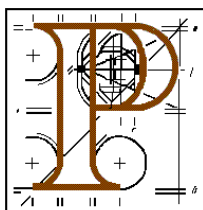


## An Bord Pleanála



## Inspector's Report

**Appeal Ref. PL 29S.245704**

**Location:** Nos. 122-124 Rathgar Road, Dublin 6.

**Proposed Development:** Retention permission for the restoration of the original rear gardens with all associated site works, (protected structure).

### Planning Application

Planning Authority: Dublin City Council.

Planning Authority Reg. Ref.: 3430/15

Applicant: Ray and Paula Moore

Application Type: Planning permission

Planning Authority Decision: Refuse permission

### Planning Appeal

Appellant(s): Ray and Paula Moore.

Observers: Rathgar Residents Association.

Date of Site Inspection: 7<sup>th</sup> January, 2016

**Inspector:** Stephen Kay

## **1.0 Site Location and Description**

- 1.1 The appeal site is located on Rathgar Road in Dublin 6 in an area that is characterised by large two storey over basement level predominately terraced dwellings. The appeal site comprises the site of three separate dwellings immediately to the south of the junction of Rathgar Road and Auburn Villas.
- 1.2 The dwellings on the appeal site comprise No.124 closest to the junction with Auburn Villas which is a 19<sup>th</sup> century split level villa style dwelling with a large two storey extension to the rear. The other two dwellings on the site, Nos. 122 and 123 comprise a pair of two storey over basement level semi detached dwellings.
- 1.3 The layout of the dwellings is such that the rear garden area of No. 124 has been reduced with the construction of two infill dwellings to the rear that are accessed via Auburn Villas. The rear garden area to No. 124 is therefore now c. 120 sq. metres. The other dwellings on the site at Nos.122 and 123 retain rear gardens of c. 35 metres in length and each have rear garden areas of between 350 and 400 sq. metres. The overall area of the appeal site is stated to be 2074 sq. metres with the existing dwellings on site having a combined floor area of 640 sq. metres.
- 1.4 Nos. 122 and 123 would appear to be in multiple occupancy. No.124 is a single occupancy dwelling. All three dwellings on the appeal site are protected structures. All three dwellings are in the same ownership.

## **2.0 Proposed Development**

The proposed development comprises the retention of the following works:

- The undertaking of landscaping works and restoration of the original rear gardens including new steps and paving and the restoration of the existing boundary walls.
- The demolition of timber sheds in the rear garden of No. 122.
- The retention of openings in the garden walls between Nos. 122 and 123 which are the 3 storey multi tenancy dwellings and with No.124.
- The construction of 2 no. sheds each with a floor area of 4.9 sq. metres and located in the rear gardens of Nos. 122.
- The construction of a single storey garden room extension to the rear of No. 123 having a floor area of 24.4 sq. metres.
- The construction of new walls to the rear of Nos. 122 and 123 which separate the rear of these dwellings from the garden areas to the east. It should be noted that on inspection of the site these walls have been removed and the rear of the

dwelling at Nos. 122 and 123 Rathgar Road have unimpeded access to the rear garden areas.

### 3.0 Planning History

The following is a summary of the Planning history relevant to the ***appeal site***:

Dublin City Council Ref. 5275/06: Permission granted by the Planning Authority for the demolition of existing single storey and two storey extension to the rear of No. 124 Rathgar Road and for the construction of a new two storey extension to the rear, alterations to the front windows and front entrance door, new ground and first floor windows to the side (east) and general refurbishment to include replacement windows and new roof. External works also proposed comprising replacement of railings, gates and gate posts, the repositioning of the existing pedestrian access and all associated site works.

Dublin City Council Ref. 1415/08: Permission granted by the Planning Authority for the alterations to previously approved development Ref. 5275/06 to include new basement increasing ground and first floor area and construction of chimneys to the rear of a previously approved two storey extension on a site at No. 124 Rathgar Road.

Dublin City Council Ref. 0025/98 – Permission granted by the Planning authority for the conversion of No.122 Rathgar Road from one dwelling and three flats to 2 no. dwellings.

It is noted that the report of the Planning Officer makes reference to the fact that there is an enforcement case relating to the site. Ref. E0337/15.

#### ***Other Sites Permission***

Dublin City Council Ref. 2212/14 – Permission refused by the Planning Authority for the construction of 2no. two-storey detached 4 bedroomed townhouses along the front avenue to No.125 Rathgar Road with vehicular access through the existing gate on a site to the north east of the current appeal site. Permission refused on the basis of access, contravention of the Z2 zoning objective and adverse impact on the character of a protected structure.

Dublin City Council Ref. 2213/14; PL29S.243339 – Permission granted by the Planning Authority and refused on appeal by the Board for development consisting of the demolition of existing carport shed; construction of a random stone finished wall defining the curtilage of the protected structure, construction of a new recessed vehicular entrance gateway, sidewalls and piers to provide access to the existing house off Auburn Villas. Permission was refused on the basis that the development would remove the main house from its existing tree lined

avenue and gate lodge and the Board considered that the proposed development would seriously impact on the character and setting of the Protected Structure and would adversely affect an Architectural Conservation Area.

## **4.0 Planning Authority Assessment and Decision**

### **4.1 Internal Reports**

Planning Officer – The report of the Planning Officer notes the objections to the proposed development and also the protected status of the structures. The report states that there are serious concerns in view of the fact that the works sever Nos. 122 and 123 from the rear gardens relating to these properties. It is noted that the development for which retention is sought results in a garden area of c. 800 sq. metres accessible from No. 124 while the rear garden area to the other two properties would be limited. Refusal of permission consistent with the Notification of Decision which issued is recommended.

Drainage Division – No objection subject to conditions.

Conservation Officer – Recommends a grant of permission.

### **4.2 Decision**

A Notification of decision to Refuse Permission was issued by the Planning Authority. The following summarises the reasons for refusal:

1. That the retention of 2 metre high walls across the gardens immediately to the rear of Nos. 122 and 123 would sever these properties from their original rear gardens and would adversely impact on the character of these protected structures.
2. That the works for which retention is proposed would result in a reduction in the level of open space available to the residents of Nos. 122 and 123 such that it would be below development plan standards.

### **5.0 Grounds of Appeal**

A first party appeal against the refusal of permission has been submitted and the following is a summary of the main issues raised in this appeal submission:

- That the conservation department of the council recommended that permission be granted.
- That the objective was to restore the gardens from their previous overgrown state and to provide a garden area for the family.

- That the house at No. 124 has been in family ownership for over 70 years. No. 122 was purchased in 2007 and the property at No. 123 purchased in September, 2015. The garden to 122 was always badly overgrown and not used by tenants of the house. It is intended that in time the houses would remain in family ownership.
- That the rear garden to No.124 is not suitable for a play area for children and this was the basis of the idea to provide access through to the rear of the other two gardens.
- That the entire retention application was refused permission on two grounds both of which related to open space and the retention of the walls to the rear of Nos. 122 and 123. These walls have now been removed and the basis for the refusal of permission no longer exists.
- That the planning officer ignored the comments of the conservation officer regarding the retention of the garden shed structures.
- That there is support for the development from the tenants in Nos. 122 and 123 and letters reflecting the support are attached with the appeal.

The appeal is accompanied by photographs of the development works undertaken and photos of the condition of the gardens prior to the undertaking of works on site.

## **6.0 Observations on the Appeal**

An observation has been received from the Rathgar Residents Association. The following is a summary of the main points made in this observation:

- That the buildings on site are protected structures and that the protected status is not limited to the buildings but also extends to the entire sites including boundaries.
- That each house requires the provision of private amenity space and Nos. 122 and 123 each have 8 no. bed spaces. A total of 120 sq. metres of private amenity space (minimum) is therefore required for each.
- That the objective of this application is to legitimise works that result in the rear gardens of Nos. 122 and 123 being very significantly reduced in size and the facilitation of additional new development accessed from Auburn Villas.
- If permitted, the form of development would result in a very undesirable precedent for other locations.

- Noted that permission for development on the northern side of Auburn Villas (Refs. 2212/14 and 2213/14) were refused permission by the Planning authority and An Bord Pleanála.

## **7.0 Response Submissions**

### **7.1 Planning Authority Response to Grounds of Appeal**

No response to the grounds of appeal on file.

## **8.0 Development Plan Policy and Guidance**

### **8.1 Dublin City Development Plan 2011-2017**

The appeal site is zoned Objective Z2, '*to protect and / or improve the amenities of residential conservation areas*' under the provisions of the Dublin City Development Plan, 2011-2017.

All three of the buildings on the appeal site (Nos. 122-124 Rathgar Road) are included on the record of protected structures.

The Architectural Heritage Protection Guidelines for Planning Authorities includes some comment on the importance of features within the curtilage of protected structures (paragraph 13.4), including relating to boundary walls.

## **9.0 Assessment**

The main issues arising are considered to be as follows:

- Residential amenity and open space provision.
- Impact on the Character of Protected Structures.
- Other Issues.

### **9.1 Residential Amenity and Open Space Provision.**

9.1 As noted in the first party appeal submission, the basis for the refusal of permission issued by the planning authority is that the walls constructed to the rear of nos. 122 and 123 Rathgar Road and which separate these dwellings from the bulk of their garden areas results in a sub-standard provision of private amenity space. Having regard to the limited extent of private amenity space which was proposed to be retained for Nos. 122 and 123 I would agree that this is the case with the layout as originally submitted for retention.

- 9.2 As currently on site, the walls to the rear of Nos. 122 and 123 have been removed and there is now no barrier between these dwellings and the open space to the rear of the dwellings. In this regard I would agree with the first party that the basis for the refusal of permission issued by the Planning Authority has been largely overcome.
- 9.3 A result of the layout for which retention is sought is that there is no longer a private amenity area serving each of the three properties individually. Specifically, No. 124 is now connected with the garden of 123 by an opening of c.8.5 metres in width. The gardens of Nos 123 and 122 are also connected by two openings of c. 2 metres in width in the stone boundary walls, one located towards the eastern end of the boundary and the other at the western end. In addition, there is a narrower opening located at the far western end of the boundary close to the rear of Nos. 122 and 123. The effect of these openings is that there is free movement for the residents of all three properties throughout the whole rear garden spaces. Were all of the properties in single occupancy I would not consider that this is a suitable layout however given the fact that Nos. 122 and 123 are in multi occupancy and would already have a shared communal amenity area I do not have any objection on amenity grounds to the principal of the layout for which retention is sought. In the event that the sites were to be the subject of sale and / or converted to single family occupation it is my opinion that the openings for which retention permission is sought would not be appropriate. For this reason it is recommended that in the event of a grant of permission a condition be attached requiring that the opening in the boundary walls would be closed off in the event that the properties are sold.
- 9.4 With regard to the structures for which retention is sought, the scale of these is not such that it would have any adverse impact on residential amenity. The two small sheds in the garden of No. 122 are to be used for the storage of tools and are of a scale that they are not suitable for any other purpose. The structure at the rear of the garden to No. 123 is also in my opinion of a scale and design such that is acceptable.
- 9.5 The overall design and standard of the landscaping works undertaken to the rear gardens is very high and the spaces created are such that they would have a positive impact on the amenity of residents of the three dwellings. I accept that there is no clear basis by which it can be assured that the residents of the two rented properties at Nos. 122 and 123 Rathgar Road would have free access to the amenity spaces created by the amalgamation of the rear gardens of these properties however I note the fact that both No. 122 and 123 currently have access to the garden level at the rear of the houses. It is to be assumed that access will be maintained for residents of these properties. In the event of a grant of permission it is recommended that a condition requiring the maintenance of access to the rear garden area from Nos. 122 and 123 would be attached.
- 9.6 I note the concerns expressed by the Observer to the appeal with regard to the rationale for the development and the precedent which it may set for other similar locations. Regarding the rationale for the development and the statement that the aim is to secure additional

development accessed off Auburn Villas, I do not see how this is a possibility given the layout of No.124 and the two storey extension constructed to the rear of this property. In the current configuration, there is no frontage to Auburn Villas that would facilitate access to additional development. Were such a proposal to be made in the future it would have to be assessed on its merits. With regard to the issue of precedent, the situation on the appeal site is quite unique in that the three properties are in the same ownership. I do not consider that the granting of permission in this case would act to set an undesirable precedent for other similar forms of development in the future and any other such proposals would again have to be assessed on the individual merits of the case.

## **9.2 Impact on the Character of Protected Structures.**

9.2.1 All three buildings on the appeal site are included on the record of Protected Structures and as highlighted by the observer to the appeal, this means that all structures and features on the site, including boundary walls are protected. In the case of the appeal site, I do not consider that the landscaping works undertaken or the structures erected within the grounds of the protected structures are such that they have an adverse impact on the character of these structures. On the contrary, the landscaping works undertaken are of a high quality and have, in my opinion an overall positive impact on the setting and character of the buildings.

8.2.2 With regard to the openings created between the sites of nos. 122, 123 and 124, the boundary features impacted are within the rear garden areas of the structures. They are not publically visible and the scale of the interventions is not such that they fundamentally alter the boundary features or the approach to the structures as viewed from the street. The openings in the walls are such that the basic form of the boundaries between the individual dwelling plots remains significantly intact.

8.2.3 The Architectural Heritage Protection Guidelines for Planning Authorities give some guidance at section 13.4 regarding features within the curtilage of protected structures, including boundary features. This section of the guidelines stresses the impact that changes in boundary treatments or curtilage features can have on the streetscape, the public setting of a protected structure or the relationship between the structure and other buildings or features of importance. I do not consider that the openings in the rear boundary walls for which retention is sought in the application the subject of appeal is inconsistent with this aspect of the guidelines. I also note that the openings created are also reversible and as such are in line with good conservation practice.



### **9.3 Other Issues.**

- 9.3.1 Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.
- 9.3.2 A new Development Contribution Scheme for Dublin City to cover the period 2016-2020 has been adopted. It is noted that this scheme clarifies at paragraph 15 that there shall be no exemption or rate reduction applicable in the case of applications for retention such as that the subject of this appeal. The sheds constructed on site would not in my opinion come within the scope of residential floorspace and it would not therefore be appropriate to attach a financial contribution condition to any grant of permission.

### **10.0 Recommendation**

- 10.1 Having regard to the above it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions.

## **REASONS AND CONSIDERATIONS**

Having regard to the nature of the works undertaken including the fact that the wall to the rear of Nos. 122 and 123 Rathgar Road for which retention was sought has been removed, the limited extent of the openings provided and the reversibility of the works undertaken, it is considered that subject to compliance with the conditions below, the development would not seriously injure the amenities of property in the vicinity or the occupants of the properties on site, would not have an adverse impact on the character and setting of any protected structure and would be consistent with the Objective Z2 (Residential Conservation Area) zoning objective for the area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be 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 in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. For the avoidance of doubt, this permission does not include for the retention of the stone clad block wall located to the rear of the dwellings at Nos. 122 and 123 Rathgar Road shown on the submitted Site layout Plan (Drg. No. 0553-P-051).

**Reason:** In the interests of residential amenity and the provision of adequate open space to serve the development.

3. Access shall be maintained for residents of Nos. 122 and 123 Rathgar Road to the open space area located to the rear of these dwellings.

**Reason:** In the interests of residential amenity and the provision of adequate open space to serve the development.

4. In the event of the sale of any property on the appeal site the connections between that property and the rear gardens of the adjoining properties shall be closed. Details of works to the boundary walls to effect such closure shall be submitted for the written agreement of the Planning Authority prior to the undertaking of any works and all such works shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

**Reason:** To ensure that the residential amenity of future occupants of the properties on site is protected in the development and that all works are carried out in accordance with best conservation practice.

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**Stephen Kay**  
Inspectorate  
21<sup>st</sup> January, 2016