



An
Bord
Pleanála

Inspector's Report

ABP-313752-22

Development	Permission for the construction of a dwelling house including entrance and associated works.
Location	St Anthony Stores, Lehenaghbeg, Togher, Co. Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2140345
Applicant(s)	Quasim Mehmood
Type of Application	Planning Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party Appeals
Appellant(s)	Katherine O'Sullivan and Ber O'Sullivan
Observer(s)	None
Date of Site Inspection	14 th October 2022
Inspector	Susan Clarke

1.0 Site Location and Description

- 1.1. The appeal site, measuring 0.045ha, is located at St. Anthony's Stores, Lehenaghbeg, Togher, in a residential area, with industrial lands located further to the east and south on the outskirts of Cork city. It is located approximately 4km southwest of the city centre. It is situated on the junction of Togher Road and Spur Hill and comprises the rear garden of a two-storey dwelling (St. Anthony's), which fronts onto Togher Road. There is a single storey barbers operating in the unit abutting St. Anthony's. The site adjoins an estate road in Palmbury Orchard to the east. There is a large public open space area at the entrance to Palmbury Orchard.
- 1.2. The context of the subject site is presented in the appendix to this report which includes, maps and a number of photographs taken on the day of my site inspection.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a two-storey, dormer style detached dwelling (177 sq m) and new vehicular entrance onto an estate road in Palmbury Orchard.
- 2.2. Following a request for further information, the Applicant confirmed that a green strip of land along the eastern boundary of the site, measuring 3.5m x 4.75m would be required to facilitate the new vehicular access to the site. No further amendments were made to the proposal at RFI stage.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Grant Permission on 11th May 2022 subject to 11 No. standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports (31st August 2021 and 9th May 2022)

The Planner's Report is consistent with the decision of the Planning Authority.

The Planning Officer considered that the proposed development in terms of the policy context and zoning objective afforded to the site under the Cork County Development Plan 2014-2020, Ballincollig Carrigaline Municipal District Local Area Plan 2017 and Togher Village Regeneration Area. The Officer considered that the proposed development was acceptable in principle having regard to the zoning, character of the area and site's planning history. Furthermore, the Officer stated that the proposed design, including the open space provision and boundary treatments, were acceptable. Following the submission of further details regarding the vehicular access arrangements to the site, including a Letter of Consent (1st November 2021) from Cork City Council to include a sliver of land along the eastern boundary of the site in Palmbury Orchard to facilitate access to the site, the Officer considered that the loss of the green space would not have a significant impact on the amenities of the area.

3.2.2. Other Technical Reports

Area Engineer (11th August 2021 and 28th April 2022): No objection subject to condition.

Development Contributions (24th August 2021 and 5th May 2022): No objection subject to condition.

Environment Report (3rd August 2021): No objection, subject to condition.

Drainage Report (24th August 2021): No objection, subject to condition.

3.3. Prescribed Bodies

Irish Water (8th September 2021): No objection, subject to condition.

3.4. Third Party Observations

- 3.4.1. Five Third-Party Observations were submitted to the Local Authority opposing the proposed development. A further observation was submitted by the Appellants following the readvertisement of the statutory notices at RFI stage. The key points raised in the Observations are set out in the Third-Party Appeal. See Section 6 below.

4.0 Planning History

- 4.1. **CCC Reg. Ref. 085922:** Planning permission granted in September 2008 for the same styled two storey dwelling to that proposed in this appeal case, subject to 14 No. conditions. This permission expired in 2013.

5.0 Policy Context

5.1. Cork City Development Plan 2022-2028

- 5.1.1. The subject site is now sited within the jurisdiction of Cork City Council, having been subject to a boundary extension / transfer with Cork County Council. The relevant development plan is the Cork City Development Plan 2022-2028, which was adopted on 27th June 2022 and came into effect on 8th August 2022.
- 5.1.2. The subject site is located within an area of Cork City which is zoned ZO 01 Sustainable Residential Neighbourhoods which has the stated objective to “*protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses*” in the 2022-2028 Development Plan.
- 5.1.3. Section 11.139 of the 2022-2028 Development Plan addresses Infill Development:
- Adaptation of existing housing and re-using upper floors, infill development will be encouraged within Cork City. New infill development shall respect the height and massing of existing residential units. Infill development shall enhance the physical character of the area by employing similar or complementary architectural language and adopting typical features (e.g. boundary walls, pillars, gates / gateways, trees, landscaping, fencing, or railings).*
- 5.1.4. Section 11.145 addresses residential entrances / parking in front gardens.

5.2. Ballincollig Carrigaline Municipal District Local Area Plan 2017

- 5.2.1. The site is located within the South Environs of the LAP and is zoned as an “existing built-up area”.
- 5.2.2. SE-RA-01: Togher Village Area around Togher Cross with development centring on the Doughcloyne hotel complex. Potential for a mixed use neighbourhood centre and a new Primary Health Care centre to serve the western portion of the City South Environs.

5.3. **Natural Heritage Designations**

The site is c. 4km to the closest point of the Cork Harbour SPA (site code 004030).

5.4. **EIA Screening**

Having regard to the nature and scale of the proposed development, comprising the construction of one residential dwelling in a serviced urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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**

6.2. A third-party appeal has been lodged by Katherine O'Sullivan and Ber O'Sullivan of Lios Muire, Lehenaghmore, Togher Cross, Cork opposing the Local Authority's decision. The grounds of appeal can be summarised as follows:

- Proposal will result in a traffic hazard as the Palmbury Orchard is a narrow residential road with no footpath on either side of the road. The proposal could impact negatively on access of emergency services.
- Refuse trucks will not be able to service the site.
- Proposal will lead to the destruction of a valued green area.
- It is not clear if the Applicant has title over the eastern boundary wall.
- East Lodge is not a comparable development to that proposed; it does not face onto any houses in Palmbury and the main entrance to the dwelling is from Togher Road.
- The stone wall is in a state of considerable disrepair.
- The green space to be used for access for the proposed development is not owned by Cork City Council, but a different party.

- The proposed building would overlook Lios Muire and cause a significant loss of privacy.
- Should permission be granted request that the proposal is relocated to the east of the site as possible, the entrance should not be adjacent to the rear wall, and an eight-foot capped solid wall should be constructed between the proposed dwelling and Lios Muire.
- Site notice was not displayed on the Applicant's wall but rather on Lios Muire's boundary wall. The discrepancy was confusing and misleading.

6.3. Applicant Response

6.3.1. The Applicant submitted a First-Party Response to the Board on 6th July 2022. The key points can be summarised as follows:

- The means of access is a well-established residential roadway. There is a public footpath within 20-25m of the eastern site boundary, adjacent to House No. 35.
- The estate road in question is a looped or ring road with access from both ends, and as such is accessible to trucks.
- The proposed development would not negatively impact access for emergency services as on-site car parking is proposed.
- The green area will only be removed across the 3.5m width of the access to the dwelling and not over the entrance frontage of the property. The area is so narrow it is not usable as it is overgrown with hedgerows, briars and nettles. There are two large public open spaces to the south of Palmbury Orchard.
- The vehicular entrance to East Lodge is located on Palmbury Orchard.
- There is no requirement for a vehicular entrance not to face the entrance to another property.
- The Applicant's engineer will assess the condition of the boundary wall and will make recommendations to Cork City Council for its retention, repair and improvement.

- Cork City Council owns the strip of green area along the eastern boundary of the site.
- The proposed dwelling has been designed to minimise any loss of privacy and appropriately set back from the boundaries.
- The site notice was erected on the applicant's boundary wall.

6.4. **Planning Authority Response**

No response received.

6.5. **Observations**

None.

6.6. **Further Responses**

None.

7.0 **Assessment**

Having examined the application details and all other documentation on file, 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. Other Matters
4. Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. **Principle of Development**

- 7.1.1. The proposed development seeks to provide for a new two storey dwelling on an existing residential site within an established residential area. The subject site is zoned ZO 01 Sustainable Residential Neighbourhoods. Under this land use zoning objective residential is listed as a permitted in principle use. I consider the proposed

development to be acceptable in principle, subject to quantitative and qualitative safeguards in respect of design and amenity.

7.2. Impact on Residential Amenities

Architectural Design

- 7.2.1. The proposed dwelling is the same as that permitted on the site in 2008, i.e. a two storey, dormer style, detached dwelling (4-bedrooms) with a projecting front gable and rooflights to the front and rear. (A copy of the permitted development is enclosed with this file.) The dwelling will have an overall height of 7.7m and so is generally consistent with the two storey dwellings in the area. I concur with the Local Authority that the design is acceptable and in keeping with the character of the area.
- 7.2.2. Having regard to the size of the site (0.045ha) and the size of the proposed dwelling (155 sq m), the proposal does not constitute overdevelopment. Having regard to the height, scale and massing of the proposed development in the context of the neighbouring dwellings, I do not consider it to be excessive. The dwelling is setback 11m from its western boundary and 25m from the rear elevation of Saint Anthony's, located further to the west. It is setback approx. 19m from the rear elevation of Lios Muire, (the Appellant's residence) and 24m from An Grianan, both located to the west of the site and approx. 17.5m from East Lodge, a single storey dwelling located to the north of the site. Furthermore, it is setback 1.85m from its northern boundary, 4.87m from the southern boundary and 5.9m from its eastern boundary. There is a separation distance of approx. 22m from the front gable to the existing dwellings facing the subject site on Palmbury Orchard. As such, I am satisfied that it will not have significantly negative overbearing impacts on the neighbouring properties.
- 7.2.3. In terms of the repair works to the stone wall along the eastern boundary of the site, I consider the Applicant's proposal for an engineer to assess the condition of the boundary wall and make recommendations for its repair in consultation with Cork City Council to be acceptable. I highlight that the wall is not a Protected Structure, nor does it form part of an architectural conservation area.
- 7.2.4. In conclusion, I consider that the proposed development will not detract from the built character of the area.

Overlooking

- 7.2.5. The proposed development has no windows on the side elevations (north and south elevations) at first floor level. The proposal includes 2m high concrete post and timber trellis fence on the northern and western boundaries. A 2m high concrete block wall is proposed along the southern boundary. Having regard to the proposed boundary treatments, there will be no overlooking of neighbouring properties from the proposed ground floor windows and doorways. As such, I do not consider that the Appellant's suggestion for an eight-foot capped solid wall to be constructed between the proposed dwelling and Lios Muire is necessary. There are two rooflights proposed to the rear and one to the front. Having regard to the position of these rooflights, I do not consider that they will result in any significant overlooking of neighbouring properties. In summary, I am satisfied that the proposed development will not adversely overlook neighbouring properties to the extent that it would significantly impact their residential amenity.

Overshadowing

- 7.2.6. Due to the separation distances between the proposed development and neighbouring dwellings, the orientation of the site, topography of the area, scale and massing of the replacement dwelling and to the pathway of the sun, I am satisfied that no undue loss of light or overshadowing would occur to the neighbouring property. Furthermore, for similar reasons I am satisfied that the proposed development will not alter the quantum of daylight currently enjoyed by the occupants of neighbouring dwellings.

Traffic

- 7.2.7. The Appellants raise concerns in relation to traffic safety and query how the site will be serviced by refuse trucks. The proposal includes for a 3.5m wide vehicular entrance with 2m high inward opening timber gates. As highlighted by the Applicant, the proposed development includes for on-site car parking and as such there will be no increase in on-street parking in the area. Having regard to the sightlines from the proposed entrance I do not consider that the proposal will represent a traffic safety hazard. The area is already serviced by refuse trucks and as highlighted by the Applicant the estate road is a looped or ring road, not a cul-de-sac. As such, I do not foresee why the proposed development would present a change to the existing refuse collection arrangements or impact emergency services accessing the area.

- 7.2.8. Cork City Council has clear and unambiguous guidelines that vehicular entrances serving residential dwellings should not be wider than 3 metres, or where context and pattern of development in the area allows not wider than 50 per cent of the width of the front boundary. Having regard to the Development Plan policy (Section 11.145), I consider a 3m wide entrance would be appropriate and sufficient at this location which has acceptable sightlines.
- 7.2.9. I note that there is no hardstanding footpath directly fronting the site, however there is a green strip of land located to the north of the proposed site entrance which stretches as far as East Lodge. Furthermore, there is a hardstanding footpath to the southeast of the proposed entrance along Nos. 35 and 41 Palmbury Orchard. I consider that the pedestrian facilities in the area are satisfactory having regard to the scale and nature of the proposed development. In summary, I am satisfied that the proposal is acceptable in terms of traffic safety.
- 7.2.10. The proposed vehicular access crosses a green strip of land along the eastern boundary of the subject site. The Appellant argues that this will result in a loss of valued green area. Having regard to the size of the area (4.75m x 3.5m), and the quantum of available public space in the area, I do not consider that the proposal will result in a significant reduction in residential amenity.

Conclusion

- 7.2.11. 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, nor would it represent a traffic safety hazard.

7.3. Other Matters

Public Consultation

- 7.3.1. The Appellants state that the site notice was not correctly erected on the subject site. I note that the Planning Authority validated the application and considered the readvertised statutory notices that were submitted at RFI stage to be acceptable. I am satisfied that the position of the notices did not prevent concerned parties from making representations. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

Land Ownership

- 7.3.2. The Appellants query who owns the strip of green space located along the eastern boundary of the site and the eastern boundary wall. The Applicant submitted a letter of consent from Cork City Council to include the subject area as part of the application with the RFI Response.
- 7.3.3. 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.
- 7.3.4. 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.

7.4. Appropriate Assessment.

- 7.4.1. The site is c. 4km to the closest point of the Cork Harbour SPA (site code 004030). Having regard to the nature and scale of the proposed development in an established built-up urban area on serviced land, and the separation distance to the European sites to the subject site, I do not consider that the proposal would be likely to significantly impact the qualifying interests of the European Sites during either the construction or operational phases of development. As such, I consider that no Appropriate Assessment issues arise. In conclusion, I do not consider 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

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

9.0 Reasons and Considerations

- 9.1.1. Having regard to the residential land use zoning of the site, the nature and scale of the proposed development, and the provisions of the Cork City Development Plan 2022-2028 including Section 11.139 (Infill Development) and Section 11.145 (Residential Entrances/Parking in Front Gardens), 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 nor would it represent a traffic safety hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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 the 4th February 2022 and 14th April 2022, 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>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of development, details of the materials, colours and textures of all external finishes, shall be submitted to and agreed in writing by the Planning Authority.</p> <p>Reason: In the interests of orderly development and the visual amenities of the area.</p>
3.	<p>The proposed vehicular entrance shall not exceed 3.0 metres in width and shall not have outward opening gates. The footpath and kerb shall be dished at the road junction in accordance with the requirements of the planning authority.</p>

	<p>Details indicating the proposed compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of clarity, and pedestrian and traffic safety.</p>
4.	<p>Prior to the commencement of development, details of the boundary treatments, including repairs to the stone wall along the eastern boundary of the site, shall be submitted to and agreed in writing by the Planning Authority.</p> <p>Reason: In the interests of orderly development and the visual amenities of the area.</p>
5.	<p>a) All trees and hedgerows within and on the boundaries of the site, except those specified for removal as part of this permission, shall be protected during building operations and retained thereafter.</p> <p>b) Tree felling and clearing of vegetation shall take place outside of the bird nesting season.</p> <p>Reason: In the interest of visual amenity and biodiversity protection.</p>
6.	<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>Reason: In the interest of public health.</p>
7.	<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>Reason: In the interest of orderly development.</p>
8.	<p>The name and numbering of the dwelling shall be in accordance with a naming and numbering scheme submitted to, and agreed in writing, by the Planning Authority, prior to the occupation of the dwelling.</p> <p>Reason: In the interest of orderly street numbering.</p>
9.	<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</p>

	<p>development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
10.	<p>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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
11.	<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 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>

Susan Clarke
Planning Inspector

20th October 2022