunlight and Overshadowing (DSO) assessment, utilising best practice tools, should be scoped and agreed with the Planning Authority prior to application and should take into account the amenities of the proposed development, its relevant context, planning commitments, and in major development areas the likely impact on adjacent sites.

5.2. National Policy

5.2.1. National Planning Framework 2018-2040

National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas.

Activating these strategic areas and achieving effective density and consolidation, rather than urban sprawl is a top priority. A preferred approach would be compact development focussed on reusing previously developed, 'brownfield' land.

Objective 2a targets half of future population growth in the existing five Cities and their suburbs.

Objective 3a seeks to deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements, while Objective 3b further seeks to deliver at least half (50%) of all new homes targeted in the five Cities and suburbs, within their existing built-up footprints.

Objective 8 sets ambitious growth targets for Cork, proposing a c.50% growth in population to 2040. It emphasises compact growth requiring a concentration of development within the existing built-up area, including increased densities and higher building formats.

Objective 13 is that planning and related standards including building height and car parking in urban areas, will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth.

Objective 35 seeks to increase residential density in settlements, through measures including infill development schemes, area or site-based regeneration and increased building height.

5.2.2. **Housing for All - a New Housing Plan for Ireland** (September 2021)

A multi-annual, multi-billion euro plan which will improve Ireland's housing system and deliver more homes of all types for people with different housing needs.

The overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

5.2.3. **Rebuilding Ireland: Action Plan for Housing and Homelessness**

The plan identifies five pillars for action. Pillar 3: Build More Homes, seeks to increase the output of private housing to meet demand at affordable prices.

The key action is to double housing output over the Plan period aided by measures including infrastructural funding through the Local Infrastructure Housing Activation Fund (LIHAF).

5.2.4. **Section 28 Ministerial Guidelines**

Having considered the nature of the appeal, the receiving environment, the documentation on file, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2022) (the 'Apartment Guidelines').
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the 'Building Height Guidelines').

5.3. **Natural Heritage Designations**

5.3.1. There is a designated site located 10 kilometres east of the subject site:

- Cork Harbour SPA (004030)

5.4. **EIA Screening**

5.4.1. Under Items 10(b)(i) & (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2020, where more than 500 dwelling units would be constructed and where 10 hectare-urban sites would be developed, the need for a mandatory EIA arises. The proposal is for the development of a 0.52 hectare site to provide 16 apartment units. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The grounds of appeal can be summarised as follows:

- The appeal is made with respect to condition 7 alone, and specifically for the omission of parts a) and b).
- All units have been designed to maximise a southerly aspect and provide passive supervision of common spaces. Cycle storage is provided by two structures located within the site.
- As required a daylight/shadow analysis was prepared and submitted to the planning authority. The report was prepared in accordance with BRE standards and all units, including units 2 and 3 met or exceeded minima. It should be noted that BRE guidance is advisory not mandatory.
- In addition to daylight, sunlight and overshadowing analysis, a Vertical Sky Component (VSC) analysis was also prepared with reference to the sloped nature of the site. The VSC values are all acceptable and meet standards, as supplemented by other window lighting rooms.
- Units 2 and 3 achieve in excess of 2 hours of sunlight to private amenity space on March 21st.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

7.1. Having regard to the nature and scale of the development and the specific issue arising, that being a first party appeal against Condition number 7 of the planning authority decision, I am of the opinion that the determination of the application as if it had been made to the Board in the first instance is not warranted. In that regard I note the provisions of section 139 of the Planning & Development Act 2000 (as amended). This assessment will therefore be confined to the specific appeal of Condition number 7 of the planning authority decision.

I consider the key issues in determining this appeal are as follows:

- Residential amenity
- Appropriate Assessment

7.2. Residential amenity

- 7.2.1. The site comprises land that slopes noticeably downwards from south to north. The proposed apartment block will be constructed on a platform that is cut into this slope. The lower ground floor units (1-4 inclusive) are all dual aspect and position living room areas on the southern elevation that will look out across a large private amenity space (more than 30 sqm) and enclosed by a stepped retaining wall. Units 1 and 4 have the benefit of a dual aspect living area, but units 2 and 3 do not. The planning authority are concerned that the amount of natural light allowed into the living room areas of units 2 and 3 will be inadequate. This will result from the influence of the opposing retaining wall and the gantry access at upper ground level that provides the access to the apartments above. After reviewing further information (FI) submitted by the applicant with regard to sunlight/daylight analysis, the planning authority decided to omit units 2 and 3 and replace them with additional storage space, some communal space and stair/lift access as required by the Design Standards for New Apartments. In addition, the choice to omit external storage space is presented and a decorative railing on top of a low wall shall bound unit 1.
- 7.2.2. The applicant seeks the omission of parts a) and b) of condition 7 that require the replacement of units 2 and 3 with a storage area and other changes to external storage provision. It is the applicant's contention that all units achieve acceptable

sunlight/daylight results in accordance with BRE/BS non-mandatory guidance. In addition, the large private amenity areas associated with units 2 and 3 also achieve acceptable levels of sunlight.

- 7.2.3. As can be seen from the documentation received by the planning authority, the applicant submitted a Daylight, Sunlight and Overshadowing Assessment prepared by BPC Engineers and dated 17/12/2022. The planning authority required further information that concerned Average Daylight Factor (ADF) and Vertical Sky Component (VSC) calculations, the requirement for these was clarified and information was submitted and dated 22/03/2022. Both of these reports were prepared using advice contained in BRE 'Site Layout Planning for daylight and sunlight' 2011 and BS 8206-2008 by a competent building performance consultant. I am satisfied that the methodology and approach used to assess sunlight and daylight impacts are satisfactory and robust. I note that the Apartment Guidelines (2022) with reference to apartment development applications and sunlight/daylight; state the follow:

Planning authorities should avail of appropriate expert advice where necessary and have regard to quantitative performance approaches to daylight provision outlined in guides like A New European Standard for Daylighting in Buildings IS EN17037:2018, UK National Annex BS EN17037:2019 and the associated BRE Guide 209 2022 Edition (June 2022), or any relevant future standards or guidance specific to the Irish context, when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.

- 7.2.4. The appellant has noted the non-mandatory nature of BRE guidance. I also note that technical guidance can be prone to updates and revision. In this respect, I am satisfied that the applicant made use of the most up to date guidance available at the time that the application was lodged. The apartment guidelines call for assessments to be made in the context of the new 2022 BRE guidelines, the most significant change is how internal daylight within buildings is assessed, formerly ADF and now illuminance lux levels. Given that the applicant has already prepared detailed studies into the performance of apartment buildings under guidance that was available at the time, I am satisfied that there is enough detailed technical information on the file to allow the Board to make a reasoned decision.

- 7.2.5. From the Daylight, Sunlight and Overshadowing Assessment and its additional commentary submitted by the applicant I can see that ADF and sunlight to amenity spaces were calculated and that this data was supplemented by Annual Probable Sunlight Hours (APSH) assessment and more detailed sunlight to private amenity space analysis.
- 7.2.6. Firstly, all other apartment units are unaffected by condition 7, besides from the addition of a boundary wall to unit 1 for privacy. I do not consider that additional bulky storage is warranted or necessary, given that all apartments are provided with internal storage spaces and external storage facilities (combined with bike stores) have also been permitted. I have confined my assessment as it relates to units 2 and 3 and how they perform as suitable residential units with acceptable levels of amenity as it relates to the penetration of natural light.
- 7.2.7. The rooms tested for ADF are shown by figure 9 Appendix A of the first report submitted to the planning authority, further information submitted subsequently does not change any results. The relevant rooms are R2 (unit 3) and R3 (unit 2), these are living/kitchen/dining rooms (LKD). Both of these rooms face south, across a level garden space of 4 metres in depth towards a 3 metre high stepped retaining wall. A gantry access at upper floor level crosses between units 2 and 3, it is three metres in width and extends 6 metres. Table 5 of the report shows that R2 returns a result of 4.34% and R3 returns a result of 4.24%, well within the target value of 2% for a LKD room. ADF is a measure of the overall daylight in a space, and BRE guidance recommends an ADF for kitchens of 2% and living rooms an ADF of 1.5%. If levels fall below these targets, then compensatory measures should be proposed. In this instance, I can see that the results for rooms R2 and R3 are in excess of the minimum targets for both a kitchen and living room. This is not surprising, given the due south aspect, notwithstanding the proximity of a 3 metre high stepped retaining wall and overhead gantry. I am satisfied that units 2 and 3 are adequately lit by natural light as demonstrated by very good ADF results.
- 7.2.8. The planning authority also highlight concerns about the private amenity spaces associated with units 2 and 3, in their opinion they do not receive enough direct sunlight. Further information was sought and submitted in this respect. The applicant's report has calculated what amount of sunlight falls on the rear amenity space and clarifies that the minimum required private amenity space for a two

bedroom unit is 7 sqm. The results show that on March 21st, approximately a third of the rear amenity space will receive direct sunlight for at least 2 hours of that day. The actual amount of rear amenity space that will receive that minimum requirement of 2 hours amounts to 12.15 sqm (for both units). The appellant makes the point that far in excess of the minimum rear amenity space of 7 sqm will receive the requisite amount of sunlight. The results are set out by diagram and table, figure 11 and 12 of the FI report refer.

7.2.9. The information provided in the applicant's reports is clear and concise. I would expect to see favourable results for habitable rooms and private amenity spaces that face due south. In circumstances where an obstruction will be present, such as a retaining wall, I would expect results to show a fall off in natural light performance. This is the case with the subject appeal, where units 1 and 4 return ADF values of 6% or greater, this is because of a side window to the LKDs. Units 2 and 3 still return ADF values in excess of the target value and this is acceptable. With reference to rear amenity space, the fact that units 2 and 3 face south is in their favour and allows for a design that takes into account the proposed and necessary stepped retaining wall. This is the reason why the private amenity space depth is 4 metres in order to allow a part to be in shade and a part to be in sunlight. The design approach selected by the applicant has achieved an acceptable level of sunlight to the rear amenity spaces, I see no reason to omit these units.

7.2.10. The sunlight/daylight/overshadowing reports prepared by the applicant clearly demonstrate that all units perform well in relation to natural light access. This is not a particularly challenging urban site with neighbouring development that may be impacted upon. However, the site is on a slope and the design approach has been to position a stepped retaining wall a sufficient distance from the rear amenity space and windows of LKDs associated with units 1, 2, 3 and 4. All of these units perform well and in particular units 2 and 3 do not fail to meet the criteria set by BRE/BS guidance.

7.3. **Appropriate Assessment**

7.3.1. The subject site is located approximately 10 kilometres west of Cork Harbour SPA (Site Code. 004030). Having regard to the nature and scale of the proposed development within a serviced urban area and the distance from the nearest

European site, 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 consider the appeal in the context of section 139 of the Planning & Development Act 2000 (as amended). I further recommend that the Board direct the planning authority to amend Condition No. 7 by the omission of parts a) and b).

9.0 Reasons and Considerations

Having regard to the design and nature of the apartment building proposed with specific reference to the Daylight, Sunlight and Overshadowing Assessments submitted with the application, and also having regard to the residential amenity being provided for by the proposed development in accordance with the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2022) and Objective 11.4. Daylight Sunlight and Overshadowing of the Cork City Development Plan 2022-2028, it is considered that units 2 and 3 fully meet all requirements with respect to acceptable levels of residential amenity and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

7. a) the outer edge of the privacy strip to the north of unit 1 shall be bounded by a decorative railing on top of a low wall to a maximum height of 2m, or some other suitable permanent boundary treatment to be agreed with the Planning Authority and the interior area shall be soft landscaped. Revised plans and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interests of orderly development and residential amenity.

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.

Stephen Rhys Thomas
Senior Planning Inspector

20 April 2023