

An Bord Pleanála



Inspector's Report

Development: Retention of first floor roof garden and the doors accessing it to the rear of existing two storey house.

Location: 53 Beresford Street, Dublin 7.

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 2347/16
Applicant: Noel McAuley
Type of Application: Permission
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Noel McAuley

Type of Appeals: 1st v Refusal
Date of Site Inspection: 13th July 2016
Inspector: Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The site is situated at 53 Beresford Street, Dublin 7.
- 1.2 Beresford Street runs northwards from Chancery St at the Four Courts, east of Church St in Dublin's inner city. The general area is characterised by mixed use, medium rise, larger buildings reflecting its inner city location. Within an area between Mary's Lane at the southern end, Stirrup Lane at the northern end, Church St and Beresford St (to the west and east respectively), there is an enclave of low density residential development of two storey brick houses. These houses are relatively unaltered in their appearance and have a uniformity in materials, scale and roof profile. The block of houses, of which no. 53 forms part, fronts east to Beresford Street, south to Church Ave West, west to Church St and north to Father Matthew Square. Father Matthew Square has a small landscaped area at the western end, opposite the church on Church St (St Mary of the Angels) and is otherwise hard surfaced and used for car parking by resident permit holders.
- 1.3 The site is occupied by a two storey mid terrace house. This terrace, facing Beresford St, has rear yards attached and therefore the gables of the terrace are separated from the adjoining houses on Father Matthew Square and Church Ave, which run at right angles to Beresford St, by boundary walls c. 2m high. For this reason the rear of No. 53 Beresford Street, is visible, at first level, from Father Matthew Square and Church Ave West.
- 1.4 The houses along Beresford Street have small, fenced-in front gardens; that of No. 53 has been hard surfaced.
- 1.5 The site area is given as 58m².

2 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises retention of first floor roof garden and the doors accessing it, to the rear of the existing two storey house.
- 2.2 The floor area of the roof terrace is given as 8.4m².

3 PLANNING AUTHORITY DECISION

- 3.1 The planning application was lodged on the 25th February 2016.
- 3.2 **Technical Reports**
- 3.3 Engineering Department Drainage Division – 23/03/16 – conditions.
- 3.4 Transport Infrastructure Ireland – 16/03/16 – no observations.
- 3.5 Planning Report 13/4/16 –
Zoning Z2 ‘to protect and /or improve the amenities of residential conservation areas’.
- Sections of the City Development Plan are referred to:
- 15.10.2 of the City Development Plan – design of residential extensions.
- FC 26 - protect and conserve the city’s built heritage, including its fabric and character.
- FC 27 - seek the preservation of the built heritage of the city
- FC 41 - protect and conserve the special interest and character of Architectural Conservation Areas and Conservation Areas
- 17.9.8.3 - Conservation Areas
- 17.9.8 - extensions and alterations to residential development
- Appendix 25 - Guidelines for Residential Extensions.
- 3.6 The proposal essentially relates to a roof garden / outdoor terrace area of c. 8 sq m at first floor level with access from a set of

glazed double doors that relate internally to a space off a central landing. There are a series of vertical timber posts (2.4m high) at 1m intervals along the terrace, as well as horizontal posts on top of the structure, whilst there is glass balustrade to 1.1m high surrounding the terrace area. The submitted drawings indicate that the double doors are for wheelchair access and there is medical correspondence on the file record to support same. The application site relates to a mid-terrace artisan type two-storey dwelling of yellow brick with redbrick detailing along the window reveals and string courses, located in the inner city, in a predominantly residential area. The site and surrounding terraces form part of a Residential Conservation, Area Z2, which is characterised by a uniformity in materials, scale and roof profile. The terraces represent a series of fine grain urban housing on relatively constrained plot sizes, with the subject terrace, Beresford St, aligned in a perpendicular fashion to the adjoining terraces of similar dwelling types (Church Ave, Church Terrace and Church St): all historically designed around a central open space: Fr Matthew Sq. The application site and surrounding dwellings represent tight inner city residential context, typical of the vernacular dwelling types. From site inspection, it is evident that relatively few, with the exception of one or two dwellings, have protruding dormers or elements at roof level, with the traditional roof profiles intact. From site inspection, there was no apparent indication of any other roof terrace.

- 3.7 The report considers the site context, the previous planner's assessment of the permission for alterations and extensions to the dwelling and the relevant conditions omitting double doors/ extensive glazing at first floor level (3895/09) the visual impact and residential amenity of neighbouring / adjoining properties. Having regard to the Z2 zoning there are concerns at the principle of the proposal. The main issues are visual impact, character of the conservation area and the residential amenity of neighbouring properties. Contrary to the applicant's contention, there is no established precedent for roof garden or terraces at first floor level at this location or vicinity. The terrace with vertical and horizontal timber posts does not respect the established pattern of development in the area, would be out of character and visually incongruent, detracting from the scale and profile of terrace dwellings in the area. It is noted that the roof terrace structure is visible from Fr Matthew Sq. an attractive focal point of the surrounding dwellings and central to the character of the residential conservation area. It is also visible from the other

surrounding streets. The proposal would detract from the architectural quality and uniformity of the conservation area.

- 3.8 Section 15.10.2 sets out the zoning objectives for the Z2 zoning which include the general objective for such areas - to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.
- 3.9 Section 7.2.5.3 gives guidance in relation to conservation areas, stating conservation areas have been designated in the city in recognition of their unique architectural character and important contribution to the heritage of the city. Designated conservation areas include extensive groupings of buildings or streetscapes and associated open spaces.... All of these areas require special care in terms of development proposals which affect structures in such areas, both protected and non-protected. The special value of conservation areas lies in the architectural design and scale of these areas and is of sufficient importance to require special care in dealing with development proposals. Dublin City Council will thus seek to ensure that development proposals within all conservation areas complement the character of the area.
- 3.10 Section 17.9.8 states: the form of the existing building should be followed as closely as possible, and the development should integrate with the existing building. Planning permission will only be granted where the proposed development has no adverse impact on the scale and character of the dwelling.
- 3.11 Appendix 25 states in relation to roof extensions that if not treated sympathetically, dormer extensions can cause problems for immediate neighbours and in the way a street is viewed as a whole, as a general principle the extension into the roof should be visually subordinate; in this case the terrace is the relevant consideration.
- 3.12 It is considered that the proposal would not complement the character of the area and would be contrary to policy FC 41 to protect and conserve the special interest and character of Architectural Conservation Areas and Conservation Areas in the development management process.
- 3.13 It is considered that the proposal would be contrary to the Z2 zoning objective, policies relating to protecting and conserving

the amenity and architectural quality of conservation areas as set out in Section 7.2.5.3 and policy FC41.

- 3.14 There are concerns regarding the impact on neighbouring properties. It is considered, particularly given the tight urban context, with regard to the loss of privacy and visual amenity, that the proposal would detract from the privacy and visual amenity of adjoining properties and potentially depreciate the value of property.
- 3.15 Section 17.9.8 states criteria for extensions to dwellings – that the residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy, and also that the development should have no adverse impact on the scale and character of the dwelling and have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight. The proposed development would impact on the amenities of neighbouring properties by reason of overlooking and loss of visual amenity.
- 3.16 A refusal of permission is recommended.
- 3.17 The planning authority decided - 14/4/2016 – to refuse planning permission for two reasons:
- Reason no 1
Having regard to the Z2 Zoning Objective (Residential Conservation) pertaining to the application site, under which it is an objective to protect residential conservation areas from unsuitable new developments or works which would have a negative impact on the amenity or architectural quality of the area: Policy FC41 which seeks to protect the character of Conservation Areas, as well the standards for extensions and alterations to dwellings as set out in Section 17.9.8 and the related guidelines set out in appendix 25 of the Dublin City Development Plan 2011-2017, and the established pattern of development in the area, it is considered that the proposed development by virtue of its excessive scale at roof level, would be visually incongruent in this residential conservation area.
- Reason no 2
The proposed development by virtue of the provision of open space at first floor level in the form of a roof garden

would seriously detract from the residential amenity of neighbouring properties by loss of privacy and as such would depreciate the value thereof, and set an undesirable precedent for similar development. The proposed development would therefore be contrary to the Dublin City Development Plan 2011-2017 having regard to the residential zoning objective (Z2), the standards for residential extensions (Section 17.9.8 and appendix 25) and the proper planning and sustainable development of the area.

- 3.18 The decision was in accordance with the planning recommendation.
- 3.19 An observation on the file has been read and noted.

4 PLANNING HISTORY

3895/09

Grant of permission for alterations to existing two storey mid terrace domestic dwelling consisting of: demolition of existing single storey extension to the rear of the dwelling (11 square metres) and construction of new domestic two storey pitched roof extension to rear (15 square metres), with attic conversion (15 square metres) incorporating dormer window and roof light to rear and single roof light to front, and all internal alterations. New railings and gate to street elevation, new windows to front elevation and associated site works at 53 Beresford Terrace.

Condition 2 revised the development – first floor extension to have a maximum projection of 1.35m and maximum external width of 2.2m, to be clad in brick and have a pitched roof to match the main roof, to be a continuation of the main roof and terminate at its western elevation in the lower eaves. The existing first floor rear bedroom window opening shall be retained. The attic accommodation shall be contained within the pitch of the existing roof with the exception of a dormer structure to the rear having a maximum external width of 2.5m the dormer structure shall be separate to the existing brick chimney. Development not to commence until revised drawings have been agreed.

5 GROUNDS OF APPEAL

- 5.1 The first party Noel McAuley has appealed to decision to refuse permission.
- 5.2 The grounds can be summarised as follows:
- 5.3 On or about January 2010 Mr McAuley had a roof garden built at his house, together with access by a double glass door. This work was undertaken at the same time as a whole house renovation. The roof area had always been used as a roof garden and the work undertaken was carried out as a safety measure.
- 5.4 In August 2016 he received a letter from an enforcement officer. He was advised that in order to retain the structure, retention planning permission would need to be sought.
- 5.5 He encloses images of and from the roof garden, similar type structures in the area, a petition supporting the retention of the roof garden from the local community, a letter confirming the use of roof areas as gardens, as being common practice in this area, and letters of support from neighbours, together with articles supporting urban gardens in the inner city.
- 5.6 The first party has lived here since 1965. It was his wife's parent's home and her grandparent's home. The majority of houses in the neighbourhood are similarly occupied by long-time residents with strong links to the area; families living in harmony generation after generation.
- 5.7 Many residents are elderly and have made modifications to their houses to assist mobility, as he has. Mr McAuley built the roof garden because of his limited mobility and to substitute for his former enjoyment: sitting reading the newspaper in local parks.

- 5.8 Mr McAuley refers to the Development Plan (17.9.1) which identifies the importance of open space and states that it can be provided in a number of ways.
- 5.9 Citing the refusal reasons Mr McAuley points out that the roof garden is not a new development or works; the scale cannot be described as excessive; it is keeping with the size of other roof gardens in the area; it is not visible from Beresford St; it is partially visible from Fr Matthew Sq and Church Terrace providing you cross to the opposite sides of these respective locations and look up. There is no loss of privacy and no such claim has ever been made by a neighbour. The roof garden would not set a precedent as there are already at least 4 other roof gardens in the area. The decision is inconsistent with the council's policies: with the principle of access for all including the disabled. A signed petition is enclosed.

6 RESPONSES

6.1 Planning Authority

- 6.2 The Planning Authority has not responded to the grounds of appeal.

7 POLICY CONTEXT

- 7.1 **The Dublin City Development Plan 2011 – 2017** is the operative plan.

- 7.2 Relevant provisions include:

Zoned Z2 - To protect, provide and improve residential amenities. Section 15.10.2 sets out the zoning objectives for the Z2 zoning which include the general objective for such areas - to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

7.2.5.3 - conservation areas have been designated in the city in recognition of their unique architectural character and important contribution to the heritage of the city. Designated conservation areas include extensive groupings of buildings or streetscapes and associated open spaces.... All of these areas require special care in terms of development proposals which affect structures in such areas, both protected and non-protected.

The special value of conservation areas lies in the architectural design and scale of these areas and is of sufficient importance to require special care in dealing with development proposals. Dublin City Council will thus seek to ensure that development proposals within all conservation areas complement the character of the area. Mechanisms used to designate areas of particular conservation value are land use zonings e.g. residential conservation areas, architectural conservation areas.

Relevant policies include (FC41) to protect and conserve the special interest and character of Architectural Conservation Areas and Conservation Areas (FC 26); to protect and conserve the city's built heritage, including its fabric and character; and (FC 27) to seek the preservation of the built heritage of the city.

17.10.8 - In considering proposals for development in conservation areas, it is policy to have particular regard to the effect of the proposed development on buildings and the surrounding environment, both natural and manmade, and the impact of development on the immediate streetscape in terms of compatibility of design, scale, height plot width, roof treatment, materials, landscaping, mix and intensity of use proposed. Development within conservation areas should be so designed so as not to constitute a visually obtrusive or dominant form of development. New alterations and extensions should complement existing buildings/ structures in terms of design, external finishes, colour, texture, windows/ doors/ roof/ chimney/ design and other details.

17.9.8 -The design of residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy. In addition, the form of the existing building should be followed as closely as possible, and the development should integrate with the existing building through the use of

similar finishes and windows. Applications for planning permission to extend dwellings will be granted provided that the proposed development:

- Has no adverse impact on the scale and character of the dwelling.
- Has no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight.

7.3 Appendix 25 - Guidelines for Residential Extensions:

Proposals should: not have an adverse impact on the scale and character of the dwelling, have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight; and achieve a high quality of design.

Residential amenity issues - it is important to make sure that any extension does not unacceptably affect the amenities of neighbouring properties. This includes privacy, outlook, daylight and sunlight.

8 ASSESSMENT

8.1 The main issues which arise in relation to this development are historic use as a roof garden, shortfall in open space availability, privacy, precedent, impact on conservation area, and appropriate assessment and the following assessment is addressed under these headings.

8.2 Historic use as a roof garden

8.3 The first party states that the roof has always been used as a roof garden and attaches to the grounds of appeal a letter signed by a number of residents of the area stating that the first party and his family have always used the roof area as a roof garden, as they also do, and as do other families in the area.

8.4 I note that the planning application in 2009 included a proposal for large 'new timber windows and screens to rear elevation', the existing window was not shown on the drawings but a condition (2b), not appealed, required that the existing first floor window opening be retained. I am satisfied therefore that, although the first party and his family may have occasionally stepped out a window onto the roof, it was not a roof garden.

8.5 **Shortfall in Open Space Availability**

8.6 The first party has outlined his need for private open space.

8.7 The only open space available at the rear of the dwelling is a small yard, enclosed by high walls. There is a small front garden, now hard surfaced, to the front, but it fronts onto a busy road. The roof garden would greatly enhance the amenities of the dwelling.

8.8 **Privacy**

8.9 The reason for refusal refers to loss of privacy. From the number of signatures of support for the development it would appear that this may not be an important issue for some in the area. This doesn't necessarily mean that all residents who are potentially affected have confirmed their support. From photographs provided by the first party, which have been submitted with the grounds of appeal, it is clear that the roof garden overlooks adjacent yard areas at close quarters. In my opinion the impact on privacy is a serious negative impact of the development, notwithstanding the general support for the proposal.

8.10 **Precedent**

8.11 The first party cites examples of similar development carried out in the area including a roof garden close to the rear of the subject dwelling.

8.12 On the date of inspection I noted one instance of a structure to the rear of a dwelling fronting Church St, where planters at above a

ground floor building may indicate a roof garden. The area is not walled in or otherwise protected and I cannot confirm that it is used as a roof garden.

8.13 A roof garden to the rear of the subject site is shown in photographs supplied by the first party. This area is enclosed by a perimeter of buildings and not visible from public streets or the surrounding area.

8.14 I would not regard either of these examples as setting a precedent against which the proposed development should be assessed.

8.15 **Impact on Conservation Area**

8.16 The site is located in a residential conservation area and policies to protect these areas from unsympathetic development are clearly outlined in the Development Plan.

8.17 The Plan states that conservation areas have been designated in the city in recognition of their unique architectural character and important contribution to the heritage of the city. Designated conservation areas include extensive groupings of buildings or streetscapes and associated open spaces.... All of these areas require special care in terms of development proposals which affect structures in such areas, both protected and non-protected. The special value of conservation areas lies in the architectural design and scale of these areas and is of sufficient importance to require special care in dealing with development proposals. Development within conservation areas should be so designed so as not to constitute a visually obtrusive or dominant form of development.

8.18 The development proposed for retention is visible from the surrounding area. It comprises high vertical timber posts (c2.4m) at 1m intervals, with horizontal posts on top and perforated metal panels to c1.1m high. I note from the photographs supplied, that the roof garden to the rear of the subject site (enclosed by buildings and not visible) uses glass for its boundary which I would consider a more acceptable design solution. There is nothing to

indicate that the higher vertical or horizontal timber posts are a necessary part of the construction.

- 8.19 This residential conservation area is characterised by a uniformity in materials, scale and roof profile. Having regard to the visibility of roof gardens and their potential for significant negative impact on the uniformity of the area, a feature characterising this residential conservation area, notwithstanding the general support in the area for roof gardens, their development on an ad-hoc basis is unacceptable and I consider that individual applications could only be advanced in the context of a design developed in consultation with the planning authority and agreed by them.
- 8.20 In my opinion the proposed development constitutes a visually obtrusive and dominant form of development, therefore, notwithstanding the benefits to the first party, which I acknowledge, having regard to the location in a residential conservation area, where the roof garden is visible from public streets, I consider that planning permission should be refused.
- 8.21 **Appropriate Assessment**
- 8.22 The proposed development is the retention of first floor roof garden and the doors accessing it to the rear of an existing two storey house. The site is in a built up area with public piped water services.
- 8.23 The nearest Natura sites are South Dublin Bay and River Tolka SPA (004024) which is in c 3km distance away and separated from the subject site by large areas of Dublin City.
- 8.24 In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document

'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.

- 8.25 Having regard to the nature and scale of the proposed development and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

9 RECOMMENDATION

In accordance with the foregoing assessment, I recommend that planning permission be refused for the following reasons and considerations.

REASONS AND CONSIDERATIONS

- 1 The development proposed for retention is visible from adjoining streets within a residential conservation area where it detracts from the uniformity which characterises the area. The proposed development would materially contravene the zoning objective for the area which seeks to protect the area from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area; would conflict with Development Plan policies which seek to protect and conserve the special interest and character of the city's built heritage; and would accordingly be contrary to the proper planning and sustainable development of the area.

2 The development proposed for retention would seriously detract from the residential amenities of neighbouring property by reason of loss of privacy.

Dolores McCague
Inspectorate

Date

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| Appendix | 1 | Map and Photographs |
| Appendix
2011 -2017 | 2 | Extracts from the Dublin City Development Plan |
| Appendix
3895/09 | 3 | Copies of extracts from the planning application |