



An
Bord
Pleanála

Inspector's Report PL29S.246886

Development	Construct two storey house with two and a half storey return beside no. 67 Garville Aveune Upper Ranelagh, Dublin 6.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2541/16
Applicant(s)	Gemma and Philip De Barra
Type of Application	Permission
Planning Authority Decision	Permission
Appellant(s)	1. Austin and Elizabeth Murray
Observer(s)	None
Date of Site Inspection	29 th of September 2016
Inspector	Angela Brereton

1.0 Site Location and Description

The subject site is located on the southern side of and Garville Avenue Upper, in the section between Rathgar Avenue to the east and Brighton Square to the west. It adjoins no.67 which is an end of terrace period property that comprises a two storey red brick dwelling with a 2 storey rear return and a substantial rear and side garden. There are a number of trees and shrubs in the rear garden area, and a large tree in the front garden area. There is a gated side access to the rear garden area. There are also locked gated access to the area of land to the west which provides a right of way to rear access for nos. 4 and 5 Brighton Road to the west.

There were two cars parked on site on the day of the site visit. There are separate pedestrian and vehicular entrances. There is footpath and paid/permit parking along the road with two public spaces available along the site frontage.

Nos.73/75 Garville Avenue Upper are a more recently constructed pair of two storey semi-detached houses to the west. The blank side elevation of no.73 faces the private open space and the site.

2.0 Proposed Development

The proposed development comprises the following:

- The construction of a new two storey house, with a two and half storey return, beside no.67 Garville Avenue.

A Site Layout Plan, Floor Plans, Sections and Elevations have been submitted, showing the existing and proposed development.

The application form provides that the total site area is 935sq.m, the floor area of the buildings to be retained is 206sq.m (i.e. no.67 Garville Avenue). The floor area of the proposed new development is 174sq.m, providing a total floor area for existing and

proposed of 380sq.m. It is provided that the proposed plot ratio is 53% and proposed site coverage is 20%.

A letter has been submitted from Peter White Associates Architects with the application which has regard to the context of the site, ownership, planning history in the area. A Brief Specification for the works is also included.

3.0 **Planning Authority Decision**

3.1. **Decision**

On the 16th of June 2016 Dublin City Council granted permission subject to 11 no. conditions. These are relatively standard relative to infrastructural and construction issues and the following is of note relative to design:

- Condition no.3: *The external railing, wall, roof and window finishes of the dwelling hereby permitted shall be strictly in accordance with the documentation received on 24th of March 2016, as amended by revised plans and particulars received on May 30th 2016, no alterations to same will be permitted in the absence of prior written consent of the Planning Authority.*

Reason: In the interests of proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made, including the internal reports. They considered the right of way issue to be a civil matter and referred to Section 34 (13) of the Planning and Development Act 2000 as amended. They had some concerns about the proposed design and layout and recommended that additional information be sought to include the following:

- Confirmation that the parapet level of the proposed dwelling will match that of the existing dwelling at no.67 Garville Avenue Upper.
- Further details to be submitted on boundary treatment including the 'Galvanised Steel Railing'.
- Revised plans and particulars confirming the precise design of the proposed 2 and 2 ½ storey rear return.
- Proposals to be submitted to address the parking issue.

Response

Peter White Associates Architects has submitted a response of behalf of the First Party and have included revised drawings. Their response includes the following:

- They confirm that the parapet on the new dwelling would be in line with the parapet of the existing house no. 67.
- They attach a photograph showing the front railings.
- They wish to build the top 4th bedroom to be in scale with other houses in the area.
- They prefer to use the present access for parking for the new house as the site plan shows, with disc parking on the street or widening the entrance for no.67. Dublin City Council would decide this separately in due course.

Planner's Response

The Planner had regard to the F.I. submitted and considered that the applicants have adequately addressed concerns raised by way of additional information and that the provision of a dwelling on this site is now acceptable. They recommended that permission be granted subject to conditions.

3.3. Other Technical Reports

Internal

The Engineering Department Drainage Division has no objections to the proposed development provided standard drainage conditions are complied with including the incorporation of SuDs.

The Roads and Traffic Division do not object to the proposed development provided the existing vehicular entrance is used and would object to the creation of a new entrance and the loss of an on-street parking space.

3.4 Third Party Observations

Submissions have been received from local residents whose concerns include the following:

- The owners of nos.4,5 and 6 Brighton Road are concerned to point out that the laneway/right of way is well used and provides essential rear access to nos.4 and 5.
- This area cannot be conceived as private open space for the development.
- The proposed design and layout would seriously injure the residential amenities of neighbouring properties in this residential/conservation area.
- The architectural treatment proposed would detract from the character of the residential conservation area.
- Overlooking and loss of views and devaluation of property in the area.
- Concerns about the impact of the proposed development on parking.
- They are concerned that the right of way will be restricted including during construction phase.

4.0 Planning History

The Planner's Report provides that there is no planning history relevant to the subject site.

5.0 Policy Context

5.1 Development Plan

Dublin City Development Plan 2011-2017

Chapter 11 refers to 'Promoting Quality Homes in a Compact City'. Section 11.4.2 encourages higher densities and varied housing typologies. Section 11.4.7 relates to Housing and Objectives QH18 and QH19 support quality housing in character with the area.

The site is within the Map 'H' land use zoning area - Section 15.10.2 refers to the 'Zoning Principles' – Z2 (residential conservation area) land use zoning.

Chapter 17 provides the 'Development Standards' and regard is had in particular in this case to the following Sections:

Section 17.4 provides the Plot Ratio standards and 17.5 relates to Site Coverage.

Section 17.9.1 provides the Residential Quality Standards A3 refers to House only (in addition to A1 standards –all residential development).

17.9.6 refers to development of Corner/Side Garden Sites and 17.9.7 refers specifically to infill housing.

5.2 Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities 2009 The guidelines encourage more sustainable urban development through the promotion of higher density housing in appropriate locations, such as unused or derelict land and backland sites in town centre and inner suburban areas. In particular, higher densities are considered appropriate in inner city and brownfield lands and in locations which are served by public transport under the Transport 21 programme, having regard to the proximity of the site and the capacity of the system of public transport. The objective is to achieve an efficient use of land appropriate to its context, while avoiding the problems of overdevelopment. Section 5.9 refers to Inner suburban/infill sites and has regard to residential infill. In determining the appropriate density in residential areas whose character is established by their density or urban form, a balance must be struck between reasonable protection of amenities and privacy of adjoining neighbours, the protection of established character and the need to provide residential infill. Chapter 7 concerns the home and its setting and discusses issues such as daylight, sunlight, privacy, open space and communal facilities.

Detailed advice is contained in the Department's companion urban design manual document. Strong emphasis is placed on the need to achieve a high quality of design in terms of layout, elevational treatment, public and private open space, traffic safety and pedestrian linkages with local facilities, and levels of privacy and amenity.

5.3 Delivering Homes, Sustaining Communities (2007) provides an overarching policy framework for an integrated approach to housing and planning. The statement noted that demographic factors will continue to underpin strong demand for housing, which in turn will present considerable challenges for the physical planning of new housing and the provision of associated services. The quality of the housing environment is central to creating a sustainable community. Sustainable neighbourhoods are areas where an efficient use of land, high quality design, and effective integration in the

provision of physical and social infrastructure combine to create places people want to live in.

5.4 Quality Housing for Sustainable Communities - Best Practice Guidelines

2007 The aim of these Guidelines is to identify principles and criteria that are important in the design of housing and to highlight specific design features, requirements and standards. This includes Table 5.1 which refers to Space provision and room sizes for typical dwellings.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A Third Party Appeal has been submitted from Austin and Elizabeth Murray who reside in no.100 Rathfarnham Road but are the owners of no.4 Brighton Road (to the west of the site). Their grounds of appeal can be summarised as follows:

- They are concerned that the proposed development will impact on their use of the right of way to the rear of their property and also to that of no.5 Brighton Road. They attach a copy of a memorandum from their Solicitor which shows this land area in yellow.
- The inclusion of this house is an overdevelopment of these lands. This is evidenced by the fact that the pedestrian entrance to the house seems to rely on the right of way to allow a path to the front door in order to provide 2no. parking spaces and appropriate landscaping in the front garden.
- The applicant has a history of storing rubbish and building debris in the right of way and they are concerned about the impact of the development on their properties during the course of construction.
- The proposed design is pastiche and detracts from the architectural quality of the area. They note the need for sensitive design relative to the conservation

area and Protected Structures in the area. They suggest that this application be refused on the grounds that it is inappropriate development in a sensitive architectural environment.

6.2 **Planning Authority Response**

Dublin City Council notes the grounds of appeal and provide that the reasoning on which the P.A's decision on the application was based is set out in the Planning Report on file. They are satisfied that the issues raised were addressed in the A.I. submitted. They ask the Board to uphold their decision.

It is of note that the Council has subsequently forwarded a map which accompanied the Observations to the Board where the right of way area is shown in yellow.

6.3 **Other Party Responses**

Peter White Associates Architects provides a response on behalf of the First Party, which includes:

- Their clients will respect the rights owned by the appellants in this case. A new gate was recently fitted from Garville Avenue Lower, as the previous gate had fallen into disrepair, which further facilitates those enjoying the right of way.
- They consider that the new house fits easily into the site and does not significantly affect the enjoyment of those living in nearby dwellings.
- They are strongly of the view that the proposed new house is elegantly proportioned and matching the nearby houses in the Conservation area, and note pre-planning consultations with the Council.
- The additional information shows that the parapets match exactly that of no.67 – they had originally offered a slightly lower parapet to distinguish and differentiate the original house from the new house.

- They will endeavour to use best building practices in the construction of the new house and to minimise disruption to neighbours. This will provide a pleasing new home for the future occupants.

7.0 **Assessment**

7.1. 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 can be dealt with under the following headings:

- Principle of Development and Planning Policy
- Right of way issues
- Design and Layout
- Impact on Residential Amenity
- Impact on the Character and Amenities of the area
- Appropriate Assessment

7.2 **Principle of Development and Planning Policy**

This proposal seeks to construct a two storey four bedrooled dwellinghouse in this side garden area of no.67 Garville Avenue Upper. At present no.67, an attractive red brick end of terrace period property has substantial landscaped side and rear gardens. The issue in this case is whether the site area is considered to be suitable for an infill residential development and whether the proposed design and layout is considered to be acceptable in this residential conservation area 'Z2' land use zoning.

In this respect Section 17.9.6 provides that while development in the side garden of the existing dwelling is a means of making the most efficient use of serviced lands, it should be undertaken on suitable sites and to a high standard of design so that it constitutes a valuable addition to the residential building stock in the area.

Section 17.9.7 of the DCDP 2011-2017 provides: *Having regard to policy on infill sites and to make the most sustainable use of land and existing urban infrastructure, the planning authority will allow for the development of infill housing on appropriate sites.*

Therefore while the principle of an infill development is supported within the residential land use zoning, it needs to be ascertained whether the proposed development would be sustainable on this site area in this location and would comply with standards for residential development. It is of issue that such infill residential development not be detrimental to the amenities of future and adjoining residential occupants or the character of the residential conservation area. Regard is had to these issues, including the right of way issue raised by the Third Party in the Assessment below.

7.3 **Right of Way issues**

A letter has been submitted from Peter White Associates Architects with the application which states that the applicants are the owners of no.67 Garville Avenue Upper along with its side garden, and with a further laneway/right of way, now used as a vegetable garden, further to the west. They provide that this allows access to the back gates at nos.4 and 5 Brighton Road and is rarely used. It is noted that the application form provides that the total area of the site is 935sq.m. This includes the area of the existing house and garden and this area of private land used for right of way to the west shown in blue. Also the application site, which is shown between these two areas in red.

The Third Party are concerned as to the impact of the proposed development on their right of way. No.4 Brighton Road is one of two houses that have a right of way leading from the rear garden of their property to Granville Avenue Upper. This right of way is included in the lands outline blue in the planning application. They attach a copy map from their deeds where the right of way is shown in yellow. They also attach a memorandum from their Solicitor confirming their title to the right of way hatched in yellow. They request that this area not be seen as private open space for the proposed dwelling. They note that it is used on a regular basis and are concerned about the implications of construction phase.

On the site visit I noted that the site abuts an area which appears as private open space to the west which forms a right of way to the rear gardens at nos. 4 and 5 Brighton Road. There are building and garden materials stored in this area but the passage to these houses is accessible. Both have rear gates to this area. The right of way is not accessible to the public and does not extend to Brighton Road. The site is bordered to the south by the rear garden of no.6 Brighton Road, which does not have access to this side area. There is a locked wooden gated access to this area from Garville Avenue Upper, which is only accessible from the rear.

In response the First Party note private contracts between neighbours, as in the case of this right-of way and provide that they will respect the rights owned by the appellants in this case. The Site Layout Plan does not show that the proposed development will provide an encroachment on this area of land. It is of note however, that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of S.34(13) of the Planning and Development Act: "A person shall not be entitled solely by reason of a permission under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts..."

7.4 **Design and Layout**

The proposed new end of terrace dwelling is to be constructed in the side garden area of no.67 Garville Avenue Upper. The proposed site area as shown in red on the Site Layout Plan is c.300sq.m. The floor area of the proposed two storey dwelling is 174sq.m. This would imply that the proposed plot ratio is c.58% and based on the footprint a site coverage of c.30%. The rear garden area is approx.130sq.m. This is not at issue as it exceeds the DCDDP requirements for private open space for a 4 bedroomed house. Also the plot ratio and site coverage are within the DP standards for such.

The floor plans show that it is proposed to provide dining/lounge, kitchen on ground floor, bedrooms 1,2 and 3 on first floor and bedroom 4 in the second floor rear return. A small single storey area is proposed as part of the living area on ground floor.

As per the additional information there are some slight modifications shown on the revised plans submitted on the 30th of May 2016 where on the advice of the Council the new parapet is shown to match the existing. This is considered preferable as they will appear as a terrace of three similar type houses. It is noted that the existing houses have quoin detail on the side of the frontage and it is recommended that if the Board decide to permit that in the interests of consistency and visual amenity that this be included.

7.5 Access

The Roads and Traffic Division notes that the existing vehicular entrance to no.67 Garville Avenue Upper will also serve the proposed development. They are concerned that the provision of a separate vehicular entrance for the new house would result in the removal of an on-street parking space which would not be in accordance with policy and they would not support -Section 17.40.11 relates: *There will be a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on on-street car parking spaces.* Also Policy SI13 seeks: *To retain on-street parking as a resource for the city, as far as practicable.*

At present no.67 has two no. parking spaces on site. There is a separate vehicular and pedestrian access, with the latter to the front door of no.67. The First Party provide that they prefer to leave the present access for parking for two cars on site for the new house as shown on the Site Layout Plan. Then car parking for the original house no.67 can be by disc parking on the street. It is noted that there are currently public parking spaces marked out in front of the site. There is paid/permit parking in the area, and on the day of the site visit I noted that there was on-street parking available.

They wish to provide parking for no.67 by widening the pedestrian gateway into no.67 and relocating the current brick stone capped pier i.e re-using the pedestrian gate with a new double gate. It is noted that a large mature tree in the front garden area would have to be removed to facilitate further parking on site. It is considered that on-site parking could be provided for no.67, but that this would necessitate the change from pedestrian to vehicular entrance in this location. They contend that

DCC could decide the parking issue separately in due course and it is not part of the present application. It is considered that this 'provision of a new vehicular access would require a separate planning application/permission. I would recommend that if the Board decide to permit that a condition be included that the parking issue be addressed i.e details regarding on street parking be submitted to DCC prior to the commencement of development.

7.6 Impact on Residential Amenity

It is considered that the proposed side elevation will appear more bulky, in particular the 2 ½ storey return, but taking into account the setback and the single storey element, this assists in mitigating the impact. It is considered in view of the gap i.e. the area between this property and the blank side elevation of no.73 Garville Avenue Upper and there will not be issues of overlooking this property.

It is proposed that there be two windows in the side elevation at ground floor level which will look onto the area of private open space/right of way area. These will face the blank side elevation of no. 73 Garville Avenue Upper so it is not considered that overlooking will occur, although they will be adjacent to and provide surveillance of the right of way area.

As the proposed rear return projects out similarly to no.67 it is not considered that it will impact adversely on this property, although details of boundary treatment need to be submitted, and this can be conditioned. In view of the above is not considered that there will be an adverse impact on the residential amenity of adjacent properties.

7.7 Impact on the Character and Amenities of the Area

The subject site is within the area zoned Objective 'Z2' i.e: *To protect and/or improve the amenities of residential conservation areas.* The general objective for these areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

It is noticed that the development while within the Z2 zoning is not specifically within a Conservation or Architectural Conservation Area. However it is within this zoning due to the quality of the architecture in the surrounding area i.e Section 15.10.2 provides:

The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The guiding principle is to enhance the architectural quality of the streetscape within the area.

There is concern that the area is already overdeveloped due to inappropriate modern infills that detract from the character of proximate Protected Structures and the residential conservation area. The Third Party are concerned that the proposal detracts from the architectural quality of the area and does not represent good modern design. However it is not considered that a modern design would harmonise as well with the existing as that proposed, which will blend in better with the character of existing houses in this area of the residential conservation area. In this respect it is of note that Policy Q19 of the DCDDP seeks: *To ensure that new housing development close to existing houses reflect the character and scale of the existing houses unless there are exceptional design reasons for doing otherwise.* Provided quality materials are used to match the existing house and the amendments as provided in the additional information submitted, and relative to the inclusion of quoins as recommended above are incorporated, it is not considered that the proposed development will detract from the residential conservation area. Rather it will be seen as an end of terrace corner house on an appropriate infill site.

7.8 Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise.

8.0 Recommendation

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

8.2. REASONS AND CONSIDERATIONS

Having regard to the nature, extent and design of the development proposed, to the general character and pattern of development in the area and to the provisions of the Dublin City Development Plan 2011-2017, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of property in the vicinity and would not be out of character with the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 30th day of May 2016, and by the further plans and particulars received by An Bord Pleanála on the 3rd of August 2016 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. The external finishes of the proposed house including roof tiles/slates, new parapet and fenestration shall match those of the existing dwelling in respect of scale, colour and texture. Samples of the proposed materials shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity in this residential conservation area.

3. The design of the proposed development shall be amended as follows:
 - (a) Quoins shall be inserted on the front gable end to match those on no.67 Garville Avenue Upper.
 - (b) Details of all proposed boundary treatment front and rear of the site shall be submitted.
 - (c) Details of parking arrangements for no.67 relative to on-street parking shall be submitted to Dublin City Council.

Revised drawings/details showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

4. 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 and no surface water from the proposed development/site shall be allowed to discharge onto adjoining properties or the public road.

Reason: In the interest of public health.

5. The site and building works required to implement the development shall be carried out only between the hours of 0700 to 1800 Monday to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays and Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of adjoining residential occupiers.

6. 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 noise management measures and off-site disposal of construction/demolition waste.

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

7. 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 the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall

be referred to 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.

Angela Brereton
Planning Inspector

3rd of October 2016