



Development	Demolition of remnants of former factory building and construction of house, new boundary wall, access gate and associated works
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3921/15
Applicant(s)	Karen Benson
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Appellant(s)	Stanley Donnelly, 233 Cabra Road
Observer(s)	1) Joseph Kelly, 35 Swilly Road and Karl Dillon 37 Swilly Road 2) Gerard Robinson, 39 Swilly Road and Una Reid 33 Swilly Road
Date of Site Inspection	5 th September 2016
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located to the rear of a detached residence, no. 229 on the north side of Cabra Road which is a mature suburban residential area. The development site occupies more than half of the original back garden of the residential property as outlined in blue and extends across the full width at 14.8m over a depth of almost 21m to the end wall which leaves a garden depth of about 10m for the original house. The site also extends alongside the house up to the public road where there is a separate vehicular access to the road which narrows the original garden and plot to about 12m. The houses and plots on this side of Cabra Road are generously proportioned with depths of 50m and widths in the order of 10-17m.
- 1.2. The home of appellant, no. 233 (appellant) adjoins the no.229 (there is no no.231) and the development site on the western side. No.233 is a family residence with mature boundaries and is set back 8.5m from the boundary. A small garden shed adjoins the western boundary of the development site.
- 1.3. No 227 similarly adjoins the site to the east and is also a family residence/B and B and is set back 5.1m. There is a large shed type structure along its eastern boundary over a depth of almost 14m. The ground level is notably lower than the development site. The rear gardens of 4 dwellings on Swilly Road back onto the site on its northern side. These houses are 32m from the boundary and there a sheds at the ends of these gardens and small gap. The wall appears to be built up to the original garden walls.
- 1.4. The original plot scales at almost 50m by 15-16m. The development site contains the remnant walls of a former commercial building and comprises part of the external walls which are set back from the boundary. The entrance and site are presently walled off from the front and back garden of no 229 but the gable of the house which incorporates ground level remain exposed onto the driveway.
- 1.5. Photographs of my site inspections are contained in the appendix (in pouch at front of file)

2.0 Proposed Development

2.1. It is proposed redevelop a former factory site for the purpose of residential use and the main elements comprise:

- Demolition of remnant walls of factory building
- Construction of 107 sq.m. Two-bedroom dwelling comprising both single and two storey elements.
- Single site height at 3.86m and two storey element rises to 6m as per revised design submitted as part further information (revised from 3.88 and 6.3). The layout has also been handed with the two storeys and single storey element swapped such that the two storeys in revised plans are set back forms the western boundary.
- Contemporary style with flat roof and mix of brick and render finishes
- Set back from rear boundary of just over 3m and set back from west and east boundaries at 1.48m and 1.38m respectively.
- Main Private open space to front of proposed dwelling (to rear of existing dwelling at 229) which is also fenced off from proposed car parking area (two cars) at the end of the vehicular driveway from the public road.

3.0 Planning Authority Decision

3.1. Decision

By order dated 28th April 2016 the planning authority is a notification of a decision to grant permission subject to 11 conditions which notably require as per condition 3.

- Modification to the design to include obscure glazing in the north facing landing window and bathrooms. Permanent maintenance of angled louvres in master bedroom as per drawings submitted on 10th March
- Boundary wall of min 2m and max 2.5m along northern boundary as measured from ground level to north.

3.2. Planning Authority Reports

The report of the area planner can be summarised as follows:

The proposed development is acceptable in principle having regard to the zoning although this constrained by the development standards applicable for back land residential development. Consideration however is given to the large site and its

characteristics and particularly to the precedent of a former factory premises with independent access.

In terms of amenity and assimilation there is concern about:

- The eastern element and its excessive scaling and height
- overlooking and impact on no.229
- boundary treatment in relation existing walls, proposed height and finishes
- and former use of site

Further information was requested in respect of these matters and address accordingly.

In further information the proposed layout and design is modified such that the two storey element has been relocated to the opposite side of the site by 'flipping' the plans. The height is marginally reduced. The planning authority acknowledges the variance in shadowing but disregards it as being significant in view of the garden depth.

First floor windows are considered an issue that can be addressed by design and condition.

A separation of 21m is provided between opposing windows at first floor level between proposed house and no.229 and is considered acceptable.

3.3. Other Technical Reports

Roads and Traffic: No objection subject to standard conditions regarding footpath/kerb and entrance.

Drainage Division: No objection subject to conditions which includes the requirement for an appropriate flood risk assessment.

3.4. Third Party Observations

- 1) Submission received from agent for owner of 233 which adjoins site to western side.
 - Principle of house welcome having regard to the unsightly derelict structure

- Concerned about impact on 233 and how it is represented in drawings. Concerned about overlooking, overshadowing and proposed boundary of only 1.8m.
- 2) Submission from owners of 33, 35, 37 and 39 Swilly Road which adjoin northern boundary of site. Concerns relate to:
- Two storey out of keeping overdevelopment and proximity to boundaries and overlooking
 - Loss of Established boundary of 3m.
 - intrusion of windows in north elevation
 - Possible future flooding in view of drainage arrangements.

4.0 **Planning History**

- 4.1. The applicant clarifies in further information that the original house was built in the 1940s and that a butchers wholesale business operated form the 1940s to the 1980 in subject site which was independent of the dwelling house. It was subsequently used as a glass factory up to 2011 and has been unoccupied since then.
- 4.2. 3211/15 refers to a decision to refuse permission for a two storey three bedroom hose on the same site on basis of height, scale, relationship with existing dwelling, overdevelopment, deficient open space and piecemeal approach generally.
- 4.3. Permission grant for two storey extension for 3 bedrooms for b and b business in the adjacent dwelling tot eh east. (referred to in planning authority report but no reference to number provided)

5.0 **Development Plan**

The objective for the site is 'to protect, provide and improve residential amenities' - (Z1).

Section 17.9.5 sets out considerations for backland type development.

6.0 **Natural Heritage Designations**

Not applicable

7.0 The Appeal

7.1. Grounds of Appeal

The grounds of appeal have been submitted by an agent on behalf of the owner of the adjacent house to the west (no. 233 Cabra Road) and the issue relate to:

- **Principle of dwelling** having regard to its piecemeal nature and the planning status of the factory which is submitted not to have the benefit of planning permission
- Inadequacy of council's treatment of **boundary** which accepts proposal to remove wall and replace with new wall
 - Currently no,233 enjoys a high degree of privacy virtue of boundary at over 2.5m
 - A 2.2m block wall is requested with new planting on the development site side.

7.2. Planning Authority Response

No further comment

7.3. Observations on Appeal

1) Joseph Kelly, 35 Swilly Road and Karl Dillon 37 Swilly Road

2) Gerard Robinson, 39 Swilly Road and Una Reid 33 Swilly Road

- Two-storey out of keeping close to boundary when considering previous single storey premises.
- Established 80 year 4m boundary along south rear boundary of garden of observers. This provides security and privacy. This built along boundary and not inside a wall and removal may result in damage to properties. It should be retained and made good.

7.4. **First Party Response to Grounds of Appeal**

Boundary:

- It is clarified that meetings were held with the neighbours to discuss the proposal including the boundary.
- It is further clarified that the existing walls of the factory are inside the original wall and are not the common boundary.
- Full and elevation of the existing boundary and specification for proposed boundary have been submitted
- A 2.2m high wall can be provided to comply with the request of the appellant. No objection to a condition requiring this height.

Principle of development

- The history of the former factory premises is clarified. It operated as butchers wholesalers since 1940-1980 and then as glass factory up to 2011 from which time it has been cant and derelict.
- The Board is requested to review the appellant's initial comments about welcoming the proposal
- Precedence is not an issue in view of existing entrance and previous development.
- The proposed development complies with the development plan guidance and would be an improvement

8.0 **Assessment**

- 8.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues fall under headings below. The

residential issues are best addressed with respect to different boundaries and neighbouring properties:

- Principle
- Residential Amenity: Height, overlooking, overshadowing and boundary
 - Impact on neighbouring dwellings on Swilly Road
 - Impact on neighbouring dwellings on Cabra Road
- Appropriate Assessment

Principle

8.2. As the proposal relates to the provision of a dwelling to replace a former commercial use in an area where the objective is to provide for residential amenity, it is acceptable in principle. However as it is located in a back garden the issue of piecemeal back land development is typically a consideration. In this case however there is an established subdivision of the site dating back to the 1940s and an established structure with an independent former butcher's wholesalers /glazier use, therefore the backland development has already been carried out. The material consideration in this case is the redevelopment of a derelict site. In this context I do not accept that a piecemeal development is taking place. I consider the principle of a dwelling house to be wholly in accordance with objectives of the development plan in seeking to enhance the residential amenities of the area.

Impact on existing dwellings on Swilly Road

8.3. With respect to height there are objections to the two storey element from the residents backing onto the site. It is reasonable to normally expect an 11m set back for a two storey house for reasons of privacy and amenity. In this case however there is an approximate 4m high wall (incorporating openings) remaining along the northern boundary which would have been originally roofed and home to a commercial activity. By comparison, I consider a domestic structure in the order of 6m in height at a distance of over 3m from the rear boundary is acceptable. There would in fact be a reduction in the potential for overshadowing from a 6m high structure set back over 3m as compared to a 4m wall on the boundary due to the orientation. The reduction in overshadowing from the level that presently exists

would be achieved by a lower boundary wall. In terms of overlooking, as there are no windows at first floor level there is no opportunity for overlooking. The handing of the layout makes no appreciable difference, in my opinion, to the properties on Swilly Road.

- 8.4. The boundary treatment is contentious in that the residents wish to retain the 4m high wall in order to safeguard privacy and security. I consider the proposed height of 2.2m to be sufficient and reasonable for a property 3m from the boundary. The retention of a 4m wall in a redevelopment context may have stability implications and the requirement for such would be unreasonable, particularly when walls are more typically 1.8m – 2.2m. It also important to highlight that the lower wall height would also reduce overshadowing which is matter of concern by the observers in respect of the two storey element which is essentially a potential source of less overshadowing than the wall.
- 8.5. The issue of the precise location of the wall in relation to the party boundary and damage to property is, I consider, a civil matter between the parties. It is a matter for the applicant to ensure construction is carried out within the landholding.
- 8.6. From a planning and development perspective there is no requirement for the development to encroach on the neighbouring property in order to be carried out in accordance with the plans. Nor is there provision for such encroachment under the Planning Acts.

Impact on adjacent properties on Cabra Road

- 8.7. While on the one hand the appellant who owns the adjacent house at no. 229 to the west states general support for the principle of a dwelling in the original submission to the planning authority, concern is expressed in the appeal at a piecemeal approach and suitability of the site. The concerns are based on a general dissatisfaction with the approach by the council in respect of matters of privacy which is presently enjoyed by the existence of a boundary wall in excess of 2.5m in height.
- 8.8. In response to the planning authority's request for further information, in revised plans the first floor level has been relocated nearer to the appellants' property and directly opposing the rear elevation of no.229 . The use of louvred shutters is proposed to control views away from the curtilages and rear elevations of no.233

and 229. (There is no house number 231). While this would reduce the visual prominence of a potential incongruous house in a rear garden as viewed from the street I consider the revised plans to be marginally more intrusive in terms of potential overlooking for nos. 229 and no.233 having regard to its configuration.

- 8.9. In terms of overshadowing the two storey element if remaining on the eastern side would cast some shadow into the residual end of the garden at no, 227. However the reduced garden in that case is by virtue of a large shed extending along the majority of the boundary wall. There is also a considerably large rear garden the majority of which would be not be directly impacted by the proposed development in either configuration. a
- 8.10. The appellant is particularly concerned about the boundary wall height and seeks 2.2m high wall. The applicant, as expressed in the response submission, is not opposed to this. Accordingly there is no disagreement on this point. I consider a 2.2m high wall to be fair and reasonable.
- 8.11. The original layout in my judgement is preferable in terms of direct impact on neighbouring dwellings. I also consider the upper level provides an opportunity for passive surveillance along the lane – I say this in the context of the safety issue that has been raised in the submissions.
- 8.12. In conclusion, I do not consider the proposed development to detract from the residential amenities of the neighbouring properties and am of the opinion that it would be acceptable in terms of providing an adequate standard of residential amenity for both existing and proposed homes and would in overall terms be a significant improvement on the former commercial premises at this location. Having regard to the planning history and pattern of development I consider a dwelling to be acceptable and in accordance with the proposed planning and development of the area.

Appropriate Assessment.

- 8.13 Having regard to the nature and scale of the proposed development being a modest redevelopment of a serviced site in an urban area 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.

9.0 Recommendation

9.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

Having regard to the nature, scale and design of the proposed development, the configuration of the site and the existing character and pattern of development on and in the vicinity of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would visually integrate into the existing streetscape in a satisfactory manner and would provide for a satisfactory level of amenity for future occupants of the dwelling. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, on the 30th day of October, 2015, 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. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. (a) The north facing landing and en-suite bathroom windows at first floor level shall be permanently maintained with obscure glazing.

(b) The first floor bedroom window shall be fitted and permanently maintained with angled louvres directed away from neighbouring dwellings. Details of this shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of construction of the dwellings.

Reason: In the interest of residential amenity

4. Details of the layout, the materials, and external finishes of the screen walls shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of construction of the dwellings.

Reason: In the interest of visual amenity.

5. All boundary walls along the northern, southern and western boundaries and partly along the eastern boundary of the development site shall be 2.2 metres in height above ground level as measured on the higher ground. Walls shall be constructed in concrete block, and capped, and rendered on both sides unless otherwise agreed with the planning authority. Details shall be submitted to, and agreed in writing with, the planning authority, and prior to commencement of construction of the dwelling.

Reason: In the interests of residential and visual amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In this regard the developer shall ensure that an appropriate flood risk impact assessment in accordance with the OPW guidelines is carried out and informs the proposed drainage arrangements for the proposed development.

Reason: In the interest of public health.

6. The public footpath shall be dished in accordance with the requirements of the planning authority.

Reason: In the interest of orderly development.

7. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Part 1 of Schedule 2 of those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: To allow for a planning review of possible future development proposals owing to the limitations of the site configuration and size.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working and noise and traffic management measures.

Reason: In the interests of public safety and residential amenity.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal

of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interests of public safety and residential amenity.

10. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Suzanne Kehely
Senior Planning Inspector

12th September 2016