

# An Bord Pleanála



## Inspector's Report

**PL 29S.246622**

### Development

Partial demolition of garage and construction of a 2-storey house

No.77 Charleville Close & rear of 149 Leinster Road Rathmines, Dublin 6  
(Protected Structure)

### Planning Application

Planning Authority: Dublin City Council

Planning Authority Ref.: 2372/16

Applicant: Ann Dalby

Type of Application: Planning permission

Planning Authority Decision: Refuse permission

### Planning Appeal

Appellant(s): Ann Dalby

Type of Appeal: First v Refusal

Observers: Two

Date of Site Inspection: 12<sup>th</sup> July 2016

**Inspector:** Karla Mc Bride.

## **1.0 INTRODUCTION**

### **1.1 Site and location**

The appeal site is located in Rathmines on the south side of Dublin City and the surrounding area is predominantly residential in character. The site is located along Charleville Close which is a mews laneway to the rear of Leinster Road and there are a variety of houses types in the vicinity. The site is also located to the rear of an existing 2-storey over basement mid terrace house at no.149 Leinster Road which is a Protected Structure. The site is currently occupied by a single storey garage. It also comprises one half of the rear section of the garden at no.149 and planning permission was recently granted for a house on the other half of the garden under Reg. Ref.3013/15. The site is bound on either side by existing 2-storey houses.

The attached photographs and maps describe the site in some detail.

### **1.2 Proposed Development**

Permission is being sought to:

- Partly demolish the existing garage
- Construct a 2-storey house with attic accommodation
- The c.174sq,m, house would occupy a c.166sq.m. site
- The house would be c.5m wide, 19.5m deep & c.4.5m to 9.5m high
- Provide one car parking bay

#### ***Accompanying documents:***

- Planning report
- Shadow Analysis Report (with appeal)
- Model

### **1.3 Planning Authority's Decision**

The Planning Authority decided to refuse planning permission for 1 reason which is summarized below:

*The site is located within a Z2 zone which seeks “to protect, and/or improve the amenities of residential conservation areas”, the 2-storey glazed element at first and second floor would overlook and overshadow neighbouring properties, it would be visually incongruous and seriously injure the residential amenities of property in the vicinity.*

This decision reflects the report of the City Planning Officer.

***Interdepartmental reports:***

*Transportation Department* had no objection subject to conditions.

*Drainage Department* had no objection subject to conditions.

*City Conservation Officer* had no objection.

***Submissions:***

Two letters received which raised concerns in relation to overshadowing, overbearance, overlooking, loss of privacy, adverse impact on streetscape excessive height and scale, and contrary to mews development standards.

**1.4 Planning history**

***Reg. Ref. 3013/15*** - Permission granted for the partial demolition of the garage and construction of a 2-storey house (plus attic accommodation) at no.79 Charleville Close to the rear of no.149 Leinster Road (PS).

***Reg. Ref. 2423/14*** - Permission refused for two 2-storey houses (plus attic accommodation) at nos. 77 & 79 Charleville Close to the rear of no.149 Leinster Road (PS). Decision upheld by ABP under 29S.243839 for 1 reason related to overlooking, overshadowing, loss of privacy, substandard amenity space and car parking.

***Reg. Ref.3440/11-*** Permission granted for two 2-storey mews houses (plus attic accommodation) at nos. 77 & 79 Charleville Close to the rear of no.149 Leinster Road (PS). Permission refused by ABP under 29S.240553 for 1 reason related to overshadowing and overbearance to the E.

***Pre-planning:*** A consultation took place and concerns were raised in relation to the impact of the proposal on neighbouring properties and the need to overcome the previous reasons for refusal.

**2.0 ARCHITECTURAL HERITAGE GUIDELINES FOR PAs, 2004**

These Guidelines provide a practical guide in relation to Part IV of the 2000 Planning Act which deals with the protection of architectural heritage in respect of the Record of Protected Structure, Architectural Conservation Areas, Declarations and Places of Worship as well as development control advice and detailed guidance notes on conservation principles.

### 3.0 DEVELOPMENT PLAN

**Zoning objective:** The site is located within an area zoned with the objective “Z2” in the Dublin City Development Plan 2011-2017 which seeks “To protect and/or improve the amenities of residential conservation areas.”

**Heritage:** The site is located within a Conservation Area and No.149 Leinster Road is a Protected Structure.

#### ***Works to Protected Structures (Section 17.10.1):***

In determining applications which relate to protected structures or their setting the authority will take into account:

- The importance of the building, its intrinsic special architectural and/or historic interest and rarity.
- Particular physical features of the building, external and internal.
- The extent and impact of interventions and alterations proposed and already taken place, excluding any unauthorised development.
- Setting and contribution to streetscape.
- Extent to which the proposed works would bring substantial benefits to the community.

#### ***Mews Development standards Section 17.9.4:***

(a) Existing stone/brick coach houses located on mews laneways are of national and international importance...proposals to demolish such buildings on economic grounds will generally not be accepted.

(b) Development will be confined to single-family units, 2-storey height.

(d) New buildings should complement the character of the lane and main building with regard to scale, massing, height, depth, roof treatment and materials, and may be required to incorporate gable-ended pitched roofs.

(f) Accommodation will only be allowed in the roof space of a 2-storey mews if the pitch and eaves height is in accordance with the established pattern on the laneway, this provision shall not apply where 3-storey mews are proposed, dormer windows, front or rear, will not be permitted, and balconies will be considered on their merits.

(j) At least one off-street car space per mews building.

(m) Private open space shall be provided for the full width of the site; the depth shall not be less than 7.5m and free of off-street parking.

(p) The distance between the opposing windows of mews dwellings and of the main houses shall be a minimum of 22m.

## **4.0 APPEAL**

### **4.1 First Party appeal**

- Design is a contemporary response to a complicated site.
- No overshadowing as the design has taken account of the previous reason for refusal by reducing the bulk, height and massing to the rear with only minimal overshadowing of no.81.
- Recently permitted house at No.79 has not yet been built and could be subject to future changes.
- Prepared to make internal and external alterations to reduce concerns about overlooking and overshadowing.
- Stepped back arrangement towards the building line at nos. 73 & 75 will minimise overshadowing.
- Shadow studies at neighbouring houses are attached demonstrate very little overshadowing at no.77.
- Roof ridge line lowered 1.3m below the existing ridge lines at nos.73 & 75 to minimise overbearance at neighbouring houses.
- Changes to the internal layout of the permitted house at no.79 would minimise overlooking.
- Adequate separation distances will prevent overlooking of neighbouring properties.
- The spiral staircase would be a virtually solid element that would not have an adverse impact on the streetscape or residential amenities.
- One car parking space provided in line with Plan requirements.
- Adequate private open space in line with Plan requirements.
- Adequate separation distance with no.149 Leinster Road with no impact on Protected Structure.

### **4.2 Observers**

Two letters of observation received from neighbouring property owners:

#### **4.2.1 John Redmond & Niall MacCurtain (No.73)**

- Proposal would generate an unacceptable level of overshadowing, be visually incongruous, and seriously injure residential amenities.

- The applicant's appeal suggests changes to the proposed house at no.77 and possible future changes to the permitted house at no.79.
- Excessive scale & bulk for a small infill site along a mews laneway.
- Adverse impact on building lines along this section of the laneway.
- Non-compliance with mews development standards with respect to a unified approach, 2-storey height restriction, the need for a complimentary design, and the avoidance of a saw tooth effect.
- Shortfall in open space for existing, permitted and proposed houses.
- Traffic generation.
- Piecemeal approach to the development of the overall site.
- Overdevelopment.

#### **4.2.2 Paul Mitchell & Catherine Brady (no.81)**

- Trying to squeeze a family sized house into a tight site in order to provide 2 houses to the rear of no.149 instead of one house.
- Adverse impact on the amenity space to the rear of no.81 by way of overbearance and overshadowing.
- Excessive bulk and mass of the 2-storey rear element which presents as a high blank wall when viewed from nos. 79 & 81.
- Impact of current proposal on neighbours would be very similar to house refused under 29S.243839.
- The ridge line is not lower than no.75.
- Proposal constitutes overdevelopment with resulting overbearing impact on existing and permitted houses.
- Proposal will result in overlooking of the rear of the houses to the E, including permitted house at no.79 and the existing house at no.81.
- Inappropriate use of angled windows and excessive glazing.
- Substandard shadow diagrams which do not show the site context in terms of boundaries or rear gardens, and the rear courtyard to no.81 is not largely overshadowed by the boundary wall.

- The suggested changes to the house permitted at no.79 cannot be considered by the Board.
- The overly complicated design will adversely affect the streetscape.
- The sloping and angled roof plane which attempts to make the connection between the permitted house at no.79 and the higher ridge line at no.75 is very awkward looking.
- Accept that the external spiral staircase could be designed to avoid overlooking, but this is a feature of the over-development of the site.

#### **4.3 Planning Authority response**

No response from to date.

#### **4.4 Prescribed Bodies**

The appeal was circulated to the Development Applications Unit of the DAH&G, the Heritage Council and Failte Ireland for comment and there has been no response to this request.

## **5.0 REVIEW OF ISSUES AND ASSESSMENT**

The main issues arising in this case are:

1. Principle of development
2. Visual and residential amenity
3. Built heritage
4. Overdevelopment and precedent
5. Other issues

### **5.1 Principle of development**

The proposed mews house would be located within an area zoned “Z2” which seeks “To protect and/or improve the amenities of residential conservation areas” in the current Development Plan and the proposed development is compatible with this objective.

### **5.2 Visual and residential amenity**

The proposed 2-storey house with attic accommodation would be located in one half of the rear garden of an existing 2-storey over basement mid terrace house at no. 149 Leinster Road. Planning permission was recently granted for a house on the other half of the rear garden under Reg. Ref 3013/15 and this house has not yet been constructed. No.149 Leinster Road is a protected structure and the site is located within a Z2 residential conservation area.

#### **5.2.1 Visual amenity:**

The proposed house would front on to Charleville Close which is a mews laneway characterised by a range of house types in a variety of designs, finishes, and setbacks from the roadside boundary. The proposed c.174sq.m, house would be c.5m wide, 19.5m deep and c.4.5m to 9.5m high, with a contemporary design with extensive glazing and a series of sloping roof planes.

The height and design of the proposed house would be similar to the recently permitted house on the other half of the rear garden. The proposed height would be similar to the neighbouring houses although not identical and the roof profile would be radically different. The contemporary design would also be somewhat different to the neighbouring houses to the E and W. Although the proposed house



would respect the established building line to the E at nos.81 to 85, it would be set forward of the building line to the W at 73-73.

Section 17.9.4 (b) of the Development Plan states that mews development will be confined to single-family units of 2-storey height, subsection (f) states that accommodation will only be allowed in the roof space of a 2-storey mews if the pitch and eaves height is in accordance with the established pattern on the laneway. It is noted that there is no discernible established pattern of development along Charleville Close which comprises a wide range of house types and designs and various setbacks from the front building line. I am therefore satisfied that the proposed house would not have a significant adverse effect on the visual amenities of the area.

### **5.2.2 Residential amenity - proposed house:**

Section 17.9.1 of the Development Plan states that the minimum floor area for a 3-bed unit should be 100sq.m and that the Council will also have regard to the principles and standards outlined in contained in the DoEHLG's 2007 'Quality Housing for Sustainable Communities - Best Practice Guidelines for Delivering Homes Sustaining Communities.'

Table 5.1 of these Guidelines state that the floor area for a 3-storey, 3-bed, 6 person unit should be at least 110sq.m and that the main living room should be at least 15sq.m with an aggregate living area of 37sq.m. Section 5.3 states that single bedrooms should be at least 7.1sq.m. and 2.1m wide; double bedrooms should be 11.4sq.m and 2.8m wide; the main bedroom should be 13sq.m. and 2.8m wide; whilst the living room width should be at least 3.8m.

The floor area of the proposed house would be c.174sq.m. The living room would be c.30sq.m and the aggregate living area, which would be c.18m long and between c.3.3m and 4.5m wide, would comprise the living room, dining room and kitchen. All three of the bedrooms would comply with the minimum space and width standards set out in the DoEHLG Guidelines. All rooms would be lit by natural light and adequate storage would be provided. The house would therefore provide for an acceptable level of amenity for future occupants.

The proposed rear garden would be c. 8.5m deep and c.5m wide with an area of c.42.5sq.m. which complies with subsection (m) the mews development standards under Section 17.9.4 (b) of the Development Plan. However it is noted that this is less than what would normally be required for a standard 3 bedroom house.

### 5.2.3 Residential amenity – neighbouring houses

#### ***No. 149 Leinster Road:***

The proposed house would be located to the rear/S of the existing house at 149 Leinster Road. The separation distance between the two houses would be in excess of the required 22m between opposing first floor rear windows and the proposed house would not overlook or overshadow the existing house to any significant extent. The rear remaining garden at no.149 would be c.200sq.m which is well in excess of Development Plan requirements.

#### ***No.73 & 75 Charleville Close:***

The proposed house would be located to the side of the existing 2-storey houses at nos.73 and 75 Charleville Close to the W. It would protect c.1.5m and c.6.0m to the fore of the front building line established by nos. 73 and 75, although it would be in line with the front elevation of the adjacent permitted house to at no.79 to the E. The c.6.0m deep section would be set back at least 2.0m from the boundary with no.75 and although this section of the proposed house would cast a shadow across the front garden of the neighbouring house in the early part of the day, the overall impact would not be significant.

The proposed house would respect the rear building line with the exception of the 2-storey external staircase located in the easternmost section, which would be adjacent to, and partly within, the site of the permitted house at no.79. However it would not overshadow the neighbouring properties to the W to any significant extent.

The ground and first floor windows in the proposed rear elevation would be c.2.6m wide and c.1.8m high at ground level and c.2.0m to 2.5m high at first floor level. The extensive glazing at first floor level would overlook the neighbouring properties and give rise to a loss of privacy. However this issue could be addressed by way of a planning condition to reduce the size and scale of the first floor rear window.

#### ***No. 79 Charleville Close:***

Permission was recently granted under Reg. Ref.3013/15 for a 2-storey house with attic accommodation and a single storey rear extension on the adjacent site to the E on the other half of the rear garden of no.149 Leinster Road. The permitted (but not yet constructed) house would be c. 4.0m wide, c.14.0m deep and c.3.0m to 8.5m high.

The 3-storey and c.8.0m high rear section of the proposed house would project c.6.0m beyond the rear elevation of the adjacent permitted house at no.79, whilst the c.4.5m to c.5.5m high external spiral staircase would extend along the site boundary for a further 2.0m. The c.8.0m projection would be overbearing and visually obtrusive and it would cast a substantial shadow over the adjacent site in the afternoon and evening. (The contents of the applicants shadow study are noted.)

The proposed first floor rear window would overlook the rear section of garden at the permitted house in a similar way to that outlined above in relation to no.75 Charleville Close, although this could be remedied by way of a planning condition. The absence of windows in the side elevation of the proposed house would ensure that the neighbouring rear garden would not be overlooked from this location.

The large S facing window in the rear section of the proposed house would be located within c.6m of the first floor rear elevation of the recently permitted house at no.79. This window would be c.2.5m wide and c.5m high and it would span the first and second floors to provide additional daylight to the living room and it would be the only source of natural light to bedroom no.3. Although the rear first floor section of no.79 does not contain any habitable rooms the rear staircase has windows that would be overlooked to an unacceptable degree.

The proposed development would therefore seriously injure the residential amenities of the neighbouring recently permitted house.

Any future changes to the recently permitted house at no.79 cannot be considered as part of the assessment of the current proposal.

#### ***Nos. 81-85 Charleville Close:***

The rear section of the proposed house would also project c.8.0m beyond the rear garden walls of nos. 81-85 to the E which would not be overlooked or overshadowed to any significant extent, although the scale of the gable wall could be overbearing.

### **5.3 Built heritage**

The proposed development would be located within a Conservation Area, to the rear of no.149 Leinster Road which is a designated Protected Structure. Section 17.10.1 of the Development Plan requires a high standard of design that takes account of the surrounding built heritage and the submission of a detailed conservation method

statement. A detailed Conservation report was not submitted however it is noted that none of the proposed works would have a direct impact on or affect the integrity of a Protected Structure. Having regard to the variety of house types along the Charleville Close, I am satisfied that the proposed development would not adversely affect the character of the Z2 Residential Conservation Area.

#### **5.4 Overdevelopment and precedent**

The proposed 2-storey house would occupy one half of the rear garden at no.149 Leinster Road and it would be located adjacent to a recently permitted 2-storey house on the other half of the same garden. Having regard to the height, scale, bulk and layout of the proposed house and taking account of the issues raised in section 5.2 above, the proposed development would constitute an overdevelopment of a restricted rear garden site, which would be contrary to the proper planning and sustainable development of the area. The proposed development would also set an undesirable precedent for the future development of similar rear garden sites in the surrounding area.

#### **5.5 Other issues**

***Vehicular access and parking:*** The proposed car parking arrangements in line with Development Plan requirements for mews developments and the site is located in close proximity to several public transport bus routes at Rathmines and Harold's Cross.

***Environmental services:*** The proposed arrangements are considered acceptable subject to compliance with the requirements of Irish Water and the planning authority.

***Appropriate assessment:*** The proposed development would not have an adverse effect on the integrity of any European Sites.

***Financial contribution:*** Standard conditions should be applied in accordance with the Council's Section 48 Scheme and any other Council Schemes.

***Part V:*** The requirement to provide for social housing does not apply.

### **6.0 RECOMMENDATION**

Arising from my assessment of this appeal case I recommend that planning permission should be refused for the proposed development for the reasons and considerations set down below.

## REASONS AND CONSIDERATIONS

1. The proposed development would be located within an area zoned Z2 in the Dublin City Development Plan 2011 – 2017 which seeks “to protect, and/or improve the amenities of residential conservation areas”. Having regard to the scale, height, bulk and layout of the two-storey element of the proposed development and the extent to which it would project beyond the single storey rear elevation of the neighbouring permitted house at No.79 to the east of the site, the proposed development would cause an unacceptable level of overshadowing and overbearance and it would be visually obtrusive. Having regard to the relationship between the proposed and recently permitted house at no.79 and the narrow separation distance to the rear, the extensive glazing at first and second floor level in the proposed S facing elevation would overlook the neighbouring permitted house at no.79 and give rise to an unacceptable loss of privacy. The proposed development would seriously injure the residential amenities of property in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the height, scale, bulk and layout of the proposed development, which would be located one half of the rear garden of no.149 Leinster Road and adjacent to the site of a 2-storey house (with attic accommodation) that was granted permission under Reg. Ref. 3013/15, the proposed house would constitute an overdevelopment of a restricted rear garden site, and it would set an undesirable precedent for similar future developments in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karla Mc Bride

Senior Inspector

28<sup>th</sup> July 2016