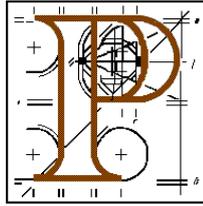


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL29N.245748

Development: Demolition of remains of house and construction of 3 no. houses, new access road, footpath and car parking area at No. 1 Hawthorn Avenue, East Wall, Dublin 3.

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 3476/15
Applicant: Ballymastone Properties Limited
Planning Authority Decision: Refuse permission

Planning Appeal

Appellant(s): Ballymastone Properties Limited
Type of Appeal: First party
Observers: Transport Infrastructure Ireland
Date of Site Inspection: 9th February 2016

Inspector: Donal Donnelly

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site is located on Hawthorn Avenue, East Wall approximately 1.5km east of Dublin city centre. East Wall is a residential neighbourhood enclosed by railway lines to the west and south and by East Wall Road (R131) to the north-east. The main street through East Wall is Church Road and Hawthorn Avenue is a cul de sac at the southern end thereof.
- 1.2 Hawthorn Avenue is approximately 85m in length and is as narrow as c. 5m. There are single storey cottages on the north-eastern side of the road behind a narrow footpath, as well as 2-storey townhouses set further back from the street edge. The south-western side of the road comprises a commercial premises and the Hawthorn Mews duplex development, which is also set back from the street edge to allow for on-street parking.
- 1.3 The site is located at the western end of Hawthorn Avenue along the railway embankment. Access is from the end of Hawthorn Avenue via palisade gateway. The site is roughly triangular shaped and all buildings have been cleared including the majority of the end of terrace dwelling. The surface of the site comprises mostly of concrete and there is some evidence of original cobble stone in places. The stated area of the site is 611 sq.m.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development is described on planning notices as follows:
 - Demolition of the remains of the former dwelling house on site;
 - Construction of 2 no. 3-bed 2-storey houses and 1 no. 2-bed 2-storey house;
 - Construction of a new access road (cul de sac) off Hawthorn Avenue, footpath and car parking area (4 no. spaces);
 - Associated site works.

3.0 PLANNING HISTORY

Dublin City Council Reg. Ref: 0760/97

- 3.1 Permission granted to demolish 1 no. dormer terraced house and to construct 3 no. 3 bedroom and 2 no. 2 bedroom two storey houses with associated site works.

Dublin City Council Reg. Ref: 2036/07

- 3.2 Permission refused for demolition of 1 no derelict dormer terraced house and site clearance of adjoining builders yard (named a derelict site by Dublin City Council under the derelict sites act), and construction of 6 no. dual aspect apartments in 1 no. 2 storey block, 6 no. surface car parking spaces and associated site works on previously approved site under ref. no: (0760/97).

- 3.3 Reasons for refusal related to substandard bathroom sizes and inadequate storage, unworkable car parking layout and overdevelopment.

Dublin City Council Reg. Ref: 4591/08

- 3.4 Permission refused for (i) demolition of 1 no. derelict dormer terraced house and site clearance, and (ii) construction of a terrace of 3 no. duplex units consisting of: 2 no. 2 bedroom duplex units with balconies, ground floor terraces and all windows facing south-west and 1 no. 3 bedroom duplex unit with south-west and west facing windows with associated surface car parking, landscaping and site works.

- 3.5 The first reason for refusal referred to the provision of 6m high walls/development for the full depth of the boundary with No. 2 and to the rear, which would have had a seriously injurious impact on adjoining residential amenity. Other reasons for refusal related to the provision of substandard open space and inappropriate materials and finishes.

Dublin City Council Reg. Ref: 3626/04

- 3.6 Permission refused for demolition of 1 no. dormer terraced house and the construction of 3 no. 3 bedroom, 2 storey dwellings and 1 no. 3 bedroom dormer dwelling with associated site works, (being an application for renewal of planning permission previously authorised under ref. ref. no. 0760/97).

- 3.7 Reasons for refusal concerned inadequate open space, ventilation, natural lighting and parking, together with inadequate drainage infrastructure.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

- 4.1.1 Under the assessment of the application, it is considered that the demolition of the remains of the former dwelling and construction of 3 no. dwellings is acceptable in principle. It is also noted that the dwellings are generously sized and would comply with the residential quality standards of the Development Plan.
- 4.1.2 The Roads and Traffic Planning Division note that Hawthorn Avenue is a narrow carriageway ranging from approximately 4m to 3.5m in width. There is concern regarding the constricted nature of Hawthorn Avenue, which is a residential terraced street with the majority of car parking on-street. It is considered that vehicular access cannot be provided to the site when vehicles are parked along Hawthorn Avenue. Furthermore, cars park on the footpath thereby restricting pedestrian access. It is therefore considered that the proposal may result in reversing manoeuvres and congestion along the existing roadway and this would constitute a traffic hazard.
- 4.1.3 The Case Planner concludes that the planning merit of the proposal aside, any development that would endanger public safety by creating a traffic hazard cannot be supported and refusal is therefore recommended.

4.2 Planning Authority Decision

- 4.2.1 The Council issued notification of decision to refuse permission for the proposed development for the following reasons:

“The site is located at the end of a narrow street, Hawthorn Avenue, which varies in width from 3.5 metres to 4 metres. The street is not wide enough to provide for 2-way traffic and is also currently used for on street car parking serving existing dwellings. In this regard the proposal may result in reversing manoeuvres and traffic congestion along the existing road. The proposed development would thereby endanger public safety by reason of traffic hazard.”

5.0 GROUNDS OF APPEAL

5.1 A first party appeal against the Council's decision has been submitted on behalf of the applicant. The grounds of appeal and main points raised in this submission are summarised as follows:

- Site has a non-conforming established industrial use and has been subject to enforcement under the Derelict Sites Act (since removed) – there is planning gain from removing an eyesore and replacing it with three well designed houses.
- Houses will have attractive contemporary construction that will not compete for attention with the historic precinct.
- Amount of private open space is well in excess of the 15 sq.m. per bedspace standard in the Development Plan.
- Width of lane goes from 12m to 4.7m measured between buildings – full width of the avenue should be treated as shared space.
- Applicant is providing off-street parking and an extension to Hawthorn Avenue that includes a turning area, thus negating the need for a vehicle to reverse out.
- This is the fourth planning application on the site and the first that mentions traffic as a problem – permission was granted for four houses on site in 1997.
- Hawthorn Avenue has provided satisfactory access to the site on a daily basis for many years for both trucks and cars when the site was in use as a builders' yard.
- Part of the fabric of city living, in an older city like Dublin, is made up of sites like these.
- If the Board is minded, the omission of car parking spaces is a possible solution given the inner city location and public transport nearby.

6.1 Planning Authority response

6.1.1 No response.

6.2 Observation

6.2.1 Transport Infrastructure Ireland submitted an observation on the appeal stating that the development falls within the area set out in the Luas Red Line Docklands Extension Section 49 Levy Scheme. Should the appeal be successful, the Board is asked to apply a Section 49 Levy as a condition of the grant.

7.0 POLICY CONTEXT

7.1 Development Plan

7.1.1 Within the Dublin City Council Development Plan, 2011-2017, the appeal site is zoned Z2, where the objective is *“to protect and/ or improve the amenities of residential conservation areas.”*

7.1.2 Section 17.9 contains standards for residential accommodation. It is stated that all infill housing should:

- Have regard to the existing character of the street by paying attention to the established building line, proportion, heights, parapet levels and materials of surrounding buildings.
- Comply with the appropriate minimum habitable room sizes.
- Have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard.

7.2 Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities

7.2.1 Infill residential development is recognised in these Guidelines for its potential to accommodate increased residential densities. It is stated that *“in residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.”*

7.2.2 It is also noted that *“the design approach should be based on a recognition of the need to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities, i.e. views, architectural quality, civic design etc.”*

8.0 ASSESSMENT

8.1 In my opinion, the main issues to be addressed in this appeal are as follows:

- Development principle;
- Layout, design and space considerations; and
- Access and parking.

Development principle

8.2 The appeal site is zoned Z2 where the objective is “to protect and/or improve the amenities of residential conservation areas.” The construction of a residential development of 3 no. dwellings would therefore be acceptable in principle subject to an assessment of the impact of the proposed development on the amenities of existing and future residents and compliance with other relevant Development Plan policies and objectives.

8.3 It is stated in Section 17.10.18.1 that proposals in conservation areas should have particular regard to the effect on buildings and the surrounding environment, as well as on the immediate streetscape. I would be satisfied that the proposed development will remain visually separate from the adjoining row of historic cottages on Hawthorn Avenue and that it can contribute to an overall improvement in amenity for the residential conservation area. In this regard, it should be noted that the site is currently disused and was previously occupied by a non-conforming use (builders yard).

Layout, design and space considerations

8.4 The proposed dwellings are laid out in a stepped format to fit the triangular shape of the site. The dwelling to the west is set off the railway embankment by a distance of 2.308m and the eastern dwelling has been designed so that a flat roof single storey element adjoins the boundary with the end of terrace cottage. In my opinion, this is the optimal layout for the dimensions of this site and adjoining context.

8.5 Each property will have private amenity spaces of 62.5 sq.m., 63.3 sq.m. and 91 sq.m. The end dwellings (Houses 1 & 3) are above the Development Plan standard of 15 sq.m. of private open space per bedspace and the centre dwelling will have an under provision of approximately 11.7 sq.m.

- 8.6 Houses 1 & 2 will have floor areas of 100 sq.m. and House 3 will be 95 sq.m. The target gross floor area for a 3-bed 5-person 2-storey house in the Quality Housing Guidelines is 92 sq.m. The equivalent figure for a 2-bed 4-person 2-storey dwelling is 80 sq.m.
- 8.7 I would be satisfied that the proposed dwellings are well sized and will provide for a good standard of residential accommodation for future residents. The smaller open space serving the middle dwelling is counterbalanced by the internal floor area in excess of minimum standards. Furthermore, the dwellings are provided with a semi-communal courtyard setting to the front. The dwelling to the west will have a large garden area and this may help to off-set the adverse impacts associated with the adjoining active railway line.
- 8.8 In terms of design and scale, the proposed dwellings are consistent with the surrounding pattern of development. Similar plot widths, heights, roof treatments and materials are evident in the area, and as noted, the dwellings will be visually removed from the terrace of cottages.
- 8.9 In general, I consider that the proposed development is appropriate in terms of scale, design, and intensity and type of use for this site. The proposal will also bring into active use a site that has lain vacant for some time. I would also be satisfied that there are no issues in terms of impact on surrounding residential amenities and that the development of this vacant site can improve the overall safety and security of the street.

Access and parking

- 8.10 It is stated in the Council's reason for refusal that Hawthorn Avenue is not wide enough to provide for 2-way traffic and is also currently used for on-street car parking. It is therefore considered that the proposal may result in reversing manoeuvres and traffic congestion along the existing road.
- 8.11 The first party appellant submits that the width of Hawthorn Avenue varies from 4.7m to 12m when measured between buildings. It is considered that the full width of the avenue should be treated as a shared space to be utilised by both pedestrians and motor vehicles. Furthermore, it is highlighted that the proposed development will effectively provide a new turning area for Hawthorn Avenue, thereby negating the need for vehicles to reverse out. It is also noted that the site was previously accessed for many years by both cars and trucks when in use as a builders' yard. Finally, the appellant points out that permission was granted previously on site for 4 no.

dwellings and none of the three subsequent planning applications at this location were refused on traffic grounds.

- 8.12 In my opinion, refusal of permission on grounds of access and traffic safety essentially renders this site landlocked and unable to be developed. Clearly, there is a potential pinch point at the site entrance if a vehicle is parked outside No. 2, 3 or 4 Hawthorn Avenue. However, I would be in agreement that there is an established entrance to the site and the applicant should be entitled to use this access. Furthermore, I would be satisfied that the existing informal "shared surface" arrangement on this street can continue having regard to its short length and narrow width, and the low volumes of traffic using the street. There are opportunities along the road for vehicles to pass and the proposed access arrangements will allow for sufficient forward visibility for an informal one-way access to exist at the site entrance.
- 8.13 I would have concern, however, with the internal parking layout and the ability of vehicles to turn and exit the site in forward motion if all spaces are occupied. I would also question whether this space can act as a turning circle in its current format.
- 8.14 Should the Board be minded to grant permission for the proposed development, I recommend that 2 no. resident parking spaces are provided in the location of the proposed visitor parking space and adjoining planter. These spaces would have better forward visibility when egressing the site if there are reversed into. A single space should be provided to the south of the middle dwelling and the space to the south thereof should be left free for turning, bins, bicycles, landscaping, etc.

Appropriate Assessment

- 8.15 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise

9.0 CONCLUSIONS AND RECOMMENDATION

- 9.1 It is considered that the proposed development should be granted for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

Having regard to the zoning objective, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual amenities of the area or residential amenities of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, 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 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

- 2 The proposed development shall be amended as follows:
 - (a) 2 no. residents' parking spaces shall be provided at the location of the proposed visitor space and adjoining planter;
 - (b) 1 no. resident's parking space shall be provided to the south of House 2;
 - (c) The proposed development shall be served by 3 no. residents' parking spaces only;
 - (d) The proposed development shall be served by 3 no. secure cycle parking spaces.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of traffic safety and convenience.

3 A landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. This scheme shall include the following:-

- (a) Details of all proposed hard surface finishes including reuse of existing cobble stone on site;
- (b) Proposed locations of any trees and other landscape planting in the development, including details of proposed species and settings;
- (c) Details of any street furniture, including bollards, lighting fixtures and seating;
- (d) Details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes; and
- (e) Details of proposed bin and bicycle areas.

Reason: In the interest of visual amenity.

4 Prior to the commencement of development, the applicant shall submit details and samples of all proposed external finishes of proposed dwellings for the written agreement of the Planning Authority.

Reason: In the interest of visual amenity.

5 Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6 Site development and building works shall be carried out only between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

- 7 All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

- 8 The naming/ numbering of the proposed development shall be agreed in writing with the planning authority prior to its occupation.

Reason: In the interest of orderly street numbering.

- 9 The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

- 10 Prior to the commencement of development, the applicant shall delineate on a map those areas which are to be taken in charge for written agreement of the Planning Authority. In relation to those areas not taken in charge a Management Company shall be set up. The Management Company shall provide adequate measures for the future maintenance and repair in a satisfactory manner of private open spaces, roads, footpaths, car park and all services, together with soft and hard landscaping areas, where not otherwise taken in charge by the Local Authority.

Reason: In the interests of the future maintenance of this private development, in the interests of residential amenity and the adequate provision of community facilities.

- 11 Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

- 12 The developer shall pay to the planning authority a financial contribution in respect of Luas Red Line Docklands Extension in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

- 13 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. 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.

Donal Donnelly
Planning Inspector
Date: 12th February 2016