



An  
Bord  
Pleanála

## Inspector's Report ABP-318590-23

### Development

Retention permission for a 2-storey extension, a small lean-to shed and 2 no. velux windows. Planning permission is also sought for the addition of 1 no. new velux window and all associated site development works.

### Location

No. 1 Churchyard Lane, Ballintemple, Cork City.

### Planning Authority

Cork City Council.

### Planning Authority Reg. Ref.

23/42302.

### Applicant(s)

Pat Kennedy.

### Type of Application

Retention Permission and Planning Permission.

### Planning Authority Decision

Refuse.

### Type of Appeal

First Party.

### Appellant(s)

Pat Kennedy.

### Observer(s)

1. Jamie Fitzgerald.
2. Cormac O'Hare.

**Date of Site Inspection**

22<sup>nd</sup> and 23<sup>rd</sup> May, 2024.

**Inspector**

Patricia-Marie Young.

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	5
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	6
3.3. Prescribed Bodies .....	7
3.4. Third Party Observations .....	7
4.0 Planning History .....	7
5.0 Policy Context .....	7
5.1. Development Plan .....	7
5.2. Natural Heritage Designations .....	8
5.3. EIA Screening .....	8
6.0 The Appeal .....	9
6.1. Grounds of Appeal .....	9
6.2. Planning Authority Response .....	9
6.3. Observations .....	9
7.0 Assessment .....	11
8.0 Appropriate Assessment Screening .....	24
9.0 Recommendation .....	25
10.0 Reasons and Considerations .....	25
Appendix 1 – Form 1: EIA Pre-Screening	

## 1.0 Site Location and Description

- 1.1. No. 1 Churchyard Lane, the appeal site, consists of an irregular rectangular shaped site with a given 0.0538ha area, on which is a single storey end-of-terrace vernacular cottage that front onto the western side of Churchyard Lane, in the Cork city suburb of Ballintemple, just over c3km to the south east of Cork city's centre. It forms part of a larger row of single and two storey period residential terrace properties. The site itself is located c30m to the north of Churchyard Lane's junction with Avondale Park, c112m to the south of its junction with Blackrock Road and c285m to the north of its junction with Boreenmanna Road and Saint Gerard Majella Terrace.
- 1.2. The principal façade and roof structure over of No. 1 Churchyard Lane which has been recently modified. It is setback from the western side of Church Lane by a low solid wall which contains a timber pedestrian entrance gate on its northern side. There is a pathway running along the front side boundary that links to the front door with the remaining semi-private front garden area gravelled.
- 1.3. Attached to the southern side elevation there is an attached tall timber clad side extension that has a height that exceeds the front elevations eaves height. This attached structure is of a height that projects above the height of a tall solid boundary wall that separates the site from No. 1 Avondale Park. In part it appears to be attached and projecting above the boundary that separates the site from No. 1 Avondale Park.
- 1.4. To the rear the property has been extended by way of a two-level extension that projects from the original rear elevation and has the appearance of a part basement level with an upper floor level that projects out from the rear attic of the subject property. The projection from the attic opens onto a raised level that has the appearance of a flat roof that is covered in what appears to be green mating/artificial grass that on its north and south side is bound by solid and concrete capped walls. The height of these walls is considerably higher than the eaves level of the No.2 Churchyard Lane and the neighbouring period terrace properties to the north.
- 1.5. The attic level and lower-level extension appears to have a pathway and stairs running along its boundary with No. 2 Churchyard Lane. The main boundary treatment between the two properties is a non-permanent green mesh screen attached to a metal frame. The rear ground levels of this adjoining property appear to be considerably lower.

- 1.6. Immediately to the west of the recently added rear extension is a lower concrete patio that links into a mainly lawned rear garden. This area is considerably higher than the adjoining properties to the north and the ground levels of the site appear to have been recently augmented.
- 1.7. The surrounding area has a strong residential and mature character.

## 2.0 Proposed Development

- 2.1. **Retention Permission** is sought for a 2-storey extension to the rear (west) of the property; a lean-to shed with corrugated plastic roof to the south gable end of the property and the retention of 2 no. Velux windows, 1 no. Velux window to the side (south) elevation and 1 no. Velux window to the side (north) elevation. In addition, **Planning Permission** is sought for the addition of 1 no. new Velux window to the front (east) elevation and all associated site development works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 7<sup>th</sup> of November, 2023, the Planning Authority issued a notification of their decision to **REFUSE** to permission for the following single stated reason:

*“Having regard to the context of the proposed development site in relation to adjoining properties and the provisions of the Cork City Development Plan 2022-2028, including zoning objectives (ZO 1, ZO 1.2) and development management standards (sections 11.142 and 11.143) which aim to provide for and protect residential amenity, it is considered by virtue of its design, massing and scale, that the development to be retained would seriously injure the amenities of adjoining properties and have a negative impact on the character of the area. It is further considered that the development to be retained would not provide an acceptable standard of residential amenity for future residents. The development to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Authority's Planning Officer's report (03/11/2023) is the basis of their decision. It includes the following comments:

- Enforcement action in relation to the works carried out on this site are noted.
- No AA or flood issues arise.
- This development gives rise to poor quality residential amenity for occupants of this dwelling, and it gives rise to diminishment of residential amenity for existing properties in its vicinity.
- Scope of works carried out on site are not reflected in the description of development for which permission is sought.
- Accuracy of the drawings is questioned.
- It is not considered that the development has been sensitively designed to have regard to its context.
- The works are excessive, inappropriate, and out of character with the host dwelling and adjoining properties.
- The extension for which retention is sought is overbearing and gives rise to overshadowing of adjoining properties.
- The patio/balcony gives rise to overlooking of adjoining properties.
- This development fails to accord with relevant local planning provisions.
- There is no merit in permitting the velux window sought for planning permission in isolation given the concerns raised in relation to the remainder of the development as a whole.
- Civil matters of concern could be clarified by further information.
- Concludes with a recommendation of refusal.

#### 3.2.2. Other Technical Reports

- **Environment:** No objection, subject to safeguards.

- **Contributions:** Section 48 contributions are applicable.

### 3.3. Prescribed Bodies

- 3.3.1. **Irish Water:** No objection.

### 3.4. Third Party Observations

- 3.4.1. During the course of the Planning Authority's determination of this planning application they received a number of Third-Party submissions. These are attached to file, and I consider that they correlate with the key points made by the Third-Party Observers in their submissions to the Board (See: Section 6.3 of this report below).

## 4.0 Planning History

### 4.1. Site

- **P.A. Ref. No. E8504:** Currently open enforcement case in relation to unauthorised works carried out on this site.

### 4.2. Setting (Recent & Relevant)

- 4.2.1. None.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Cork City Development Plan, 2022-2028, is applicable. The site forms part of a larger area of suburban land zoned 'ZO-01 Sustainable Residential Neighbourhoods'. The stated objective for such lands is: *"to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses"*.
- 5.1.2. ZO 1.1 of the Development Plan states: *"the provision and protection of residential uses and residential amenity is a central objective of this zoning. This zone covers large areas of Cork City's built-up area, including inner-city and outer suburban neighbourhoods. While they are predominantly residential in character these areas are not homogenous in terms of land uses and include a mix of uses. The vision for*

*sustainable residential development in Cork City is one of sustainable residential neighbourhoods where a range of residential accommodation, open space, local services and community facilities are available within easy reach of residents”.*

- 5.1.3. ZO 1.2 of the Development Plan states: *“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. Section 11.140 of the Development Plan sets out that: *“as part of the Core Strategy it is essential that existing homes are utilised”.*
- 5.1.5. Section 11.141 of the Development Plan states: *“in order to ensure that existing homes are utilised by occupation Cork City Council supports the retention and adaptation of the existing housing stock to suit the evolving needs of society”.*
- 5.1.6. Section 11.142 of the Development Plan states that: *“the design and layout of extensions to houses should have regard to the amenities of adjoining properties particularly as regards sunlight, daylight and privacy. The character and form of the existing building should be respected, and external finishes and window types should match the existing”.*
- 5.1.7. Section 11.143 of the Development Plan sets out the following requirements for extensions to existing dwellings.
- 5.1.8. Section 11.12 of the Development Plan states: *“a high standard of design is essential to this process”.*

## **5.2. Natural Heritage Designations**

- 5.2.1. The site is located c1.2km to the north of Cork Harbour SPA (Site Code: 004030) as the bird would fly.

## **5.3. EIA Screening**

- 5.3.1. See completed EIA Screening form attached. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood significant effects on the environment arising from the proposed development. EIA, therefore, is not required.



5.3.2. I note that the site is located c1.1km to the north of proposed Natural Heritage Area: Douglas River Estuary (Site Code: 001046) at its nearest point as the bird would fly.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The grounds of appeal can be summarised as follows:

- It is requested that the Planning Authority's decision is overturned.
- Many of the houses on Churchyard Lane have been modified and extended.
- The Planning Authority's assessment and decision is unreasonable.
- The extension is not excessive in its massing and scale. It results in this modest cottage being habitable for its occupant.
- No undue visual or residential amenity impact arises from this development.
- The patio takes advantage of pre-existing ground levels.
- The extension was designed to be setback from neighbouring properties to the south and north. It was designed to look onto the rear amenity space.
- The adjoining property to the south includes windows that overlook the rear of this property. Reference is made to the planning history of this adjoining property.

### **6.2. Planning Authority Response**

6.2.1. None.

### **6.3. Observations**

6.3.1. The Board received Third Party Observations from:

- Cormac O'Hare (08.01.2024).
- Jamie Fitzgerald (08.01.2024).

I have had regard to the content of both of these submissions and have decided to summarise them separately as follows:

6.3.2. The Third-Party Observer's submission received by the Board from Cormac O'Hare indicates that they have an address of 'The Elms' No. 1 Avondale Park and sets out their support of the Planning Authority's decision. They therefore seek that the Board uphold this decision. This submission includes the following concerns:

- Applicant has disregarded proper planning process by way of carrying out unauthorised development and ignoring the requirements of the warning letter.
- Substandard form of the development that has given rise to residential and visual amenity diminishment.
- The letter of support from the adjoining property to the north sets out that similar works disregarding the planning process would be carried out.
- Permitting this development would give rise to an undesirable precedent.
- This development is out of character with the dwelling and with its setting.
- Application does not accurately reflect the nature and scope of works carried out, including but not limited to the significant change in ground levels to the rear.
- The extension represents a 70% increase in the dwellings original size. This scale of increase is not modest.
- There is no precedent for this type of development in this locality.
- There is no evidence that supports that the permitted extension to No. 1 Avondale Park development is non-compliant with its grant of permission.
- There is no evidence to support the appellants claim against the Planning Authority.
- This development is excessive, out of scale and has had no regard to the amenity of neighbouring properties.
- This development has adversely impacted on shared boundary wall and the works have encroached onto land outside of the appellant's legal interest.
- The shed structure is in effect a further extension to the property.
- The Board is requested to uphold the decision of the Planning Authority.

6.3.3. The Third-Party Observer's submission received by the Board from Jamie Fitzgerald indicates that they have an address of No. 2 Churchyard Lane sets out their support

of the development sought under this application and indicates that they are proposing a similar extension to the rear of their property so that they can more satisfactorily meet their housing need.

## **7.0 Assessment**

### **7.1. Overview**

7.1.1. Having undertaken an inspection of site, having had regard to the relevant planning policies, provisions and guidance pertaining to the subject site, the nature and scale of the development sought under this retention permission and planning permission application, the submissions received by the Board during its determination of this case through to having regard to the historical development on site and the pattern of existing and permitted development in its setting, I consider that the main issues that arise in this appeal case relate to the Planning Authority's given reason for refusal together with the concerns raised by the Third Party Observers. I consider that these can be assessed under the following broad headings:

- Principle of the development
- Residential Amenity Impacts
- Visual Impacts
- Other Matters Arising.

7.1.2. The matter of 'Appropriate Assessment' also requires examination. This I propose to examine separately under Section 8 of this report below.

7.1.3. Before I commence my assessment for clarity I note the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place. Further, like any other planning application it should be assessed in terms of its contribution towards the achievement of the applicable zoning objective, the vision for the zoning objective and

its compliance as well as consistency with relevant planning policy provisions through to guidance at a local through to national level.

- 7.1.4. Secondly, having inspected the site and its immediate setting alongside having regards to available aerial and streetscape views of the site I raise it as an issue that the submitted documentation provided with this application and on appeal fail to provide an accurate representation of what the site context was prior to the carrying out of works for which retention permission and also accurately reflect what is sought for permission.
- 7.1.5. For example, in relation to the proposed works this is described as consisting of 1 no. new velux window and all associated site development works relating to its provision. These works have already been completed. I am not therefore satisfied that this component of this planning application is accurately described in the public notices through to the documentation provided with this application.
- 7.1.6. In relation to the retention permission, these are described as consisting of a 2-storey extension, a small lean to shed and 2 no. velux windows only. Of concern, having inspected the site and having had regard to available aerial and streetscape views of the site is their inadequate provision of documentation on this file that accurately depicts the host dwelling, its site and immediate setting context, including relationship with adjoining properties prior to the carrying out of works. Alongside there is a lack of adequate information setting out the site and its immediate topography context before the said retention works took place. Through to details on manmade as well as natural features on site and bounding the site as well as servicing the site. Overall, it is my view that the documentation provided fails to provide an accurate description of the site and its setting situation before the works to it were carried out.
- 7.1.7. Similarly, I am not satisfied that the nature and the scope of works for which retention is sought are accurately depicted. Moreover, this concern is added to by an additional concern that the actual quantum of change that has been carried out on site to facilitate the proposed development for which retention is now sought may include works that are unauthorised.
- 7.1.8. In this regard the elevational changes to the front façade and chimney stack are not accurately shown. Other inaccuracies include the roof structure over the extension that projects at attic level is shown as having a roof structure flush with its western gable,

lean to shed built form, the velux window in the southern elevation over the extension containing the kitchen, the built form of the shed structure, the relationship between the double patio doors and the roof structure it opens onto, the extent of concrete surfacing through to its relationship with the extensions, the additional features constructed to the rear including the depiction of boundary treatments through to the level of augmentation of the site are not accurately depicted and/or reflective of what's apparent on site.

- 7.1.9. These concerns are further added to by the fact that the drawings show slightly differing red line areas and with works appearing to have been carried out on what are shared boundary walls and/or boundaries outside of the applicant's legal consent to carry out. With the documentation providing no documentation setting out with legal certainty that the applicant has confined the works to lands that are solely in their interest and where the works have interfered with through to over sailed or encroached onto Third Party lands that this was done with the consent of that impacted party.
- 7.1.10. In relation to these concerns whilst I note that Article 22 of the Planning & Development Regulations, 2001, as amended, requires applications that include land outside of the legal interest of the applicant to include a letter of consent of the affected landowner, the Planning Authority validated this application. Though through their examination of this application they indicate that were not satisfied that the development did not interfere with Third Party lands and that this matter would require further information to address. This was not sought due to the substantive issues raised by the Planning Authority that could not be overcome by way of further information and in this type of context the request for further information on this matter was not deemed to be warranted.
- 7.1.11. Given the Third-Party concerns and having inspected the site setting I am not satisfied that this matter can be satisfactorily addressed without a request of further information by the Board should it be minded to grant permission as it is my view on the basis of the information before me that the applicant has not demonstrated sufficient legal interest to make this application which includes works that appear to interfere with lands outside their legal interest.
- 7.1.12. Notwithstanding, the Board however may also consider that the various issues raised in terms of interference with Third Party land through to structural integrity issues for

the period stone wall separating No. 1 Churchyard Lane and No. 1 Avondale Park, the adjoining property to the south to be civil matters. With these I note arising from what it would appear to be its use as a retaining wall for the changed ground levels arising from the works carried out on site to facilitate the extension and the amended rear garden levels. Also, the shed structure for which retention is sought which appears to be attached through to oversail and project above part of this wall with a junction of this wall also appearing to be compromised by these works.

- 7.1.13. The Board may be satisfied that this is a civil matter for resolution between the parties concerned, subject to the applicant providing sufficient demonstration of legal interest, to have made this application. As in all such cases, the *caveat* provided for in Section 34(13) of the Planning and Development Act 2000, as amended, applies which stipulates that a person shall not be entitled solely by reason of a grant of permission, including retention permission, to carry out or to have carried out any development, as a grant of permission would not in itself confer any right over private property.
- 7.1.14. I also note that unauthorised development falls outside the remit of the Board and falls within the jurisdiction of Cork City Council.
- 7.1.15. My final concern in relation to the comments made by the Appellant in their appeal submission that relate to the Planning Authority's procedural handling of this case. On this matter I note that the Board is not an ombudsman and as such I do not propose to comment further on this matter other than to say that the current application before the Board by way of this 1st Party appeal is assessed on an entirely *de novo* basis. That is to say that the Board considers the proposal having regard to the same planning matters to which a Planning Authority is required to have regard when deciding on a planning application in the first instance.
- 7.1.16. Given the substantive concerns raised above it is in my view a significant concern that the development sought under this application provides conflicting details on the situation before the works were carried out, the nature and scope of the works carried out through to misrepresents that the velux window sought for planning permission has yet to be carried out. This is coupled with the ambiguity over the extent of the applicant's interest in terms of carrying out of works that potentially has interfered with Third Party lands in the absence of demonstrating the necessary consent. In this context it could also be considered that the public notices do not provide a brief and

accurate reflection of the nature and scope of development for which retention is sought but this also being the case with the suite of documentation provided.

- 7.1.17. In such circumstances the Board may wish to dismiss the appeal on the basis that a new application would be required to address these concerns in a proper manner that not only provides a proper suite of information from which a determination of this application could be made but also providing an opportunity to ensure that the public had adequate opportunity to engage in the public consultation phase for a development that is reflective of what is in actuality sought for regularisation through the making of a planning application.
- 7.1.18. Alternatively, to this the Board may consider further information to be sought with this addressing the discrepancies between the before and after situation including re-advertising of the development providing a more accurate brief description of the actual development sought for retention.
- 7.1.19. Notwithstanding, given the concerns raised in the following sections of this report, neither option overcomes the substantive visual and residential amenity issues that arises from this development lack of consistency with relevant local planning provisions for alterations and additions to existing dwellings as provided for under the Cork City Development Plan, 2022-2028.

## **7.2. Principal of the Proposed Development**

- 7.2.1. The site forms part of a larger parcel of mature residential in character suburban land that is zoned '*ZO-01 Sustainable Residential Neighbourhoods*' under the applicable Development Plan. The objective for such lands is to protect and provide for residential uses. This development relates to alterations and additions to an existing dwelling. Given that residential development is permissible on 'ZO-01' lands, I am satisfied that it can be concluded that the general principle of development is acceptable, subject to safeguards.

## **7.3. Residential Amenity Impact**

- 7.3.1. The Planning Authority's single reason for refusal essentially considered that the proposed development would seriously injure the amenities of properties in its vicinity by virtue of the design, massing, and scale of the development for which retention is sought. The level of undue residential amenity impact was such that the development

was considered to conflict with the provisions of the Development Plan. With reference made to the overall zoning objective of the site, ZO 1.2, Sections 11.142 and 11.143 of the Development Plan. It was further considered that the proposed development would not give rise to an acceptable standard of residential amenity for occupants of the dwelling.

#### *7.3.2. Residential Amenity for Future Occupants*

In relation to these concerns, I firstly note that I consider that the design of the alterations and extensions to what was a modest vernacular cottage are not sensitive to the constraints of the site. On the basis that the overall design of the alterations and extension to the host dwelling does not achieve adequate or qualitative levels of daylight and natural ventilation for its internal spaces.

In this regard of particular concern is what is essentially an additional bedroom provided beyond the original rear elevation of the host dwelling (Note: Bedroom 2). The design has sunken this additional room by way of its western and southern walls to the height of its flat roof that projects beyond the attic level over by deep soil. This deep soil has a ground level that matches the adjoining rear garden level. There is one modest in height and width window that opens onto a restricted in width corrugated plastic roof covered passageway that links by way of a number of steps to main rear garden to the west with a difference in ground levels of over c2m. With the rise in steps commencing in close proximity to the west of this window. This window has a northerly aspect and addresses what appears to be a tall boundary wall with the adjoining property of No. 2 Churchyard Lane. The drawings on file are photocopies and not accurate to scale. The space between this window and the boundary wall appears restricted in its width and one where it is likely to be significantly overshadowed throughout most of the day throughout the four seasons of the year.

Similarly, Bedroom No. 1 would be served by a single window. However, I acknowledge that light and natural ventilation to this window would not be as obstructed due to its eastern aspect. With it opening onto the semi-private front garden area that is bound on its eastern and northern side by low perimeter boundary features. Of concern however is that Table 5.1 of the Quality Housing for Sustainable Communities, 2007, for a two-bedroom four-person dwelling sets out that the area of



a double bedroom should at least be 11.4m<sup>2</sup> . Bedroom 1 falls short of this minimum standard.

In relation to the WC at ground floor level is a modest WC for which there is no natural light or ventilation indicated. Nor is it a space that would appear to meet the requirements set out under the Building Regulations for both ventilation and universal access. There is no provision showing any mechanical venting of this room to provide appropriate air exchange and removal of moisture laden air. Also, there is a concern that this room fails to meet the minimum floor to ceiling heights.

Additionally, the ground floor level hallway is dependent on the front and back door for natural light penetration and ventilation with no windows serving this space. Notwithstanding, this is not a habitable space but, in this context, could have provided additional light penetration and natural air flow for the ground floor level.

Of concern the aggregate floor area of Bedroom 1 and 2 at ground floor level falls below the 25m<sup>2</sup> set out under Table 5.1 of the Quality Housing for Sustainable Communities, for a two-bedroom four-person dwelling. And of further concern it is not demonstrated that the floor-to-ceiling height of these rooms meet minimum floor to ceiling heights set out in Building Regulations.

At upper floor level the living room area is lit and ventilated by one modest in height and width velux light that is *in situ*. This room is unlikely to meet the standard minimum floor to ceiling height for any of this rooms floor area. The drawings provided with this application fail to provide relevant cross sections of this new attic living room that would demonstrate that this is not the case.

With this being said, I am of the view that the floor area of the living room space does not meet the minimum standards set out under Table 5.1 of the Quality Housing for Sustainable Communities, for a two-bedroom four-person dwelling (Note: 13m<sup>2</sup>) and I raise question marks over this room's compliance with Building Regulations in terms of floor to ceiling heights. Further, the aggregate living area meet the standards set out in this document (Note: 30m<sup>2</sup>) for this type of dwelling unit.

There are also in my view question marks over the floor-to-ceiling height of this combined kitchen and dining room.

Moreover, there is no natural light or ventilation of the upper floor landing with two velux windows and a double door providing light and natural ventilation to the kitchen/dining space. As said in relation to the ground floor level hallway this is not a habitable space, however, additional light and natural ventilation of this space could improve the internal amenity of the rooms at attic level.

The combined kitchen and dining space is the only room where a level of cross ventilation can occur and despite the orientation as well as the presence of both tall manmade and natural boundaries to the west and south particularly this room should receive adequate levels of daylight whereas the other spaces and rooms in this dwelling as proposed in this application would not.

Moreover, in terms of the rear private amenity the changes to the rear ground levels through to the removal and/or alteration of some boundary features results in the amended rear private open space one that not only gives rise to more overlooking onto other properties in its vicinity. But also due to the manner in which the balcony is designed use of this space and in the absence of any adequate screening along the northern boundary this space is a space that is likely more overlooked than its previous context. Thus, diminishing the quality of private amenity space for enjoyment of occupants of this dwelling.

In relation to this particular concern, I note that Objective 11.5 of the Development Plan sets out that in considering private amenity space for houses that regard would be had to its demonstratable good quality including the degree of overlooking through to impact on residential amenity of properties in the vicinity.

I also note in relation to the Quality for Sustainable Communities standards that the resulting dwelling unit as shown in the submitted documentation accompanying this application also fails to demonstrate a minimum internal provision of storage space for occupants of this dwelling.

My final note relates to the rear ground floor projecting extension which is essentially a sunken element with only part of its northern elevation exposed. The remainder below ceiling height of Bedroom 2 is below the adjoining ground levels to the west and south. Such basement structures are required to demonstrate compliance with Section 10.120 of the Development Plan. The documentation provided with this application does not demonstrate compliance with Section 10.120 of the Development

Plan's requirements. Nor has the applicant provided with their application and on appeal any detail on the nature of the ground conditions, any retaining features that may have been required given the augmented ground levels that would appear to have occurred on this site through to any structural design strategies for this element of the development sought for retention. The surface water drainage measures are also unclear.

#### Conclusion:

In relation to the above concerns, I note that Section 11.3 of the Development Plan sets out an objective for high quality function design for housing developments with this including adequately sized rooms with comfortable and functional layouts that are fit for purpose. It identifies qualitative aspects as including but not limited to dual aspect, adequate ventilation, and daylight. I am not satisfied that this has been achieved in terms of the alterations and additions to No. 1 Churchyard Lane.

Moreover, I am not convinced that the internal residential amenity standard of this 2-bedroom four-person dwelling is one that firstly is consistent with ZO 1.2 of the Development Plan which sets out that residential amenity is a central objective. Nor is it consistent with Section 11.106 of the Development Plan which sets out that the functional spaces of dwellings and its living spaces are a key determinant of its liveability alongside its adaptability to new household requirements in fulfilling lifecycle needs. With Section 11.107 of the Development Plan setting that it will ensure that all houses are designed to excellent design standards.

This further reinforces my concerns that the alterations and extensions sought under this application to what I acknowledge is modest vernacular cottage do not demonstrate a qualitative outcome for its occupants or is it one that is likely to meet some of the most basic building regulation standards for habitable rooms in a dwelling unit. This latter concern I note is one that falls outside the remit of the Board on the basis that they are subject to other regulatory controls and legislative provisions. Notwithstanding, this as said the applicant has failed to demonstrate compliance with Section 10.120 of the Development Plan in relation to the basement element.

At a national planning context, I finally note that Section 4.4 and 5.5.1 of the Quality Housing for Sustainable Communities guidance document, which in a consistent manner sets out that dwellings should provide appropriate accommodation, good

quality living environments and that they should be designed so that they provide a high-quality environment that meets the needs and, as far as possible, the preferences of the residents. Further, the standards referred to in the said document are consistent with those set out in the Design Manual for Quality Housing, Department of Housing, Local Government and Heritage, and the more recently adopted Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024, which advocates a qualitative design response for housing developments.

With the variance in terms of qualitative and quantitative outcomes for occupants being such that they are such that they exceed a level of flexibility to be applied on a site which has the width and depth to accommodate a more site responsive design to achieve additional habitable area without also giving rise to the level of adverse impact on adjoining properties as this design approach results in.

Thus, I am not satisfied that this development is one that accords with the proper planning and sustainable development of the area on the basis of the substandard design and residential amenity outcome for occupants of a two-bedroom four person dwelling type. I consider that the substandard residential amenities are in itself sufficient basis to warrant a refusal of permission of the development sought under this application.

#### *7.3.3. Residential Amenity Impact on Properties in the Vicinity*

In relation to the adjoining property to the south, No. 1 Avondale Park, I accept that the relationship between these two properties have been significantly changed by the nature of the development carries out to the rear of No. 1 Churchyard Lane. Particularly in terms of level of overlooking arising from the raised balcony. The augmented levels to the rear of the site, the visual incongruity of the additions including the shed structure which appears to be built onto and projecting above the historic boundary wall which in itself is also visually overbearing as well as out of character with its setting.

Further, the removal of natural features including amendments to perimeter boundaries all have resulted in significant diminishment of the level of privacy between these two properties. Whilst there is a level of overlooking to be expected in a suburban city location like this given the established tight grain nature of its pattern of

its mainly one and two dwellings, I consider the level of overlooking that arises from the balcony level and augmented ground levels adversely increase overlooking of the rear of No. 1 Avondale, including its rear private amenity space.

In relation to the adjoining and neighbouring properties to the north of No. 1 Churchyard Lane, I consider that similarly the balcony feature accessed from the attic level kitchen/dining room projection, the augmented ground levels and the treatment of the southern boundary is such that it gives rise to direct overlooking of these adjoining and neighbouring properties. It is also likely that this projecting extension and its overall built form, height, orientation through to relationship with these properties who have at this point restricted in width plots is such that it has also given rise to additional overshadowing.

There is in my view a lesser potential for adverse impact due to the lateral separation distance between the rear elevation of the upper-level extension and properties in the residential scheme of Ashcroft to the west.

I am also not satisfied that the design and layout of the alterations as well as additions sought under this application to the rear of the host dwelling have had regard to minimising the potential for adverse impact on properties to the north and south. Nor are there any measures proposed with in this application to reduce potential residential amenities that arise from this design. For example, adequate screening measures.

I note that the Development Plan under Section 11.142 states that: *“the design and layout of extensions to houses should have regard to the amenities of adjoining properties particularly as regards sunlight, daylight and privacy”*.

Additionally, the said plan under Section 11.143 sets out the consideration for extension to existing dwelling houses with criteria 7 stating that: *“care should be taken to ensure that the extension does not overshadow windows, yards or gardens or have windows in flank walls which would reduce the privacy of adjoining properties”*.

I am not satisfied that the development sought under this application is consistent with these requirements and in turn the residential zoning of the site that seeks to balance the protection of existing residential amenities with residential amenity improvements (Note: ZO 1). With Section ZO 1.2 of the Development Plan setting out that development in this zone that does not support the primary objective of this zone will be resisted.

Moreover, Section ZO 1.4 sets out that whilst uses that contribute to sustainable residential neighbourhoods are deemed to be acceptable in principle subject to them not detract from the primary objective of protecting residential amenity and not conflict with other objectives of the Development Plan.

Furthermore, Section 11.5 of the Development Plan, sets out the overarching development principles for development in Cork City. This includes but is not limited to contribute to the creation of a sustainable city and new development that does not give rise to undue detrimental impacts on its receiving environment.

#### Conclusion

Whilst I accept that the original end of terrace dwelling was modest in its floor area, I am not satisfied that the alterations and additions sought for approval under this application represent a qualitative and site or context sensitive design. To permit the development sought under this application would be contrary to the proper planning and sustainable development on the basis of it giving rise to serious injury to residential amenities of properties in its vicinity.

#### **7.4. Visual Amenity Impact**

- 7.4.1. The Planning Authority's reason for refusal included concerns that the design, massing, and scale of the development would have a negative impact on the character of the area.
- 7.4.2. In relation to this concern in addition to the alterations and extension to No. 1 Churchyard Lane, I note that Section 11.12 of the Development Plan sets out that all new development should enrich the urban qualities of the city and that a high standard of design is essential to this process.
- 7.4.3. Additionally, Section 11.142 of the Development Plan sets out that extensions to houses should have regard in their design to the character and form of the existing building. Advising that it should be respected and that external finishes through to window types should match the existing.
- 7.4.4. Further Section 11.143 of the Development Plan sets out that extensions should follow the pattern of the existing building as much as possible (Note:11.143(1)); be constructed with similar finishes and similar windows to the existing building so that they would integrate with it (Note: 11.143(2)); roof form should be compatible with the

existing roof form and character (Note: 11.143(3)); and, dormer extensions should not obscure the main features of the existing roof (Note: 11.143(4)).

- 7.4.5. I am not satisfied that this proposal in terms of its overall design, built form, lack of subordination to the main roof structure through to the modulation of solid to void and treatment of materials are such that they sit comfortably and respectfully with the host dwelling.
- 7.4.6. There also appears to be a loss of original front boundary with the replacement of an unsympathetic timber fencing and gate through to unsympathetic interventions to the characterful period stone and part lime shell rendered walls that bounds the southern perimeter of the site.
- 7.4.7. Further the gable fronted rear addition, raised balcony created over a sunken basement level is at odds with the pattern of development to the rear of properties addressing the southern side of Churchyard Lane to the north of its junction with Avondale Park. It together with the overall design and built form of the alterations and addition lacks subservience and harmony with the host dwelling and its terrace group.
- 7.4.8. Moreover, the shed structure is of a height that when viewed from the public domain it exceeds the eaves height of the host dwelling with its timber cladding and its corrugated roofing over through to metal detailing being at odds with the character and pattern of development in this area.
- 7.4.9. Conclusion: Having regard to the above, I am not satisfied that the development sought under this application is one that demonstrates compliance with the local planning provisions set out in the Development Plan for extensions to dwellings and if permitted it would adversely detract from the period character of its host dwelling and the terrace group it forms part of. As well as would give rise to undesirable precedent for other similar developments that would be at odds with the character and pattern of development of this locality. For these reasons the development sought under this application would be contrary to the proper planning and sustainable development of the area.

## 7.5. Other Matters Arising

- 7.5.1. **Devaluation of Property:** I have no information before me that would provide evidence that the development sought under this application would lead to devaluation of property in the vicinity.
- 7.5.2. **Servicing:** The foul drainage, surface water through to water supply arising from the development sought under this application could be dealt with by way of standard suitably conditions should the Board be minded to grant permission.
- 7.5.3. **Advisory Note:** Should the Board be minded to grant permission I recommend that it include an advisory note setting out the provisions Section 34(13) of the Planning and Development Act, 2000, as amended. It states that *‘a person shall not be entitled solely by reason of a permission under this section to carry out any development’* and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property.

## 8.0 Appropriate Assessment Screening

- 8.1. In accordance with Section 177U (4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that that the development sought under this application would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act 2000 is not required. This conclusion is based on:
- The serviced suburban location of this brownfield site. With this essentially consisting of modest alterations and additions to an existing dwelling connected to public foul drainage and water supply.
  - The lateral separation distance between the subject site and the nearest European site, which is Cork Harbour SPA (Site Code: 004030) and the nature of the urbanscape in between.
  - The limited zone of influence of potential impacts, restricted to the immediate vicinity of the proposed development.
  - The absence of meaningful pathway to any European site.



- Impacts predicted would not affect the conservation objectives of any European site due to the development sought under this application being outside the zone of influence.

## **9.0 Recommendation**

- 9.1. I recommend that permission should be REFUSED for the development sought under this application for the reasons and considerations set down below.

## **10.0 Reasons and Considerations**

1. Having regard to the pattern of development in the area and the scale of development proposed, it is considered that the alterations and extension sought to the host dwelling, by reason of its design, scale, bulk, built form and relationship with properties in its vicinity, would result in a substandard dwelling unit for occupants and would seriously injure the residential amenities by reason of visual obtrusion, overbearance, overlooking and overshadowing.

It is also considered that the development sought under this application would be out of character with the host dwelling and the pattern of residential development in the surrounding suburban area.

Further, the development sought under this application as a result of its lack of qualitative and quantitative design would conflict with the provisions of the Cork City Development Plan, 2022-2028, and the minimum internal standards for a dwelling unit of the type sought as recommended in the Quality Housing for Sustainable Communities, 2007.

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.*

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Patricia-Marie Young  
Inspector

28<sup>th</sup> day of June, 2024.

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	<b>ABP-318590-23</b>			
<b>Proposed Development Summary</b>	<b>Retention permission for a 2-storey extension, a small lean-to shed and 2 no. velux windows. Planning permission is also sought for the addition of 1 no. new velux window and all associated site development works.</b>			
<b>Development Address</b>	<b>No. 1 Churchyard Lane, Ballintemple, Cork City.</b>			
<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>	✓	
		<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>				
Yes		N/A	EIA Mandatory EIAR required	
No	✓		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>
No	✓		<i>This application retention application relates to alts and adds to an existing dwelling &amp; is therefore not a class specified under Part 2, Schedule 5, PDR (as amended).</i>	No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

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

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

28<sup>th</sup> day of July, 2024.

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

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