



An
Bord
Pleanála

Inspector's Report

ABP-316089-23

Development	Construction of a house
Location	1 Maryborough Downs, Maryborough Hill, Douglas, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2240900
Applicant(s)	Ann Murphy
Type of Application	Outline Permission
Planning Authority Decision	Refuse
Type of Appeal	Third Party
Appellant(s)	Roddy Hogan
Observer(s)	None
Date of Site Inspection	12/12/2023
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site comprises the side garden of an existing end-of-terrace three-storey dwelling, in the housing estate called Maryborough Downs. The estate is located to the south of Cork City Centre, in the suburb of Douglas. The existing dwelling and side garden at no. 1 Maryborough Downs are located at the junction of the estate road and Maryborough Hill. The estate comprises approx. 14 no. dwellings and an apartment block of three storeys. there are no front boundary walls, with the front garden space of each dwelling being used for car parking.
- 1.1.2. The subject site accommodates a small shed and a steeply sloping rear garden. It is bound to the north (Maryborough Hill) by a band of trees and shrubs.

2.0 Proposed Development

- 2.1.1. On the 2nd March 2022, outline planning permission was sought for the construction of a two storey dwelling in the side garden of an existing dwelling.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 24th February 2023, the Planning Authority issued a notification of their intention to REFUSE to grant outline permission for the following reasons:
- 1 Based on the information submitted, the Planning Authority is not satisfied that the proposed development can be adequately serviced in terms of surface water drainage and provision of safe vehicular access via a dished footpath. In the absence of appropriate consent to these works, the proposed development would represent disorderly development, set an undesirable precedent, and not be in accordance with the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. **Area Engineer:** Maryborough Downs estate is not taken in charge. Applicant needs consent of owner of the estate to dish the privately owned footpath. Further Information required.
- 3.2.2. **Infrastructure Development:** No objection subject to condition that no development occur within 3m of the boundary with Maryborough Hill.

3.2.3. **Planning Report:** Principle of development is acceptable but notes the lack of detail. Two-storey split-level dwelling would not be out of character. Notes requests for further information and recommends same.

3.3. **Prescribed Bodies**

3.3.1. **Uisce Eireann:** Existing sewer runs to the north of the proposed dwelling. Applicant should be requested to show required separation distances. Surface Water is not to be connected to the foul network.

3.4. **Third Party Observations**

3.4.1. Objects to the proposed development on traffic / safety, visual amenity / out of keeping with character, new driveway and overshadowing / overlooking grounds.

4.0 **Further Information**

4.1.1. On the 26th April 2022, the Planning Authority requested that the applicant address the following items:

- 1 consent from the owner of the estate to dish the privately owned footpath outside the proposed entrance
- 2 consent from relevant landowner to connection to private surface water sewer
- 3 details of separation distance from existing sewer pipes.

4.1.2. The applicant responded to the Further Information request on the 24th October 2022 stating that it was not possible to contact the owner of the estate and with a drawing show the requisite separation distance from the sewer pipes. The submission was accompanied by a letter from an elected representative requesting that the City Council progress with the application notwithstanding the absence of details.

4.2. **Reports on File following submission of Further Information**

4.2.1. **Area Engineer:** City Council cannot give permission for something they have no known ownership rights over. If development was on a public road, there would be no objection. Applicant could consider a plebiscite to take the estate in charge.

4.2.2. **Planning Report:** Notes the report and recommends further information.

4.2.3. **Senior Planner:** Concurs with above recommendation.

- 4.3. On the 21st November 2022, the applicant was advised that the response to the Further Information request was deemed inadequate and advised that the applicant consider taking in charge route.
- 4.4. On the 26th January 2023, the applicant responded with a letter signed by 12 residents seeking that the estate be taken in charge,
- 4.5. **Further Reports:**
- 4.5.1. **Area Engineer:** As the owner of the estate cannot be determined, permission cannot be obtained for connection, services, etc. A plebiscite has been submitted, however, there is not sufficient signatures on it currently. The applicant should liaise with relevant department within Cork City Council to further explore the taking in charge process. Once the estate has been taken in charge then an application such as this can be assessed in the future. Refusal recommended.
- 4.5.2. **Planning Report:** Refusal recommended based on area engineers report.
- 4.5.3. **Senior Planner:** Concurs with recommendation to refuse.

5.0 Planning History

- 5.1.1. None on the subject site.

6.0 Policy Context

6.1. Cork City Development Plan 2022-2028

- 6.1.1. The subject site is zoned ZO 01 Sustainable Residential Neighbourhoods, with the stated objective to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.

6.2. Natural Heritage Designations

- 6.2.1. The subject site is 0.5km south of the Cork Harbour SPA (004030).

6.3. EIA

- 6.3.1. Having regard to nature and scale of the development and the location of the site, in a serviced built-up urban area, 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.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. **Roddy Hogan, 21 Tirol Avenue:** Owners and residents of dwelling that adjoins the rear boundary of the application site have appealed the decision of the Planning Authority to refuse permission. Grounds of appeal can be summarised as follows:

- Application should have been refused for more substantial reasons. The reasons for refusal give the impression that if the two outstanding matters are sorted, permission could be granted.
- Separation distance of 27m while acceptable and while could be resolved at approval stage, is nonetheless intimidating.
- Original development was planned when car ownership rates of one per household were the norm. Subject site is located in Parking Zone 2 of the 2022 development plan which requires a maximum of three spaces per three-bedroom dwelling.
- No new car parking is proposed. The two spaces indicated on the drawing already exist and serve the existing development. The second space appears not to have the benefit of planning permission. It is unlikely permission would have been granted due to the proximity of the junction with Maryborough Hill.
- In their unsolicited information submission, the applicants architect proposed a wider driveway. This solution would not enable additional parking as there would be no space to turn.
- The existing traffic hazard caused by overspill parking in the estate would be exacerbated.
- The subject creates an important visual amenity, with mature vegetation creating a biodiversity resource.
- Given the submission that there will be no overlooking, one must assume that all windows will be on the northern elevation. These windows would be blocked by the existing mature vegetation.

- It is likely the existing trees will be significantly impacted to facilitate the proposed development.
- The implication of the Planning Authority decision is that once consent for the connection to sewers and to dish the footpath is forthcoming, then permission will follow. The Board is requested to note the more serious defects of the proposed development and refuse permission with additional reasons.

7.2. Applicant Response

7.2.1. None on file.

7.3. Planning Authority Response

7.3.1. None on file.

7.4. Observations

7.4.1. None on file.

8.0 Assessment

8.1.1. I have examined the file and the planning history, considered all policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and noted the appellant's request for the Board to consider additional reasons for refusal, over and above that of the Planning Authority decision. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Ownership and Car Parking
- Surface Water Sewer
- Visual Impact

8.1. Principle of Development

8.1.1. The proposed development of a dwelling in the side garden of an existing dwelling, on lands zoned for residential development and in a fully serviced urban area is acceptable in principle and in keeping with the zoning objective for the area.

8.2. Ownership and Car Parking

- 8.2.1. One of the two issues raised as a concern by the Planning Authority is the ability to provide a car parking space. The Planning Authority state that as ownership of the footpath has not been clarified, no option to dish the footpath exists.
- 8.2.2. The existing dwelling, no. 1 Maryborough Downs benefits from two car parking spaces, being the last site in the estate. The footpath at the proposed car parking space is already dished and thus two cars can safely be parked on site with no works to the footpath required.
- 8.2.3. I note the submission of the appellant that one car space per dwelling is not sufficient and that the 2022 development plan provides for a maximum of two spaces per three-bed unit. As noted by the appellant, this guideline is a maximum, not a minimum. The subject site is located in a zone 2 Parking Zone. Section 11.236 of the plan states that “areas that are or will be accessible to mass transit alongside public transportation corridors”. It is an objective of the 2022 plan, that transport plans for Cork City will consider the implication for climate change mitigation and seek to achieve a considerable modal shift to reduce the car dependence for residents of Cork City. The provision of one space each for the proposed and existing dwelling is acceptable.

8.3. Surface Water Sewer

- 8.3.1. The area Engineers report notes that a connection to the private surface water sewer will be required. Should the Board decide to grant permission, this can be achieved by way of condition. It is not a substantive issue and in my opinion, should not form the basis of a reason for a refusal of outline permission given that all other issues have been addressed.

8.4. Visual Impact

- 8.4.1. The subject application is for outline permission. As per section 36(2) of the Planning and Development Act 2000, as amended permission shall not operate to authorise the carrying out of any development to which the outline permission relates until a subsequent permission has been granted.
- 8.4.2. The separation distance of over 27m from the appellants dwelling to the east and the proposal to construct a split-level dwelling to address the topography of the site are

such that overlooking and overshadowing issues should not arise. Section 11.139 of the development plan requires infill development to respect the height and massing of existing residential units, to enhance the physical character of the area by employing similar or complementary architectural language and adopting typical features. These matters are more appropriately addressed at consequent stage, should the Board decide to grant permission.

8.5. Appropriate Assessment

- 8.5.1. Having regard to the nature and scale of the proposed development to be retained in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

9.0 Recommendation

- 9.1.1. I recommend outline permission be GRANTED for the following reasons and considerations and subject to the following conditions:

10.0 Reasons and Considerations

- 10.1.1. Having regard to the residential zoning for the site of the proposed development, the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	This grant of outline permission is in respect of development as indicated in the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the Planning Authority on the 25th day of October 2022 and the 27 th day of January 2023, except as may otherwise be required in order to comply with the following conditions. No development is authorised on foot of this grant of outline permission and no
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	<p>development shall be undertaken until a grant of approval consequent on this outline permission is received.</p> <p>Reason: In the interest of clarity</p>
2.	<p>Plans and particulars to be lodged for permission consequent on this grant of outline permission shall include:</p> <ul style="list-style-type: none"> (i) A detailed landscaping plan for the site, (ii) Proposals for the retention of existing boundary treatment to the north (iii) Proposals to protect the privacy and amenity of existing adjoining property to the east. (iv) Design proposals which have regard to the design and character of the built environment in the vicinity. <p>Reason: In the interest of clarity and to define the subject matter for consideration at permission consequent stage.</p>
3	<p>At the permission consequent stage, drainage arrangements, including the attenuation and 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>
4	<p>Prior to the commencement the developer shall enter into water and wastewater connection agreements with Uisce Eireann.</p> <p>Reason: In the interest of public health.</p>
5	<p>At permission consequent stage, the developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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</p>

	<p>such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission</p>
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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.

Gillian Kane
Senior Planning Inspector

08 January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Outline permission for house in side garden		
Development Address	Side of 1 Maryborough Downs, Douglas, Cork		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
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?			
Yes		N/A	EIA Mandatory EIAR required
No			Proceed to Q.3
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]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	N/a	Preliminary Examination required
Yes	n/a	Screening Determination required

Inspector: _____

Date: 08/01/2024