



An
Bord
Pleanála

Inspector's Report

ABP-305379-19

Development	PERMISSION & RETENTION: retention of side and rear two-storey extensions and permission for alterations to the existing development:
Location	80 & 82, Naas Road, Dublin 12 (D12 N971, D12 AF86)
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3332/19
Applicant(s)	Thomas Horan
Type of Application	Permission and Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Pat and Jane Maher
Observer(s)	None
Date of Site Inspection	12 th December 2019

1.0 Site Location and Description

- 1.1. The appeal site is located on the western side of the Naas Road in Inchicore, Dublin 12, an area characterised by mid-20th Century suburban and commercial developments. The road extends from the urban village of Inchicore to the M50 and for most of its length the Luas line runs along the centre line. The site is located within a development of mid-sized semi-detached mid 20th Century dwellings on the east side of the road approximately 4-500 metres south-west from where the road crosses the Grand Canal and Blackhorse Luas Stop.
- 1.2. The appeal site consists of a pair of attached semi-detached dwellings with 2-storey side extensions with own door access on each side on a plot totalling 0.090 hectares. Each plot is a similar size, with the total floor area of development on the site given as 388 square metres. The site has a two large front gardens facing the Naas Road, currently used for vehicular parking.

2.0 Proposed Development

- 2.1. The development will comprise:
- (i) retention permission for the construction of side and rear two-storey extensions to Nos. 80 & 82 Naas Road
 - (ii) planning permission for the following alterations to the existing development:
 - (a) 2.0-metre-high dividing wall to rear gardens of Nos. 80 & 82 Naas Road
 - (b) removal of side doors to Nos. 80 & 82 Naas Road and provision of 2 no. windows at ground floor level
 - (c) removal of quoins to front elevation at Nos. 80 & 82 Naas Road
 - (d) dash finish with raised plaster beds to front elevation between front entrance doors and first floor windows to Nos. 80 & 82 Naas Road

(e) alterations to internal layouts including the reinstatement of living room and removal of ensuite at ground floor level of No. 82 Naas Road and the provision of additional storage space to ground floor level of No. 80 Naas Road

(f) reduction in width of vehicular entrances to Nos. 80 & 82 Naas Road to 3.6 metres

(g) provision of car-parking, manoeuvring space and landscaped areas to the front of Nos. 80 & 82 Naas Road

(h) all associated boundary treatments and site works necessary to facilitate the development.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant planning permission subject to eight conditions. The following are considered of relevance:

Condition No. 3

Each house and extensions thereto shall be used as a single dwelling unit only.

Reason: To ensure that the development is not out of character with existing residential development in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the planning authority. The Planning Officer notes the zoning objectives for the area and the extensive planning history of the site. It is set out that the works are acceptable in principle and compliant with relevant standards. Whilst the failure to comply with previous planning decisions is noted it is stated that this cannot be a consideration of this planning application.

3.2.2. Other Technical Reports

Drainage Division- Report dated 24th July 2019 raised no objection to the proposal, subject to standard conditions.

3.3. Prescribed Bodies

Transport Infrastructure Ireland- In their report dated 22nd July 2019 TII set out that they have no observations to make.

3.4. Third Party Observations

Four submissions were made in relation to the development. A brief summary of the issues raised in the submission to the Planning Authority are set out below:

- The developer has shown a disregard for planning law through non-compliance with previous permissions.
- The development contravenes the city development plan and regional planning guidelines.
- Violation of fire safety regulations and building regulations.
- Failure to apply for a Social Housing Exemption Certificate.
- Failure to comply with Part 5 of the Planning Acts.
- Carried out construction outside of the legally permissible hours, including bank holidays.
- Apartments are substandard in size and aspect.
- Multiple occupancy of both houses.
- The upper floor rear windows have an unacceptable overlooking impact on the rear gardens of adjoining properties.
- A large unauthorised garage/warehouse has been built in the rear garden of the subject site, this is used as office space and detrimentally impacts residential amenity.
- CCTV cameras overlook neighbouring properties.
- Electricity wires overhang neighbouring properties.
- Use of commercial bins in the front garden has created an environmental hazard.
- The South-Central Area Committee had previously requested legal action take place to rebuild and re-instate the semi-detached dwellings as they were originally were.

- The properties are advertised as apartments on Daft.ie and have availability for the next 12 months.
- The application form has been incorrectly filled in when describing the nature of the development.
- Existing and previous tenants have caused much disturbance to adjoining neighbouring properties.

4.0 Planning History

Site

ABP 302667-18 / DCC Reg. Ref. 3490/18 – Permission refused in 2018 for the retention of the construction of side and rear extensions to no.80 and 82 Naas Road as per previous granted planning reference number 2763/07/x1, including modifications to the front elevations and works to accommodate the conversion of the attic space to habitable space, including all associated service connections and site works.

Reason for refusal-

It is considered that the proposed development for retention would involve the retention of unauthorised works, both internally and externally to the planning permission reference number 2763/07 and its Extension of Duration reference 2763/07/x1 and would be contrary to condition 1 of that permission. It is considered that the proposed side extensions represent a substandard level of amenity and the combination of the substandard design of the front elevation and the garden and parking area would seriously injure the amenities of the area. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area

DCC Reg. Ref. No: 3490/18 – Permission refused for the retention of the construction of side and rear extensions as per previous granted planning reference number 2763/07/x1, including modifications to the front elevations and works to accommodate the conversion of the attic space to habitable space, including all associated service connections and site works.

DCC Reg. Ref. 2617/18 – Permission refused for the retention of the construction of side and rear extension to No. 80 & 82 Naas Road as per previous granted

planning reference number 2763/07/x1, including modification to the front elevations and works to accommodate the conversion of the attic space of habitable space, including all associated service connections and site works.

Enforcement Ref. No: E0741/17 refers to enforcement proceeding (Section 154 Notice) against the applicant with regard to the subject site.

DCC Reg. Ref. No: 2763/07/x1 refers to the decision to grant permission for an Extension of Duration of Permission for plan ref no 2763/07.

DCC Reg. Ref. 4228/16 - Permission refused for alterations and extension of the separate but adjoining dwelling houses known as 80 and 82 Naas Road, Dublin 12.

DCC Reg. Ref. 3567/15 – Permission granted for the retention of the in-complete garage structure and permission for the completion of the proposed garage works.

DCC Reg. Ref. 2325/08 - Permission granted planning permission for detached domestic garage and solar panels to roof of proposed garage.

DCC Reg. Ref. 2763/07 - Permission granted for alterations and extensions to separate but adjoining dwelling houses (Nos. 80 and 82 Naas Road) to consist of modifications to front elevations, two-storey extensions to side and rear of both and conversion of attic space for use as habitable spaces.

Surrounding (Recent)

DCC Reg. Ref. 2983/14 – Permission granted for fully serviced conversion of attic space at No. 84 Naas Road, including dormer window on side elevation and velux roof windows to rear, also retention of extension to rear of dwelling, conversion of garage for use as habitable space and associated works.

DCC Reg. Ref. 2767/15 - Permission granted for retention of six existing tubular solar panels, with total gross panel area of 16.55m², installed on fixed tilted mounting kits, located on flat roof of existing garage, which is within rear garden area, including all associated service connections and site works.

4.1. Development Plan

Zoning objective: The site is located within an area zoned Z1 which seeks “To provide for and improve residential amenities.”

Relevant sections of the Development Plan include:

The most relevant planning policies for the proposed development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan.

Section 16.2.2.3: Alterations and extensions (general)

- Extensions will be sympathetic to the existing building and adjoining occupiers,
- Alterations and extensions to roof will respect the scale, elevational proportion and architectural form of the building.

Section 16.10.12: Extensions and Alterations to Dwellings

Relates to alterations and extensions to dwellings and states that development will only be granted where it will not have an adverse impact on the scale and character of the area and will not adversely affect amenities enjoyed by occupants of adjacent buildings.

Appendix 17 of the Plan sets out design guidance with regard to residential extensions;

- 17.3: Residential amenity: extensions should not unacceptably affect the amenity of the neighbouring properties,
- 17.4 Privacy: Extensions should not result in any significant loss of privacy to the residents of adjoining properties.
- 17.6 Daylight and Sunlight: care should be given to the extensions and the impact on the adjoining properties,
- 17.11 Roof extensions: the design of the roof shall reflect the character of the area and any dormer should be visually subordinate to the roof slop, enabling a large proportion of the original to remain visible.

Appendix 5: Section 5.1- Road standards relative to residential development, including reference to the Planning Authority's guidance leaflet titled 'Parking Cars in Front Gardens

4.2. Natural Heritage Designations

None

4.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

5.0 The Appeal

5.1. Grounds of Appeal

The third-party appeal was made by Pat and Jane Maher, 78 Nass Road, Dublin 12.

The principal grounds of appeal can be summarised as follows:

- It is set out that the applicant was refused planning permission in 2017 for a two-storey extension to the side and rear and the conversion of the attic space.
- The applicant chose not to appeal this decision but applied in 2018 for retention permission of side and rear extensions. This was refused on appeal by ABP REF. 302667-18.
- It is set out that planning enforcement is actively pursuing the applicant for non-compliance with an order to reinstate 80/82 back to their original state as two no. three-bedroom houses.
- The appellant questions the grant of permission given the planning history and the on-going enforcement proceedings.
- Concern is expressed regarding the statement by Dublin City Council planners noting the applicant's failure to comply with previous planning decisions and stating that "this cannot be a consideration of this planning application" and how this can be the case given the applicants planning history.
- It is set out that the applicant can carry out unauthorised development and fail to comply with proper standards and procedures.

5.2. Applicant Response

- It is submitted that the development lodged is fully compliant with relevant development management standards and objectives of the Dublin City Development Plan 2016-2022.
- It is set out that the proposals in terms of built form, scale, design and provision of amenity space responds to the previous reason for refusal on the site, particularly with regards to the protection of neighbouring amenity.
- The applicant seeks to address previous matters of concern and has been informed by pre-planning feedback provided by Dublin City Council.

5.3. Planning Authority Response

None

5.4. Observations

None

6.0 Assessment

6.1.1. The assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Principle of Development
- Failure to Comply with Previous Planning Decisions
- Design - Impact on Character of the Area
- Appropriate Assessment

6.2. Principle of Development

6.2.1. The proposed development provides for the retention of side and rear two-storey extensions to Nos. 80 and 82 Naas Road and permission for a 2.0-metre-high dividing wall to the rear gardens, internal and external alterations, reduced vehicular entrance width and revised landscaping. The drawings indicate that Nos 80 and 82 will be used as two no. single use homes and will not be subdivided for apartment use.

6.2.2. The site is located within an area zoned Z1 which seeks “To provide for and improve residential amenities.” Residential is a permissible use within this zoning category. Therefore, the principle of the extensions is acceptable on ‘Z1’ zoned land, subject to safeguards.

6.3. Failure to Comply with Previous Planning Decisions

6.3.1. The appellant sets out that the applicant has a history of non-compliance with planning permission on the site and that the applicant was refused permission by the Board in 2018 under file ref. ABP 302667-18 for the retention of extension works.

6.3.2. Concern is also expressed regarding the statement by Dublin City Council planners noting the applicant’s failure to comply with previous planning decisions and stating that “this cannot be a consideration of this planning application”.

6.3.3. I note the site has been subject to on-going enforcement proceedings and whilst I note the legislation now provides that once enforcement action is initiated, it will be unaffected by a planning application being lodged subsequently for retention permission, this is a matter for the planning authority and not the subject of this appeal.

6.3.4. The rectification of an unauthorised development can be done in two ways: the first is the correction of the relevant non-compliance or subsequent permission for the retention of the unauthorised structure.

6.3.5. The correct mechanism within the planning system to regularise unauthorised development, where the applicant seeks to retain the development is to seek retention permission.

6.4. Design - Impact on the Character of the Area

6.4.1. In 2018 the applicant was refused planning permission under file ref. ABP 302667-18 for the retention of extension works on the basis that the proposed development for retention would involve the retention of unauthorised works, both internally and externally to the planning permission reference number 2763/07 and its Extension of Duration reference 2763/07/x1 and would be contrary to condition 1 of that permission. It was also considered that the proposed side extensions represent a substandard level of amenity and the combination of the substandard design of the front elevation and the garden and parking area would seriously injure the amenities

of the area and would be contrary to the proper planning and sustainable development of the area.

- 6.4.2. The current proposal seeks to amend the internal layout and revise the external fenestration to reflect the grant of planning permission reference number 2763/07 and its Extension of Duration reference 2763/07/x1. The works also include amendments to the front garden including the reduction in hard surfaced area and a reduction in the width of the vehicular entrance to 3.6m in compliance with Appendix 5: Section 5.1- Road standards relative to residential development, including reference to the Planning Authority's guidance leaflet titled 'Parking Cars in Front Gardens of the Development Plan.
- 6.4.3. In relation to the external finishes proposed, I note the width of the development and the pitched roof profile is consistent with reg. ref. 2763/07 and its Extension of Duration reference 2763/07/x1. However, the current proposal includes the addition of a third window bay at ground and first-floor level. Site inspection indicated that other similar dwellings in the area have been extended in this manner. Therefore, I am satisfied that the principle is acceptable in this context subject to revised window design whereby the additional ground floor windows and the first floor bedroom windows (excluding the original bay windows) to the front façade are revised to reflect the design, height and width of the original first floor over front door window design of the general area and extend to eaves level to match the adjoining dwellings.
- 6.4.4. In my opinion subject to compliance with the above the design is acceptable and does not conflict with the general character of the area and is in accordance with Section 16.2.2.3: *Alterations and extensions (general)* and Section 16.10.12 of the Development Plan.
- 6.4.5. There is a significant amount of private amenity space in the back garden of each site and I am satisfied that there is no undue negative impact on the established residential amenity of the adjoining properties.
- 6.4.6. Overall, I do not consider the proposal results in any injurious impact on residential amenity and would not have an adverse impact on the character of the area or property values, I consider the principle of the development is in line with Appendix 17 of the Development Plan.

6.5. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

7.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, as set out below.

8.0 Reasons and Considerations

Having regard to the Z1 zoning objective, the policies and objectives of the Dublin City Development Plan 2016-2022, in particular Section 16.10.12 and Appendix 17, residential extensions, the design and layout 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 amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 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 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 out in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be revised as follows:
 - (a) The additional ground floor windows and the first floor bedroom windows (excluding the original bay windows) to the front façade shall be revised to reflect the design, height and width of the original first floor over front door

window design of the general area and extend to eaves level to match the adjoining dwellings.

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

Reason: In the interests of orderly development and the visual amenities of the area.

3. Each dwelling shall be used as a single dwelling unit only.

Reason: To ensure that the development will not be out of character with the existing residential development in the area.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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: To protect the residential amenities of property in the vicinity of the site.

5. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Irené McCormack
Planning Inspector

16th December 2019