



An
Bord
Pleanála

Inspector's Report

ABP-319489-24

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|--------------------------------|-------------------------------------------------------------------------------------|--------------------|---------------------------|
| Development | Dwelling, access, boundary walls, connection to services, and all associated works. | | |
| Location | Ashwell's Hill, Deerpark Road, Cashel, Co. Tipperary. | | |
| Planning Authority Ref. | 2360394. | | |
| Applicant(s) | Jimmy Kao & Ling Mee Wong. | | |
| Type of Application | Permission | PA Decision | Refuse permission |
| Type of Appeal | First Party | Appellant | Jimmy Kao & Ling Mee Wong |
| Observer(s) | Denis & Laura Vahey. | | |
| Date of Site Inspection | 1 st August 2024 | Inspector | Des Johnson |

Context

1. Site Location and Description.

1.1 The site is located in the south-west outskirts of Cashel. It is an undeveloped site to the south side of Ashwell's Hill, a cul de sac off Deerpark Road.

1.2 The site is at the end of the cul de sac, and backs on to single storey dwellings which front on to Deerpark Road. The site is overgrown and is raised relative to the cul de sac.

2. Description of development.

2.1 The proposal is for the construction of a dwelling, access, boundary walls, connection to services, and all associated works.

2.2 The gross floor area of proposed works is stated to be 269sqm, and the site area is 0.044ha. It is proposed to connect to existing services.

2.3 The proposed dwelling is two-storey, and has 4 bedrooms. External finishes include blue/black slate to the roof, dyed render and selected timber to front façade, and dyed render to other external walls. Windows are to be uPVC/Aluminium.

3. Planning History

Reference 05/1436 – Permission granted for site enabling works to facilitate construction of 16 no. dormer detached dwelling houses, to include construction of site entrance, access road and footpaths, and all associated site works.

Reference 05/1442 – Outline Permission for 16 no. plots for dormer detached dwelling houses at land north of Deerpark Road.

4. National/Regional/Local Planning Policy (see attached)

4.1 Cashel and Environs Development Plan 2009, as varied – the site is zoned Existing Residential with the objective to preserve and enhance existing residential amenity, ensuring that any new development does not result in excessive overlooking of existing residential properties, does not reduce general safety for existing residents, and does not reduce the usability and security of existing public and private open space.

5. Natural Heritage Designations

5.1 Lower River Suir SAC – c. 3.8km to the west.

Development, Decision and Grounds of Appeal

6. PA Decision.

6.1 The planning authority refused permission for two reasons, summarised as follows:

1. Overbearing impacts and negative impact on the amenities of existing residential property to the south, due to scale, massing, and location of the proposed development. Overlooking of adjacent serviced sites. The requirement for retaining walls will result in a substandard form of private amenity space for the occupants of the proposed dwelling. Contrary to Policy DM1 (Development Standards) and Section 9.1 (Land Use Zoning objectives) of the Cashel and Environs Development Plan 2009, and the proper planning and sustainable development of the area.

2. The proposed development is to be serviced by way of services located in the private road to the front of the site and outside the red line boundary for the application and, as such, cannot be considered under the application. The proposed development is contrary to the proper planning and sustainable development of the area.

6.2 The Planner's Report, dated 27.07.2023 states that the site is located within the development boundary for Cashel on lands zoned 'Residential Existing' and with the objective to preserve and enhance existing residential amenity, ensuring that any new development does not result in excessive overlooking of existing residential properties, does not reduce general safety for existing residents, and does not reduce the usability and security of existing public and private open space. The site is serviced by an unfinished road and footpath, and services are not taken in charge. The nature of the proposed development is acceptable in principle. The parent permission at this site refers to the provision of detached dormer dwellings. There is concern in relation to the proposed massing, overbearing impact, and overlooking. The overall design and scale are not satisfactory and not in line with the zoning objective. Further Information (FI) is recommended relating to revised design, boundary treatments, legal entitlements, water/wastewater services, site services, and S 97 exemption.

6.3 In response to the request for FI on 21st February 2024, Fortress Planning submitted the following:

- The request for a cross-section through the site and adjoining site to the SSE was burdensome, and would require permission to access 3rd party lands. An alternative was agreed in principle including moving the building

forward on the site, centring the building on the plot, reducing the overall size of the building, and moving rear first floor windows to side elevations.

- Submission of a revised site layout plan 23FPC008-02 Rev. P2 indicating proposed boundary treatment, with boundary types and heights indicated.
- An area for private open space is not stated in the Cashel & Environs Development Plan 2009, but reference to the Thurles & Environs Development Plan 2009, gives a figure of 60sqm. A total of 71sqm is achieved in the proposed development.
- A Site Drainage Layout is submitted showing storm network and discharge. Details of a condition survey of sewers and water pipes is included. An application has been made to Uisce Eireann.
- An application has been made for a S97 Certificate.

6.4 The Planner's Report, dated 13.03.2024 (following the submission of Further Information notes the following:

- Ground levels are to be reduced by c. 2m
- The overall dwelling size is reduced by 32sqm, and height of dwelling at 7.539m remains the same
- The dwelling is centred on the plot
- First floor windows to the rear are omitted, and bedroom windows are included on the eastern elevation (overlooking site no.8), and on the western elevation (overlooking site no.10) serving a walk-in wardrobe
- The rear boundary treatment is shown as a 1.2m high boundary wall.

It was indicated to the 1st party that the proposal for a two-storey dwelling on this site was not considered to be a favourable design response. The applicant has not provided a cross section showing impacts on the existing residential property to the south, but has provided a contiguous elevation drawing showing the proposed dwelling and the existing neighbouring dwelling to the west. Significant concerns remain in relation to the scale and massing of the proposed 2-storey dwelling. The proposed development will have overbearing impacts on the property to the south, and detract from its residential amenity. There would be impacts on the adjoining serviced sites. Site levels will necessitate the

construction of retaining walls to the southern and eastern boundaries. The contiguous elevation submitted with FI indicates that required retaining walls could be c.3m at the highest location. Without the cross section requested, it is difficult to fully assess the impact of the retaining wall on the property to the south i.e. a fall from height. The planning authority is not satisfied that the Further Information response has addressed concerns with respect to the impacts on the residential amenity of the property to the south. The proposed development represents overdevelopment and an inappropriate design response. There would be negative impacts on the property to the south, and on the development potential of the adjoining serviced sites. The proposed development is contrary to the land use zoning objective for the site.

A letter from Kingston & Co. Solrs was submitted with FI (dated 21.02.2024). This includes a Deed of Transfer relating to the site dated 8th June 2009 from Liam Campion Construction Ltd. to Ronan and Catriona Blanchfield. The 1st party purchased the site from the Blanchfields. Roads and services have not been taken in charge. It remains a matter for Liam Campion Construction Ltd to comply with the covenants and conditions set out in the Deed of Transfer.

7. First Party Appeal and Observation.

7.1 The grounds of appeal may be summarised as follows:

- There would not be overbearing impacts on the existing residential property to the south. The proposed house is in excess of 22m from the external rear wall to external rear wall of the southern neighbour, and overlooking cannot be legitimately established. During consideration of the application (and request for Further Information), the planning authority did not require a topographical/level survey, but in response to the neighbours' concerns, the 1st party moved any first-floor window to the sides. It would be up to the developers of adjoining sites to resolve overlooking in their designs. The window in the west façade lights a walk-in wardrobe and could be frosted/obscured.
- In response to Further Information, the 1st party moved the position of the proposed dwelling 1.8m forward from the original position, ensuring private open space to the rear and protection to the southern property. The proposed dwelling was centred on the site, the location of the

entrance was changed and car parking was moved to the front yard, and the overall area of the building was reduced substantially, with the ground floor reduced by 15sqm and the first floor reduced by 17sqm.

- The retaining wall to the rear demonstrates that the site is lower than the southern site, thereby reducing the overall impact on that property.
- The 1st party have permission to connect to services outside their site area. The second reason for refusal is disingenuous.

7.2 An Observation (Denis & Laura Vahey) may be summarised as follows:

- The rear of the Observers property will be directly exposed by the proposed development. The proposed developments back window faces directly into the Observers living space within the suggested 35m separation, with the lack of screening measures due to the proximity of the proposed dwelling to the boundary wall exacerbating the problem.
- Previous permissions showed houses at a greater separation distance. The proposed boundary wall is a serious health & safety concern.
- The proposed development contradicts the style and character of the neighbourhood, due to its scale and mass. It will be an unsightly and incongruous structure. The proposed development could set a precedent for further similar developments.
- The proposed development would potentially be constructed over an existing sewer line, raising potential health & safety issues as well as environmental impacts
- The Observation includes a photograph of the rear of the Observers property.

8. PA Response

8.1 None on file.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development proposed, 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.

10. AA Screening

Having regard to the nature and scale of development, location in an outer urban area, connection to existing services, 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. The proposal is for the construction of a dwelling, access, boundary walls, connection to existing services, and all associated works. The gross floor area of proposed works is stated to be 269sqm, and the site area is 0.044ha. The access road and services are not taken in charge at this stage. The proposed dwelling is two-storey, has 4 bedrooms and is shown as 7.539m in height. External finishes include blue/black slate to the roof, dyed render and selected timber to front façade, and dyed render to other external walls.
- 2.2. The proposal was amended by way of further information submitted to the planning authority on 21st February 2024. The key amendments relate to a reduction in ground levels by c. 2m, reduction in the dwelling size by 32 sqm, siting the proposed development centrally on the plot and moving the dwelling 3.8m from the south-eastern boundary, the omission of first floor windows to the rear with the windows relocated to the eastern elevation (overlooking site no. 8) and the western elevation (serving a walk-in wardrobe and overlooking site no. 10), and rear boundary treatment shown as a 1.2m high wall.
- 2.3. I consider that the key planning issues in this appeal are as follows:
 - Site history and principle of development
 - Residential amenity impacts
 - Other issues

- Environmental assessments

Site History & Principle of Development

- 2.4. The site forms part of an unfinished housing development at Ashwell's Hill. By Orders dated 22nd December 2005, Permission was granted for site enabling works to facilitate the construction of 16 no. dormer detached dwelling houses, to include construction of site entrance, access road and footpaths, and all associated site works, and Outline Permission for 16 no. plots for dormer detached dwelling houses (Reference 05/1442). Both consents relate to the larger unfinished development, and both reduced the total number of units to 14. Condition no. 3 of Reference 05/1442 required that a permission granted consequent to the Outline Permission restrict the ridge height of each dwelling not to exceed 6.7m above existing ground level at the footprint of the dwelling, and that an 11m rear garden be provided at the rear of each dwelling. These consents are out of time at this stage, and the current proposal for permission is not consequent to the Outline Permission granted under Reference 05/1442.
- 2.5. In October 2007, under Reference 07/1499, Permission was refused for construction of a semi-dormer dwelling to connect to existing foul and surface water sewers on plot no. 6, for reasons that the application for permission was consequent on the previous Outline Permission but differs significantly from that Outline Permission, and prematurity by reason of an existing deficiency in infrastructure. In June 2008, under Reference 08/446, permission was granted for a dwelling house on plot no. 8 (adjacent to the east of the current appeal site).
- 2.6. The site is zoned Existing Residential in the Cashel and Environs Development Plan, as varied. Having regard to the planning history for the larger site, and the zoning objective for the area, I consider that the proposed development is acceptable in principle.

Residential Amenity

- 2.7. There are two key issues arising in respect of residential amenity impacts. The first relates to the adequacy and usability of the private amenity space to be provided with the proposed dwelling, and the second relates to the impact of the proposed dwelling on existing adjoining properties fronting on to Deerpark Road.

- 2.8. The original submission dated 8th June 2023, shows the proposed dwelling set back 2.239m from the south eastern site boundary. I consider that this would not provide an acceptable form of private amenity space. No other private amenity space is shown. The FI submission shows the proposed dwelling moved forward on the site and a separation of 3.801m between the proposed dwelling and the south eastern site boundary. The 1st party contend that this provides for 71sqm of private amenity space and that is adequate. The planning authority has concerns regarding the usability of this area as private amenity space having regard to the nature and height of the site boundary, consisting of a retaining wall topped by a boundary wall. I note that there are strips of land, similar in width, to the north-eastern and south-western sides of the proposed dwelling which could also be used as private amenity space. On balance, I consider that there is adequate provision of usable private amenity space for the proposed dwelling.
- 2.9. The FI submitted includes for the repositioning of proposed first floor windows to the side elevations. One window serves a bedroom (bedroom 4) and the other serves a walk-in wardrobe. The remaining window at first-floor level in the rear elevation serves a WC and would be provided with frosted glazing. I conclude that the proposal as set out in FI would not give rise to overlooking of properties to the rear of the proposed dwelling. The impact of the relocated windows on the side elevations on the future development of adjoining serviced sites could be addressed by way of condition of any permission granted.
- 2.10. The Contiguous Elevation- Gable West Facing illustrates how the proposed dwelling would site on the site, and the positioning of the dwelling relative to the south-eastern boundary. I conclude that the proposed dwelling would not be unduly obtrusive when seen from the existing adjoining residential development to the south-east.

Other issues

- 2.11. The Observers contend that the proposed development would potentially be constructed across an existing sewer. There is no convincing evidence on file to support this contention, and the planning authority have not raised this as a specific concern. In these circumstances I do not consider that this would be a reasonable ground for refusal. The Observers raise health & safety concerns in relation to the

proposed boundary treatment, but there is no provision for access between the subject appeal site and the adjoining property to the south-east. The Observers state that the proposed development would conflict with the style and character of the neighbourhood. I submit that the existing pattern of development is a mixture of house types and designs, and that the proposed development would not be out of character with the existing pattern of development in the area.

Environmental assessments

- 2.12. Having regard to the limited nature and scale of development proposed, 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.
- 2.13. Having regard to the nature and scale of development, location in an outer urban area, connection to existing services, 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.

3.0 Recommendation

- 3.1. I recommend that permission be granted.

4.0 Reasons & Considerations

Having regard to the planning history relating to the larger site at Ashwell's Hill, the zoning objective for the area as set out in the Cashel and Environs Development Plan 2009, as varied, and the established pattern of development in the wider area, it is considered that the proposed development, subject to compliance with the following conditions, would provide for an acceptable form of development, would not be seriously injurious to the amenities or be out of character with existing residential property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 8th day of June, 2023, as amended by the further plans and particulars submitted on the 21st day of February 2024, 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 written agreed particulars.

Reason: In the interest of clarity.

2. The developer shall pay a contribution to the Planning Authority in respect of public infrastructure and facilities that is provided or is intended to be provided by or on behalf of the authority which will benefit development in the area of the Planning Authority. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

3. The windows serving bedroom 4 in the east facing elevation, and the walk-in wardrobe in the west facing elevation shall be high level windows. Details of the design of these windows shall be agreed in writing with the planning authority before development commences.

Reason: To protect the development potential of the adjoining serviced sites, and in the interest of the proper planning and sustainable development of the area.

4. All service cables associated with the proposed development (such as electrical, telecommunications and television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenities.

5. The developer shall enter into water and wastewater connection agreements with Uisce Éireann prior to commencement of development and all development shall be carried out in compliance with Irish Water Standards codes and practices.

Reason: In the interest of public health

6. Prior to the commencement of development, details of all external finishes, including the dwelling and boundary walls, shall be agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

Des Johnson
Planning Inspector
29th August 2024.

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.