



An
Bord
Pleanála

Inspector's Report

ABP-315995-23

Development	Permission to retain domestic garage.
Location	Kilnap , Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2241349
Applicant(s)	Andrew O'Sullivan
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Third Party
Appellant(s)	Liam McElhinney
Observer(s)	None on file
Date of Site Inspection	10 th June 2023
Inspector	Sarah Moran

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1.0 Site Location and Description

- 1.1. The site (stated area 0.065ha) is an existing detached house and associated grounds within a row of one off dwellings at Old Whitechurch Road on the northern outskirts of Cork City. There is an existing single storey garage to the rear of the house, which abuts the southern and western (rear) site boundaries. The structure has a stated area of 54 sq.m.

2.0 Proposed Development

- 2.1. Permission is sought to retain the existing single storey garage for domestic use.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Further information request issued on 17th October 2022. Clarification of further information request issued on 7th December 2022. Notification of permission with conditions issued on 9th February 2023. Condition no. 2 of the permission specified that the garage shall be ancillary to the main dwelling.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first planning report on file, dated 17th October 2022, recommends a further information request for drainage details to ascertain if the garage has been constructed over an existing foul drain serving the adjoining property, also to address concerns that the structure has been partially constructed on a neighbouring property. A second planning report dated 7th December 2022 recommends a request for clarification of further information. The final planning report, dated 7th December 2022, recommends permission.

3.2.2. Other Technical Reports

Area Engineer report dated 2nd September 2022. No objection subject to conditions.
Second Area Engineer report dated 23rd January 2023 states no objection subject to permission.

3.3. **Prescribed Bodies**

3.3.1. None on file.

3.4. **Third Party Observations**

3.4.1. The above named appellant objected to the application for retention on grounds similar to those raised in the grounds of appeal.

4.0 **Planning History**

4.1. The subject site was one part of a larger plot that has a lengthy planning history, see the planning report on file dated 17th October 2022 for full details. The following case is noted in particular, which relates to the existing house at the development site:

4.2. Reg. Ref. 13/35677

Permission granted subject to conditions for a for one and half storey dwellinghouse, treatment unit, domestic vehicular entrance and associated site works.

5.0 **Policy Context**

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

5.1.1. The site is located in an area zoned ZO1 Sustainable Residential Neighbourhoods, subject to Zoning Objective 1: To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses. The following development plan objectives are noted in particular.

5.1.2. 11.148 Detached Habitable Room (Not Residential Accommodation)

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.

5.1.3. 6.13 Areas of High Landscape Value

To conserve and enhance the character and visual amenity of Areas of High Landscape Value (AHLV) through the appropriate management of development, in order to retain the existing characteristics of the landscape, and its primary landscape assets. Development will be considered only where it safeguards to the value and sensitivity of the particular landscape. There will be a presumption against development where it causes significant harm or injury to the intrinsic character of the Area of High Landscape Value and its primary landscape assets, the visual amenity of the landscape; protected views; breaks the existing ridge silhouette; the character and setting of buildings, structures and landmarks; and the ecological and habitat value of the landscape.

5.1.4. 10.326 Kilnap Area

Much of the area is designated as an Area of High Landscape Value in this Development Plan as it forms one of visually dominant series of ridges on the northside of the City. The aim is to conserve and enhance the special landscape character and visual amenity of these areas though ensuring that all development is landscape dominated and in keeping with the character of the area.

5.1.5. 11.12 New Development

All new development should enrich the urban qualities of the city and its towns, villages and suburbs. A high standard of design is essential to this process, as well as the fostering socially and economically viable communities. Creating a distinctive sense of place which takes into account context, character and setting is essential. Development proposals will be assessed on the visual characteristics of the built form and related elements such as aspect and orientation, proportion, the balance of solid to void, the shapes and details of roofs, chimneys, windows and doors and the

materials used. Details of walls, gates, street furniture, paving and planting will also be noted. Roof forms should harmonise with and not clash with the city's traditional pitched roof forms. Layouts of buildings and spaces must be designed to ensure that areas are permeable, pleasant, legible and safe.

5.2. Natural Heritage Designations

5.2.1. Not relevant.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale the development, which consists of the construction of a domestic shed in a rural location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appellant is the owner of no. 172 Old Whitechurch Road, the adjoining residential property to the immediate south of the development it is proposed to retain. The main points made in the grounds of appeal may be summarised as follows:

- The structure to be retained has a significant adverse impact on the appellant's property.
- The structure has been partially built on the appellant's property and has been built over an existing wayleave for the benefit of the appellant. Maps of the wayleave are submitted in support of the appeal.
- It is also submitted that the garage has been constructed over an area designed for a surface water treatment soakaway as per the applicant's original permission under Reg. Ref. 13/35677.

- The garage has been constructed c. 1m inside the appellant's registered boundary. The applicant has proposed to demolish part of the structure and to reconstruct it within their property. This will have a material effect on the legal boundaries between the properties. This is further significant information, which will require an adjustment to the red line site boundary and readvertising of the planning application in accordance with article 35(1) of the Planning and Development Act 2000 (as amended).

6.2. Applicant Response

- 6.2.1. None on file.

6.3. Planning Authority Response

- 6.3.1. None on file.

6.4. Observations

- 6.4.1. None on file.

6.5. Further Responses

- 6.5.1. Not relevant.

7.0 Assessment

7.1. I have read through the file documentation, the relevant provisions of the City Development Plan and have carried out a site inspection. The main issues are those raised in the planning reports on file and in the grounds of appeal. Overall, I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Consistency with development plan policy on detached habitable rooms
- Impacts on residential and visual amenities
- Drainage issues
- Site ownership issues

These issues may be considered separately as follows.

7.2. Consistency with Development Plan Policy

7.3. Development plan paragraph 11.148 sets out policy on detached habitable rooms, as set out above. I am satisfied that the development to be retained is consistent with this policy with regard to its modest scale relative to the existing dwelling and grounds and its use for domestic purposes.

7.4. Impacts on Residential and Visual Amenities

7.4.1. The structure to be retained abuts the boundary shared with the appellant's property to the immediate south. Given that the structure is single storey, is limited in scale (stated area 54 sq.m.) and that there is no evidence of any non-domestic use, I consider that there is no significant impact on residential amenities by way of overlooking, overshadowing, visual obstruction or other disturbance such as noise or dust. The structure is set back from the road frontage of the site behind a high gate and is not visible from the road. The modest scale of the structure in the grounds of an existing house does not result in any significant adverse impacts within an Area of High Landscape Value, as per the development plan policies set out above, and does not detract from the character of the area.

7.5. Drainage Issues

7.5.1. The appellant submits that the garage has been built over an existing wayleave. Maps of the wayleave are submitted in support of the appeal. It is also submitted that the garage has been constructed over an area designed for a surface water treatment soakaway as per the applicant's original permission under Reg. Ref. 13/35677.

7.5.2. The planning authority sought further information in relation to a potential existing foul drain under the garage, connecting to the appellant's property. The applicant carried out an inspection of the property with Cork City Council Drainage Section on 13th December 2022. A trial hole was excavated and it was found that no foul drain was present. The subsequent report of CCC Drainage Section confirms same and states no objection to permission. I note the comments of the appellant regarding the presence of a wayleave at the site and the potential construction of the garage in the location of a soakaway serving the existing house at the site. I consider that, if

permission is granted, this matter may be resolved by way of a condition requiring drainage arrangements to the satisfaction of the planning authority.

7.6. Boundary Dispute

- 7.6.1. The appellant submits that the garage has been built on their property, c. 1m within the shared boundary. The applicant is willing to partially demolish the existing structure such that it is within the boundary. While I note the appellant's comments in relation to a boundary dispute, I cannot determine conclusively where the boundary is correctly located. The solution proposed by the applicant appears reasonable and, in any case the granting of permission does not give the applicant the right to retain property on lands not in his ownership. I note in this regard Section 5.1 of the Development Management Guidelines, which states that '[t]he planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts' and refers to section 34(13) of the 2000 Act which states that a person is not entitled solely by reason of a permission to carry out any development.

8.0 Recommendation

- 8.1. Having read the appeal and submissions on file, had due regard to the provisions of the Cork City Development Plan 2022-2028, carried out a site visit and all other matters arising. I recommend that permission is granted to retain the structure subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Cork City Development Plan 2022-2028, to the stated residential use on site, the nature of the proposed use (i.e. a domestic storage shed ancillary to the dwelling) and to the pattern of development in the surrounds, it is considered that, subject to compliance with the conditions set out below, the development it is proposed to retain would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would constitute an acceptable form of development at this location. The development it is proposed to retain would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The proposed development shall comply with the plans and particulars lodged with the application submitted, and as amended by Further Information received on the 10th November 2022 and the Clarification of Further Information received on 13th January 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>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>
3.	<p>The garage to be retained shall be ancillary to the main dwelling. It shall not be used for commercial purposes or as a separate dwelling unit.</p> <p>Reason: In the interest of residential amenity.</p>
4.	<p>The developer shall pay to the planning authority a financial contribution in respect of the extension of the Cork Suburban Rail in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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</p>

	<p>matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
5.	<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.

. Sarah Moran
Senior Planning Inspector
10th June 2022