



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319806-24

#### Development

(1) Retention of dwelling as constructed (change of design from that granted under PD35, PD982 & PD1337); (2) Retention of domestic garage as constructed; (3) Retention of the alterations to the boundary at the rear of the dwelling; (4) Permission for decommissioning of the septic tank and percolation area to the rear of the property and replacing it with a package pump system and rising main to connect to the public sewer on Navigation Road.

#### Location

Leadon, Navigation Road, Annabella, Mallow, County Cork

#### Planning Authority

Cork County Council

#### Planning Authority Reg. Ref.

24/4459

#### Applicant(s)

Melissa Leahy

#### Type of Application

Permission

#### Planning Authority Decision

Grant subject to conditions

<b>Type of Appeal</b>	Third Party v. Grant
<b>Appellant(s)</b>	John Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21 January 2025
<b>Inspector</b>	Cáit Ryan

## 1.0 Site Location and Description

- 1.1. The subject site is located in Mallow, approx. 30km north west of Cork city. The site fronts onto the heavily trafficked Navigation Road (N72), and is approx. 200m south west of Mallow train station. It is bound to the east by a walkway, Avondhu (Blackwater) Way, which is turn is bounded by the rail track at a much more elevated level. The rail Annabella Bridge, a protected structure, is approx. 20m north east of the site. The 50kph speed zone for Mallow begins immediately west of the site's vehicular entrance. The site area is 0.12ha.
- 1.2. There is detached dwelling on site, 'Leadon', which is of single storey appearance to the front and is partially 2-storey to the rear. The site is bounded to the west by a detached 2-storey dwelling, east of which are a number of detached dwelling houses fronting Navigation Road. The site is bounded to the rear (south) by a field.
- 1.3. To south of the existing rear boundary wall is a small, roughly rectangular-shaped area, shown on site plan as location of percolation area to be decommissioned. This area is overgrown and boundaries comprise a chainlink fence.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for:

- Existing dwelling as constructed (change of design from that granted under PD 35, PD 982 and PD 1337)
- Existing detached domestic garage as constructed
- Alterations to the boundary at rear of dwelling

Permission is sought to:

- Decommission existing septic tank and percolation to rear of the property and replace it with a package pump system and rising main to connect to the public sewer on Navigation Road

The gross floor area of the dwelling is stated as 267sqm, and the garage as 30sqm.

Documentation lodged includes a cover letter and an Uisce Éireann/Irish Water letter dated 25 January 2024, relating to a pre-connection enquiry.

Unsolicited Further Information was submitted on 24 April 2024, which includes additional details relating to the planning history of the subject site.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority made a decision to grant, subject to 18no. conditions.

Conditions of note are:

Condition 3: Surface water to be disposed of by soakaways and shall not flow onto public road, footway or adjoining property.

Condition 4: Sight distances of 50m shall be provided 2.4m back from public road edge. No vegetation or structure exceeding 1m with sight distance triangle.

Condition 7: Submit details for sewage pumping station and rising mains

Condition 8: Existing septic tank shall be decommissioned and removed

Condition 16: No construction to start until full connection agreement with Uisce Éireann (UE)

A further 3no. conditions relate to Uisce Éireann; Conditions 14, 15 and 17 refer.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Basis for planning authority's decision:

Executive Planner's report (08 May 2024): Screens out Appropriate Assessment, notes planning history and internal reports including that Archaeologist indicates 'no comments' on administration system, and notes third party observations. States development contributions are not applicable. Recommends grant subject to 18no. conditions.

##### **3.2.2. Other Technical Reports**

Area Engineer's report (07 May 2024): Notes supplementary further information indicates side entrance on previous application on site. Recommends grant subject to 9no. conditions.

Water Services report (07 May 2024): Notes existing sewer shown by applicant is not entirely correct. Main sewer traverses third party lands and only traverses the public road at Kennel Hill junction. No objection in principle but further engagement required at connection agreement stage. Recommends 9no. conditions.

### 3.3. **Prescribed Bodies**

**Transport Infrastructure Ireland (TII)** letter dated 4 April 2024 states it has no observations to make.

### 3.4. **Observations to the Planning Authority**

2no. observations were received by the planning authority. The issues raised are similar to those raised in the grounds of appeal.

## 4.0 **Planning History**

### Subject Site

**P.A. Ref. PD 35:** Erection of dwelling granted in 1966.

**P.A Ref. PD 982:** Extension to dwelling granted in 1985. This was not implemented.

**P.A. Ref. PD 1337:** Extension to dwelling granted in 1990.

### Adjoining Site

**P.A. Ref. 05/55010 and ABP Ref. 211846:** Permission granted in 2005 to construct dwellinghouse for bed and breakfast accommodation use at Navigation Road. The Board's Reasons and Considerations refer to the proposed development involving the replacement of a larger building having a similar use. This site is located directly west of the subject (Leadon) site, and a replacement house has been constructed.

## 5.0 **Policy Context**

### 5.1. **Cork County Development Plan 2022-2028**

The site is zoned Objective ZU 18-9: Existing Residential/Mixed Residential and Other Uses. Appropriate Uses include residential development.

The site fronts onto Scenic Route S14: Road between Mallow and Roskeen Bridge.

The site is not within the High Value Landscape designation, which is approx. 100m to east, on the opposite side of the rail line.

Mallow Architectural Conservation Area is approx. 100m to east. Annabella Bridge, a rail bridge, is a protected structure (RPS ref. 2431) approx. 20m to north east.

## **5.2. Natural Heritage Designations**

The site is not located within or adjacent to any European sites.

The nearest European site is Blackwater River (Cork/Waterford) SAC (Site Code 002170), approx. 100m to south.

## **5.3. EIA Screening**

See completed Appendix 1 - Form 1 on file. Having regard to the nature and type of development proposed, it is not considered that it falls within the classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended), and as such preliminary examination or an environmental impact assessment is not required.

## **6.0 The Appeal**

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

The third party appeal is from John Walsh, owner of Riverside House, the dwelling house to west. The grounds of appeal may be summarised as follows:

#### Windows:

- 6no. windows face third party's property. Decision granted retention for all without conditions. 4no. 'upper' windows face third party's property. 2no. 'lower' windows are somewhat shielded. Windows are marked on photos.
- Window 1: Drawings on PD 35 do not show windows facing west. Drawings on PD 982 show new bow window in existing opening. Existing opening correlates with Window 1. After PD 35 and before PD 982 were granted,

Window 1 was installed. Requests Board to (1) remove Window 1, (2) replace with frosted glass or (3) refuse retention, to prevent overlooking.

- Windows 2 and 3: Drawings on PD 1337 do not show Windows 2 or 3 on western elevation. Requests Board to (1) remove windows, (2) replace with frosted glass or (3) refuse retention, to prevent overlooking.
- Window 4: Currently contains frosted glass as required by Condition 4 of PD 1337, for upstairs landing window. Current application does not indicate this. Requests condition that it continues to be frosted glass.
- Window 5 serves an en-suite window and presently has frosted glass. There is no condition on PD 1337 requiring same and current application does not show this. Requests condition that Window 5 contains frosted glass.
- Window 6: Satisfied with the decision as issued in respect of Window 6.

#### Subsidence/Boundary wall

- Surface ground level was lowered by around 5 feet to facilitate the P.A. Ref. PD 1337 2-storey extension. Asks that measures be taken to prevent possible subsidence or ground slippage on third party's property and damage or collapse to boundary wall

#### Red line boundary

- Site plan showing a red line includes third party's boundary wall on west side.
- Requests amended site layout plan correctly showing the red boundary line to east of third party's boundary wall.

#### Storm water pipe

- A storm water pipe installed in the application property is discharging through the south boundary wall into adjoining lands owned by third party's mother. Asks that stormwater pipe is removed, hole in wall is sealed and storm waters be disposed of within application property. Notes Condition 3 of decision

#### Passageway to east

- Third party's mother has a right of way over passageway from Navigation Road to her lands. An entrance has been opened on east boundary of

application property onto passageway.

- Site plan on PD 35 does not show entrance and gate on eastern boundary, and is unable to locate same on PD 982. Location Map and Layout Map on PD 1337 marks 'side entrance' on eastern boundary.
- Board to decide as to whether the PD 1337 grant remedies opening of the entrance or whether retention should have been applied for at that time.
- If PD 1337 does not remedy opening of entrance, third party asks (1) entrance is removed and closed to match wall, (2) retention is refused, or (3) entrance is restricted to pedestrian access only, to preserve amenity of passageway.

## 6.2. Applicant Response

The applicant's response to the grounds of appeal is as follows:

### Windows

- Three of the six windows were approved under P.A. Ref. PD 1337 – Windows 4, 5 and 6. Windows 5 and 6 face a block wall and there is no overlooking.
- While drawings on the 1990 application do not show front section of the dwelling that existed at the time, it is obvious that the bedroom window to rear would need to be relocated to the western side – Window 3
- Windows 1 & 2 at upper level were in place when 1990 application approved.
- Window 1 was approved as a bay window on P.A. Ref. PD 982. Although this application was never constructed, precedence was set.
- The windows look onto the side elevation and area to front of house, and do not result in loss of privacy/residential amenity. There is a shed in neighbour's property outside the areas of Windows 3 and 4. There is no intention to change obscure glazing in Window 4.
- Mature planting within neighbour's property was removed in approx. 2013. Removal of this planting should be main concern. Aerial photo from 2000 shows neighbour's house prior to its demolition and replacement

Ground Levels and Structural Issues: These points are not planning related. The



building and boundary wall have been in place for over 30 years without issues.

Red Boundary Line: Red boundary outline is for identification at planning stage and does not have legal implications.

Storm Water Pipe: Applicant was not aware this pipe existed, and intends to now block this and redirect any surface water to soakaways on site.

Entrance via Passageway to East: Entrance can be seen on site layout on P.A. Ref. PD 1337, and established for in excess of 30 years. Respectfully suggests that a person who has a right of way over a lane has no influence on gates, etc.

### 6.3. **Planning Authority Response**

The planning authority has confirmed that it has no further comment.

### 6.4. **Further Responses**

The third party has responded to state that he reiterates the contents of his appeal letter of 27<sup>th</sup> May last.

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Impacts on Residential Amenities
- Drainage
- Site Boundaries and Side Entrance
- Other Issues – (1) Wastewater and (2) Condition 4

### 7.2. **Impacts on Residential Amenities**

7.2.1. For ease of reference, I refer in this assessment to the windows numbers as outlined in the grounds of appeal.

- 7.2.2. With regard to concerns raised in the grounds of appeal relating to windows on the western elevation of the subject dwelling, I note the cover letter lodged with the application outlines that the P.A. Ref. 1337 extension included 4no. bedrooms to the rear and is similar to what is now in place, and also that as it did not contain complete plans and elevations, it is not clear exactly what was in place prior to that application. The response to the appeal grounds draws attention to Windows 4-6 being shown and approved by P.A. Ref. 1337. Window 4 comprises obscure glazing serving a landing. On site inspection I noted that Windows 5 and 6 at lower ground floor level serve a bedroom and adjoining en-suite, and face a wall.
- 7.2.3. Windows 1-3 serve bedrooms and are approx. 1.5m – 2m from western boundary wall, as measured from plan. Based on the lodged drawings, these bedrooms appear to be at ground floor level. While the boundary wall is approx. 1.7m in height as measured from within the site, having regard to the adjoining ground levels, these windows are above or partially above this boundary. A small shed was noted within Riverside, a short distance from its eastern boundary to the subject site.
- 7.2.4. While I note the proximity and height of Windows 1-3 relative to the eastern site boundary, I note also that these windows are indicated to be at ground floor level. Overlooking of the adjoining Riverside property would be principally of its front and side garden areas. Having inspected the site, and noting the location of all 6no. windows on the western elevation highlighted in the third party grounds of appeal, and having regard to the subject dwelling's relationship to the neighbouring Riverside dwelling to the west, I consider that these windows do not result in undue overlooking of Riverside, and that the development proposed to be retained would not adversely impact on the residential amenities of this adjoining property.
- 7.2.5. Separately, I note other elements of the development proposed to be retained include the garage along the eastern site boundary bounding the walkway and the amended site boundary to the rear (south). I consider retention of same would not adversely impact on residential amenities of the adjoining property and would be acceptable.

### 7.3. **Drainage**

- 7.3.1. The grounds of appeal state that a storm water pipe in the subject property is discharging through the south boundary wall into adjoining lands, and notes

Condition 3 of planning authority's decision. The applicant response to grounds of appeal reiterates the content the Unsolicited Further Information (received 24 April 2024), which is that it is intended to block this and redirect any surface water to soakaways on site.

- 7.3.2. Condition 3 requires surface water to be disposed of within the site by means of soakaways and shall not be allowed to flow onto public road, footway or adjoining property.
- 7.3.3. I consider that in the event the Board was minded to grant permission, a condition similar to Condition 3 would adequately address concerns relating to surface water.

#### **7.4. Side Entrance and Site Boundaries**

##### Side Entrance

- 7.4.1. The grounds of appeal include that while the site layout plan on the subject application shows 'Existing Gate as per Original Drawing', the P.A. Ref. PD 35 site plan does not show entrance and gate on eastern boundary (to passageway), and notes that P.A. Ref. PD 1337 shows 'side entrance' on this boundary. The third party asks that if Board decide that P.A. Ref. PD 1337 does not remedy opening of entrance, that entrance is removed or restricted to pedestrian access only, or retention is refused.
- 7.4.2. On site inspection I noted that a wide gated entrance is in place north of the garage, adjoining the Avondhu (Blackwater) Way walkway to east of the site. This entrance is approx. 4m wide as measured from plan.
- 7.4.3. While noting the matters raised in the grounds of appeal relating to this entrance, and also the applicant's response to same, I note that the description of development does not include any reference to this entrance, and also that no works relating to same are shown on the lodged drawings.
- 7.4.4. For clarity, the development described in the public notices as retention of alterations to the boundary at the rear of the dwelling is further outlined in the lodged cover letter to relate to the small portion of ground at the rear (south) of the property, which was not shown on the original planning drawings.
- 7.4.5. Accordingly, as the side entrance does not form part of the development description,

I consider that this matter need not concern the Board for the purposes of this appeal.

#### Site Boundaries

- 7.4.6. The grounds of appeal raise concerns that the site layout plan includes outlining in red the third party's boundary wall on the west side.
- 7.4.7. The applicant's response to grounds of appeal states that the red line is for identification at planning stage only, does not have legal implications and any issues relating to legal boundaries or mapping are separate to the planning process.
- 7.4.8. Having regard to all information on file, including the matters raised by the third party and the applicant's response to same, in terms of legal interest, I am satisfied that the applicant has provided sufficient evidence of their legal interest to make an application. Any further legal dispute is considered a civil matter and is outside the scope of the planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of Section 34(13) of the Planning and Development Act, 2000, as amended.
- 7.4.9. With regard to the third party's request that measures be taken to prevent any possible subsidence on third party's property and prevent possible damage to the boundary wall, I note that save for wastewater infrastructure works, no new works are proposed in subject case. The information submitted on file on behalf of the applicant indicates that the previous extension was constructed over 30 years ago. Accordingly, having regard to the modest nature and scale of the development proposed to be retained and the proposed development in this case, I consider that the matter of possible subsidence or damage to the boundary wall need not concern the Board for the purposes of this appeal.

#### **7.5. Other Issues – (1) Wastewater and (2) Condition 4**

##### Wastewater

- 7.5.1. It is proposed to decommission the existing septic tank and percolation area and replace same with a package pump system and rising main to connect to the public sewer on Navigation Road. The Water Services report on file includes that the existing sewer shown is not entirely correct, that there is no objection in principle but

that further engagement at connection agreement stage is needed. 13no. conditions are included in the planning authority's decision relating to wastewater/Uisce Éireann/decommissioning of septic tank. In the event that the Board is minded to grant permission, it is recommended that alternative conditions relating to wastewater/Uisce Éireann are attached.

#### Condition 4

- 7.5.2. The planning authority's Condition 4 requires 50m sight distances, and the reason for same is to provide proper sight distance for emerging traffic in the interest of road safety. The Area Engineer's report notes the existing vehicular entrance abuts the busy national secondary route N72, that a substantial hard shoulder is available at entrance location and adequate sightlines demonstrated on site layout plan. The report also refers to information submitted relating to the side entrance abutting a public walkway.
- 7.5.3. However, as no works are proposed or proposed to be retained at the existing vehicular entrance at Navigation Road, in the event the Board was minded to grant permission, I do not recommend that Condition 4 or similar condition be attached in this instance.

## **8.0 AA Screening**

- 8.1. I have considered the development proposed to be retained and the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.
- 8.2. The development proposed to be retained comprises:
- Existing dwelling as constructed (change of design from that granted under PD 35, PD 982 and PD 1337)
  - Existing detached domestic garage as constructed
  - Alterations to the boundary at rear of dwelling

Permission is sought to:

- Decommission existing septic tank and percolation to rear of the property and replace it with a package pump system and rising main to connect to the

public sewer on Navigation RoadThe nearest European site is Blackwater River (Cork/Waterford) SAC (Site Code 002170), approx. 100m to south.

- 8.3. The Planner's report on file noted that the site is within the screening zone for the Blackwater River SAC (Site Code 002170). Requirement for Appropriate Assessment was screened out on having regard to the nature of the development, the period/timescale when the works were carried out, distance from the SAC, and the lack of any physical and hydrological connection between the development site and any European site.
- 8.4. The site comprises 0.12ha, located on Navigation Road, Mallow, which forms part of the heavily trafficked N72. It is 200m south west of Mallow train station. To east is Avondhu (Blackwater) Way, which in turn is bounded by the rail track at a much more elevated level. The Annabella Bridge (rail bridge) is approx. 20m north east of the site. There are fields to the rear (south) of the site, which slope very gradually towards the Blackwater River. The river is approx. 370m south west at its nearest point.
- 8.5. For completeness, I have noted in this assessment that the 1:10,560 OS map on file indicates a stream flowing in west to east direction towards the rail line a short distance south of the site. As viewed on [www.tailte.ie](http://www.tailte.ie), I estimate the stream is approx. 100m to south. While this stream is partially shown on [www.catchments.ie](http://www.catchments.ie) mapping (accessed on 23 January 2025), the online search indicates no results are found for this watercourse. Accordingly, having regard to all information on file, and the nature of the development proposed to be retained and the proposed works, I consider that the subject development would not result in any appreciable effects on a European site.
- 8.6. Having regard to the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European site. The reason for this conclusion is as follows:
- Modest nature and scale of the works proposed to be retained and proposed works, and

- Distance from the nearest European site and lack of any connections

I consider that the development proposed to be retained and the proposed development would not be likely to have a significant effect individually, or in combination with other plans and projects, on a European site and appropriate assessment is therefore not required.

## 9.0 Recommendation

I recommend permission be granted for the proposed development.

## 10.0 Reasons and Considerations

Having regard to the nature of the development proposed to be retained and the proposed development, the design and scale of the existing dwelling house on site and its position relative to the adjoining site to the west, it is considered that the development proposed to be retained and the proposed development would not adversely impact on the residential amenities of adjoining properties, would be consistent with the provisions of the Cork County Development Plan 2022-2028 and would be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 24 day of April 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 agreed particulars.</p> <p>Reason: In the interest of clarity</p>
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2.	<p>Prior to the commencement of development</p> <p>(a) the developer shall enter into a Connection Agreement with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public wastewater collection network.</p> <p>(b) The design layout and header manhole shall be agreed with Uisce Éireann (Irish Water) as part of the connection agreement.</p> <p>Reason: In the interest of public health and to ensure adequate water/wastewater facilities.</p>
3.	<p>(a) Details and design calculations for the proposed sewage pumping station and rising mains shall be submitted to and agreed in writing with the planning authority before development commences.</p> <p>(b) The pumping station shall be operated and maintained to the satisfaction of the planning authority. Prior to commencement of development, written evidence of a maintenance contract to ensure the continuous operation of the pumping station shall be submitted and agreed with the planning authority.</p> <p>(c) The existing septic tank and percolation area shall be decommissioned once the proposed system is operation.</p> <p>Reason: In the interests of public health.</p>
4.	<p>(a) All foul sewage and soiled water shall be discharged to the public foul sewer.</p> <p>(b) Only clean, uncontaminated storm water shall be discharged to soakpits.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Surface water to be disposed of within the site by means of soakaways and shall not be allowed to flow onto the public road, footpath or adjoining property.</p> <p>Reason: In the interest of public health.</p>



6.	<p>The garage shall be used solely for purposes incidental to the domestic use on site, shall not be used for any commercial or business use and shall not be sold, let or otherwise transferred or conveyed save as part of the dwelling house on site.</p> <p>Reason: To protect the amenities of property in the vicinity.</p>

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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Cáit Ryan  
Senior Planning Inspector

23 January 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-319806-24		
<b>Proposed Development Summary</b>	<p>Permission to retain:</p> <p>(1) existing dwelling as constructed (change of house design from that granted under PD 35, PD 982 and PD 1337)</p> <p>(2) domestic garage</p> <p>(3) alterations to rear boundary</p> <p>Permission to: Decommission septic tank and percolation area and to replace it with package pump system and rising main to connect to public sewer on Navigation Road.</p>		
<b>Development Address</b>	Leadon, Navigation Road, Mallow, Co. Cork		
<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>	X	
	<b>No</b>		
<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)?</b>			
<b>Yes</b>			Proceed to Q3.
<b>No</b>	X	While the description of development seeks <i>inter alia</i> to retain existing dwelling as constructed (change of house designs permitted), I note in particular the planning history on file. This includes a grant of permission for a house on this site in 1966, and an extension to same in 1990. As such, I consider that the subject development does not come within the classes	No further action required

		listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended).	
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>			Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>			Preliminary examination required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	X	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>		<b>Screening Determination required</b>

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