



An
Bord
Pleanála

Inspector's Report ABP-313776-22.

Development	Construct house.
Location	Rear of no. 12/13 Grattan Terrace, Fermoy
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	21/7306.
Applicant(s)	Liam Gamble.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Pat & Maureen Hurley.
Observer(s)	None.
Date of Site Inspection	22/09/2022.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located to the rear of two houses in Grattan Terrace which is located to the south of the Duntaheen Road and to the south west of the center of the town of Fermoy. The site is accessed via an existing gated drive which provides access to the rear of No. 13 Grattan Terrace.
- 1.2. The subject site has a stated area of 0.046 hectares and there is a building located on the northern area of the proposed site which is described as a domestic garage. This building has a stated floor area of 46.9m², and it is proposed to retain this building on the site.
- 1.3. The primary use in this area of Fermoy is residential with a variety of house types, styles and sizes. The land to the west of the subject site is at a higher level than that of the subject site. The site is surrounded by rear gardens of the adjacent properties.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the construction of a new bungalow and associated site works, all on a site at rear of no 12/13 Grattan Terrace, Duntaheen Road, Duntahane TD, Fermoy, Co.Cork.
- 2.2. The application included the following documents:
 - Plans and particulars
 - Completed planning application form
 - Part V Exemption Certificate.
- 2.2.1. The proposed development comprises the construction of a single storey bungalow which will rise to a total height of approximately 5.35m. The three-bedroomed house will occupy a stated floor area of 95.1m² and will be finished in plaster and a slate roof. Windows will be double or treble glazed uPVC. Access to the site is via an existing gated entrance which currently serves the existing end of terrace house to the east.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 19 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, planning history and the County Development Plan, and local area plan policies and objectives. The report also includes an EIA and Appropriate Assessment Screening assessment.

The Planning Report considers the matters raised by third parties and overall concludes that the development is unlikely to give rise to a significant overbearing / overshadowing impact. Clarification is required in relation to the use of the existing garage building on the site and finally, the report notes the concerns of the Roads Section in terms of the access. Further information is required.

Following the submission of the response to the FI request, which included a Daylight & Shadow Study, the Planning Officer considered that all issues raised in the FI have been satisfactorily addressed. The report recommends that permission be granted. This planning report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

Area Engineer: The report requires that in order to improve safety for pedestrians and traffic, the existing front boundary wall and pillar on the western side should be removed in its entirety to ground level.

No engineering objections to the proposed development subject to conditions.

Following the submission of the response to the FI request, no further report was submitted.

3.2.3. Prescribed Bodies

Irish Water: No objection noted.

Following the submission of the response to the FI request, no further report was submitted.

3.2.4. Third Party Submissions

There are two third-party submissions noted on the Planning file. The issues raised are summarised as follows:

- Impact of the development on the character of the area
- Impact on existing residential amenity
- Overlooking and overshadowing of adjacent properties, impacting light in existing homes.
- Issues relating to roads and safety with regard to the access.

4.0 Planning History

The following is the relevant planning history pertaining to the site:

PA ref: 15/6316: Permission granted for the retention of alterations to roof profile of dwelling permitted under Planning Reference no. PD722 and alterations to roof profile of extension to adjoining dwelling also permitted.

Adjacent sites:

PA ref: 06/51020: Permission granted for the construction of a two-storey extension, with velux rooflights to be fitted to existing rear roof of dwelling at no. 7 Grattan Terrace, Fermoy.

PA ref: 07/51009: Permission granted for the retention of two-storey extension to rear of existing dwelling and for permission for car port to front of dwelling at no. 5 Grattan Terrace, Fermoy.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

5.1.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

5.1.2. Relevant policies of the NPF seek to support the creation of high-quality urban places and to increase residential densities in appropriate locations. The following objectives are relevant in this regard:

- Policy Objective 4
- Policy Objective 6
- Policy Objective 10
- Policy Objective 11
- Policy Objective 33
- Policy Objective 35

5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments. The guidelines state that car parking standards need to be set at realistic levels, having regard, *inter alia*, to proximity to public transport.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

- 5.2.3. Section 5.6 of the guidelines suggest that there should be no upper limit on the number dwellings permitted that may be provided within any town or city centre site, subject to a number of safeguards.

5.3. Development Plan

- 5.3.1. The Board will note that the Elected Members of Cork County Council made the Cork County Development Plan 2022-2028 and adopted the Plan on the 25th of April 2022. The Plan came into effect on the 6th of June 2022. It is noted that the application, the subject of this appeal, was submitted under the provisions of the previous County Development Plan. It is further noted that the application was considered against the provisions of the Fermoy Town Council Town Development Plan 2009, which was extended until the review of the Cork County Development Plan, as well as the Fermoy Municipal District Local Area Plan 2017. The Board will note that the adoption of the 2022 Cork County Development Plan replaces both these policy documents.
- 5.3.2. Volume 3 of the 2022 CDP deals with North Cork and Fermoy is identified as the main town for this municipal district. It is the vision for Fermoy over the lifetime of the plan, to increase the population of the town, optimise employment opportunities, manage development in order to support the strengthening and rejuvenation of the retail function of the town and ensure that all new development respects the significant built heritage of the town and its setting on the River Blackwater.
- 5.3.3. The site is zoned Existing Residential / Mixed Residential and Other Uses. The site is also noted to be located within the Greater Cork Ring Strategic Planning Area and a high value landscape.
- 5.3.4. Volume 1 of the Plan sets out the main policy material of the CDP and Chapter 3 deals with settlements and placemaking where it is the stated vision of the plan, to protect and enhance the unique identity and character of County Cork's towns and villages and improve quality of life and well-being through the delivery of healthy placemaking underpinned by good urban design, with the creation of attractive public spaces that are vibrant, distinctive, safe and accessible and which promote and facilitate positive social interaction and supports the needs of the community. In seeking to further the focus of the NPF, the Cork CDP notes that a new focus on

urban opportunity sites, through a combination of infill lands and backlands amongst other measures. The following sections of the Plan relates to infill housing:

3.5.13 To make the most sustainable use of existing urban land within the built envelope of a settlement, the planning authority will encourage the development of infill housing on suitable sites, subject to adherence to residential amenity standards and avoiding any undue impacts on the established character of an area. The layout and design of infill schemes should respect existing building lines and should generally follow established roof profiles, buildings heights and use of materials within the street.

3.5.14 Infill housing is often suitable as starter homes or housing for older people given their size and locations in central locations close to services and amenities.

3.5.15 In general, infill housing should comply with all relevant development plan standards for residential development, however, in certain limited circumstances; the planning authority may relax the normal planning standards in the interest of developing vacant, derelict and underutilised land.

5.3.5. Chapter 18 of the Plan deals with Zoning and Land Use and 18.3 deals with Land Use Zoning Categories. The following policy is relevant:

- ZU 18-9: Existing Residential/Mixed Residential and Other Uses

The scale of new residential and mixed residential developments within the Existing Residential/Mixed Residential and Other Uses within the settlement network should normally respect the pattern and grain of existing urban development in the surrounding area. Overall increased densities are encouraged within the settlement network and in particular, within high quality public transport corridors, sites adjoining Town Centres Zonings and in Special Policy Areas identified in the Development Plan unless otherwise specified, subject to compliance with appropriate design/amenity standards and protecting the residential amenity of the area.

Other uses/non-residential uses should protect and/or improve residential amenity and uses that do not support, or threatens the vitality or integrity of,

the primary use of these existing residential/mixed residential and other uses areas will not be encouraged.

5.4. Natural Heritage Designations

The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 290m to the north. In addition to the above, the Blackwater Callows SPA (Site Code: 004094) lies approximately 8.2km to the east.

5.5. EIA Screening

5.5.1. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units
- Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

5.5.2. The proposed development comprises the construction of a house in Fermoy, Co. Cork, on a site of 0.046ha. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

5.5.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.5.1. Having regard to:

- (a) the nature and scale of the development,

- (b) the location of the site within the development boundaries of Kinsale,
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The grounds of appeal are summarised as follows:

- The location of the house within 2.8m of the boundary with window and patio doors facing the appellants rear garden will result in a sever loss of privacy.
- The development represents the development of the rear gardens of two houses and will result in an inadequate area of open space for the houses.
- The development will result in a loss of use and enjoyment of the two houses as well as the appellants private open space.
- The height of the house at 5.35m will overshadow adjacent property.
- Roads and traffic issues at sub-standard entrance.
- The development is not in keeping with sustainable development and would be contrary to the proper planning and development of the area.

It is requested that permission be refused.

6.2. Planning Authority Response

The PA submitted a response advising that all the relevant issues have been covered in the reports already forwarded to the Board. No further comments to make.

6.3. First Party Response to Third Party Appeal

- There is no loss of privacy of adjoining property due to the window levels and the fact that the appellants house is on higher ground.
- The development is not a development of the rear gardens of the two houses as suggested and will not result in the loss of use and enjoyment to nos 12 and 13 Grattan Terrace.
- The daylight and shadow study demonstrates that the development will not have an impact on neighbouring properties.
- The development will not cause overshadowing of adjacent properties.
- The existing entrance to serve the property is not sub-standard and will not lead to a traffic hazard on the public road.
- The development represents sustainable development.
- Applicant fails to see how the development will devalue property.

6.4. Observations

None.

7.0 Assessment

The Board will note that I could not gain access to the site, so I took photographs from the public road. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Residential Amenity Issues
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the Development:

- 7.1.1. The subject site lies within the settlement boundary of the main town of Fermoy in Co. Cork. The site comprises a site which lies to the rear of two existing houses in Grattan Terrace. The site does not comprise part of the private open spaces associated with the two houses and there is a domestic garage located on the northern area of the site. Access to the site is via an existing drive which runs along the western gable of no. 13 Grattan Terrace. The existing houses to the west and south are located on higher ground levels and the existing boundaries to the site rise to approximately 2m in height.
- 7.1.2. In terms of the principle of the development, I would note that national policy seeks to increase residential densities in appropriate locations and that this objective is provided for in the current CDP. The Cork County Development Plan 2022 zones the lands 'Existing Residential'. The proposed development comprises the construction of a small three bedroomed single storey house which will connect to public services in the area.
- 7.1.3. Having regard to the layout of the site, I consider that the principle of the development is both reasonable and acceptable as proposed.

7.2. Residential Amenity Issues

- 7.2.1. In terms of the impact of the development on existing residential amenity, the Board will note the concerns of the third-party appellant. While I acknowledge the submission, having regard to the existing site boundaries, together with the variation in existing site levels, with the appellants home located at a higher level, I would not accept that the development, if permitted, will result in any significant overlooking of adjacent private amenity spaces.
- 7.2.2. I would also accept that the subject site does not form part of the private amenity spaces associated with Nos. 12 and 13 Grattan Terrace, and as such, there will be no reduction in the residential amenity of these properties as a result of the proposed development.
- 7.2.3. I note the concerns raised in relation to overshadowing of adjacent properties and the associated private amenity spaces. A Daylight & Shadow Study was prepared by the applicant and submitted to the Planning Authority following a request for further information. The assessment concludes that the proposal will not have a significant additional impact on daylight levels to the ground floor openings of adjoining properties and will not have any significant overshadowing effect on the open amenity spaces to the adjoining properties.
- 7.2.4. Having regard to the information available, I am satisfied that the proposed development is unlikely to have any significant impacts in terms of sunlight, daylight or overshadowing of existing properties. There are no significant impacts on existing residential amenity therefore envisaged.
- 7.2.5. In terms of the residential amenity of future residents, the Board will note that the restricted site is to include 3 areas of private amenity spaces, including two lawned areas with areas of 27m² and 24.5m², and a patio/yard area of 37m². In the context of the site location, I am satisfied that the proposed development is acceptable in this regard.
- 7.2.6. With regard to the internal space, and while I acknowledge that the proposal is for a house, I consider that the Sustainable Urban Housing: Design Standards for New Apartments guidelines might reasonably be applied in this instance. The proposed house proposes 3 bedrooms with a total floor area of 95.1m² including a combined living/dining/kitchen area of 34.79m², both of which comply with the minimum

requirements as per the guidelines. In terms of the bedrooms, I would accept that the master bedroom and bedroom no. 2 comply with the minimum area and width requirements. In terms of bedroom no. 3, I would note that the area of the room accords with the requirements of the guidelines, but that the width falls short by 100mm. However, the development would comply with the minimum aggregate bedroom floor area by 0.62m². As such, I accept that the development can be considered acceptable in terms of the residential amenity provisions for future residents.

7.3. Other Issues

7.3.1. Roads & Traffic

The proposed development is to be accessed over the existing drive which runs along the western gable of No. 13 Grattan Place. While I note that the Area Engineer raised a concern in terms of the sight distances at the entrance, the removal of the existing front boundary wall and pillar on the western side of the frontage of No. 13 Grattan Terrace is deemed to be an acceptable solution. The Board will note that the applicant owns the referenced property and therefore the required amendments to the boundary are achievable.

I do not consider that the development, if permitted is likely to give rise to any concerns relating to roads and traffic and I am satisfied that the immediate road network in the vicinity of the site has adequate capacity to accommodate the traffic associated with the house without any undue impacts for existing road users.

7.3.2. Water Services

The proposed development will connect to existing public services in the town of Fermoy. I note no objection in this regard from Irish Water. I also note no engineering objections from Cork County Councils Area Engineer. I have no objections therefore, to the proposed development from a water services perspective.

7.3.3. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.4. **Appropriate Assessment**

Introduction:

- 7.4.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any designated site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 290m to the north. In addition to the above, the Blackwater Callows SPA (Site Code: 004094) lies approximately 8.2km to the east.
- 7.4.2. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:
- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
 - Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.
- 7.4.3. Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

Consultations:

- 7.4.4. With regard to consultations, the Board will note that no issues relating to AA were raised by any party.

Screening for Appropriate Assessment

- 7.4.5. The proposed development will connect to the public water services in the town of Fermoy. I note no objections from IW in this regard.

7.4.6. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject application and did not submit a Natura Impact Statement. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. There are 2 Natura 2000 Sites occurring within a 15km radius of the site, the closest one being the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 290m to the north. In addition to the above, the Blackwater Callows SPA (Site Code: 004094) lies approximately 8.2km to the east.

7.4.7. I am satisfied that the above sites can be screened out in the first instance, as they are located outside the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on the above mentioned sites is reasonably foreseeable and that they can all be excluded at the preliminary stage for the following reasons:

- Sites are located entirely outside the EU site and therefore there is no potential for direct effects.
- No habitat loss arising from the proposed development.
- No disturbance to species.
- No pathways for direct or indirect effects.

In Combination / Cumulative Effects

7.4.8. Given the nature of the proposed development, being the construction of a house on an urban and serviced site within the built-up area of Fermoy, I consider that any potential for in-combination effects on water quality of any of the Natura 2000 sites can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in any of the identified Natura 2000 sites via rivers and other surface water features are also subject to AA.

Conclusion on Stage 1 Screening:

7.4.9. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-

pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

8.0 Recommendation

- 8.1.1. Having regard to the information submitted in support of the appeal, together with all other matters and details on the file, I recommend that permission be granted for the development subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Cork County Development Plan 2022, the established residential use in the vicinity of the site, the pattern of development in the vicinity and the scale of the development as proposed, it is considered that the proposed development works, and subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would not, therefore, be contrary to the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 27th day of 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.

Reason: In the interest of clarity.

2. The access to the site shall be altered to the satisfaction of the Planning Authority. Full details of the works shall be submitted for the written agreement of the Planning Authority prior to the commencement of any works on the site and the works to the entrance shall be undertaken in the first instance.

Reason: In the interests of road safety.

3. The existing garage on the site shall not be used as a habitable space without a prior grant of planning permission for such use.

Reason: To restrict the use of the garage in the interest of the proper planning and sustainable development of the area.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In the interest of development control and the amenities of the area.

5. The external finishes of the proposed building (including roof tiles/slates) shall be finished in accordance with the requirements of the Planning Authority. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. 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.

7. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

A. Considine
Planning Inspector
12/10/2022