



An
Bord
Pleanála

Inspector's Report

ABP-318435-23

Development

Retention for the subdivision of portion of existing dwellinghouse to form a new two storey mid terraced dwellinghouse, the insertion of velux roof lights on rear elevation, new chimney, connection to the existing wastewater treatment system and associated site works. This property is a protected structure

Location

Caherass Court, Co. Limerick

Planning Authority Ref.

2342

Applicant(s)

Claude Ashmore

Type of Application

*Retention
Permission*

PA Decision

*Grant Permission with
conditions.*

Type of Appeal

Third Party

Appellant

David Leahy

Observer(s)

None

Date of Site Inspection

08/04/2024

Inspector

Andrew Hersey

Context

1. Site Location/ and Description.

The site is located within a gated housing estate known as Caherass Court which is located off a local road to the north west of Croom Co. Limerick.

2. Description of development. The proposed development comprises of the retention of the subdivision of a portion of an existing dwellinghouse located in a terrace to form a new two storey dwelling. The proposal also includes for:

- Velux windows on the rear elevation
- New chimney
- And connection to the existing wastewater treatment system and associated site works

3. Planning History.

- Planning Reg. Ref. 97-1580 granted permission for the conversion of 5 existing buildings to residential units

4. National/Regional/Local Planning Policy

The Limerick County Development Plan 2022- 2028 is the statutory plan in force at present.

5. Natural Heritage Designations

- The nearest designated site is Tory Hill which is an SAC Site Code 000439 which is located 3.0km to the east of the site

Development, Decision and Grounds of Appeal

6. PA Decision.

- Permission was granted subject to 4 conditions. It is noted that there is no contribution with respect of the imposition of a Development Contribution

7. Internal Reports

- Architectural Conservation Officer (latest report dated 13th October 2023) in summary states that
 - The building was examined on the 24th February 2023
 - All internal fixtures of the building are modern

<ul style="list-style-type: none"> - Recommends that conditions be attached and in particular that any further works which may be required to comply with other statutory requirements may require the benefit of planning permission. • Environment (email of 6th March 2023) states that there is capacity in the WWTS to cater for the proposed development.
<p>8. Prescribed Bodies</p> <ul style="list-style-type: none"> • Irish Water (26th February 2023) - no objection
<p>9. Submissions</p> <p>A submission was received from a David Leahy on the 1st March 2023. In summary the submission raises the following issues:</p> <ul style="list-style-type: none"> • That there is no evidence that permission was granted by the management company to split the existing unit into two separate units • There is no evidence that the proposal complies with building regulations • The site layout plan does not include for FFL, private open space, parking, bin store, water connection, wastewater connection and soakpit connection details. • No conservation architect was employed during the conversion
<p>9. Grounds of Appeal</p> <p>An appeal was received by a David Leahy on the 10th November 2023. The appeal in summary states:</p> <ul style="list-style-type: none"> • That there is no evidence that permission was granted by the management company nor is there any letter of consent to split the existing unit into two units • That there is no evidence that the building complies with building regulations • The applicant has not shown that the unit complies with open space requirements

- They have not agreed car parking with the management company or other residences in Caherass Court
- The applicant has not shown consent with respect of water or wastewater connection to the unit with the management company or other residences
- That the lease specifically states that this unit is not to be divided .

10. First Party Response

A response to the third party appeal was received on the 6th December 2023 prepared by Virtus obo Claude Ashmore. In summary the response states:

- That the applicant Claude Ashmore is the owner of the said property to which the application relates.
- That issues with respect of consent or otherwise from the management company to subdivide the property is not a planning matter
- That building regulations are an entirely separate code which are separate to planning
- That they invite the Board to consider as to whether the appeal is vexatious in nature. Section 138 (1) of the Planning and Development Act 2000, as amended is cited in this respect.
- There are no grounds within the appeal that resemble planning related matters
- The response cites a number of Board cases which relate to cases whereby appeals have been dismissed on the basis that they relate to legal matters or matters which relate to issues outside of the scope of the planning application.
- That the applicants architects have stated that there are no readily evident issues apparent as to why the layout of the unit would not comply with Building Regulations save for minor works for example the replacement of velux windows to escape windows and the upgrading of fire alarms.
- That there is ample open space available

- That there is communal parking available in the courtyard fronting onto the unit. The courtyard serves 3 dwellings in total and there is potential provision for 9 car parking spaces within the same.
- Connections to water and wastewater already exist. Both are private connections i.e. water is via a GWS and wastewater is to a communal plant.
- That it is accepted that further works to the property will require planning consent unless such works are exempt from planning.

10. PA Response

None received

11. Observations

None received.

Environmental Screening

12. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

13. AA Screening

Having regard to the modest nature and scale of development and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as 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.

2.0 Assessment

2.1. Introduction

2.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to relevant local development plan policies and guidance.

2.1.2. I am satisfied the substantive issues arising from the grounds of this third party Appeal relate to the following matters-

- Legal Matters
- Building Regulations
- Section 138 (1) of the Planning and Development Act 2000, as amended
- The Principle of Development
- Visual Amenity Considerations
- Car Parking & Open Space requirements

2.2. Legal Matters

2.2.1. The appeal raises a number of issues with respect of consent from the management company to carry out the proposed works subject of this retention application.

2.2.2. Section 5.13 of the S28 Development Management Guidelines for Planning Authorities (June 2007) states that *The 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. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.*

2.2.3. With respect of the above, I do not consider it is necessary for the Board to comment further on the matter regarding any legal agreements with the management company. As stated under Section 34 (13) of the Planning and Development Act 2000 (as amended), whilst permission may be granted for the development of land consent is

still required by the owner to carry out that development. If there is a dispute then that is a matter for the courts not the Board.

- 2.2.4. In any rate, I note that it is stated that the applicant is the owner of the said property and therefore I am for the opinion that he does not require consent to apply for planning permission. Any issues with respect of the management company are considered to be issues to be resolved between both parties outside of the planning remit.

2.3. Building Regulations

- 2.3.1. The appellant also raises issues with respect to compliance with building regulations.

- 2.4. Section 7.8 of the Development Management Guidelines for Planning Authorities (2007) states the following:

It is inappropriate, however, in development management, to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and it is entirely wrong to use the development management process to attempt to force a developer to apply for other some licence, approval, consent, etc. At best, the imposition of conditions in relation to matters that are the subject of other controls is an undesirable duplication. In practice, such an approach can give rise to conflict and confusion if the effect of a condition on a development is different from that of the specific control provision. In this context, it should be remembered that the Building Regulations require certification by the developer's design team

- 2.4.1. It is clear therefore that issues with respect of compliance with Building Regulations are a matter to be dealt with outside of the planning process. I therefore do not accept that the appellants concerns with respect of compliance with building regulations is a matter for concern by the Board.

2.5. Section 138 (1) of the Planning and Development Act 2000, as amended

- 2.5.1. I note the response from the first party and the suggestion that the appeal is vexatious and without merit and that the said appeal should not be considered as per Section 138 (1) of the Planning and Development Act 2000, as amended.
- 2.5.2. I do not agree with this suggestion. The appellant has raised, amongst other issues, concerns with respect of open space, parking and connection to water and wastewater services. I consider that these are planning issues that are resolved through the planning process. In this respect I do not agree with the first party that the appeal should be dismissed under Section 138.

2.6. The Principal of the Development

- 2.6.1. The structure for retention comprises the retention of the subdivision of an existing dwellinghouse which was granted planning permission under Planning Reg. Ref. 97-1580 for the conversion of 5 existing buildings to residential units. The application for retention also includes for new velux windows on the rear elevation and the insertion of a chimney. I also note that internally, a door ope has been blocked up to facilitate the subdivision.
- 2.6.2. I note that the proposed development for retention is all part of a complex of houses known as Caherass Court which are on the Record of Protected Structures (RPS Ref 194)
- 2.6.3. The subdivided unit has a floorspace of 64.4sq.m and comprises of a ground floor with own external door access and a mezzanine with bedroom and bathroom at first floor. The unit faces out onto an existing landscaped courtyard which comprises of shared open space and parking which is not regulated by designated spaces. The rear of the unit faces out onto the local road. I note in this regard that the minimum floorspace for a 1 bed unit in the Section 28 guidelines *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020)* is 48sq.m.. The proposal therefore exceeds this minimum standard.
- 2.6.4. I note from the case planners report on file does not comment as to whether the principle of subdivision is appropriate or not at this location.
- 2.6.5. While there is no specific policy in the statutory development plan with respect to uses of protected structures, having regard to the residential aspect of the building from which the unit has been subdivided from, and having regard to the residential use of

adjacent buildings, I consider that the proposal is acceptable in principle at this location.

2.7. Visual Amenities

- 2.7.1. With respect of visual amenities I note that no changes were made to the external appearance of the building save for the insertion of a chimney and the addition of velux rooflights which I note are the conservation type.
- 2.7.2. I understand from the reports and submissions on file that the internal is constructed for modern materials.
- 2.7.3. I note the councils Conservation Architects Report on file which recommends that conditions be imposed in the case where permission is granted. I would consider therefore on this basis that the Conservation Architect has no issue with respect of the proposal.
- 2.7.4. In this respect, I consider that, and having regard to the protected status of the building, that the proposed development for retention is acceptable in terms of visual amenity considerations

2.8. Car Parking and Open Space

- 2.8.1. I note that the proposed unit subject of retention is located within a gated cluster of other single and two storey dwellings arranged around courtyards and landscaped open space.
- 2.8.2. Having regard to the details submitted with the application and the various submissions on file from the first party and having regard to my inspection of the site, I consider that there is ample open space to serve the proposed development and there is ample room for parking within the gated cluster of houses to serve the proposed development

2.9. Services

- 2.9.1. I note that there is an existing connection to water and wastewater. With respect to water I note that the supply is via a GWS with a public source. Agreements with respect of the same can be by way of agreement with Uisce Eireann.
- 2.9.2. With respect to wastewater, there is an existing WWTP on site which serves all the houses in the gated cluster. I note a report on file from Environment stating that there is adequate capacity within the same.

3.0 Recommendation

- 3.1. I recommend that permission for the development be granted permission.

4.0 Reasons & Considerations

- 4.1. Having regard to the information submitted with the application and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with the policies as set out in the Limerick County Development Plan 2022 – 2028, would not be injurious to the visual or residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

5.0 Conditions

1.	<p>The development shall be retained in accordance with the plans and particulars lodged with the application, 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.	The developer shall enter into water connection agreements with Irish Water. Reason: In the interest of public health.
3.	Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Reason: In the interest of public health

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.

Andrew Hersey
Planning Inspector

29th April 2024