

An Bord Pleanála



Inspector's Report

PL 29S 245642

DEVELOPMENT: Demolition of existing two storey detached apartment building and construction of four detached two storey house and one new vehicular entrance.

LOCATION: Hamilton Court, Seaview Terrace, (rear of No. 77 Ailesbury Road), Dublin 4.

PLANNING APPLICATION

Planning Authority: Dublin City Council

P. A. Reg. Ref: 3105/15.

Applicant: Anthony Ryan

Decision: Refuse Permission.

APPEAL

First Party Appellant: Anthony Ryan.

Type of Appeal: Appeal against Decision to Refuse Permission.

Observers: (1) Embassy of the Federal Republic of Germany,
(2) Embassy of the Republic of Austria.

Date of Inspection: 6th January, 2016.

Inspector Jane Dennehy.

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site which is rectangular in shape and has a stated area of 820 square metres is formed from the rear garden of a semi detached Victorian house on the south side of Ailesbury Road and the west side of Seaview Terrace. There is a two storey, flat roofed apartment block on the site in which there are eight one bedroom apartments, communal gardens and surface carparking. Vehicular access and a separate pedestrian access are on the east side boundary at the northern and southern ends onto Seaview Terrace along which there is a boundary wall constructed in granite.
- 1.2 A large detached house which is the ambassadorial residence of the Federal Republic of Germany is located to the south side of the appeal site. (This is the property of Observer Party No 1). To the northwest the house and gardens at No 79 Ailesbury Road is the ambassadorial residence of the Republic of Austria. (This is the property of Observer Party No 2). No 79 and No 77 are a pair of semi-detached Victorian houses.

2. PLANNING HISTORY:

- 2.1 **PL 29S 244035/ P. A. Reg. Ref. 2891/14:** The planning authority decision to refuse Permission for the demolition of the apartment block and for construction of four detached two storey house with attic accommodation, two single storey garages and four vehicular entrances was upheld following appeal.
- 2.2 Reason 1 for refusal of permission relates to the creation of multiple vehicular accesses involving removal of large sections of the granite boundary wall resulting in serious injury to the visual amenities and character of the area.
- 2.3 Reason 2 for refusal of permission relates to 'overdevelopment' and insufficient private open space and off street parking which would be contrary to the "Z2", (residential conservation area) zoning objective for the area.

3. DEVELOPMENT PLAN.

- 3.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is within the area subject to the zoning objective: Z2: *"To protect and improve the amenities of Residential Conservation Areas"*.
- 3.2 The site location is also within a zone of archaeological Constraint for the Recorded Monument DU022-084. (Burial Mound .)

- 3.3 Policies, objectives and standards for residential development are set out in section 17.9.1 in which it is also stated that the standards in, *Quality Housing for Sustainable Communities* (DOEHLG) are applicable. A minimum size of one hundred square metres is required for three bedroom houses and a minimum floor area of 7.1 square metres for single bedrooms.
- 3.4 Section 17.9.1 of the development plan allows for relaxation of standards in cases of refurbishment of existing buildings in exceptional circumstances subject to provision of good quality accommodation.

4. THE PLANNING APPLICATION.

- 4.1 The application lodged with the planning authority is a revised proposal which indicates proposals for the demolition of the existing apartment block and for construction of four, three bedroom detached two storey houses each of which has a stated floor area of 85.5 square metres. Individual curtilage parking spaces to the front of each house, an additional four communal spaces and shared vehicular access on to Seaview Terrace at the northern end and egress at the southern end are shown on the plans. Provision for private open space at the rear of each house ranges sixty to seventy four square metres in area.
- 4.2 Additional Information was requested on 24th August, 2015. The applicant was requested to demonstrate house design consistent with standards for the minimum floor areas and storage in section 17.9.1 of the Dublin City Development Plan. In the response submitted on 27th August, 2015 the proposals for additional storage resulted in a reduced floor area of two of the single bedrooms at 6.3 square metres which is below the minimum of 7.1 square metres in "*Quality Housing for Sustainable Communities*" (DOEHLG)
- 4.2 The reports of the Roads Planning Division the drainage division indicate no objection subject to standard conditions.
- 4.4 The report of the City Archaeologist indicates no objection subject to compliance with an archaeological condition.
- 4.5 Third Party objections were lodged by Embassy of the Federal Republic of Germany and The Embassy of Austria. These parties have submitted observations on the appeal and details of their observations are outlined in paras. 8.1 - 8.2 and 9.1- 9.3.

5. DECISION OF THE PLANNING AUTHORITY.

- 5.1 By Order dated, 23rd September, 2015 the planning authority decided to refuse permission on the basis of the following reason:

“The proposed development fails to comply with the minimum size standards for residential units as set out in section 17.9.1 of the Dublin City Development Plan, 2011-2017 and would result in substandard accommodation for future residents and seriously injure the residential amenity and depreciate the value of property in the area. The proposed development is therefore considered contrary to the Z2 zoning objective of the site which is to protect and improve the amenities of Residential Conservation Areas”.

- 5.2 The planning officer also commented that the reasons for refusal of permission for the previous proposal had been satisfactorily addressed but that the dwelling size was substandard. He stated that the floor area of each dwelling at 85.5 square metres was significantly below the minimum requirement of one hundred square metres for three bedroom houses provided for in, *“Quality Housing for Sustainable Communities”*. (DOEHLG.)

7.0 THE APPEAL.

- 7.1 An appeal was received from Brian O'Donoghue, Architects on behalf of the applicant on 20th October, 2015. Attached to the appeal is a drawing (No 358/36 in which the number of bedrooms in each house is reduced from three to two bedrooms and in which storage provision of one square metre is shown at ground floor level and five square metres at firsts floor level. It is requested that permission be granted for the proposed development incorporating the amendments.
- 7.2 It is noted in the appeal that the reasons for refusal of permission for the prior proposal have been overcome and that this is confirmed by the planning officer in his report. The acceptability to the planning officer of the current proposal with regard to the the proposed demolition, drainage arrangements, archaeological requirements and as to any potential for overlooking are also noted in the appeal.

8. OBSERVER SUBMISSION - Embassy of the Federal Republic of Germany.

- 8.1 A submission was received from Mathias Hopfner on behalf of the Embassy of the Federal Republic of Germany, which is the owner of Danesfield, Seaview Terrace, the Ambassadorial Residence that adjoins the southern boundary of the appeal site on 13th November, 2015.
- 8.2 It is stated that for security reasons consent cannot be given for access to the Danesfield property which may be necessary or construction and maintenance purposes at House No 1. According to Article s 22 and 30 of the Vienna Convention on Diplomatic Relations *“the premises of a mission must be inviolable”* and a receiving state must take appropriate

steps to protect the premises of the mission against any intrusion or damage. It is requested that the special function and status of “Danesfield” as the private residence of a diplomatic agent be taken into account in the appeals process.

9. OBSERVER SUBMISSION. Embassy of the Republic of Austria

9.1 A submission was received from Manahan Planners on behalf of the Ambassador for the Republic of Austria who resides at No 79 Ailesbury Road the rear gardens of which adjoin the full length of the north western boundary of the appeal site. The contents can be outlined as follows.

9.2 Concerns expressed in the submission to the planning authority at application stage about impact of the proposed development in respect of which conditions were requested were disregarded by the planning authority but these conditions should also be applied if permission is granted for the revised proposal in the appeal.

It was requested that Condition(s) be attached with requirements for the rear elevation windows to face the front instead of the rear, for omission of a gable end window, for no windows to be inserted in the roof and for a ‘nib’ or louvre be fitted to the first floor bedroom windows to restrict views and to prevent overlooking the rear gardens of No 77Ailesbury Road.

It was also requested that conditions be attached with requirements for restriction on the capacity of CCTV cameras, for a dust screen to be erected on the boundary with the garden during demolition, for restriction on construction hours and for removal of exempt development entitlements to development of extensions.

9.3 The additional information submission was unsatisfactory and the revisions in the appeal submission are insufficient. The site has potential, as acknowledged by the planning officer, for a higher quality residential development than the subject proposal. Both the proposed development and the existing development are an overdevelopment of the site. The opportunity should be taken to provide a less dense high quality development consistent with the existing pattern of development in the area.

9.4 The revised proposal in the appeal submission should be considered in a wider context than that of the revisions. The impact on the adjoining properties to the north and south should be considered in addition to the impact on No 79 Ailesbury Road.

9.5 A new element of overlooking from windows in the roof will be introduced and this is a “new issue”. A condition should be attached for

the windows to face toward the street and not towards the gardens at No 79.

- 9.6 The planning officer states that the site has potential to be developed to a high quality residential development. The existing development is overdevelopment and a similar mistake should not be made. There is an opportunity for a less dense high quality development consistent with the existing pattern of development in the area.

7. **RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.**

- 7.1 In a letter received from the planning authority it is stated that there are no further comments to add to those that are within the planning officer report.

9. **EVALUATION**

- 9.1 The application is a revised proposal for a small residential scheme on the site in which the reasons for refusal of permission for a prior proposal with regard to private open space provision and the openings and interventions to the front boundary wall have been satisfactorily addressed. The issues considered central to the determination of the decision on the current proposal having regard to the appeal against the decision to refuse permission and the observer submissions are:

Separation distance from boundary with Danesfield.
Consistency with pattern and character of development.
Impact on the Residential Amenities of No 79 and No 77.
Ailesbury Road and properties on Seaview Terrace.
Construction stage impact.

9.2 **Consistency with the established pattern and character of the area.**

The established pattern of development is that of large historic detached and semi detached houses on large plots with some more recent, mainly twentieth century development in the form of apartment developments and small housing schemes in the wider area.

- 9.3 The starting point is not a proposal for subdivision of a house plot to provide for a new development but rather a prior subdivision of the gardens of No 77 on which there is the existing eight unit apartment development. Ideally, a replacement development should be an enhancement on the existing development and in principle a small residential scheme would be an acceptable substitution for the apartment block and compatible with the established development in the area. The proposed scheme layout with the exception of the

separation distance from the southern boundary (see para 9.6 – 9.8) is satisfactory in terms of footprint, separation from boundaries, vehicular access, on-site parking and private and communal open space provision.

9.4 The revisions proposed in the appeal which provide for two bed units with storage space satisfactorily overcome the deficiency in size and insufficient storage space over which the planning authority decided to refuse permission. There are a maximum number of bed spaces for total of eight bedrooms for the four two bed units is twelve to sixteen compared to an eight to sixteen bed spaces for the eight one bed apartments in the existing building.

9.5 In view of the foregoing, it is not accepted that the proposed development constitutes overdevelopment of the site and is incompatible with the established pattern and character of development in the area.

9.6 **Separation Distance from Boundary with Danesfield.**

The existing apartment block almost abuts the boundary with Danesfield which is now the ambassadorial residence for the Federal Republic of Germany. There is no access to the side of the gable end from within the site for maintenance work, such as painting. Similarly in the proposed development there is insufficient separation distance from the southern boundary to allow for access for maintenance works or any other purpose. There is sufficient distance to the other side of the dwelling to provide for access to the rear and to this end, the proposed development satisfies the 1.5 metre separation distance required between houses according to section 17.9.1 (A3 2 page 258) of the development plan.

9.7 Irrespective of the proximity of the existing building to the boundary, or the specific concerns of the observer party regarding security it is considered that House No 1, (which is two and part three storey) should be set of the boundary so that a sufficient separation distance for access along the length of the gable end can be provided.

9.8 This has implications for the capacity of the site to accommodate the four detached units in that movement of the footprints northwards would necessitate omission of the side passage between House No 4 and the northern site boundary with the adjoining residential property. The matter could be overcome by an amalgamation of House No 1 and House No. 2 as a semi-detached pair.

9.9 Impact on the Residential Amenities of No 79 and No 77 Ailesbury Road and properties on Seaview Terrace.

The rear garden of No 79 Ailesbury Road which is the Ambassadorial Residence for the Federal Republic of Austria extends along the western boundary of the appeal site. The attic level velux windows proposed for the rear roof slope would not give rise to undue overlooking of the adjoining property at No 79 Ailesbury Road due to the shallow slope in the roof and minimum floor to ceiling height of 1.8 metres indicated on the lodged plans. It would also appear that the attic level floor to ceiling height over the floor area would be insufficient to allow for habitable accommodation that is satisfies Building Regulation standards.

9.9 The footprints of the proposed houses are eight metres from the west side boundary with the gardens of No 79. The existing footprint of the apartment block is approximately four metres from the boundary and the first floor level windows in the block face westwards towards the boundary. The footprint of the house at No 79 which faces onto Ailesbury Road and is to the north-west is perpendicular to the footprint of the proposed houses. It is considered that there is no potential for undue overlooking of the house and gardens at No 79 Ailesbury Road. It is not considered that removal of exempt development entitlements, by condition, requested by one of the observer parties is warranted.

9.10 A requirement by condition that the gable end landing windows at first floor level can be obscure glazed, and, fitted to provide for assurance and clarity with regard to potential for overlooking of No 77 Ailesbury Road and the adjoining dwellings in the proposed scheme.

9.11 Having regard to the foregoing, it is considered that there is no potential for adverse impact on residential amenities, privacy and property value of the property at No 77 Ailesbury Road, Danesfield, or other properties to the east and south along Seaview Terrace.

9.12 Construction Stage Impact.

The site location is in an established mature residential area and the proposed development includes demolition of the existing building. Concerns about disturbance and about dust emissions can be addressed by way of preparation of a construction and demolition management plan. It can include proposals for the control of dust (a concern raised by one of the observer parties), removal of demolition material off site, construction traffic management and hours of operation. In addition, should permission be granted, standard conditions addressing these matters can be attached.

9.13 **Appropriate Assessment Screening.**

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise.

10. **CONCLUSION AND RECOMMENDATION.**

- 10.1 In view of the foregoing it is considered that with the exception of a recommended requirement for provision for separation distance from the southern boundary for House No 1, the proposed development as modified in the appeal submission is satisfactory and acceptable. Permission could therefore be granted with a requirement by condition of this outstanding matter to be addressed by way of modification to the scheme through amalgamation of House No 1 and House No 2 into a semi-detached pair of houses incorporating provision for side passages for both dwellings.
- 10.2 However, it may be desirable and appropriate, bearing in mind the guidance in the Development Management Guidelines as to the limitation on matter that can be addressed condition to issue a Section 131 Notification to the applicant. The applicant can therefore be provided with an opportunity to the applicant to consider the options prior to making proposals for modification to the scheme to address this matter. In addition there would be an opportunity for the third parties and the planning authority to submit observations for consideration prior to determination of a decision.
- 10.2 A draft order is set out overleaf indicating a grant of permission with a condition attached with a requirement for amalgamation of House No. 1 and House No. 2 into a semi-detached pair as discussed above.

DECISION

Grant Permission on the Basis of the Reasons and Consideration set out below:

REASONS AND CONSIDERATIONS.

Having regard to the site location within an area designated as a residential conservation area in the Dublin City Development Plan, 2011-2017 and to the existing development on the site which is subdivided from the rear gardens of No 77 Ailesbury Road it is considered that subject to the conditions set out below, the proposed development comprising demolition of the existing apartment block and construction of four two bed dwellings on the site would satisfactorily integrate into the established pattern and character of development in the area, would not be visually obtrusive, would not be seriously injurious to the residential amenities of property in the vicinity and 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 as amended by the further plans and particulars lodged with An Bord Pleanála on 20th October, 2015 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. House No 1 and House No 2 shall be amalgamated into a semi – detached pair of two bed houses. House No 1 shall have a minimum separation distance of 1.5 metres from the southern site boundary with provision for a side passage along the entire length of the gable end wall of the house. Prior to the commencement of the development the applicant shall submit revised plans with the required modifications to the planning authority for written agreement.

Reason: To provide for separation from the southern side boundary and for access to the side and gable end of the house.

3. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Detailed proposals for measures for the management of dust emissions to provide for the protection of adjoining properties shall be included. This plan shall be prepared in accordance with the "*Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects*", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of orderly and sustainable development.

4. Site development and building works shall be confined to the hours between 0800 hrs and 1800 hrs. Mondays to Fridays excluding Bank Holidays and 0800 hrs and 1400 hrs. Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: In the interest of residential amenity.

5. The upper floor landing gable end windows shall be obscure glazed and fitted.

Reason: In the interest of clarity and the protection of the amenities of adjoining properties.

6. Details of the materials and finishes including textures and colours for the external facades and for the roof slates shall be submitted for the written agreement of the planning authority prior to the commencement of the development. Samples shall be displayed on site.

Reason: In the interest of visual amenity.

7. Drainage arrangements shall comply with the requirements of the planning authority for such works and shall incorporate Sustainable Drainage Systems in the management of storm water.

Reason: To ensure a satisfactory standard of development and to prevent pollution.

8. A comprehensive boundary treatment and 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 details:-
- (a) all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
 - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
 - (c) proposed furniture lighting fixtures and seating;
 - (d) proposed boundary treatments including heights, materials and finishes.

Reason: In the interest of visual amenity and the residential amenity of adjoining properties.

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 any archaeological excavation works 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. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs] shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

11. 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.

Jane Dennehy,
Senior Planning Inspector,
8th January, 2016.