



An
Bord
Pleanála

Inspector's Report

ABP-317730-23

Development	Construction of a house in rear garden with new vehicle and pedestrian access via existing entrance
Location	No. 3 Dawn View , Church Road, Ballynacorra West, Midleton, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	23/5016
Applicant(s)	Trevor Costigan & Kirsten Heaphy
Type of Application	Planning Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Trevor Costigan & Kirsten Heaphy
Observer(s)	None
Date of Site Inspection	9 th November 2023
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.033 hectares and is located within the townland of Ballynacorra West, approximately 2km south of the town centre of Midleton, County Cork. Access to the site is via an existing entrance off Quay Road, a cul-de-sac road. The site is located within the garden of No. 3 Dawn View, Church Road.
- 1.2. The site is bounded by wire fencing along the northeast boundary, timber panel fencing along the southwest boundary and a boundary wall along part of the northern boundary. There are two existing cottages to the north of the site and a detached bungalow to the northeast. The topography of the site rises by approximately 3 metres from the northern part of the site to the southern boundary.

2.0 Proposed Development

- 2.1. Permission is sought to construct a new detached bungalow style dwelling in the rear garden of No. 3 Dawn View. The floor area of the dwelling will measure 100sqm which includes a 44sqm first floor attic accommodation. The dwelling is proposed to have a ridge height of 6.875 metres. External finishes will comprise of a smooth sand/cement render finish to the walls and blue black roof tiles to the roof. The internal layout of the dwelling will comprise of a kitchen and dining area and living room on the ground floor and 3 no. bedrooms on the first floor. Roof lights are proposed to serve the habitable spaces on the first floor. Boundary treatment is to comprise of a new post and timber fence to a height of 1.5 metres.
- 2.2. The dwelling is proposed to be serviced by the public wastewater and water mains. Surface water is proposed to be treated via permeable paving and a soakaway on the northern part of the site.

3.0 Planning Authority Decision

3.1. Decision

Cork County Council (The Planning Authority) refused to grant permission on 12th July 2023 for the following reason:

1. It is considered that by reason of its scale/design, shadow impacts and required boundary treatment, the proposed development would represent overdevelopment of a small, restricted site, which would be out of character with the surrounding development and would seriously injure the residential amenity of the area and of adjoining properties. Furthermore, the proposed development if permitted would set a precedent for other similar development proposals in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

Planner's Report

- The Area Planner's Report, dated 10th July 2023, considers the principle of the development, planning history, siting and design, residential amenity, access and parking, surface water disposal and site services and Appropriate Assessment and Ecology.
- Refusal recommended due to overlooking, insufficient screening, shadowing and considered out of character with surrounding development and overdevelopment of a small restricted site. Letter of consent from a third party would be required in order to achieve sight lines to the west. This recommendation is endorsed by the Senior Executive Planner.

Other Technical Reports

- Area Engineer's Report (dated 22nd June 2023) – Defer decision until letter of consent for 50 metre sight line to the west.
- Water Services (Dated 4th July 2023) – No objection subject to conditions.
- Liaison Office (dated 10th July 2023) – No comment.

3.3. Prescribed Bodies

- Irish Water – No objection subject to conditions.

3.4. Third Party Observations

None

4.0 Relevant Planning History

PA Ref. 22/5949 (Subject Site)

CCC refused planning permission for a detached bungalow style dwelling with habitable accommodation in the rear garden with new vehicle and pedestrian access via existing entrance along Quay Road and all associated site development works – Reason for Refusal:

It is considered that by reason of its scale/design and required boundary treatment, the proposed development would represent overdevelopment of a small, restricted site, which would be out of character with the surrounding development and would seriously injure the residential amenity of the area and of adjoining properties. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2022-2028

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

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

not support, or threatens the vitality or integrity of, the primary use of these existing residential/mixed residential and other uses areas will not be encouraged.

Objective PL 3-2 Encouraging Sustainable and Resilient Places

As part of the Council's commitment to deliver compact growth and resilient places, the Plan supports:

(b) the development of brownfield, infill and under-utilised lands within the built envelope of the existing settlement network.

Objective TM12-8 Traffic/Mobility Management and Road Safety

d) Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.

5.2. National Policy

- Project Ireland 2040 – National Planning Framework and National Development Plan 2021-2030
- Climate Action Plan 2023

5.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region

5.4. National Guidance

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009).
- Best Practice Urban Design Manual (2009).
- Design Manual for Urban Roads and Streets (DMURS) (2019).
- Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes, Sustaining Communities (2007).
- The Planning System and Flood Risk Management Guidelines (2009).

5.5. Natural Heritage Designations

The site is not located within any designated site. The site is located approximately 30 metres south of the Great Island Channel Special Area of Conservation (SAC) (Site

Code 001058) and the Cork Harbour Special Protection Area (SPA) (Site Code 4030). The site is located approximately 30 metres south of the Great Island Channel proposed Natural Heritage Area (pNHA).

5.6. **Environmental Impact Assessment (EIA) Screening**

Having regard to the nature, size and location of the proposed development, comprising the construction of a residential dwelling in a suburban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Refer to Appendix 1 regarding the examination.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A First Party Appeal was lodged to An Bord Pleanála on 4th August 2023 opposing Cork County Council's decision to refuse the application. The grounds of appeal can be summarised as follows:

- Site is within the 'Existing Residential/Mixed Residential and Other Uses' as per CDP 2022;
- Proposed development is consistent with the existing established pattern of development at this location. Several sites in the area comprise of more than 1 dwelling. Precedent for other similar developments in the area has already been set;
- High quality standard of residential accommodation. Would not result in overdevelopment of the site and not contribute to ribbon development, proposal should be considered as infill development;
- Design and layout will not result in adverse impacts on the residential amenities of the area;
- There is a shortfall of housing stock within the locality; and

- No objections received by any of the surrounding neighbours and boundary fencing was in consultation with neighbours;

6.2. **Planning Authority Response**

No response received.

6.3. **Observations**

None

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, after an inspection of the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of the Development
- Design and Layout
- Residential Amenity
- Flooding – **New Issue**
- Access
- Appropriate Assessment (AA) Screening
- Overall Conclusion

Principle of the Development

7.2. The proposed development is for a single dwelling within the settlement boundary of Midleton, on lands zoned as 'Existing Residential/Mixed Residential and Other Uses' under the Cork County Development Plan 2022-2028 (CDP). I note that residential development is considered an appropriate use within this zoning. Furthermore, Objective PL 3-2 of the CDP supports the development of infill and under-utilised lands within the built envelope of the existing settlement network. I consider the proposed development acceptable in principle.

Design and Layout

- 7.3. The Planning Authority (PA) considers that the development would be out of character with the surrounding development and this forms part of the refusal reason. The Appellant states that the development is in keeping with the pattern of development which has evolved over time. It is stated that families have developed houses to the rear of existing houses on long development plots.
- 7.4. Having inspected the site, I note that the established character of the area comprises two storey terraced type dwellings along the frontage of Church Road with linear gardens to the rear extending to the northern boundary to Quay Road. The exception to this is 3 no. properties (two semi-detached cottages and a detached bungalow) directly to the north of the subject site, however, they all have frontage along Quay Road.
- 7.5. I note that a number of the Church Road properties have garage and shed type developments within their rear gardens. The Appellant suggests that families have developed backyard developments and new developments along Church Road. I noted no permanent habitable accommodation within any neighbouring garden on the date of my site inspection. Furthermore, I have not found any planning history in relation to backland development within this immediate area. Therefore, having regard to the above, it is my view that that the proposed development would not be consistent with the existing established pattern of development in the area.
- 7.6. The PA considers that the development represents overdevelopment of the site. The Appellant argues that the proposed dwelling is of modest size.
- 7.7. Having calculated the site coverage as c. 17%, plot ratio as c. 0.3 and the private amenity space provision, I consider the site does not represent overdevelopment in quantitative terms. Notwithstanding this, the site has a maximum width (east-west) of c. 11 metres reducing to a width of c. 9 metres along the south boundary. Furthermore, the proposed location of the entrance and driveway is within a 2.5 metre wide parcel of land between a dwelling and a shed type structure. It is my view that the site is constrained and has a number of difficulties which I will outline below.

Residential Amenity

- 7.8. I note the Appellant states that the residential amenities of existing properties and future occupants of the proposed dwelling have been considered carefully in the design. I note that the PA considers the development of being seriously injurious to the residential amenity of the area and adjoining properties in terms of scale/design, shadow impacts and required boundary treatment.
- 7.9. The proposed development will reduce the rear garden of No. 3 Church Road to between c. 4 and c. 6 metres in depth. In my view this is a material reduction in the amenity of the existing property which illustrates the constrained nature of the subject site.

Overlooking

- 7.10. The submitted site layout plan stipulates a separation distance of c. 12 metres from the front elevation of the proposed dwelling to the rear elevation of the dwellings to the north along Quay Road. I note that no first floor windows are proposed on the northwest facing elevation.
- 7.11. The footprint of the building is located approximately 1.5 metres to the north eastern and south western boundaries. First floor roof lights are proposed serving both the north east and south west elevations. I note that these roof lights will serve 3 no. bedrooms and a bathroom. Having regard to these separation distances, and to the roof lights serving habitable bedrooms, I consider that this will result in overlooking of adjoining private amenity spaces. I consider that the degree of overlooking would be significant.
- 7.12. Furthermore, having regard to the orientation of the dwelling, and the distance to the cottages along Quay Road, there may be potential for significant overlooking of the east cottage from the roof light serving Bedroom 2.
- 7.13. Therefore, having regard to the above, it is my view that the design would seriously injure the residential amenity of the area and adjoining properties in terms of overlooking and would contravene Objective ZU 18-9 of the CDP. Furthermore, due to the constrained nature of the site, the distances to property boundaries and to the significant overlooking that will occur on adjoining properties, it is my view that the proposal represents overdevelopment of the site.

7.14. I note that the PA also raises issue regarding the boundary treatment proposed. Having regard to the level differences, the PA considers that a 1.8-2 metre high fence along the southwest and northeast boundaries to be more appropriate for screening purposes but considers that it will be imposing and generate significant amenity concerns. I do not consider that such a fence would have significant amenity concerns and if permission is to be granted a condition can be attached in this regard.

Overshadowing

7.15. With regards to overshadowing, I note that the Appellant states that the design achieves the minimum requirement under BRE. I note the Overshadowing Analysis Study submitted with the application. Having regard to this study and to the PA's Planner's Report, the issue of overshadowing is primarily in relation to the cottages to the north along Quay Road and on the garden east of the proposed development. The PA considers that there will be significant shadow impacts on the properties to the north, particularly during winter, and onto the adjoining garden to the east.

7.16. The BRE Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice 2022 Guidelines are relevant regarding this issue. I note that Paragraph 3.3.17 of these Guidelines states that for gardens or amenity areas to appear adequately sunlit throughout the year, at least half of a garden or amenity area should receive at least two hours of sunlight on 21st March. The submitted analysis study clearly shows that this is achievable within the gardens of the properties to the north and east on 21st March at 10.00am and 12.00pm. In relation to the impact on habitable rooms, having regard to Paragraph 2.2.5 of the 2022 Guidelines, I note that from the Proposed Site Section 1-1, the angle between the cottages and the proposed development will be below 25 degrees.

7.17. Having regard to the above, it is clear that the proposed development will have some impact on adjoining properties to the north and east in terms of overshadowing, particularly during the winter months. However, having regard to the BRE Guidelines and to the design of the development, I consider that such an impact will not be significant.

Flooding – New Issue

7.18. According to the Cork County Development Plan 2022-2028, the site is located outside Flood Zone A and B. However, I note that Arup are preparing a Flood Relief Scheme

for Midleton. A Hydraulics Report (October 2022) has been prepared and includes flood maps to account for the climate change scenario.

- 7.19. The Hydraulic modelling has located part of the site within the Fluvial 1% Annual Exceedance Probability (AEP) in terms of the Mid-Range Future Scenario (i.e. +20% increase in the peak fluvial flow) and High-End Future Scenario (+30% increase in the peak fluvial flow). Furthermore, part of the site is located within the Tidal 0.5% Annual Exceedance Probability (AEP) in terms of Mid-Range Future Scenario (i.e. +0.5 metre increase in the peak water level) and High-End Future Scenario (+1 metre increase in peak water level). This is a new issue and the Board may wish to seek the views of the parties, however, having regard to the other substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

Access

- 7.20. The Board should note that in order to achieve 50 metre sightlines to the west of the proposed entrance, the PA's Area Engineer sought further information in the form of third party consent for the removal/cut back of vegetation. However, the further information was not requested as the application was refused. I note that the issue did not form part of the reasons for refusal and the Appellant has not addressed the issue within the grounds of appeal.
- 7.21. I noted this vegetation on the date of my site inspection. However, I also noted that the road in question was a cul-de-sac that served apartment units to the west and was not heavily trafficked by vehicles. Having regard to this and to the principles, approaches and standards set out in DMURS, I consider the proposed access arrangements adequate.

Appropriate Assessment (AA) Screening

- 7.22. I note the planning history associated with the site and to the report from the PA's Ecology Officer on application ref. 22/5949 who found that the proposed development does not pose a risk of significant adverse effects on the Cork Harbour SPA or Great Island Channel SAC, alone or in combination with other plans and projects.
- 7.23. The subject site is not located within any European Site. The site is approximately 30 metres south of the Great Island Channel Special Area of Conservation (SAC) (Site Code 001058) and the Cork Harbour Special Protection Area (SPA) (Site Code

004030). Having regard to the nature and scale of the proposed development in an established suburban area on serviced land, I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

Overall Conclusion

7.24. I have significant concerns with the approach in developing this rear garden. I consider the proposed development in its current form to represent piecemeal, haphazard development and it is my view that development of these backlands should be carried out in a planned and coordinated manner with adjoining landowners.

8.0 Recommendation

8.1. I recommend that planning permission should be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the limited area of the site and relationship to adjoining property, it is considered that the proposed development represents inappropriate backland development which would be out of character with the surrounding development and would seriously injure the amenities of adjoining residential property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Gary Farrelly
Planning Inspector

21st November 2023

Appendix 1

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

An Bord Pleanála Case Reference	317730		
Proposed Development Summary	Construction of a dwelling within rear garden, connection to public services		
Development Address	No. 3 Dawn View, Church Road, Ballynacorra West, Midleton		
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	<input checked="" type="checkbox"/>	
	No	No further action required	
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			EIA Mandatory EIAR required
No	<input checked="" type="checkbox"/>		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)
Yes	<input checked="" type="checkbox"/>	N/A	
No			No EIAR or Preliminary Examination required
Yes	<input checked="" type="checkbox"/>	Class 10(b)(iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.	Subject site measures 0.033ha and therefore is well below the 10ha threshold for urban development in other parts of a built up area.
			Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	<input checked="" type="checkbox"/>	Preliminary Examination required
Yes	<input type="checkbox"/>	Screening Determination required

Form 2 - EIA Preliminary Examination

An Bord Pleanála Case Reference	317730	
Proposed Development Summary	Construction of a dwelling within rear garden, connection to public services	
Development Address	No. 3 Dawn View, Church Road, Ballynacorra West, Midleton	
<p>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.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</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 development is for a single dwellinghouse within an established residential area.</p> <p>Removal of topsoil typical to that of housing construction. Typical construction related activities and works.</p>	No
Size of the Development	<p>The development site measures 0.033 hectares.</p> <p>The size of the development is not exceptional in</p>	No

<p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>the context of the existing built-up urban environment.</p> <p>There is no real likelihood of significant cumulative effects with existing and permitted projects in the area.</p>	
<p>Location of the Development</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>There are no ecologically sensitive locations in the vicinity of the site. The site is located approximately 30 metres south of a European Site, however, having regard to the proposed connection to public services, will not significantly impact these sites.</p>	<p>No</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector: _____

Date: _____