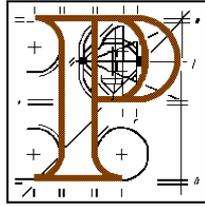


An Bord Pleanála



Inspector's Report

PL. 29S 246358

DEVELOPMENT: Demolition of single storey gate lodge, construction of two semi-detached three storey dwellings with rear balconies, garden shed, modification to existing vehicular entrance and front boundary wall, new vehicular entrance and new pedestrian side entrance with side drive way, six car spaces, landscaping and associated development works.

LOCATION: 64-66 Terenure Road West, Terenure, Dublin 6W.

PLANNING APPLICATION

Planning Authority: Dublin City Council.
P. A. Reg. Ref: 3478/15
Applicant: Hugh Devine.
Decision: Grant Permission.

PLANNING APPEALS

Third Party Appellants:

1. Terenure Residents' Association.
2. Caitriona Deveilly and Declan Doherty.
3. Norah Price,
4. Noreen McDonnell and Ciaran Casey.

Observers: Eithne Brew.

Date of Site Inspection: 3rd June, 2016.

Inspector: Jane Dennehy.

1.0 SITE LOCATION AND DESCRIPTION

1.1 The site has a stated area of 1,310 square metres and is that of a single storey nineteenth century gate lodge which has front and rear gardens and frontage onto Terenure Road West. It has a low height front boundary wall and a pedestrian entrance at the centre and piers at the centre of the frontage. At the time of inspection the lodge was unoccupied and the site was fenced off with hoarding. Two storey semi-detached houses dating from the 1940s are located along the road frontage to either side and some adjacent roads and an apartment development Hazelbrook is on the opposite side of the road. The entrance splay walls and block party boundary wall of the adjoining property to the west are approximately two metres in height. Fencing up to two metres in height is located along the inner side of the boundary wall at the adjoining property to the east. Walling and hedgerow planting are located along the rear boundary. The ground within the site is scrubland partly covered in gravel.

2.0 THE PROPOSED DEVELOPMENT.

2.1 The application lodged with the planning authority as modified by the further information submission received by the planning authority on 4th February, 2016 indicates proposals for:

Demolition of the existing gate lodge:

Subdivision of the site into two plots and construction of a pair of three storey semi detached houses with a stated floor area of 429 square metres.

A total of six carspaces, (three for each dwelling) in the front curtilages with access from two vehicular entrances off Terenure Road West,(retention of the existing entrance for one dwelling and opening of a new entrance for the other dwelling.

Retention of the existing pedestrian entrance for one dwelling and a new pedestrian entrance for the other dwelling.

Full length gardens with access via the side of each house. The application also includes landscaping works, garden sheds and balconies at first floor level for the main bedrooms of each dwelling which overlook the rear gardens.

2.2 The further submission includes a copy Property Registration Authority indicating completion of registration on 8th December, 2015 and confirmation of conveyance of ownership of the freehold interest to the

applicant on 14th March, 2014. In response to the request for Land Registry details to establish legal interest,

- 2.3 The further information included revisions in response to concerns indicated in the request in relation to site layout, design and entrance arrangements. The footprints of the dwellings are positioned centrally, canopies to the front are omitted and parking to the rear and side vehicular access is omitted. It is confirmed that sufficient space is to be provided to facilitate possible future garage construction to the side of one dwelling, (No 66)
- 2.4 The **internal technical reports** indicate no objection subject to conditions. (The initial report of the Roads and Traffic Division had included a recommendation for omission of vehicular access to off street parking the rear via the side of one dwelling via the side.)
- 2.5 Twenty one **objections** were received at application stage in which the concerns expressed relate to: layout and design, compatibility with the established development in the area, entrance and access arrangements, overlooking from balconies, intensity of development, potential for commercial use and land ownership issues.

3.0 **PLANNING HISTORY:**

- 3.1 **P. A. Reg. Ref. 3308/14:** Permission was refused on grounds of contravention of development plan objectives and serious injury to residential amenity for three two storey detached houses, two to the rear of the existing dwelling and the third to incorporate it for reasons relating to layout, size scale visual impact, overshadowing and overdevelopment and design that is incompatible with existing development.

4.0 **DECISION of the PLANNING AUTHORITY.**

- 4.1 By order dated, 24th March, 2016, the planning authority decided to grant permission subject to ten conditions all of which are of a standard nature. There are no additional specific requirements.
- 4.2 The planning officer in his report indicates satisfaction with the modifications to the proposed development indicated in the further information submission and confirms satisfaction as to sufficient legal interest on the part of the applicant to carry out the development.

5.0 THE APPEALS

5.1 Third party appeals were received from:

1. Terenure Residents' Association,
2. Caitriona Devilly and Declan Doherty,
3. Norah Price,
4. Noreen McDonnell and Ciaran Casey.

5.2 The issues raised in the appeals are common to all or the majority of the four appeals by the residents association, residents of neighbouring properties and the Observer submission of Ms Drew.

Ms Devilly and Mr Donnelly reside at No 68 Terenure Road West the adjoining property to the west,

Ms Price resides at No 62 Terenure Road West to the east of the appeal site

Ms McDonnell and Mr Casey reside at No 64 Terenure Road West which adjoins the eastern boundary of the appeal site.

5.3 The parties accept that the modifications proposed in the further information submission are an improvement on the original proposal as regards addressing their objections. The objections are outlined below:

- In the layout there is no symmetry or relationship with the established symmetry in the area. The garage to the side of No 66 will distort the symmetry. The gaps to the sides are 2.75 metres and 3.2 metres. To provide for balance and compatibility with established development, there should be two single storey garage structures, one to the side of each house and constructed simultaneously with the houses. The existing development gives precedent for houses with garages to the side.
- The gaps to the side should be infilled, (by garages) to prevent potential for the future development behind the houses, access to the rear via the side to park at the rear of the houses and to maintain security at the adjoining properties at which the rear is inaccessible.
- The two vehicular entrances should be aligned and positioned at the centre of the site frontage instead at the edge. This will prevent obstruction of the entrances of the neighbouring properties during construction.

- The separate pedestrian gates which results in a total of four entrances on the site frontage are not required. It is usual sufficient for pedestrians to use the same access as the vehicular entrance. Pedestrians use the vehicular entrances at existing properties in the area.
- The balconies at the rear will overlook the rear gardens of the adjoining existing properties and while balconies are suitable for apartments they are not appropriate or necessary for houses with gardens. The balconies should be omitted.
- There is no proof of the applicant's ownership of the lands. The applicant has failed to provide evidence of sufficient legal interest in response to the further information request. Full folio documentation from the Land Registry should have been provided. The land is not registered is subject to a third party dispute and to ongoing review by the Land Registry. A folio does not exist and it is premature to grant permission. An applicant should either have consent from the landowner or provide proof of ownership from the Land Registry. Permission should be refused on grounds of insufficient legal interest.

6. OBSERVER SUBMISSION. Eileen Brew of 10 Greenlea Road.

6.1 In the submission received on Ms Brew states that:

- Side passageways of 3.2 and 2.76 at the side of the dwellings poses a security risk,
- the two garages, one at the side of each dwelling should be constructed at the same time as the houses,
- the pedestrian accesses should be omitted,
- the balconies will overlook the rear gardens and are not required and,
- the ownership issues raised at application stage were not resolved.

7. RESPONSE TO THE APPEALS BY THE APPLICANT.

7.1 A submission was received in response to the appeals from Simon Clear on behalf of the applicant on 25th April, 2016 in which a

description and outline of the established development in the area and of the proposed development is set out.

7.2 The response to the appeals can be outlined as follows.

- The applicant has no current proposals for garages and it is not possible to require an applicant to include development in these spaces if there is no reference to it in the notices.
- The cottage occupied one third of the width of the frontage which is much less than the proposed development. A new security risk of trespass is not being introduced. Strong front boundaries will minimise potential for rear access.
- No rationale and no transportation argument have been put forward for the centralisation of the accesses on the frontage. The locations at the perimeter are consistent with the pattern in the area. Photographs included shown the adjacent driveway arrangement at the side of houses so it is a contradiction also with reference to the request for the garages to be constructed at the side in terms of vehicular access to them
- No rationale and no transportation argument have been put forward for omission of the pedestrian gates. Segregated entrances are better for safety.
- The balconies area recessed and edged by the returns preventing lateral aspect over adjoining rear gardens. The balconies open views to the mountains which are best appreciated from upper levels in suburban houses in south Dublin. They are small and have no impact on amenities or amenity of adjoining property.

7.2 It is also submitted that the issues raised in respect of Title have not relevance to planning consideration and are not open to consideration in a planning appeal. The Board is not a property arbitration body. A grant of permission does not confer rights to carry out development and the references in the appeals are of no substance.

7.3 It is requested that the grant of permission be upheld it being submitted that the appeals are unreasonable in the context of the revised proposal.

8. **OBSERVATIONS OF THE PLANNING AUTHORITY.**

8.1 There is no submission from the planning on file.

7.0 DEVELOPMENT PLAN.

- 7.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is within an area subject to the zoning objective: "Z1: *to protect provide for and/or improve residential amenities*".
- 7.2 Policies, objectives and standards for infill residential development are set out in Section 17.9.7 and in 17.10.5 with regard to the justification for retention or removal of historic buildings.

8.0 ASSESSMENT

- 8.1 The planning issues in the appeals are very much inter-related considered below are:

Layout and Design

Garages

Access and entrance arrangements.

Overlooking.

In addition, legal title and ownership issues which have been raised at application and appeal stages are also addressed.

8.2 Layout and Design

The existing gatelodge positioned forward of the building line on a plot within a section of Terenure Road West. To either side and to the rear along Parkmore there is strong homogeneity in pairs of two storey semi-detached road frontage houses with garages to the side and front and rear gardens.

- 8.3 However, the footprints and separation distances of the proposed dwellings from the side boundaries which are not equal are acceptable in that there is no significant adverse impact on the symmetry in the streetscape. The positioning of the entrances for each dwelling at the outer edge of the frontage is also acceptable and more compatible with the existing arrangements for development along the road frontage.
- 8.4 In the event of use of the garage for car or vehicular storage, it is agreed with the applicant's agent that access and egress turning

movements within the front curtilage may be more practicable. The separate pedestrian entrances would represent a departure as they form additional openings in the site frontage whereas a single vehicular entrance serves each of the existing dwellings. A continuous unbroken frontage is more visually acceptable and compatible whereas four access points would be more conspicuous. It is considered that the pedestrian entrances are unwarranted.

8.5 The appellants and observer party have not commented on the house type and design. It is considered that a satisfactory design and house type incorporating some third floor accommodation and a slightly larger footprint than that of the adjoining houses and garages has been achieved. There is no objection to the house type and design.

8.6 **Garages and Access to the Rear.**

It is agreed that provision for garages to the side of each dwelling would be comparable to other dwellings in that the entire site width can be infilled. However there are insufficient grounds to justify any requirement for garage construction to be incorporated as part of the overall development by any means through conditions. While security of access to the rear and to the rear of adjoining properties is a reasonable concern and it would be desirable that measures be taken to secure the rear from access it is not feasible for the applicant to be required, through the planning remit to provide for same.

8.7 However, the further information submission clearly indicates the applicants' acceptance that vehicular access and parking to the rear is precluded from the proposed development. A condition can be attached should permission be granted in which it is clearly specified that off street parking is restricted to the front curtilage only and that no vehicular access or parking to the rear is authorised.

8.8 **Overlooking.**

Although it is the applicant's case that the proposed balconies will provide good quality views toward the Dublin mountains for the future occupants high quality views are also attainable from the inner side of the windows. It is considered that there is no sufficient case for the first floor balconies on these grounds.

8.9 It is agreed that the balcony space is substantially setback with the range of vision and potential for overlooking to the side to adjoining properties being restricted. However, access to and use of the balconies gives rise to intrusiveness and perceived intrusion on privacy. They are also considered to be inessential given the amenity

potential of each of the two proposed units in rear private open space in particular and views from the upper floors.

8.10 Should permission be granted it is recommended that the balconies be omitted by condition.

8.11 Legal Entitlement.

It is agreed with the applicant establishment of Title and entitlement to carry out development come outside the planning remit. However, significant questions as lack of evidence in this regard arise, it is reasonable that there be some assurance in this regard in connection with consideration of a proposed development. To this end, it is considered that documentation included in the further information submission is insufficient and that the applicant has failed to demonstrate Title or entitlement to carry out the development. Copies of Land Registry Folio Documentation would be necessary.

8.12 Should a grant of permission be considered, it is recommended that the applicant be provided with a further opportunity to provide relevant documentary evidence so that the Board can be reasonably satisfied as to the entitlement of the applicant to carry out the development. Notification could be issued to the applicant regarding this matter prior to determination of a decision.

8.13 Other issues.

With regard to the proposed demolition, while the replacement of viable historic buildings is undesirable and it is clear that the existing dwelling has potential for satisfactory restoration and refurbishment it is considered that from the perspective of sustainable development interests, a reasonable case has been made for demolition in instance.

8.14 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.

9.0 CONCLUSION AND RECOMMENDATION.

In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld subject to inclusion of conditions in which for reasons of clarity and residential amenity, access to the rear and parking behind the front building line is not

permitted and in which the pedestrian entrances and balconies are also omitted by condition.

It also recommended that prior to the determination of the decision the applicant should be provided with an opportunity to submit relevant documentary evidence in the form of Folio documentation to demonstrate that the applicant has sufficient legal interest to carry out the proposed development. A draft order is set out overleaf.

DECISION

Grant Permission on the Basis of the Reasons and Considerations and subject to the Conditions set out below.

REASONS AND CONSIDERATIONS.

Having regard to the location of the site in a serviced suburban area and subject to the zoning objective to provide for and improve residential amenities in the Dublin City Development Plan, 2011-2017, it is considered that subject to compliance with the conditions set out below, the proposed development would satisfactorily integrate into the established pattern and character of development in the area, would be acceptable in terms of traffic safety and convenience and would not be seriously injurious to residential amenities of property in the vicinity. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

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 the planning authority on 4th February, 2016 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. Each dwelling shall be served by one vehicular entrance only. The separate pedestrian entrances shall be omitted. Revised plan and elevation drawings shall be submitted and agreed in writing with the planning authority prior to the commencement of the development.

Reason: In the interest of visual amenities of the site frontage and streetscape.

3. The balconies at first floor level at the rear of each house shall be omitted and the full length patio doors shall be replaced by windows to match the first floor windows for Bedroom 2 shown on the lodged plans. Revised plan and elevation drawings shall be submitted and agreed in writing with the planning authority prior to the commencement of the development.

Reason: In the interest of the residential amenities of adjoining properties.

4. The garages/sheds located to the rear of each house shall be used for purpose ancillary to the residential use of the main dwelling only.

Reason: In the interest of clarity and to prevent unauthorised development.

5. Site development and building works shall be carried only out between 0700 hrs Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

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. 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.

9. 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
14th June, 2016.