



An
Bord
Pleanála

Inspector's Report ABP315294-22

Development	Construction of detached dwelling house, driveway, connection to existing services and associated site works.
Location	Cahercalla Road, Cahercalla More, Ennis, Co Clare
Planning Authority	Clare County Council.
Planning Authority Reg. Ref.	22846.
Applicant(s)	Pat Keogh
Type of Application	Planning permission
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Jerry and Kay O'Brien and 4 others.
Observer(s)	Patricia O'Donnell and others Diarmuid O'Brien.
Date of Site Inspection	13 th April 2023
Inspector	Ann Bogan.

1.0 Site Location and Description

- 1.1. The site, 0.174ha in area, is located at the end of Cahercalla Drive cul de sac, in a mature residential suburb on the south side of Ennis. Cahercalla Drive is an estate of low density two storey detached houses and the general pattern of development in the area is detached houses on large sites.
- 1.2. The site is bounded to the north by Cahercalla cul de sac and turning area. The front part of the site has served as an area of public open space for the Cahercalla Drive housing area, and is zoned open space .It has a number of mature trees and a partially demolished dry stone wall, with the stones remining in situ on the site. Some partial clearance of trees/vegetation appears to have taken place. The remainder of the site is a largely open, level undeveloped greenfield site.
- 1.3. An existing two storey house, 15 Cahercalla Drive (residence of one of the appellants), is located to the west of the site, with a dry stone boundary wall, with evergreen and deciduous trees and shrubs along it. The eastern boundary is a dry stone wall with mature evergreen hedging and borders a grassed undeveloped area, associated with two nearby dwellings, one of which is the home of the applicant. The southern end of the site does not have a defined boundary but adjoins the site of a former dwelling with some stone walls remaining and to the south of this is an area with dense tree and scrub growth.

2.0 Proposed Development

- 2.1. The main elements of the proposed development are outlined below:
 - A part two storey, part single storey detached dwelling 247sqm in area and of contemporary design, set out in two connected blocks. The northern two storey block would have a pitched roof with a ridge height of 8.4m and the single storey section to the rear would have a mainly flat 'green roof' with a feature 'butterfly roof 'over part of it.
 - Access is via an existing driveway off Cahercalla Road which serves two existing houses, (one of which is indicated as the applicant's dwelling) and then extends across a grassed area to reach the boundary of the site. Part of

the eastern boundary wall of the site and hedging would be removed to create the access to the site.

- No development is proposed on the part of the site designated as open space and it is described as 'being retained in its current condition'. A paved courtyard to the east of the house would be screened from the open space by a 2m high stone. The front (north) elevation of the house would face onto the open space with no separating wall or fence indicated. The remains of the partially demolished wall are shown as being retained in situ in the open space area.
- A terrace and garden are proposed to the rear of the house. The house would be located 3-4 metres from the western side boundary with the neighbouring dwelling. The existing wall and trees along this boundary are shown as being retained. There are a number of windows at ground floor level and 1 at first floor level on the western side elevation of the dwelling.
- The development would connect to the existing public sewer and water supply at Cahercalla Drive.
- The application is accompanied by a Bat Survey Report

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 10 conditions.

Condition No 2 required that no encroachment should occur on the Open Space, which should be kept clear of development, save for reinstatement of the green area, and it should not form part of the private open space of the house and the turning head should remain in situ

Condition 3 required trees and boundary walls to be retained and protected during construction and a landscaping plan to be submitted for agreement showing additional tree planting and a low stone wall north of the proposed dwelling, between it and the Open Space.

Condition 5 required the access to be off Cahercalla Road as proposed and no access to be off Cahercalla Drive, while Condition 6 required the access to be constructed prior to commencement of construction of the building.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer considered issues including the principle of the development, alleged site clearance works, legal interest, traffic, visual amenities, residential amenities, ecological issues and appropriate assessment, and recommended permission subject to conditions. She noted the concerns of third parties and concluded *'the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the amenities of the existing dwellings within Cahercalla Drive'*.

3.2.2. The need for Environmental Impact Assessment was excluded by way of preliminary examination and an Appropriate Assessment Screening was carried out and concluded that *'any significant negative impact can be screened out in terms of any impact on qualifying interests and the mitigation measures should be incorporated as part of any grant of permission'*.

The Planning Officers report formed the basis for the Planning Authority decision.

3.2.3. Other Technical Reports – none on file

3.2.4. Prescribed bodies

Irish Water: No objection subject to standard conditions

3.3. Observations

Three third party observations were received by the Planning Authority from local residents, including one representing 5 residents. The issues raised included:

- the proposed dwelling is too large for the site, the height and floor area would be overbearing,
- the green area which had been planted and maintained by residents was allegedly damaged by the applicant and trees removed in 2021; requests that

the area be restored before any construction work proceeds and a wall constructed between the dwelling and green area

- queries the submitted bat survey,
- the development would impact on residential amenities due to windows on western side overlooking neighbouring house; requests frosted glass in first floor window and a stone wall along western boundary,

4.0 Planning History

P21 1050 Permission refused for construction of a detached dwelling with associated works and services for the following reasons:

1. Having regard to the Open Space zoning as contained within the confines of the proposed development site, the definition of same as set out in the Clare County Development Plan 2017-2023 (as varied) and the residential nature of the development as proposed, it is considered that the proposed development would be contrary to Objective CDP19.3 'Compliance with zonings' of the Clare County Development Plan 2017-2023 (as varied). Therefore, it is considered that the development would materially contravene a development objective indicated in the development plan for the zoning of land for open space use and thus be considered contrary to the proper planning and sustainable development of the area.
2. Having regard to the submitted layout plan, the presence of mature trees, stone walls and remnants of a stone structure, in the vicinity of the site and the presence of bat roosts in the general area, the Planning Authority is not satisfied that the development has been satisfactorily assessed or that it has been demonstrated beyond reasonable doubt that the proposed development will not have a negative impact on bat habitats and species of importance in the area. The proposals would therefore that the ecological impact of the proposed development will not have a negative impact on bat habitats and species of importance in the area.

3. Having regard to location of the proposed the vehicular access off and existing hammerhead/turning bay which currently serves the Cahercalla Drive housing development, the Planning Authority is not satisfied that such an arrangement would not endanger public safety by reason of traffic a hazard.
4. Having regard to the lack of any details pertaining to landscaping of the site, including identification of trees, hedgerow and stone walls, for retention, the Planning Authority is not satisfied that the proposed development would successfully integrate into the receiving landscape. In the absence of such a comprehensive landscaping plan, the Planning Authority considers that the proposed development would detract from the layout character and visual amenities of the area and would therefore, seriously injure the amenities of property in the vicinity. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

P8 17041 Cahercalla Drive: planning permission was granted for a housing development of 16 no detached dwellings.

5.0 Policy and Context

5.1. Development Plan

The relevant Development Plan is the Clare County Development Plan 2023-2029 which came into effect on 20th April 2023 (an interim version of the adopted plan is available on the Clare County Council website pending the final graphically designed version). The new plan replaces the Clare County Development Plan 2017-2023 which was the Plan pertaining at the time of the Council assessment and decision of this planning application.

Zoning Objectives: The main part of the subject site is zoned 'existing residential', while the area fronting onto Cahercalla Drive is zoned 'Open Space'. (as illustrated on the Development Objectives Map for Ennis in Volume 3a of the Development Plan)

The objectives for each zoning category are set out in section 19.4 Volume 1 Written Statement of the Development Plan:

Existing Residential The objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and for uses that enhance existing residential communities

Open Space It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas, but these should only be a small component of the overall areas involved.

Volume 1 also contains objectives for Green Infrastructure and Biodiversity/Habitat Protection that are relevant to this planning application:

Green Infrastructure in Residential Developments CDP5.16 It is an objective of the Development Plan: a) To ensure that green areas associated with new residential developments enrich the quality of life of local residents and provide ecologically-rich areas that enhance biodiversity and contribute to the green infrastructure network in the County; and b) To facilitate and encourage community stakeholders to repurpose underutilised pockets within existing residential areas for the enhancement of biodiversity and green infrastructure

Biodiversity and Habitat Protection DP15.12 It is an objective of Clare County Council:

- a) To protect and promote the sustainable management of the natural heritage, flora and fauna of the County both within protected areas and in the general landscape through the promotion of biodiversity, the conservation of natural habitats, the enhancement of new and existing habitats, and through the integration of Green Infrastructure (GI), Blue Infrastructure and ecosystem services including landscape, heritage, biodiversity and management of invasive and alien species into the Development Plan;
- b) To promote the conservation of biodiversity through the protection of sites of biodiversity importance and wildlife corridors, both within and between the designated sites and the wider Plan area;
- c) To support the implementation of the All Ireland Pollinator Plan, National Biodiversity Action Plan and National Raised Bog SAC Management Plan;

- d) To ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts;
- e) To implement and monitor the actions as set out in the Clare County Biodiversity Plan; and
- f) To promote biodiversity net gain in any new plans/projects/policies to promote development that leaves biodiversity in a better state than before.

Volume 3(a) Ennis Municipal District Area Settlements addresses objectives for the Ennis area;.

While Section 2.5.2 below refers to sites zoned for new housing development in Cahircalla More it also has some relevance for smaller developments in the area such as the current application, particularly in relation to ecological issues referred to:

2.5.2 New Housing in Cahircalla: More - '.... Development proposals on the residential sites in the Cahircalla More neighbourhood listed below must be informed by bat surveys and must ensure that there is no loss of habitat for the Lesser Horseshoe bat. Any habitat loss must be offset by additional landscape planting to ensure connectivity across the landscape. All development proposals, including lighting proposals, must be informed by the results of the bat survey. A landscape management plan must also be prepared to protect and enhance the existing hedgerows and wildlife features. This landscape management plan shall be informed by an ecological assessment'.

5.2. Natural Heritage Designations

002091 Newhall and Edenvale Complex Special Area of Conservation - 1.7km

000037 Pouladatig Cave SAC - 2.5km

002165 Lower Shannon Special Area of Conservation - 1.29km

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, comprising of construction of a dwelling house and driveway in an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the

proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

In summary, the grounds of appeal are:

- Concern re Impact on residential amenity of neighbouring property at 15 Cahercalla Drive by reason of overlooking from windows in western side elevation of proposed house;
- The western boundary wall needs upgrading to mitigate potential overlooking and major loss of privacy of the adjoining house from the 4 windows at ground floor level
- Bedroom window at first floor level would overlook rear garden and ground floor living areas (kitchen and living room) resulting in adverse effect on neighbouring property. It is submitted the bedroom already has a window on the northern elevation and that the window in the west elevation should be removed to prevent overlooking
- Reference is made to two other planning permissions nearby where conditions were imposed to prevent overlooking and to the applicant's submission on a nearby application raising concerns about proposed windows overlooking his property
- Submits that a 2m high natural stone wall should be erected on the western and northern boundaries of the proposed development site
- Notes that alleged unauthorised demolition of a stone boundary wall and tree felling took place on the section of the site designated as open space which has been maintained by the residents for 40 years.
- An Bord Pleanála asked to request that this open space area be restored to its previous state including reinstating of the boundary wall to a height of 2m

to separate the open space and rest of site, reinstate the Council 'no dumping sign', reinstate the standing stones in their original position and replant trees that were removed and other landscaping works and that this should be a pre-condition to commencement of construction work on the site.

6.2. Applicant Response

The applicant's response is summarised as follows:

- Confirms the wall along the western boundary will be made good to a height of 1.6 m along its length, details will be submitted and agreed with Planning Authority prior to commencement
- Existing trees along the west boundary will be retained and protected during construction and additional tree planting will be provided
- Finished floor level of proposed house will be 520mm lower than finished floor level of 15 Cahercalla Drive. Applicant argues this factor and above measures as well as the 17m distance between the houses should be sufficient to mitigate potential overlooking of the neighbouring property
- In relation to the first floor bedroom window, the applicant has no objection to a condition requiring it to be frosted/opaque glass if considered appropriate
- The open space will be kept free of development save for reinstatement of the green area as required by condition No 2(a) of Planning Authority decision. Applicant states he will access the open space for maintenance and management including tree pruning to keep them at appropriate height.
- Applicant, who has lived nearby since 1980s, asserts he has no recollection of the open space being used as an amenity open space.

6.3. Planning Authority Response

The main points of the Planning Authority response to the appeal are:

- Considers all issues raised in appeal were considered in the assessment of the planning application

- The principle of the proposed development is considered acceptable subject to inclusion of conditions regarding the non-encroachment onto the open space area north of the dwelling and construction of access road prior to construction of proposed house
- Having regard to urban context and separation distances between the proposed and neighbouring house Planning Authority does not consider the proposed development will impact on residential amenities
- Regarding appellants request for a 2m high stone boundary wall, while the Planning Authority would have no objection to inclusion of such a condition on western boundary, to construct one to the north would not accord with established pattern of development and may appear incongruous
- Requests inclusion of conditions as attached to Planning Authority decision

6.4. **Observations**

Two observations were received:

6.4.1. Diarmuid O'Brien

A summary of history of development in Cahercalla Drive area is included. The main issues raised concerning the proposed development are as follows:

- Requests full reinstatement of trees shrubs etc on the open space area, which were damaged in 2021
- The proposed house would be against the boundary and would overlook neighbouring house
- A 12ft wall in natural stone to be erected around the open space area and along the boundary of 15 Cahercalla Drive to prevent overlooking
- Ownership of the green area to be taken over by Clare County Council Clare
- Traffic safety issue re access onto Cahercalla Road

6.4.2. Patricia O'Donnell and others, residents of Cahercalla Drive

- Residents became aware that the site zoned as 'open space' had been the subject of a submission by the applicant to change the zoning to residential

and made a submission on the amendments to the draft County Development Plan 2023-2029.

- Copy of submission on Development Plan included with the Observation
- In summary:
 - 'The site has been used, maintained and paid for by the residents since 1981
 - The site was a beautiful woodland area before the unauthorised demolition in 2021
 - Support third party appeal to reinstate open space to previous state as a precondition to commencement of construction'
- The submission includes the site plan of original planning permission (P8/17041) showing the open space at the end of Cahercalla Drive as part of the original open space for the development.
- Includes correspondence from Clare County Council stating the open space site was taken in charge by Ennis Town Council but not brought into the ownership of the Council

6.5. Further Responses

None

7.0 Assessment

7.1. This assessment is based on the recently adopted Clare County Council Development Plan 2023-2029. Having examined the details of the application and other documentation on the file, including the appeal, responses and observations and inspection of the site and having regard to the relevant Development Plan objectives, I consider the main issues in this appeal are as follows:

- Principle and form of the development
- Residential amenity
- Ecology and biodiversity

- Appropriate Assessment

7.2. Principle and form of the development

The zoning objectives for the site are similar to the previous Development Plan which operated at the time of the Planning Authority decision. The main part of the site is zoned 'existing residential' (as opposed to 'low density residential' in the previous plan). The current zoning includes an objective *'to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area'*. I consider the principle of a dwelling on this site in the context of the existing pattern of detached dwellings on individual sites in the area to be acceptable.

7.3. The proposed dwelling is of contemporary design with a two-storey section to the front and a single storey section to the rear. The two-storey section facing onto Cahercalla Drive has a pitched roof and a ridge height similar to the neighbouring houses, although with a different fenestration pattern and materials, and it is set back 5 m from the front building line of the adjacent house. The design of the building differs from the more traditional approach of the existing buildings in the estate but the set back and similar form of roof line as well as existing landscaping to the front and side of the site reduces the potential for a discordant visual impact on the existing character of the area. Overall, I consider the proposed design to be acceptable but a condition requiring additional landscaping is recommended.

7.4. The front part of the site is zoned 'open space' and the zoning objective states: *It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities.'* One of the reasons for refusal of the previous application on the site was that the proposed development would contravene the open space zoning on part of the site. In the current application the house is constructed solely on the area zoned residential and access is proposed via an existing driveway off Cahercalla Road, rather than from Cahercalla Drive, as previously proposed. The application drawings state the *'Existing Open Space area to be retained in its current condition and appropriately protected during construction'*.

7.5. I note the resident's concerns in relation to the impact of the development on the area zoned open space.' It would appear that the area zoned open space was

designated as part of the open space provision in the planning permission for the Cahercalla Drive estate development and has been maintained as such until recently and it is considered appropriate that it continue to perform that function for the area. I recommend conditions requiring that the development not encroach on the area of open space, that a wall be constructed between the open space area and the dwelling house, that access to the proposed development be solely via Cahercalla Road including for construction purposes and that there be no access off Cahercalla Drive and that additional landscaping be provided. Subject to these conditions to protect the open space I consider the principle of the development to be acceptable.

- 7.6. I note Issues raised relating to taking in charge of the estate and of alleged unauthorised development. I consider that these are matters for the Planning Authority and local parties and outside the scope of this appeal.

7.7. Residential amenity

The appellants raise concerns about the impact of the proposed development on the residential amenities of the neighbouring house at 15 Cahercalla Drive due to overlooking of the house and garden from windows in the western elevation at ground and first floor level. The proposed dwelling would have four ground floor windows in the side elevation serving an office, kitchen and utility room, and a first floor window serving a bedroom, which has a second window on the north elevation. The proposed structure would be 3.5m to 4 m from the side boundary and 17m from the nearest point of the existing dwelling, with a finished floor level c500mm below that of the existing house.

Taking into account the distance between the structures and the fact that the existing wall and trees and other vegetation along the boundary wall provide screening between the buildings, I am satisfied that inclusion of a condition requiring further planting and repair of the wall would address the potential for overlooking, particularly at ground floor level. I recommend that first floor bedroom window on the side elevation be fitted with frosted/opaque glass to address overlooking of the neighbouring house and garden. Subject to these conditions I believe that the proposed development would not be seriously injurious to the residential amenity of the area.

7.8. Ecology

Clare County Development Plan Objective DP15.12 'Biodiversity and habitat protection' includes objective 'd) *To ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts.*' As there are known Lesser Horseshoe bat roosts in the area (including Newhall and Edenvale Complex and Pouladatig Cave SACs) it is important to ensure proposals for development are assessed in the context of appropriate bat surveys and that there is no net loss of relevant habitats. A bat survey was submitted with the proposed development and the key findings were:

- No bat roosts were identified on the proposed development site
- Surveys showed that bat activity on the site is considered to be low overall,
- The site is not considered to be of any significant importance to local bats, at most the site provides some commuting habitat and some foraging habitat.
- Foraging/commuting on the site is considered to be limited to the treelines and hedgerows along the boundaries of the site. Most foraging behaviour was over the small woodland area to the south, outside the subject site
- One faint recording of a Lesser Horseshoe bat was noted but it did not pass through the site. As the site does not comprise woodland, the favoured habitat of Lesser Horseshoe bat and there are suitable foraging areas to the north-east, south west and the adjacent wooded area to the south, no significant impacts are expected to arise.

7.9. Having considered the submitted bat report and having regard to the low value of the site for bat roosting and limited value for foraging and commuting I consider that the proposed development will not negatively impact on any bat species. A condition requiring a landscape plan is considered appropriate to ensure protection of existing trees and hedgerows and requiring additional tree planting, in the interests of supporting biodiversity and residential amenity.

7.10. Appropriate Assessment

Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites and a lack of ecological or hydrological connection between the development and any European site, no appropriate assessment issues

arise and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1. I recommend that planning permission be granted subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the zoning of the site, the design of the proposed development, the pattern of development in the area, and the provisions of the Clare County Development Plan 2023-2029, it is considered that subject to compliance with the conditions set out below the proposed development would not be seriously injurious to the residential or visual amenities or character of the area and therefore would 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 21st September 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 interests of clarity</p>
2.	<p>The proposed development shall not encroach on the open space area to the north of the dwelling, save for reinstatement of the green area. This area shall not form part of the private open space serving the proposed</p>

	<p>dwelling and shall continue to serve as open space for the existing Cahercalla Drive residential area</p> <p>Reason: Having regard to the zoning and established use of this area as an open space and in order preserve this area for the amenity of local residents</p>
3.	<p>a) All existing trees shall be retained on the site, including those along the western boundary and those in the open space area and shall be protected during construction</p> <p>b) The site shall be landscaped in accordance with a landscaping plan, taking account of the recommendations of the submitted Bat Survey Report. Details of the plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The landscape plan shall include:</p> <ul style="list-style-type: none"> • a planting plan indicating existing trees and proposed additional planting of native tree and shrub species along the western boundary, in the open space area and elsewhere in the site • details of hard landscaping proposals • fallen trees and debris shall be removed from the open space • construction of a wall 1.2 m in height separating the proposed house from the open space, reusing the existing stone on-site from the partially demolished wall where feasible; • details of all other boundary treatments • details of external lighting proposals <p>The landscaping plan shall be implemented as agreed to the satisfaction of the Planning Authority prior to the occupation of the proposed dwelling.</p> <p>Reason: In the interests of biodiversity and visual and residential amenities</p>
4.	<p>a) Access to the site, including construction access, shall be from Cahercalla Road as indicated on the site layout plan submitted with the</p>

	<p>application. No access either during or post construction shall be obtained from Cahercalla Drive.</p> <p>b) The proposed access road shall be completed to the satisfaction of the Planning Authority before construction of the proposed dwelling commences.</p> <p>Reason: In the interests of traffic safety and residential amenity</p>
5.	<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>
6.	<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. The contribution shall be paid prior to the 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 the Board 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 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>

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.

. Ann Bogan
Planning Inspector

15th May 2023