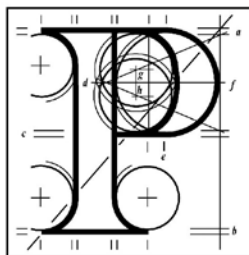


# An Bord Pleanála



## Inspector's Report

**Development:** One single storey three-bed dwelling, two car parking spaces, and all ancillary development and site layout amendment works on the housing site known as Grosvenor Manor to the rear of Nos. 33 – 43 Grosvenor Place (odd, inclusive), Rathmines, Dublin 6.

### Application

Planning authority: Dublin City Council  
Planning application reg. no. 2576/16  
Applicant: Vimovo Leinster Road Ltd  
Type of application: Permission  
Planning authority's decision: Refusal

### Appeal

Appellant: Vimovo Leinster Road Ltd  
Type of appeal: First party -v- Decision  
Observers: Brendan Tannam  
Sarah Robertson  
Timothy & Cian O'Flaherty  
Lorraine Hackett & David Clerkin  
Rathgar Residents Association

Date of site inspection:

**Inspector:** Hugh D. Morrison

## Site

The site lies within a wider back land site that has recently been developed to provide 9 dwellings. This wider site, which is known as Grosvenor Manor, is accessed off Grosvenor Place, an established residential street, and it includes an internal access road with accompanying car parking spaces and areas of open space.

The site itself lies within the westernmost portion of the wider site. This site extends over the majority of an area of landscaped open space (0.0489 hectares). This area abuts the rear gardens to the terrace of two storey dwelling houses at Nos. 29 – 43 Grosvenor Place. The new build dwellings lie to the south east and the north east of the said area.

## Proposal

The proposal would entail the construction of one single storey three-bed dwelling of c. 110 sq m and the laying out of a garden to the north and a garden/court yard to the west. The proposal would also entail the construction of two car parking spaces, which would be sited as a northerly extension to two existing car parking spaces that have been laid out in parallel to the internal access road.

## Planning authority's decision

Permission was refused for the following reason:

*Having regard to the scale, layout, design and orientation of the proposed development, the inadequate separation distances provided to the houses on Grosvenor Place, the loss of useable public open space within the development and the unacceptable level of overlooking of the proposed rear garden space, it is considered that the proposed development would seriously injure the residential amenities of neighbouring properties in the vicinity. The proposed development would, if permitted, set a precedent for other such sub-standard developments and would therefore be contrary to the proper planning and sustainable development of the area.*

## Technical reports

- Roads & Traffic Planning: No objection, subject to conditions.
- Drainage: Further information requested on proposed connection to the public sewer and sustainable urban drainage proposals.

## Grounds of appeal

- The applicant has sought, under their current proposal, to address the two reasons for refusal that their previous proposal for 2 two storey dwellings received. Thus, this proposal is for a single storey dwelling and so it would not

be overbearing and it would not lead to overshadowing. Likewise, the public open space that would serve the site would rise from 7.5% to 10% of the overall site area and so be compliant with the CDP standard.

- The planning authority refused the current proposal for a reason that surprisingly refers to overlooking. The case planner's report expresses concern that the garden that would accompany the proposed dwelling would be overlooked, a concern that was not previously voiced by the Board. If the Board now shares this concern, then it would be capable of being relieved by bamboo and tree planting, as shown in drawing no. pS[00]-03 revision B.
- The case planner also questions the usability of the public open space that would adjoin the site to the south east. This space was previously allocated for such use and so the presence of the site access road and car parking spaces around it is as before.

### **Response**

The planning authority's case is set out in the case planner's report.

### **Observers**

The observations of the five observers are summarised below:

- No site notice was posted at the entrance to the housing site.
- Support is expressed for the planning authority's refusal.
- Exception is taken to the submission of a further proposal for development in the western portion of the site, when the Board on two occasions has disallowed the same.
- Attention is drawn to the inspector's view, under PL29S.245809, that a material change in circumstances would be required before development on the western portion of the site reserved for public open space could, in principle, be considered.
- The proposal would be sited too close to the adjoining residential properties on Grosvenor Place, which have shallow rear gardens and which are zoned Z2 in the CDP, wherein the objective is "To protect and/or improve the amenities of residential conservation areas." The wall along the common boundary is insufficiently high to protect their amenities.
- The proposal would lead to overlooking and overshadowing of existing residential properties to the west and new ones to the east. Conversely, this proposal would itself be overlooked.

- The proposal would entail the development of the northern portion of the larger of the areas of public open space. Consequently, the usability of the residual space would be greatly reduced. (The presence of another small area of public open space opposite would be of no assistance in this respect).
- The loss of public open space would contravene condition 2 of the parent permission and envisaged landscaping, e.g. trees and shrubs. Furthermore, such loss was never envisaged in the marketing of the 9 dwellings to prospective purchasers.
- Drainage issues have not been addressed and the existing drainage infrastructure in the locality is over stretched.
- The site and surrounding properties were flooded in October 2011 by the culverted Swan River.
- The existing development is only 50% occupied. Facilities for residents have yet to be fully provided, e.g. cycle stands and a children's playground, and there is pressure on existing car parking spaces.
- The prolongation of construction works on a housing site that is nearing completion would be unconscionable to local residents.

### **Planning history**

- 4111/08: 21 dwellings originally proposed, this number was reduced to 14 following a further information exercise and, under appeal PL29S.233294, permission was granted for 11 dwelling units, the duration of which has been extended until 22<sup>nd</sup> January 2020. The later reduction, under condition 2, was so that the area released could be set out as open space with a possible surface water attenuation role, too. The reason for this condition was "In the interest of residential amenity, having regard to the inadequate separation distances provided to the houses on Grosvenor Place."
- 3935/14: Omission of 2 dwellings on a contracted site permitted at appeal PL29S.244606, subject to 4 conditions, the fourth of which requires that a landscaping scheme submitted at the appeal stage be implemented.
- 3551/15: 2 additional two storey dwellings of c. 127 sq m were refused at appeal PL29S.245809 on the grounds that they would be overbearing towards and they would overshadow existing houses to the west and their presence would reduce public open space on the site to below 10%.

## **Development Plan**

Under the Dublin City Development Plan 2011 – 2017 (CDP), the site is shown as lying within an area that is zoned Z1 (sustainable residential neighbourhood), wherein the objective is “To protect, provide and improve residential amenity.”

## **Assessment**

I have reviewed the proposal in the light of the CDP, relevant planning history, and the submissions of the parties. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Procedural matters,
- (ii) Land use,
- (iii) Amenity,
- (iv) Water, and
- (v) AA.

### **(i) Procedural matters**

- 1.1 Observers state that no site notice was posted at the entrance to the site. The submitted site location plan shows that a notice was to be sited at this entrance and a cover letter from the applicant states that indeed it was so sited.
- 1.2 The application was validated by the planning authority, as is its prerogative, and so I assume that the authority checked and was satisfied with siting of the site notice(s).
- 1.3 I, therefore, conclude that there is no legal impediment to the Board assessing and determining this application/appeal in the normal manner.

### **(ii) Land use**

- 2.1 The site lies within a wider housing site that has recently been developed in accordance with permitted applications reg. nos. 4111/08 and 3935/14 and their corresponding appeals ref. nos. PL29S.233294 and PL29S.244606. With respect to the area of open space in the westernmost part of this wider housing site, the majority of which is comprised in the current site, both the parent and the subsequent amending permissions were granted subject to a condition in each case that pertains to this area. Thus, the former permission included the following condition:

*2. Block C (three units) shall be omitted from the scheme and this area shall be set out as open space (and may be used to provide further enhanced surface water attenuation capacity).*

*Reason: In the interest of residential amenity, having regard to the inadequate separation distances provided to the houses on Grosvenor Place.*

The latter permission included the following condition:

*4. The landscaping scheme shown on drg no. 14162-1-102, as submitted to the An Bord Pleanála on the 14<sup>th</sup> day of April, 2015, shall be carried out within the first planting season following substantial completion of external construction works.*

*All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.*

*Reason: In the interests of residential and visual amenity.*

2.2 The observers draw attention to the former condition. They state that the current proposal to construct a dwelling house over the majority of the area reserved for open space would materially contravene this condition. They also draw attention to the inspector's report on application reg. no. 3551/15 and appeal ref. no. PL29S.245809 in which she said that the 2 two storey dwelling houses proposed for this area could only be considered if there had been a material change in planning circumstances with respect to the overall housing site. She concluded that there had been no such change. The applicant in their current grounds of appeal does not indicate that there has been such a change in the intervening period and so I consider that the current proposal would indeed represent a material contravention of the said condition.

2.3 During my site visit, I observed that the area of open space in question has been landscaped ostensibly in accordance with the landscaping scheme, which was the subject of the latter condition. Observers point out that the current proposal would entail the loss of some of the trees recently planted under this scheme. The said condition envisages the retention of such planting and so I consider that it, too, would be materially contravened by this proposal.

2.4 The planning authority's reason for refusal refers to "the loss of useable public open space". The applicant has responded by stating that, unlike under their previous application reg. no. 3551/15, 10% of the wider housing site would be subject to public open space. They also state that the relationship of the internal access road and accompanying car parking spaces would be as before.

- 2.6 I understand that the planning authority's reference to usability relates to the contraction in the expanse of the area of open space in the western portion of the wider housing site that would arise under the current proposal. Thus, this area would reduce from c. 500 sq m to 177 sq m. While it would remain rectangular in shape, the area would clearly be much less expansive with obvious implications for its utility. Furthermore, the character of the residual area would be different from that of the existing one insofar as it would be enclosed by the southern elevation of the proposed dwelling house/southern boundary wall of the proposed court yard, instead of part of the site's north western walled and landscaped boundary. Consequently, this area would be similar in character and utility to that of the small area of open space opposite, to the north east.
- 2.7 I, therefore, conclude that within the context of the wider housing site, the current site was conditioned to be reserved under the parent permission for use as open space and under the amending permission landscaping of this space was to be undertaken. The current proposal would entail the development of this site and so these conditions would be materially contravened. Furthermore, the usability of the residual area of open space would be severely reduced and its character changed.

### **(iii) Amenity**

- 3.1 The planning authority's reason for refusal refers to the inadequate separation distances that would arise between the proposed dwelling house and the existing ones to the west and the unacceptable overlooking of the proposed garden that would ensue. The applicant has responded by stating that in citing overlooking the planning authority has introduced a new issue, beyond the two raised by the Board in its first reason for refusing the preceding application reg. no. 3551/15, i.e. overbearing and overshadowing. They have addressed these two issues by now proposing a single storey dwelling house. If the Board considers that the new issue is relevant, then this could be mitigated by the planting of bamboo and trees along the common boundary.
- 3.2 The observers draw attention to the shallow depth of their rear gardens, which are 7m deep. The proposed single storey dwelling house would be sited beyond the common boundary and so it would be in a position 10.172m to the east north east of the original rear elevations to the corresponding two storey dwelling houses on Grosvenor Place. The observers express concern that this dwelling house would lead to overlooking and overshadowing and that it would itself be overlooked.
- 3.3 The common boundary is denoted by means of a wall, which is typically 1.8m high, and in places it is accompanied by ivy. The applicant's submitted drawing no. pS[el]-01 revision A shows, under cross section c-c, the adjoining ground

levels across this boundary as being c. 0.4m higher on the western side, i.e. that of the existing rear gardens. The presenting rear elevation of the dwelling house would contain habitable room windows. However, given the height of the common boundary wall and the said difference in ground levels, the opportunity for overlooking would be confined to the relationship between existing first floor windows and the proposed ground floor ones. The applicant proposes to mitigate the same by planting. Given the narrowness of the strip of land between the proposed dwelling house and the common boundary wall, their proposal in this respect would, in practise, entail planting bamboo. With respect to overlooking of the garden to the north of the proposed dwelling house, such planting could be augmented by tree planting.

- 3.4 To the east of the proposed dwelling house the separation distance that would arise between it and the nearest new build dwelling house to the north east would be 20.314m and so this distance would not pose any issue of overlooking/privacy.
- 3.5 The southern portion of the front elevation of the proposed dwelling house would be sited at the back of the footpath, which would be recessed to facilitate the construction of two additional parallel car parking spaces. The window openings in this portion would not serve any habitable rooms. The northern portion of this elevation would be set back from the footpath and so the habitable room window in it would not abut this footpath.
- 3.6 The proposed dwelling house would provide three bedroom accommodation that would be well balanced between day time and night time rooms. Adequate utility spaces would be included within the internal layout. This dwelling house would be served by an enclosed garden with an area of 84 sq m and so it would accord with CDP standards in this respect.
- 3.7 I conclude that the proposed dwelling house would, as a single storey one, not be overbearing or lead to any undue over shadowing of the neighbouring residential properties to the west. Overlooking would be capable of being mitigated by landscaping and the dwelling house itself and the accompanying garden would afford a satisfactory standard of amenity to future occupiers. Accordingly, the proposal would be compatible with the residential amenities of the area.

#### **(iv) Water**

- 4.1 As under earlier applications/appeals, observers continue to express concern over both the adequacy of the local drainage system to serve the proposal and the flood risk that the site faces.
- 4.2 In relation to the former concern, I note that Dublin City Council's Drainage Section has raised no objection to the proposal, although further information on



the proposed connection to the public sewer is requested. I note, too, that the applicant's engineer has submitted a report that outlines how SuDS requirements would be met on the wider housing site in the light of the inclusion within it of the proposed additional dwelling house.

4.3 Likewise the applicant's engineer has submitted a report on the question of flood risk. This report concludes that the site is subject to a negligible flood risk and so no mitigation measures are needed. Specifically, pluvial flooding and flooding arising from existing public drainage infrastructure would not enter the site, due to vertical constraints imposed by existing and proposed access arrangements. Overland flows within the site would continue in a south easterly direction. However, the introduction of SuDS methodologies and the installation of large water attenuation tanks on the site would regulate both these flows and discharges to the public drainage infrastructure for the first time.

4.4 I, therefore, conclude that proposed drainage arrangements would be appropriate and any flood risk attendant upon the site would be capable of being satisfactorily mitigated.

#### **(v) AA**

5.1 The site is not in or near a Natura 2000 site. The nearest such sites are in Dublin Bay (SAC and SPA). The proposal would be linked to these sites via the combined foul and surface water public sewerage network that discharges to the Ringsend WWTP. Periodic storm water surges through this Plant can lead to a decrease in the water quality of the Bay. However, the Conservation Objectives of the said Natura 2000 sites do not refer to water quality. Furthermore, the scale of water treatment occurring at the Plant is such that the contribution of the proposal would be negligible.

5.2 Having regard to the nature and scale of the proposed development and/or nature of the receiving environment and/or proximity of 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.

#### **Recommendation**

In the light of my assessment, I recommend that the proposed one single storey three-bed dwelling, two car parking spaces, and all ancillary development and site layout amendment works on the housing site known as Grosvenor Manor to the rear of Nos. 33 – 43 Grosvenor Place (odd, inclusive), Rathmines, Dublin 6, be refused.

## **Reasons and considerations**

The proposal would entail the loss of the majority of landscaped open space in the western portion of the wider housing site known as Grosvenor Manor. Under condition 2 of the parent permission granted to application reg. no. 4111/08 and under condition 4 of the amending permission granted to application reg. no. 3935/14, this open space was to be, variously, provided and landscaped. Accordingly, this proposal would materially contravene these conditions. Furthermore, the resulting residual open space would be of reduced utility and amenity value. Accordingly, to accede to the proposal would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

17<sup>th</sup> August 2016