



An  
Bord  
Pleanála

## Inspector's Report ABP-306882-20

---

<b>Development</b>	Demolition of the existing garage, boundary walls and gate and construction of two three- storey terraced houses
<b>Location</b>	Number 11, Kenilworth Lane East, Dublin 6
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4710/19
<b>Applicant(s)</b>	Darragh Fitzsimons
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Tony Mahon
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	11 <sup>th</sup> May 2020
<b>Inspector</b>	Fergal O'Bric

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on Kenilworth Lane East, a lane that runs parallel with Kenilworth Road to the south and serves to access the rear of properties along Kenilworth Road. The lane is also parallel with Effra Road to the north and perpendicular to Grosvenor Road to the east. The site has been sub-divided from Number 11 Kenilworth Road and comprises a single storey garage structure. The northern boundary of the site faces onto Kenilworth Lane.
- 1.2. The area is primarily characterised by large Victorian two and three-storey houses along residential roads which were developed in the late nineteenth century. Many of these roads have rear access lanes off which some mews developments, domestic garages and rear entrances to the main houses are located.

## **2.0 Proposed Development**

- 2.1. The current appeal pertains to the demolition of a garage structure and the construction of two three-storey terraced mews houses

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Grant permission subject to nine conditions. The most relevant conditions were:

Condition number 3: Details of materials, colours and textures of all external finishes shall be submitted and agreed in writing with the Planning Authority prior to the commencement of development.

Condition number 4: The requirements of the Drainage Division shall be strictly adhered to.

Condition number 5: The requirements of the Transportation Planning Division shall be strictly adhered to.

Condition number 6: Hours of operation for site and buildings works are set out.

Condition number 8: Noise control standards shall be set in place for the construction and demolition works.

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

#### 3.2.1. Planning Reports

The report of the planning officer reflects the decision of the Planning Authority.

Points of note are as follows:

- Principle of a contemporary approach is acceptable, and many precedents have been developed along Kenilworth Lane.
- The contemporary design would complement the existing aesthetic of the streetscape which has a varied style of architecture
- Scale of development proposed is in keeping with adjoining mews properties and comparable with numbers 10A and 10B Kenilworth Lane, which are also three-storey in height.
- Proposals would not physically impact upon the character or setting of the Protected Structure at number 11 Kenilworth Road, or other neighbouring protected structures along Kenilworth Road.
- Proposals would not adversely impact upon the amenities of neighbouring residential properties by reason of overlooking or disturbance.
- Adequate private open space of approximately 50 square metres is proposed for each residential unit.
- The site is within walking distance of a number of public green spaces.
- Site coverage, at 48%, is slightly above what is set out within the Development Plan for Z2 zoned areas, however the site coverage is consistent with neighbouring mews properties.
- Car parking is to be provided at one space per residential property and there is space within each property to provide for bicycle parking.
- The development is considered to have an acceptable impact on the wider residential conservation area and on the amenities of neighbouring properties.

### 3.2.2. Other Technical Reports

Drainage – No objection subject to conditions.

### 3.3. Prescribed Bodies

3.3.1. None received

### 3.4. Third Party Observations

3.4.1. The issues raised are covered within the observations on the appeal.

## 4.0 Planning History

Planning Authority reference number 4278/17, An Bord Pleanála reference number 300808-18-In 2018, Planning permission was granted planning permission for the construction of a mews dwelling to the rear of number 8 Kenilworth Square North.

Planning Authority reference number 3086/18, An Bord Pleanála reference number 302314-18-In 2018, Planning permission was refused planning permission for the demolition of a single storey dwelling and the construction of a pair of semi-detached dwellings off Kenilworth Lane North. Three reasons for refusal related to (i) design and impact upon residential amenity (ii) concerns regarding flooding (iii) overdevelopment of site

Planning Authority reference number 3136/15-In 2015 Planning permission was granted for the construction of two mews houses to the rear of number 10 Kenilworth Road.

## 5.0 Policy Context

### 5.1. Development Plan

5.1. Development Plan

Dublin City Development Plan 2016-2022.

5.1.1. The site is in an area that is zoned Objective Z2: To protect and improve the amenities of residential conservation areas) under the provisions of the Dublin City

Development Plan 2016-2022. Under this land use zoning objective, residential development is a permissible use.

5.1.2. Relevant policies and standards of the Dublin City Development Plan 2016-2022 include:

- Policy CHC2 - To ensure that the special interest of protected structures is protected.
- Section 16.2.1 Design Principles.
- Section 16.2.2.2 Infill Development.
- Section 16.10.2 Residential Quality Standards – Houses– sets out standards to be achieved in new build houses.
- Section 16.10.3 Residential Quality Standards – Apartments and Houses.
- Section 16.10.16 Mews Dwellings-
  - Dublin City Council will actively encourage schemes which provide a unified approach to the development of residential mews lanes and where consensus between all property owners has been agreed. This unified approach framework is the preferred alternative to individual development proposals.
  - Development will generally be confined to two-storey buildings, In certain circumstances, three-storey mews developments incorporating apartments will be acceptable, where the proposed mews building is subordinate in height and scale to the main building, where there is sufficient depth between the main building and the proposed mews building to ensure privacy, where an acceptable level of open space is provided and where the laneway is suitable for the resulting traffic conditions and where the apartments units are of sufficient size to provide for a high quality residential environment. This is in line with national policy to promote increased residential densities in proximity to the city centre.
  - Mews buildings may be permitted in the form of terraces, but flat blocks are not generally considered suitable in mews laneway locations.
  - New buildings should complement the character of both the mews lane and main building regarding scale, massing, height, building depth, roof treatment and materials. The design of such proposals should represent an innovative

architectural response to the site and should be informed by established building lines and plot width. Depending on the context of the location, mews buildings may be required to incorporate gable-ended pitched roofs.

- The amalgamation or sub-division of plots on mews lanes will generally not be encouraged. The provision of rear access to the main frontage premises shall be sought where possible.

- All parking provision in mews lanes will be in off-street garages, forecourts or courtyards. One off-street car space should be provided for each mews building, subject to conservation and access criteria.

- Potential mews laneways must have a minimum carriageway width of 4.8 metres (5.5 metres where no verges or footpaths are provided). All mews lanes will be considered to be shared surfaces, and footpaths need not necessarily be provided.

- Private open space shall be provided to the rear of the mews building and shall be landscaped so as to provide for a quality residential environment. The depth of this open space for the full width of the site will not generally be less than 7.5 metres unless it is demonstrably impractical to achieve and shall not be obstructed by off-street parking. Where the 7.5 metre standard is provided, the 10 square metre of private open space per bed space standard may be relaxed.

- The distance between the opposing windows of mews dwellings and of the main houses shall be generally a minimum of 22 metres. This requirement may be relaxed due to site constraints. In such cases, innovative and high-quality design will be required to ensure privacy and to provide an adequate setting, including amenity space, for both the main dwelling and the mews dwelling.

5.1.3. The following Section 28 Ministerial Guidelines are of relevance to the proposed development.

'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (May 2009).

Architectural Heritage Protection Guidelines for Planning Authorities (2011)-  
Department of Arts, Heritage and the Gaeltacht.

## 5.2. Natural Heritage Designations

5.2.1. None relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The Grounds of Appeal as submitted by the third party, Mr Tony Mahon, resident within number 11 Kenilworth Road to the south of the appeal site, are as follows:

- The family home of number 11 Kenilworth Road is directly in full view of the proposed mews dwellings, which have two external terraces at second floor level facing into his rear garden space, and their rear elevation windows.
- The proposed terraces should be at the same height of the adjoining terraces of numbers 10 and 10A Kenilworth Lane East, and constructed with brick, more in keeping with existing adjoining terraces.

### 6.2. Planning Authority Response

6.2.1. The Planning Authority made no comments in relation to the appeal.

### 6.3. Further Submissions

6.3.1. Under Section 131 of the Planning and Development Act 2000 (as amended), the applicant submitted revised proposals on the 2<sup>nd</sup> day of June 2020 for consideration by the Board. The revisions specifically relate to the materials to be used within the upstand of the proposed balcony areas at second floor level (drawing numbers 18-022-P-2-040), whereby a 1.1 metre brick upstand is now proposed in lieu of glass balustrade which was previously proposed. This information was circulated to the appellant.

## 7.0 Assessment

7.1. The main planning issues in the assessment of the proposed development are as follows:

- Principle of Development

- Design and Conservation/Impact on protected structures
- Impact on Amenity
- Flooding
- Other Issues
- Appropriate Assessment
- Environmental Impact Assessment

## **7.2. Principle of Development**

- 7.2.1. The site is zoned 'Z2' under the Dublin City Development Plan, 2016-2022. The stated objective for 'Z2' zoned land is "to protect and/or improve the amenities of residential conservation areas". The principle of residential development is acceptable on 'Z2' zoned land, subject to development management considerations including a suitable design and layout, an assessment of impact upon neighbouring amenities, access and traffic, flooding etc.
- 7.2.2. The principle of the demolition of the existing garage structure is acceptable, given the limited contribution the garage structure makes to the streetscape and its relatively inefficient use of the site. I am therefore, satisfied, that the site could potentially accommodate mews dwellings, subject to the consideration of the issues below.

## **7.3. Design and Conservation/Impact on Protected Structures**

- 7.3.1. The design approach is very much of contemporary style and there are a number of successful precedents of contemporary design in the area, including recently constructed mews houses on Kenilworth Lane East. The proposed houses would be three -storey, two bedroomed mews type houses. The maximum ridge height of the proposed units would be 9.1 metres, which is approximately 0.6 metres below the ridge height of the news dwellings at numbers 10A and 10B Kenilworth Lane East, and approximately 0.2 metres below the maximum the ridge levels of numbers 12 and 13 A & B Kenilworth Lane East.
- 7.3.2. The houses would have private amenity space of approximately fifty square metres each, comprising of terraces and rear garden spaces, which is in accordance with the Development Plan standards for houses with four bed spaces. The design would

complement the existing built baric within the streetscape along Kenilworth Lane East, in terms of height, bulk, scale, massing and external finishes.

7.3.3. A separation distance of approximately thirty metres would be maintained between the rear building line of the parent property at number 11 Kenilworth Rod and the rear building line of the proposed mews dwellings. This separation distance exceeds the twenty-two-metre separation distance requirement set out within the Development Plan. This distance is considered sufficient so as not to unduly impact upon the character and setting of the protected structure.

7.3.4. Therefore, I am satisfied that the design and layout as proposed is appropriate given the existing permitted built character of the area, and that the character and setting of the neighbouring protected structures will not be unduly compromised.

#### **7.4. Impact on Amenity**

7.4.1. The thirty-metre separation distance between the proposed mews dwellings and the rear of number 11 Kenilworth Road, would curtail any potential for overlooking from the proposed second floor level rear terrace. The issues of potential impact upon the neighbouring properties at Numbers 10 and 12 Kenilworth Lane East and Number 15 Effra Road were also addressed in the planning report of Dublin City Council, and I would concur with the Planning Officer that no adverse impact upon their amenities would arise from the proposed mews development.

7.4.2. The applicant has submitted revised proposals to the Board on the 2nd day of June 2020 per drawing numbers 18-022-P-2-040. These revisions were welcomed by the appellant and are considered to be acceptable.

7.4.3. It is noted that there is a two metre block wall separating the appeal site from number 11 Kenilworth Road and a 2.5 metre wooden fence and approximately six metre tall conifer tress along the rear boundary of number 11 Kenilworth Road which would restrict views to and from the appeal site.

7.4.4. In conclusion, I do not consider that the proposed design and layout would adversely impact upon the amenity of the neighbouring properties by virtue of the appropriate design and layout which is considered to be consistent and complementary to the established pattern of development along Kenilworth Lane East.

#### **7.5. Flooding**

- 7.5.1. The site is located within Flood zone C. There is no record of flooding in the vicinity of the appeal site as per the records from the Office of Public Works. The surface water proposals will comprise of storm water infiltration and attenuation of surface water and the incorporation of SuDS proposals including permeable paving. I am satisfied that these proposals will mitigate flooding and surface water run-off from the development. I also note that the drainage Division of the City Council outlined no objections to the development proposals, subject to a number of conditions.
- 7.5.2. It is proposed to tap into the existing foul sewer and watermains networks which both run along the site frontage along Kenilworth lane East. This is considered acceptable.

## 7.6. **Other Issues**

- 7.6.1. It is noted that during the planning application one of the submissions made reference to the entitlement to demolish a party boundary wall. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states: A person shall not be entitled solely by reason of a permission under this section to carry out any development. I am satisfied that the provisions outlined above give the Board sufficient comfort to permit the proposed development.

## 7.7. ***Appropriate Assessment***

- 7.7.1. Having regard to the nature and scale of the proposed development and the distance from 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 a European site.

## 8.0 **Recommendation**

- 8.1. Grant Permission.

## 9.0 Reasons and Consideration

Having regard to the zoning objective for the site and the policies and objectives of the Dublin City Development Plan 2016-2022, it is considered, subject to the conditions set out below, that the proposed development would not seriously injure the residential amenities of the area and would be acceptable in terms of visual amenity. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application submitted to the Planning Authority on the 16<sup>th</sup> day of December 2019 and as submitted to the Board on the 2nd day of June 2020, 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.

Reason: In the interest of clarity.

2. The existing boundary wall along the southern boundary of the site shall be retained and maintained. Precise details of boundary proposals along the eastern and western boundaries shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.

Reason: In the interest of visual and residential amenity.

3. The upstand area of the second floor balcony areas shall be of brick finish as set out within drawing numbers 18-022-P-2-040 submitted to the Board on the 2nd day of June 2020.

Reason: In the interest of visual and residential amenity.

- 4 Precise details of separate vehicular accesses for each dwelling unit and their tie-ins with Kenilworth Lane East to the north of the site shall be submitted for the written agreement of the Planning Authority prior to the commencement of development. The entrance gates shall be inward opening only.

Reason: In the interest of orderly development and traffic safety.

- 5 Precise details of secure bicycle parking and a bin store for each unit shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.

Reason: In the interest of proper planning and sustainable development.

- 6 The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of traffic management, intended construction practice for the development, including noise management measures and off-site disposal of construction / demolition waste.

Reason: In the interests of public safety and residential amenity.

- 7 Proposals for house naming and a house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

- 8 Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9 The applicant shall enter into water and waste-water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

10 Site development and building works shall be carried out only between the hours of 0700 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: In order to safeguard the amenities of property in the vicinity.

11 All service cables associated with the proposed development (such as electrical, telecommunications and communal 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 amenity.

12 Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and public safety.

13 The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of the public open space, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

14 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 of roads, footpaths, watermains, drains, 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 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 of the development.

15 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.

---

Fergal O'Bric  
Planning Inspector

15th July 2020