



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315462-23

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<b>Development</b>	Construction of 2-storey domestic building consisting of a ground floor gym and office, and a 1st floor guest apartment
<b>Location</b>	Cleve House, Blackrock Road, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	2240938
<b>Applicant(s)</b>	David Cronin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First / Third Party
<b>Appellant(s)</b>	John & Yvonne Cuddigan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> October 2023
<b>Inspector</b>	Joe Bonner

## 1.0 Site Location and Description

- 1.1. The site of the proposed development is located in the rear garden of an existing house, Cleve House, on the southern side of Blackrock Road, c2km east of Cork City Centre. Cleve House is listed on the National Inventory of Architectural Heritage and is also located within the Blackrock Architectural Conservation Area (ACA).
- 1.2. The overall landholding from which the site is taken, is generally rectangular in shape and is long and narrow with an overall depth of c121.5m and a width of c 16-17m. The site itself has a depth of c36.6m and is located at the southern end of the existing garden. The separation distance between the rear of the applicant's home (Cleve House) and the front of the proposed building is 72.155m.
- 1.3. The site has a stated area of 0.0603ha and is bound to the east by part of the former garden of Averno, an adjacent house, that has recently been acquired by the appellants, whose house is located c16m to the east. An area of public open space and a vehicular turning area at the end of the Elderwood Drive residential development are located to the west while the rear / southern site boundary is shared with the side boundary walls of two no two storey houses in Elderwood Drive.
- 1.4. Access to the unit is via a pedestrian path at the western side of Cleve House, with no parking provided.

## 2.0 Proposed Development

- 2.1.1. The proposed development, as describe in the public notices, consists of:
  - The construction of a new two-storey domestic building consisting of a ground floor home office and gym and a first floor two-bedroom guest apartment, located to the rear of and accessed from Cleve House, Blackrock Road, Cork together with all of associated site works including mains water service and drainage connections to the adjoining Elderwood Drive.
- 2.1.2. The proposed building is to have a floor area of 266sqm over two floors. The ground floor office and gym would have floor areas of 51sqm and 57sqm respectively, while the guest apartment would have a floor area of 153sqm, divided between a lobby of 18 sqm at ground floor and 135sqm at first floor level.

2.1.3. Access to the unit would be via a pedestrian path at the western side of Cleve House. No parking is proposed at the site and guests would park within the parking area at the front of Cleve House.

2.1.4. The application was accompanied by:

- a cover letter setting out the background to the application and the different options considered. It states that the development would have no impact on the Blackrock ACA and that the house has been designed taking into account the adjacent properties.
- a letter of consent from Cork City Council to make the application on lands in its control/ownership in Elderwood Drive, so as to provide for proposed pedestrian and vehicular access to the site (although this does not form part of the application).
- a pre connection enquiry response from Irish Water confirming waste and wastewater connections are available from Blackrock Road or through third party infrastructure in Elderwood Drive.

2.1.5. The response to the request for further information included:

- a modified building design.
- a tree protection plan prepared by an arborist and a Landscape Plan including proposed treatment of the eastern boundary that is shared with the appellants.
- a drawing showing an indicative future pedestrian/vehicular access from Elderwood Drive. The access had been discussed with the Corporate Affairs section of Cork City Council, but does not form part of this application.
- a drawing showing proposed water mains, foul and storm drainage connections into existing infrastructure in Elderwood Drive.
- an agreement in principle for the wayleave from Cork City Council, and a plan showing the red lined site boundary extended to reflect the way leave area through Elderwood Drive.
- confirmation of feasibility from Irish Water of connection to piped services.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 1<sup>st</sup> of December 2022, Cork City Council issued a decision to grant permission, subject to the attachment of 11 No. Conditions, including: -

- Condition No 1 – the development will be built in accordance with the original plans as revised in response to the request for further information.
- Conditions No's 3 and 4 – restricted the occupation and use of the building to be ancillary to the main house at the front of the site.
- Condition No 7 – a 6m wide wayleave to be provided for all drainage laid through Elderwood Drive to the west and no drainage to be constructed within 5m of any existing structures.
- Condition No 8 – requires an agreement with Irish Water for wastewater to discharge via Elderwood Drive to the west.
- Condition No 11 – requires a development contribution be paid in respect of the Cork Suburban Rail Project.

### 3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Officers First Report of May 2022 states that while the site is large enough to accommodate the proposed development, due to its size, it is likely to revert to residential use in the future and the issue of the vehicular access would then arise, as none is proposed in the current application.

3.2.3. Reference is made to the Conservation Officer's comments and to concerns raised the by the third party observers. The following further information was requested:

- Revise the design to make the development sit more comfortably in the site as an infill/backland development, and to reduce concerns of overlooking.
- Submit a Landscape Plan detailing all trees to be retained, with particular attention to be paid to the eastern boundary of the site.

- Address the long-term potential requirement for vehicular access to the site in case it is converted to one or two residential units.
- Submit full drainage details, including connections to manholes in Elderwood Drive.
- A wayleave through Elderwood Drive does not exist. If consent has been given by Cork City Council, provide details of same and extend the red line site boundary around the way leave.
- Submit a pre connection query to Irish Water and then submit details of Irish Water's confirmation of feasibility of connection to piped services.

3.2.4. The Planning Officer's Second report notes that the Cork City Development Plan 2022-2028 had come into effect since the request for further information was issued but that there has been no substantive change to the Development Plan objectives for the site.

3.2.5. In recommending a grant of permission, the Planning Officer took into consideration the comments of the Conservation Officer in respect of the revised design, the comments of the Drainage section regarding drainage and the confirmation that a future access is feasible through Elderwood Drive, and their recommendation is the basis for the decision to grant permission.

### 3.2.6. **Other Technical Reports - Initial Application**

- Drainage Division – April 2022 – Further Information sought regarding a lack of drainage drawings and a way leave that is necessary from Cork County Council to facilitate drainage arrangements.
- Urban Roads & Street Design – May 2022 – No objection
- Conservation Officer – Further Information sought due to the scale of the proposed building and its impact on the Blackrock ACA, and it should be redesigned to be read as diminutive in scale to Cleve House.
- Development Contributions Section – May 2022 – No objection subject to conditions.
- Environment Waste Management & Control – March 2022 – No objection subject to conditions.

- Part V – Section 96 will not apply to the proposed development.

### 3.2.7. Other Technical Reports - Response to Further Information

- Drainage Division – November 2022 – No objection subject to conditions.
- Corporate Affairs Cork City Council – Agrees in principle to the granting of a wayleave for connection to services in Elderwood Drive
- Conservation Officer – Notes that the Tree Works and Protection Plan still shows the twin gable structure and that this should be corrected. A grant of permission is recommended.
- Development Contributions Section – November 2022 – No objection subject to conditions.

### 3.3. Prescribed Bodies

- Irish Water – May 2022 – Further information sought regarding a lack of data on initial application for connection across third party lands at Elderwood Drive.
- Irish Water – July 2022 – A letter confirming feasibility of connection for water and wastewater, was provided by Irish Water, to the applicant, and it formed part of the response to the request for further information.

### 3.4. Third Party Observations

3.4.1. One third party observation was received by the planning authority on 14<sup>th</sup> April 2022 in respect of the initial application, on behalf of the appellants John and Yvonne Cuddigan, with an address at Wyldwood, Blackrock Road, Cork, T12FT6F, which is a house located to the east of the application site.

3.4.2. While the grounds of the observation are restated in full in the grounds of appeal, some of the matters raised in the observation were addressed in the request for further information and in the response thereto, so in the interest of clarity, the grounds of the observation are addressed here and can be summarised as:

- While the proposed structure may be remote from the applicant's dwelling, it is proposed to be located 1.7m from the common boundary with the appellants and

17.7m from their kitchen window. With a height of 9m, the proposed structure would overshadow the appellant's garden area in the evenings.

- Existing mature trees and hedging that provide privacy and security to the appellant's are likely to be affected by the eastern elevation being located 1.7 meters from the common boundary. An Arborists report should be provided as it is unclear what trees are to be removed or retained or how they would be protected during construction. Detailed landscape and fencing proposals should be submitted to clarify the applicant's proposals to mitigate the effects of the proposed works on the common boundary.
- It is questionable whether a gym and office could be described as domestic or ancillary when each have separate entrances and floor spaces in excess of 50sqm. The principles of life cycle planning should be applied to this project because it could easily be converted to independent residential use in the future.
- The reference to minimising first floor windows in the applicant's cover letter acknowledge that there is potential for impacts on adjoining residential properties. The appellants query the assumption that there would be less overlooking from the kitchen than the living area, as the kitchen is likely to be occupied more frequently during the day.
- The fact the applicant's Architect considered it necessary to mitigate overlooking calls into question the appropriateness of this proposed site layout, particularly in the event that the structure is used as an independent dwelling in the future.
- There is some uncertainty about whether the proposed development is to connect to Blackrock Road or Elderwood Drive, as no engineering details have been submitted in regard to 1) the route of pipes, 2) the proposed connection to the public service; or 4) the invert levels of the sewer.
- Clarification should be sought to verify whether the proposed finished floor level can be achieved.

## 4.0 Planning History

### 4.1.1. Appeal Site

There is no site-specific planning history for the current application site but there is for the main house from which the application site is taken. The descriptions of the applications are set out below, but none are considered relevant to the current site or current proposal.

- **P.A Ref. 00/24838** – Permission granted on the 2<sup>nd</sup> of March 2001 to ‘demolish existing annexes to reconfigure entrance gates & to alter and extend "ierne"’.
- **P.A Ref. 01/25797** – Permission granted on the 22<sup>nd</sup> of March 2002 to ‘incorporate loft extension with 3 no. roof lights & a gable window further to alterations & extensions under TP24838/0’.
- **P.A Ref. 08/33071** – Permission granted on the 30<sup>th</sup> of July 2008 for ‘alterations and extension, including construction of additional first and attic floor levels, together with the construction of a new boundary wall and gates to the main road and all associated site works’.

#### Appellant’s property

4.1.2. Three precedents refer to part of the appellant’s current property as they have recently acquired part of the rear garden of Alverno that is a house with a deep narrow garden (c8.5m wide) that previously separated and still separates the application site from the appellant’s property. The relevant applications are:

- **P.A Ref. TP 15/36542** – Permission granted on the 1<sup>st</sup> of December 2015 for the development of two houses and an access lane to the east of the application site, including the site containing the appellant’s home.
- **P.A Ref. TP 16/36978** – Permission granted on the 7<sup>th</sup> of October 2016 for ‘changes to TP15/36542 to include alterations to the private shared driveway access, the design of the bungalow dwelling and all associated site works’. Only the changes to the access lane are relevant to the appellant’s property.
- **P.A Ref. TP 16/37181** – Permission granted on the 8<sup>th</sup> of March of 2017 for the ‘Re-design of previously granted planning permission's TP 15/36542 & 16/36978 to include changes such as: 1. Change of house type, 2. Revised site layout plan including site boundaries and 3. All related ancillary site works. The changes include the design of a two and a half storey dwelling & domestic garage’. This refers to the appellant’s home.



## Site to immediate west of Cleve House

- **P.A. Ref. TP16/36713 (ABP.247279)** – Permission refused by the Board on the 30<sup>th</sup> of November 2016 for a ‘House to include associated site development works and alterations to existing vehicular entrance’ on a site c30m to the north of the current application site in the rear garden of the house to the immediate west of Cleve House. The reason for refusal stated:

The proposed development, by reason of its location, layout and design, would result in overlooking and overshadowing of the neighbouring properties and adversely affect the setting of existing properties, would impact on their privacy and would constitute overdevelopment of the site. The proposed development would, therefore, seriously injure the amenities of and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

## **5.0 Policy Context**

### **5.1. Cork City Development Plan 2022-2028**

- 5.1.1. The relevant Development Plan is the Cork City Development Plan 2022-2028, which came into effect on the 8<sup>th</sup> of August 2022. Variation No 1 regarding ‘Car Parking Standards’ was adopted on 8<sup>th</sup> May 2023.
- 5.1.2. The site is zoned ‘ZO 1 – Sustainable Residential Neighbourhoods’ with a stated objective ‘to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses’.
- 5.1.3. While the Development Plan supports the concept of infill housing on small sites, ZO 1.1 provides that ‘The provision and protection of residential uses and residential amenity is a central objective of this zoning’ and ZO 1.2 states that ‘Development in this zone should generally respect the character and scale of the neighbourhood in which it is situated. Development that does not support the primary objective of this zone will be resisted’.
- 5.1.4. Under the heading of ‘Separation, Overlooking and Overbearance’ sections 11.100 and 11.101 note that ‘Privacy and overlooking are important for quality of life’ and

that 'all development proposals will be required to demonstrate that they have been designed to avoid overlooking'.

- 5.1.5. The site is located in Parking Zone 3 which applies to 'areas accessible to mass transit alongside public transportation corridors' where the maximum number of parking spaces permitted for 1–2-bedroom houses is 1.25.
- 5.1.6. Objective 3.4 states that 'Cork City Council will seek to ensure that at least 66% of all new homes will be provided within the existing footprint of Cork. Cork City Council will seek to ensure that at least 33% of all new homes will be provided within brownfield sites in Cork'. This will be achieved by measures to included 'the development of small and infill sites'.
- 5.1.7. Objective 3.9 'Adaptation of Existing Homes, Infill Development and Conversion of Upper Floor' encourages the development of new homes including in infill sites while section 3.46 provided that 'Cork City Council will support infill development to optimise the role that small sites in the City can play in providing new homes for Cork's expanding population'.
- 5.1.8. Section 11.104 refers to 'Overbearance.
- 5.1.9. Section 11.139 states that '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).'
- 5.1.10. Sections 11.146 and 11.147 refer to 'Family Flats' and 11.146 states that 'Ancillary family accommodation refers to sub-division or extension of a single unit to accommodate an immediate family member.
- 5.1.11. Section 11.147 sets out the criteria that an applicant must demonstrate before permission would be granted including:
  1. A bona-fide need for such a unit including details of the relationship between the occupant of the main dwelling and the occupant of the ancillary accommodation;
  2. The unit shall comprise a physical extension of the main house with direct access to the main dwelling and shall be located at ground floor level;

3. The ancillary unit should not impact adversely on either the residential amenities of the existing property or the residential amenities of the area;
4. The entrance to the family flat shall be via the main dwelling. Where own-door access is unavoidable, own-door access shall be located to the side or rear;
5. The accommodation shall revert back to being part of the original house when no longer occupied by a member of the family;
6. No sub-division of the garden shall be permitted.

5.1.12. Section 11.148 refers to 'Detached Habitable Room (Not Residential Accommodation)' and states:

- A small detached habitable room (but not for residential accommodation) can provide useful ancillary accommodation such as a playroom, gym or home office for the main residence. It must be modest in scale relative to the main house and remaining rear garden area. Development proposals will be required to demonstrate that the design and use of the proposed structure will not detract from the residential amenities of the main house or adjoining property. Any such structure shall not provide residential accommodation in any form and shall not be equipped to do so (i.e., no kitchen, toilet, etc) and shall not be let or sold independently from the main dwelling.

5.1.13. Objective 8.23 – refers to Development in Architectural Conservation Areas.

#### Blackrock ACA

5.1.14. Blackrock Road ACA is divided into four separate sub-areas, and the application site is located within area A. Paragraph 1.38 of Volume Three to the Development Plan states that 'This sub-area, of historical, social and architectural significance, is characterised by its linear street layout along Blackrock Road and for its stock of buildings from the 18th to 20th century'.

5.1.15. The issues identified in the ACA included that 'the area is under increasing traffic pressure, has difficulties with parking as well as pedestrian and cyclist safety' and goes on to state that 'it is important that the condition and character of the existing

building stock be maintained as well as the integrity of the streetscape and the riverside landscape.

## **5.2. Natural Heritage Designations**

- 5.2.1. The closest European site is (Site Code: 004030) Cork Harbour SPA approximately 2.8km to the northeast. EIA Screening
- 5.2.2. See completed Form 1 and Form 2 in Appendix 1.
- 5.2.3. Having regard to the limited nature and scale of the proposed development in a serviced urban area and the absence of any connectivity to any sensitive location, I have concluded at preliminary examination stage that there is no real likelihood of significant effects on the environment arising from the proposed development having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended). The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 Grounds of Appeal**

- 6.1.1. A third-party appeal has been submitted on behalf of John and Yvonne Cuddigan, who previously made an observation in respect of the application. The grounds of the appeal can be summarised as follows:
  - The appellants are not against the principle of the development but consider that there is a more appropriate location for the proposed development on the site. The appellant's alternative proposal suggests moving the building northwards on the site to facilitate the development of a similar house on their property at some stage in 2023 and they request that permission is refused, or a condition attached that requires the design and layout amended to that shown in the alternative layout plan attached to the appeal, which would facilitate their future plans.
- 6.1.2. The grounds of the initial observation to the Planning Authority are restated in full but are addressed in section 3.4 above and are not repeated here. The primary purpose of the initial observation was to ensure that their concerns were given due consideration by both the planning authority and the applicant and that the

appropriate amendments would be made to the layout and design before a decision to permit was issued.

6.1.3. The grounds of appeal continue under three headings:

6.1.4. The initial planning assessment

- The initial Planning Officer's assessment appeared to support the appellant's concerns regarding the physical scale and visual dominance of the initial proposed structure in terms of the design, style and potential for overlooking. These issues and others raised by the Conservation Officer were addressed in item 1 of the request for further information, including that the scale of the structure as originally proposed would compete with rather than be secondary to the main house on the site.

6.1.5. The assessment of the revised design

- The revised design addressed the concerns of the Conservation Officer but made no reference to the appellant's observation seeking that the building could sit more comfortably into the site and lessen overlooking.
- The Planning Authority did not permit observations to be made on the revised design submitted as further information, which could have avoided this appeal.
- Citing an extract from the Planning Officer's final report of the 1<sup>st</sup> of December 2022, the appellants consider that their previous concerns were not addressed and that only the comments of the Conservation Officer were considered, which focused on a revised design that reduced the bulk and the extent of fenestration in the proposed structure and addressed potential impacts on the applicant's home. The Conservation Officer's considered that the revised proposal would read as a secondary to the main house (NIAH structure) at the front of the site and that was deemed acceptable by the planning authority.
- It is contrary to good planning and conservation practice, in regard to infill development, to focus of physical separation, and it is more important to have a balanced approach with greater emphasis on improving the compatibility of the layout and design.

6.1.6. Criteria for assessment

- Under this heading, the Board is asked to reassess the suitability of the proposed layout and design on the basis of:

- Relevant policies and guidelines on infill development in the current Cork City Development Plan 2022- 2028 including paragraphs 11.104 (overbearance) and paragraph 11.139 (infill).
- The criteria applied when considering the applications for the appellant's home included density, layout, design and access arrangements, should also be applied to this proposal.
- There is a need to have due regard to existing residential amenities and the future development potential of the appellant's property and permission should not be granted for a layout which would make it more difficult to carry out a similar development on adjoining properties. The Planning Authority appears to have focused exclusively on the future options within the application site, with inadequate consideration given to the future development potential of the appellant's property.
- Too much focus was placed on the potential impact of the proposed development on the Architectural Conservation Area and on the conservation status of Cleve House, which is listed on the NIAH. It would appear that the Planning Authorities failure to consider the appellant's proposal to relocate the proposed dwelling to the north was due to the Conservation Officer's recommendation that the maximum separation distance be maintained between the proposed building and Cleve House.
- An extract from the Development Plan shows that the application site and the western part of the appellant's property are within the Blackrock ACA and three buildings on the NIAH are located close to the proposed development. The appellants are of the opinion that the proposed building is not significant from an architectural conservation point of view and there was no valid conservation reason for the Planning Authority to ignore their request to relocate the dwelling to the north, to facilitate the proper development of their property.

### 6.1.7. Conclusion

- The appellants consider the request for further information was not adequately addressed in the applicant's response or in the decision of the Planning Authority.
- The appellants support the principle of infill development but believe the layout should facilitate a similar development on their property, which is not achieved by the permitted location of the development.

## 6.2. Applicant Response

6.2.1. The applicant responded to the grounds of appeal on the 1<sup>st</sup> of February 2023. It states:

- The revised design of the development, including the fenestration, is as requested by the planning authority in the request for further information.
- The development responds to the architectural heritage of Cleve House, the need to protect the residential amenity of surrounding properties and delivers floor space requirements for the applicant's family consistent with the objectives of the City Development Plan.
- The matters raised in the appeal are similar to those raised in the initial observation on the application and the appeal has had no consideration of the assessment of these issues by the Planning Authority.

6.2.2. The applicant considers that four primary issues were raised in the appeal:

### 6.2.3. Compliance with Cork City Development Plan 2022-2028

- While the appellant is of the opinion that the proposed development does not comply with development policies and the Development Plan, it has been designed to respect the height and massing of existing residential units including the appellant's three-storey dwelling and employs a similar design approach to the appellant. The proposed development is located 17.6 metres from the nearest point of their house, such that there would be no impact on their outlook.
- Paragraph 16.74 in the old Development Plan that referred to ancillary family accommodation is included at paragraph 11.147 in the new Development Plan.

- Section 11.148 of the new Development Plan is also considered relevant as it relates to ‘ancillary gyms and home offices.’
- Due to the cultural heritage significance of the applicant’s home (Cleve House) at the front of the site, there is limited opportunity to construct an ancillary residential unit as an extension to the main house. Therefore, it is considered that a separate building is appropriate in the large rear garden, and the Planning Authority agreed with this.
- The size of the applicant’s family home is insufficient to cater for their current needs, which include ageing parents, successful home businesses and children attending second and third level education. The first-floor accommodation would be used by visiting family members, the applicant's parents or business colleagues.

#### 6.2.4. Impacts on Residential Amenity

- The applicant disagrees with the appellant’s suggestion that the residential amenity of their house has not been adequately assessed by the Planning Authority or that the focus was on Cleve House and cites the request for further information and the response thereto, which saw a reduction in the mass of the building and the redesign of windows. These changes addressed any potential for overlooking of the appellant’s home.
- The proposed building and the appellant’s property are separated by a distance of 17.6m which is a greater distance than that which exists between the appellant’s home ‘Wyldwood’ and ‘Cleveland Gardens’, which is a house located to the immediate east of the appellant’s home. Those two properties are separated by 16.2m and this separation is demonstrated in an aerial photo in the response.

#### 6.2.5. Future development potential of adjacent lands

- The primary objective of the appeal is so that the appellant can maximise the future development potential of their site.
- The applicant highlights that the appellant’s house is in fact built in the former rear garden of two different houses and is in itself considered to be an infill property.
- The appellants do not seem to have developed a design concept for their site other than a blue box shown in the appeal and the applicant has not been provided with any details of any future application.



- The area of land on which the appellants are proposing to build a house is only 6m in width and has only recently been acquired by the appellants. Any new development would require the demolition of the existing two storey 72sqm garage that has been carefully designed to integrate with the appellant's house and has been finished to a very high standard.
- The relocation of the proposed building to the place proposed by the appellant would have a negative impact on the mature trees along the eastern boundary of the site and this was noted in the 'Tree Works and Protection Plan' and 'Landscape Plan' submitted as part of the response to the request for further information. The proposed location will ensure the retention and protection of the canopy of trees along the eastern side boundary.
- The applicant proposes an alternative location for a potential additional building on the appellants site, being located at the southeastern corner of the appellant's property.

6.2.6. Inconsistent approach to development having regard to the pattern of development in the area

- While the appellant contends that the proposed development represents an inconsistent approach, the applicant considers that the proposal to relocate the permitted development to the north to facilitate a new development on the appellant's site would be inconsistent with the approach taken to date where new developments have been located a minimum of 16 metres from existing properties.

**6.3. Planning Authority Response**

- None

**6.4. Observations**

- None

**6.5. Further Responses**

- None

## 7.0 Assessment

### Introduction

7.1. Having examined the application details and all other documentation on file, including the response to further information and information received in relation to the appeal, having inspected the site and the appellant's property, and having regard to relevant local planning policies, I am satisfied that the main issues in this appeal are those raised in the grounds of appeal. These issues can be dealt with under the following headings:

- Principle of Development
- Appellant's Proposal to Relocate Building
- Proximity to Boundaries and Overlooking
- Height
- Overshadowing and Overbearance
- Building Line
- Apartment Standards
- Access
- Impact on ACA
- Supplementary Development Contributions
- Appropriate Assessment

7.1.1. In the interests of clarity for the Board, I confirm that this assessment is based on the amended design, and associated plans and particulars submitted in response to the request for further information, as the revised design is the subject of both the decision to grant permission and the appeal.

### 7.2. Principle of Development

7.2.1. It is noted that the planning application was initially assessed under the policy provisions of the Cork City Development Plan 2015-2021, but that Plan had been superseded prior to the issuing of the decision to grant permission. This assessment is based on the provisions of the Cork City Development Plan 2022-2028, which

came into effect on the 8<sup>th</sup> of August 2022. Variation No 1 regarding 'Car Parking Standards' was adopted on 8<sup>th</sup> May 2023.

- 7.2.2. The proposed development is located in an area zoned 'ZO 1 – Sustainable Residential Neighbourhoods' and the principle of all three proposed developments being residential, gym and home office are acceptable at this location, subject to the detailed considerations below.
- 7.2.3. The proposed building would combine home office and gym at ground floor with living accommodation at first floor level. Sections 11.146 'Family Flats' and 11.147 of the Development Plan refer to ancillary family accommodation by way of sub-division or extension of a single unit to accommodate an immediate family member. Section 11.148 refers to small detached habitable rooms acting as home office or gym's and states that they must be modest in scale relative to the main house and remaining garden space and must not detract from the residential amenities of the main house or adjoining property. While these sections refer to the principle of these uses being acceptable, they impose restrictions on the extent of development that could normally be built as ancillary structures associated with a primary residence. However, taking account of the status of Cleve House in the NIAH and being located within the Blackrock ACA, and taking account of the size of the overall landholding, I am satisfied that the site is of sufficient size to accommodate an independent structure of the size proposed and the limitations set out in sections 11.147 and 11.148 do not apply to the proposed development.
- 7.2.4. I consider that the principles of infill development as set out in Section 11.139 of the Development Plan apply to the proposal. It states that new infill development shall respect the height and massing of existing residential units.
- 7.2.5. In conclusion, I am satisfied that the proposed structure and the intended uses of ancillary residential, gym and office are acceptable at this location, subject the consideration of other matters as set out below.

### **7.3. Appellant's proposal to relocate building**

- 7.3.1. As part of the grounds of appeal, the appellants state that they are not against the principle of a building on the site and have proposed that it should be relocated further north on the site, which would in turn facilitate the development of a second

house on their property. The buildings would be located in approximately the same location as where the appellant's existing garage is located, to the northwest (front) of their existing house.

7.3.2. The appellants indicated that they intend to apply for permission for such a house in 2023, but as of the date of this report on the 21<sup>st</sup> of December 2023, no application had been submitted to Cork City Council for any new development to replace their existing garage.

7.3.3. The potential for developing a new house in the side garden of the appellant's property would be facilitated by their recent acquisition of part of the former rear garden of a house that stands between the appellant's original property and the application site. The acquired garden measures c8.5m in width and c61m in depth.

7.3.4. On the occasion of the site visit, it was noted that the ground level of the side garden that has been acquired by the appellants is c1m higher than the floor level of their existing domestic garage.

7.3.5. I consider that the appellant's proposal to build a second house on their site, although hypothetical at this time, is a material consideration in assessing the grounds of the appeal, particularly the references to proximity to boundaries, overlooking and overshadowing. The appellant's proposal to build another residence closer to their home than the building that is the subject of this application would indicate that their grounds of proximity to boundaries, overlooking and overshadowing are not material planning concerns at all, and it is difficult to sustain an argument about these matters in respect of the current application, while at the same time proposing to build a separate structure that would be closer to their own site and would have a significantly greater impact in respect of proximity to boundaries, overlooking and overshadowing than the current proposal, by reason proximity.

7.3.6. Nevertheless proximity to boundaries, overlooking and overshadowing are considered further below.

#### **7.4. Proximity to Boundaries and Overlooking**

7.4.1. The proposed building would be located 1.66m from the eastern side boundary, which is defined by a hedgerow and trees, and 17.6m from the nearest part of the

appellant's home, which has three first floor windows facing west towards the site. The former rear garden of the neighbouring house to the east (Alverno) stands between the proposed building and the appellant's home, while the existing boundary fence and hedgerow along the east of the appellant's original site remain in situ and provide a good degree of protection of privacy. No windows are proposed at first floor level facing the appellant's home, and I am satisfied that that there is no potential for direct overlooking of the appellant's home or property.

- 7.4.2. At the rear, the proposed first floor kitchen windows will be 8.48m from the shared boundary wall with houses on Elderwood Drive to the south, while the guest bedroom would be c1.4m further from the boundary and both windows could potentially overlook the rear garden areas of the adjacent houses. The response to further information includes a 'Tree Works and Tree Protection Plan' as well as a 'Landscaping Plan' that confirm that the existing dense tree and hedge cover at the rear of the site will be retained and protected during construction and replaced where necessary to mitigate against cutback of the existing hedge. If the Board is minded to grant permission, I am satisfied that the retention, protection and enhancement, if necessary, of this buffer area can be addressed by way of a condition.
- 7.4.3. At its closest, the western side elevation would be 1.528m from the western side boundary adjacent to the public open space in Elderwood Drive. A first-floor guest bedroom window would overlook the open space. I am satisfied that this window would provide additional passive surveillance to this open space and is appropriate.
- 7.4.4. The separation distance between the front building line of the proposed building and the rear of Cleve House is approximately 70 meters and I am satisfied that the separation distance between the two properties is such that no overlooking issues would arise in respect of Cleve House or any other houses to the north of the site.

## **7.5. Height**

- 7.5.1. The ridge height of the main body of the building was originally proposed to be 8.0m, with the ridges of the two gabled fronted elements being 9.065m. Following the request for further information, the western gable element was removed, and the main ridge height was reduced to 7.72m, with the single gable ridge element, which would be located closest to the appellant's property being 8.201m, representing a reduction of 0.864m.

- 7.5.2. The highest ridge height of the building as amended following further information would be 31.601m, which is 1.149m and 1.679m lower than the ridge heights of the two neighbouring houses to the south at Elderwood Drive. It would also be 1.415m lower than the ridge height of the appellant's home and 3.709m lower than the ridge height of the applicant's home, Cleve House, to the north of the site.
- 7.5.3. I am satisfied that the height of the proposed development as amended at further information stage, would ensure that the development would not be prominent on the site and would not have a negative impact on the amenities of the nearest residential properties by reason of its height.

## **7.6. Overshadowing and Overbearance**

- 7.6.1. Having observed the separation distance of c17.6m that would exist between the appellant's home and the proposed development and taken into account the vegetation cover that separates the two sites, as well as the intervening garden of a third property that has been acquired by the appellants and changes made to the design of the proposed development in response to the request for further information, which reduced the ridge height of the wing closest to the appellants property, I am satisfied that there is no potential for overshadowing of the appellant's property.
- 7.6.2. Section 11.104 of the Cork City Development Plan 2022-2028 states that in a planning context overbearance is the extent to which a development impacts upon the outlook of the main habitable room in a home or the garden, yard or private open space servicing a home. In established residential developments any significant changes to established context must be considered. Relocation or reduction in building bulk and height may be considered as measures to ameliorate overbearance.
- 7.6.3. The overall landholding from which the proposed development site has been taken is large enough to accommodate a development of the scale proposed, and while the appellants have raised grounds of concern, it must be noted that their home is in itself an infill development that was granted as part of a development of two houses in the rear garden of other properties, that also front onto Blackrock Road and I am satisfied that the proposed development as redesigned in response to the request for further information would not be overbearing on the appellant's property, or on any

other properties. I am also satisfied that the main outlook from the appellants ground floor is to their garden to the south and not westwards towards the application site.

### **7.7. Building Line**

- 7.7.1. The proposed building line is similar to that of the appellant's house, which is in itself an infill dwelling in a former rear garden, built pursuant to grants of permission issued in 2015, 2016 and 2017. The appellant's stated that the building line should be moved forward to facilitate a second house on their property. I do not consider it appropriate to relocate the proposed building northwards on the site to facilitate a hypothetical future development on the appellant's property and I am satisfied that the proposed building line is appropriate.

### **7.8. Apartment Standards**

- 7.8.1. I am satisfied that the proposed residential element complies with and exceeds the Required Minimum Floor Areas and Standards set out in Appendix 1 to the Sustainable Urban Housing: Design Standards for New Apartments (July 2023)

### **7.9. Access**

- 7.9.1. Although Cork City Council has provided consent to the applicant to provide for a road access to the building from Elderwood Drive to the west, such a proposal does not form part of this application and the applicant proposes to access the building by pedestrian means only from their existing house to the north, that in turn accesses onto Blackrock Road. As the building is ancillary to the existing house and is to be used for purposes ancillary to the applicants existing house, I am satisfied that the proposed means of access is acceptable and that any future change of use of the building or provision of independent access thereto, would be subject to a separate planning application.

### **7.10. Impact on ACA**

- 7.10.1. The Blackrock ACA extends for a distance of c3.7km along both sides of Blackrock Road and the focus of the ACA is on the buildings fronting onto it.

7.10.2. A key issue for the ACA is that it is important that the condition and character of the existing building stock be maintained as well as the integrity of the streetscape and I am satisfied that the proposed development would not have any impact on the existing house on the land or the adjacent properties and would not affect the streetscape.

## **7.11. Supplementary Development Contributions**

7.11.1. The Development Contribution Report from Cork City Council recommended that a Supplementary Development Contribution be attached to comply with the Scheme adopted by Cork City Council on the 14<sup>th</sup> of September 2022 and a condition to that effect was imposed on the decision to grant permission.

7.11.2. I have inspected the Supplementary Development Contribution Scheme, which forms Section 2 of the adopted Scheme and I note section 2.4 states the scheme applies to the area defined as being:

- Within a 1 kilometer corridor of the Cork-Blarney, Cork-Cobh and Cork-Midleton railway lines (excluding tunnel sections, (the disused) Kilbarry Railway Station and Kent Railway Station, in so far as they are situated within the functional area of Cork City Council.

7.11.3. I have reviewed the site location in the context of the above reference rail lines and stations and I am satisfied that the site is not located within the area to which the scheme applies. Therefore, I do not consider that a supplementary development contribution is payable in respect of the proposed development.

## **7.12. Appropriate Assessment**

7.12.1. Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distance to the nearest designated European Site, and the absence of any ecological and/or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.



## 8.0 Recommendation

8.1. I recommend permission be GRANTED for the following reasons and considerations and subject to the following conditions.

## 9.0 Reasons and Considerations

9.1. Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the character of the area or the amenities of property in the vicinity. 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 on the 15<sup>th</sup> of March 2022, as amended by revised plans and particulars submitted on 4<sup>th</sup> of November, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity</p>
2.	<p>The proposed residential element shall be occupied ancillary to the main dwelling 'Cleve House', by a member of the family of the occupier of the principal dwelling on the site or by guests, and in the event of the residential element no longer being required for this purpose, the structure shall be used for a purpose incidental to the enjoyment of the principal dwelling. The structure shall not be left, sold, leased or otherwise used as a separate dwelling unit, without a separate grant of planning permission.</p>

	<b>Reason:</b> in the interest of clarity and residential amenity
3.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
4.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.</p> <p><b>Reason:</b> In the interest of visual and residential amenity.</p>
5.	<p>Drainage arrangements, including the termination and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health and surface water management.</p>
6.	<p>The site shall be landscaped in accordance a landscaping scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be included details of all trees and hedging to be protected during construction, details of the means of protection of trees and hedging and any new trees or hedging to be planted will be planted in the first planting season following completion of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.</p> <p><b>Reason:</b> In the interest of visual and residential amenity.</p>

7.	<p>A 6m wide wayleave shall be provided for all private drainage laid through third party lands. Wayleave agreement shall be entered into with Cork City Council for the sections of private storm and foul drainage laid through the Elderwood Drive estate. No drainage shall be constructed within five M of any existing structure</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Uisce Eireann.</p> <p><b>Reason:</b> In the interest of public health.</p>
9.	<p>The construction of the proposed 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 proposed development, including noise management measures, traffic management and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interest of public safety and residential amenity</p>
10.	<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>

<b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Joe Bonner  
Senior Planning Inspector

21<sup>st</sup> December 2023

**Appendix 1 - Form 1**  
**EIA Pre-Screening**  
**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-315462-22			
<b>Proposed Development Summary</b>	Construction of 2-storey domestic building consisting of a ground floor gym and office, and a 1st floor guest apartment			
<b>Development Address</b>	Cleve House, Blackrock Road, Cork			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X	
		<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>			EIA Mandatory EIAR required	
<b>No</b>	X		Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>	X	Class 10(b)(i) of Part 2: threshold 500 dwelling units	Part of the development consists of a guest apartment.	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	<input checked="" type="checkbox"/>	<b>Preliminary Examination required</b>
<b>Yes</b>	<input type="checkbox"/>	<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	315462-22	
<b>Proposed Development Summary</b>	Construction of 2-storey domestic building consisting of a ground floor gym and office, and a 1st floor guest apartment	
<b>Development Address</b>	Cleve House, Blackrock Road, Cork	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The subject development comprises a mix of residential and home office/gym development in an area characterised by residential development. In this way, the proposed development would not be exceptional in the context of the existing environment.</p> <p>During the construction phase the proposed development would generate waste during excavation and construction. However, given the moderate size of the proposed building I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the nature of the proposed use.</p>	<p>No</p> <p>No</p>
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context</p>	<p>The proposed development would consist of a single building accommodating a residential unit at first floor and home office and gym at ground floor</p>	

<p>of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>and is not considered exceptional in size in the context of the surrounding residential buildings.</p> <p>Owing to the serviced urban nature of the site and the infill character of the scheme I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>	<p>No</p> <p>No</p>
<p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The application site is not located in or immediately adjacent to any European site. The closest European site is (Site Code: 004030) Cork Harbour SPA approximately 2.8km to the northeast.</p> <p>There are no waterbodies or ecological sensitive sites in the vicinity of the site. The site is located within a serviced urban area and the site will be connected to public surface and foul sewers. I do not consider that there is potential for the proposed development to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>		

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)