



An
Bord
Pleanála

Inspector's Report PL29S.246972

Development

Demolition of Boundary wall at Kenilworth Lane East and South;
Construction of 238 square metre two storey detached three bed house;
Construction of new stone boundary wall;
Two off street car parking spaces;
Relocation of vehicular entrance to Kenilworth Lane South and site works at rear of No 16A Kenilworth Road. (Protected Structure.)

Planning Authority

Dublin City Council

P. A. Reg. Ref.

2834/16

James Moran.

Decision

Grant Permission for Retention.

First, Third Party Appellant

Michael Gibbons,

Second, Third Party Appellant

Tina O'Neill

Third, Third Party Appellant

Shane Johnson.

Date of Site Inspection

9th October, 2016.

1 Site Location

- 1.1 The site which has a stated area of 278 square metres, is rectangular in shape and is a corner site formed from a sub division of the rear garden of No 16A Kenilworth Road, a Victorian end of terrace house in multiple occupancy. Kenilworth Lane East and West is a rear access lane from Kenilworth Road extending as far as Harold's Cross to the west and serves the rear of the properties on Kenilworth Road on the south side, Effra Road on the north side and Grosvenor Place is to the east side. It is approximately four metres in width and has no footpaths. The lane is located along the east side boundary of No 16A Kenilworth Road and the east side and northern frontage of the appeal site formed the original rear garden. There are rubble stone walls along the boundaries which appear to date from the time of construction of the Kenilworth Road houses. A pedestrian gate is on the east boundary at the rear of the Kenilworth Road house and a vehicular entrance, which was boarded up at the time of inspection is on the northern frontage. Mature trees are within the site on the inner side of the eastern boundary had been cut and there was evidence of other site clearance works.
- 1.2 Along the eastern side and on both sides of Kenilworth Lane there is a mix of dwellings constructed in rear gardens of the Kenilworth Road and Effra Road houses, workshops, garages and lock ups. The detached house (occupied by one of the appellant parties) adjoins the western side boundary of the appeal site.

2 The Proposed Development

- 2.1 The application lodged with the planning authority on 9th May, 2016, indicates proposals for permission for construction of a two storey detached house which has a stated floor area of 238 square metres along with two off street car spaces and a relocated vehicular entrance and gate off Kenilworth Lane South on the site and for demolition and replacement retention of the boundary walls.

- 2.2 The application includes a report on conservation aspects of the development in which it is concluded that no intervention to site curtilage of No 16A Kenilworth Road would occur there being a distinct boundary between the two properties and that the proposed development accords with best conservation practice.
- 2.3 **Third Party Observations** were submitted by four parties in which issues of concern are raised about flooding risk, traffic safety and parking supply, dwelling size and design, impact on residential amenities visual amenities, and established historic architectural character and layout in the area including trees and landscaping.
- 2.4 **The Internal Technical reports** of the Drainage Division, Roads and Traffic Planning Division and the Conservation Officer indicate no objection subject to conditions. The Roads and Traffic Planning Division recommends that the existing vehicular entrance be retained and upgraded to a 3.6 metre width in that the proposed location is too close to the corner on the eastern boundary. The conservation officer notes the special interest of the random rubble stone walls located along garden and lane boundaries of late nineteenth century houses and includes a recommendation for inclusion of a condition for the new boundary wall construction to match the existing random rubble stonewall in size, with salvage being reused where possible and in coursing and pointing.
- 2.5 **The Planning Officer** indicates satisfaction with the proposed dwelling in relation to the existing dwelling, mews dwellings in the vicinity and widening of the existing entrance as recommended by the Roads Engineer.
- 2.6 **Decision of the Planning Authority.**

By order dated, 29th June, 2016 the planning authority decided to issue a decision to grant permission subject to conditions of a standard nature which in addition include the following requirements:

Condition No 3 (a) Retention of the existing entrance with alterations to provide for width between 2.5 and 3.6 metres and inward opening gates.

Condition No 4 Requirements for the replacement boundary walling to match the existing wall in rubble stone size, in height, thickness, coursing and pointing to include salvaged rubble stone from the demolished.

3 **Planning History**

3.1 According to the planning officer report there is no record of planning history for the appeal site. There is a reference to a previously permitted at Kenilworth Road and Kenilworth lane under P. A. Reg. Refs. 3136/15 and 3450/01. (Details are not available.)

4 **Development Plan**

4.1 The operative development plan is the Dublin City Development Plan 2011-2017 according to which the appeal site and environs are subject to zoning objective: Z2;

“To provide for and or improve the amenities of residential conservation areas.”

Guidance and standards for mews development on rear access lanes are available in section 17.9.14

5 **The Appeals**

5.1 There are three third party appellants. They are:

First, Third Party Appellant	Phillip O'Reilly, Grosvenor Square,
Second, Third Party Appellant	Tina O'Neill, Kenilworth Lane East,
Third, Third Party Appellant	Shane Johnson, Kenilworth Lane West.

5.2 The appeal from Mr O'Reilly was received o 25th July, 2016 and the appeals from the other two parties were received on 26th July, 2016. They are extensive in detail have

been reviewed and most of the issues raised are shared by two or all three parties. They are outlined in brief first below followed by some issues specific to the individual appellants.

5.3 **Overdevelopment:**

A three storey house of 283 square metres on a plot of 278 square metres is excessive for the site location and across the entire width of the site and exceeds development plan standards. It breaches the front building line by 3.6 metres. It does not accord with Mews Lane development standards in section 17.9.14 as it does not complement the character of the mews lane and main building. The scale is excessive, design is lopsided adjacent to the east boundary wall and a pitched roof solution is more appropriate. The amount of private open space should meet the requirements for mews lane development and for multiple occupation of dwellings.

5.4 The proposal does not comply with the standards for development within the curtilage of a protected structure according to section 17.10.2 of the development plan and is incompatible with the protected structure. It fails to demonstrate traditional, proportional relationships between buildings, their returns gardens and mews and mature trees. The gardens contribute to the character of the existing protected structure and urban grain. The lane's setting with the boundary walls and the mature trees are unique to the urban grain and the trees are an important visual buffer interfacing with the rear of Grosvenor Place which is perpendicular to the mews houses on Kenilworth Lane. A tree survey and landscaping scheme is required, having regard to the soft landscaping standards in section 17.2.2 of the development plan.

5.5 **Private Open Space**

Private open space provision at 16 square metres per bed space is required according to the development plan. This equates to ninety-six square metres for six bed spaces. Forty-two square metres only is provided. The minimum depth of 7.5

metres has not been met. A quantitative assessment of the space provided for the existing protected structure is also required. There is no landscaping or planting scheme detail to indicate quality of the private open space.

The house is much larger than the other mews houses. It is possible to provide additional bedrooms within the internal space, and can accommodate five double bedrooms and scope for an additional floor in the house.

5.6 **Overlooking.**

The house, especially the east facing windows would overlook the rear of properties on Grosvenor Place, especially No 18 and the distance does not comply with the minimum separation distance of eleven metres.

The infringement of the building line reduces the views from and light to the ground floor windows of the adjacent property to the west and a three storey blank façade facing property is unacceptable. The dwelling is visually discordant dominant out of and out of scale with the adjoining dwelling.

The reason for refusal of permission following appeal for another development is appropriate for the current proposal:

“Having regard to the massing, volume, height and length of the flanking wall to adjoining property it is considered that the proposed development would have overbearing impact and seriously detract from, the residential amenities of adjoining property. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.” (PL 239446/ P. A. Reg. Ref. 283/11 refers.)

5.7 **Flooding Risk**

No flood risk assessment was submitted with the application and flood risk will be increased. The area has experienced significant flooding problems with water flowing along the lane towards the houses on Grosvenor Place and Effra Road. The 150 years old combined sewer system requires replacement before any new development is permitted. The proposed development will exacerbate the problem

because percolation and soakage space is reduced. The ramps were installed on the lane to control flood water flow rather than control traffic speed. Climate change has not been provided as existing drainage conditions are deficient. The Swan River which has had serious flooding problems in recent years is only ten metres from the site.

5.8 Green Infrastructure

The proposal is deficient as regards the guiding principles in section 16.2 of the development plan for best practice sustainable solutions and use of natural features. The arborist report included with the appeal and initial observer submission of Mr Johnson includes remarks that the existing trees were disregarded but they should be a feature. The conservation report submitted with the application included an environmental impact section in which these issues should have been addressed. A landscaping plan and an arboriculture impact assessment, tree survey and method statement should have been lodged with the application.

5.9 Traffic safety and configuration of the lane.

The lane width in places is less than four metres, and parking takes place along it. The junction is a blind right angled junction and there is no suitable space for an entrance and parking.

5.10 Protected Structure/Architectural Heritage:

The proposed development is incompatible with and seriously injurious to the protected structure and the residential conservation area. There should be no interventions to the boundary walls notwithstanding any argument that the walls are not in the curtilage of the protected structure. Removal also sets undesirable planning precedent. There is a conservation imperative to respect the historic environment and materials.

Further Submission of Mr O'Reilly (first third party)

A submission was received from Mr O'Reilly on his own behalf on 19th August, 2016 indicating support for and reiteration and elaboration of the issues raised in the concurrent third party appeals. According to the submission a simple two storey dwelling of circa one hundred square metres is of appropriate size and suitable. Having regard to the development plan standards a simple two storey dwelling of circa one hundred square metres is of appropriate size and suitable having regard to the development plan standards.

A three storey house and the size of the proposed dwelling as well as is excessive overdevelopment for the site and the location and relative to adjoining properties and the historical architectural characteristics of the area and the views that the proposals for the boundary treatment are also inappropriate. No 16A Kenilworth Road, the protected structure would be seriously affected by the close proximity of the proposed large, high and excessively proportioned which would block light to the rear rooms. The architect's statement supporting the proposed development is rejected.

7 Observations of the Planning Authority.

There is no submission from the planning authority on file.

8. Response to the Appeals by the Applicant.

A submission was received from the applicant's agent, Kieran O'Malley and Associates was received on 22nd August, 2016. According to the submission:

- The proposed house is not a three storey house. It has two floors and no roof garden. A condition can be attached and is acceptable. It has an atrium feature complimenting the contemporary design and providing light. The

design and form complements existing development and the prominence of No 16A Kenilworth Road.

- The rubble stone wall has been mixed with concrete or cement and the rubble stone is not likely to be the original, is partially demolished and not of historic or conservation merit. The replacement will enhance the visual amenity of the laneway. The conservation officer did not indicate objection.
- There is a clear rationale for the building line as it is in line with six permitted mews lane dwellings to the west. Nos 12A,12B, 13A 13B, and two dwellings at 10 Kenilworth Lane East. (P. A. Reg. Ref 3136/15 refers.) There is no difference to the staggered layout of mews dwellings at the rear of Nos 11-14 Kenilworth Road. Residential and visual amenities at the adjoining property to the west at which curtilage parking is located to the front from which a short length of the side elevation would be visible would be unaffected. There is no entitlement to protection to the views from the west facing ground floor windows at the dwelling. The proposal is not comparable to the proposed development determined under PL 239446 as they are not comparable and no precedent can be taken
- The development proposed will not overlook the rear of the properties on Grosvenor Place to the east as the rear gardens are shielded by the garages and sheds at the ends of the gardens with access onto Kenilworth Lane as shown on the site layout drawing. The window to window separation distances between the proposed development and No 18 Grosvenor Place exceeds twenty-two metres and timber slats are to be used for the east facing first floor windows for bedroom 3 and the mezzanine.
- The depth of the rear private open space ranges from 7.16 metres to 10.9 metres and totals 60 square metres in size with forty percent of the rear garden being over ten metres in depth. There is no obligation on the applicant to provide open space for No 16A Kenilworth Road because it was in

separate ownership prior to the bringing into effect of legislation for protected structures.

- It is confirmed that the trees are to be removed and no tree felling license is required. The trees are in poor condition and of no value. This is demonstrated on the site drawing 16-109-PL-104. There is no justification for their retention and trees were not retained at mews developments along the lane.
- Evidence of flooding has not been provided in the appeals. An underground tank for rainwater harvesting with connection to a soakaway for overflow is included in the proposal.

9. Assessment

9.1 Several issues raised within the three third party appeals are central to the determination of a decision. They are:

Architectural Heritage and established pattern and character of development.

Boundary Walls Trees and Landscaping.

Dwelling footprint form, design and height.

Traffic and Pedestrian Safety

Flooding and

Appropriate Assessment.

9.2 Architectural Heritage and established pattern and character of development.

The site location is within an area zoned Z2 “*Residential Conservation Area*” and the main buildings along Kenilworth Road including No 16A the site of which is subdivided providing for the appeal site are protected structures.

The historic curtilage of No 16A Kenilworth Road, (a protected structure) has been subdivided for some time and the appeal site is in separate ownership. To this end, it is accepted that the applicant has no legal control or responsibility for the private

open space provision for the original house whereas there are potential planning restrictions as regard impact of the proposed development on the property at No 16 Kenilworth Road, with respect both architectural heritage protection considerations and the residential amenities of dwelling units within that property.

The historic layout and grain of the area is that of large Victorian Terraced houses on deep, narrow plots with rear coach house facilities at the end of the rear gardens accessed from secondary service laneways. Radical interventions and alterations have taken place over time along the rear access lanes including Kenilworth Lane which have included mews developments, involving significant alterations to frontage and boundary treatments and trees. It appears that most of these developments took place some time ago and it is noted the current proposal is for a development where the original site has already been severed is a continuation of such interventions.

9.3 Boundary Walls Trees and Landscaping.

It is agreed, based on a brief visual inspection that the boundary walling has been subject to some interventions but would it appear that the interventions primarily to amount to the addition of concrete mix over the original rubble stone and that the damaged area at the corner can be appropriately repaired. Nevertheless, the application lacks evidence of any comprehensive survey and condition study having been undertaken and justification for the proposed boundary construction inclusive of a method statement providing for salvage and good conservation practice. It is not demonstrated that alternative options to the removal of the boundary wall were identified and investigated or that the removal is justified.

There is no evidence within the application to justify for the setting aside of conservation principles and practice or acknowledgement of the site location within the historic curtilage of a protected structure and within an area designated as a Residential Conservation area in the submissions of the applicant. It is considered that these issues should be addressed prior to determination of a decision. A

reduced footprint providing for increased separation distances from the boundary may be a favourable option in this regard.

At the time of inspection removal of the trees and site clearance works had been part completed. Justification for the removal of trees would not appear to have been fully addressed at application stage along with any proposals for landscaping which given the sensitive location are important considerations.

9.4 Dwelling footprint form, design and height.

The proposed dwelling size is considerable and has a floor area at 238 square metres is close to the total site size at 278 square metres which alone is indicative of a considerable two storey house. In principle there is no objection to the box form design which can generally successfully integrate, and complement existing development including mews lane development in historic areas. However, the current proposal as a depth of twenty metres over the two floor height built up to the western boundary of the lane. It encloses, dominates and dwarfs the laneway. This continuous elevation notwithstanding some feature elements of interest in the glazing is excessive at two storey height over a the twenty metre distance. The impact would be ameliorated by a footprint setback inside the boundary be a minimum distance of 1.5 metres and reduced in length, at either the front or rear or a combination of both. Owing to the block form, the rear across the entire width of the house, would give rise to enclosure of the protected structure but this impact could be overcome by reduced width and depth. There is no objection in principle to the proposed front building line, it being agreed that an established front building line is followed in the footprint. The issue is the overall footprint size having regard to the block form of the dwelling.

9.5 Residential amenities of adjoining properties.

The impact on the existing house at No 16A Kenilworth Road, the adjoining property to the west on Kenilworth Lane and the properties on Grosvenor Place are considered.

16A Kenilworth Road, Protected Structure.

While the applicant has no legal responsibility for the private open space provision at No16A Kenilworth Road, (the site subdivision of several years ago resulting in separate ownerships,) the assessment of the proposal does detail consideration of standards achieved with regard to impact on the residential amenities of No 16A Kenilworth Road. No 16A contains several apartments and the rear garden which overlooked by several rear elevation windows and accessed by steps from the ground floor is a communal utility and amenity space for the residents. It is noted that some screen planting has been provided along the subdivision boundary providing for some screening.

It is considered that there is sufficient private open space provision, at sixty square metres with a minimum depth of seven metres is satisfactory both in terms of quality and quantity. The contentions as to possible future additional bedroom space and as to an accessible roof garden being provided within the proposed dwelling can be addressed by condition should it be considered necessary.

On review of the lodged plans, the separation distances between opposite windows is well in excess of the minimum of twenty-two metres recommended in statutory guidance and the development plan. There is greater potential for overlooking the proposed development from No 16 Kenilworth Square owing to the more highly positioned windows in the rear elevation and additional habitable floors relative to the proposed dwelling and external steps at the rear entrance.

9.7 The Adjoining property to the west side (No 16 Kenilworth Lane - Ms O'Neill)

The front building line of the adjoining dwelling on the west side is setback behind the front building line of houses on the sites to the other side to the west. Taking into account all other development and it is not accepted that the building line is for the proposed development established by the footprint of the appellant's property but there is a strongly defined site frontage with curtilage parking behind at her property and at the proposed property. However, given the large box form, parapet height,

and length of the side elevation abutting the west boundary projection forward of the front building line of appellant's property, the proposed development is seriously injurious to the amenities of the appellant's property through overbearing impact and enclosure of the front curtilage. This excessiveness of this impact can be satisfactorily ameliorated by substitution of a dwelling with a similar box form if the footprint and proportions are reduced allowing for a reduced size box form with a smaller footprint and increased separation distances from the boundaries. These recommended modifications would also the impact on access to daylight to the internal accommodation of the appellant's property.

9.8 Properties to the East on Grosvenor Place (No 18. Appellant)

It is noted that the east elevation includes fenestration overlooking the lane and towards the rear of the Grosvenor Place properties. No 18 Grosvenor Place is the property of Mr. O'Reilly one of the appellants. Notwithstanding the position of the footprint onto the east boundary which is not considered acceptable for other reasons, it is not agreed that the proposed development overlooks these properties. The historic rear access to the properties on Grosvenor Lane is from Kenilworth Lane East and most of these properties have garages and lockups opening on to the lane. These structures shield the rear garden space and rear elevations of the Grosvenor Place houses from overlooking, from the windows at first floor level in the east elevation of proposed dwelling and, in addition, separation distances between the footprints are well in excess of the twenty-two metres minimum standard between opposing windows.

In summary with regard to impact on residential amenity, it is considered the proposed development has potential for undue adverse impact on the amenities of the adjoining property to the west which could be addressed by modification to the footprint, size and proportions of the proposed dwelling.

9.9 Traffic and Pedestrian Safety

The lane width and right angled corner provides for low attainable speeds with or without ramps along the lane. It is agreed with the planning authority that the proposed entrance location on the east side boundary is a major concern with regard to traffic and pedestrian safety concerns and that the existing location on the northern frontage would be more satisfactory. It may be advisable consideration to be given to configuration of the front curtilage parking space to facilitate access and egress in forward gear but this may not be essential owing to restricted attainable speed at the corner. There is no objection to the additional traffic generation and turning movement on the lane and at the junction with Kenilworth Road that would be generated by the proposed development.

9.10 Flooding.

Concerns as to intensification of development and consequential loss of permeable space surface

9.11 Appropriate Assessment

Having regard to the scale and nature of the proposed development which was carried out several years ago, the retention of which is proposed no Appropriate Assessment issues arise and it is not considered that the proposed development has a significant effect individually or in combination with other plans or projects on a European site.

10. Conclusion and Recommendation

10.1 In conclusion, the boundary walls would appear to have architectural heritage merit, particularly in view of the zoning objective. A survey and condition study is warranted along with consideration of alternative options before the proposed demolition can be justified.

- 10.2 The twenty length of the box form over two store height abutting the inside of the boundary wall is excessive in impact on the public realm and the context of the protected structure given the proposed infill across the entire width of the site by the proposed dwelling. The length of the proposed dwelling on the boundary with the adjoining dwelling to the west is excessive and overbearing and provides excessive enclosure of the adjoining property to the west side.
- 10.3 It is considered that all of these concerns could be overcome by a reduced footprint and overall size for the proposed dwelling, the design principle of which is considered acceptable. Should this conclusion be shared, it may be appropriate issue a section 132 notification to the applicant and provide him with an opportunity to address the issues prior to the determination of a decision. It is not considered appropriate for an amended design to be addressed by condition.

In view of the foregoing, a draft order indicating a decision to Refuse Permission is set out in the draft order overleaf.

Decision

Refuse Permission on the basis of the reasons and considerations set out below.

Reasons and Considerations.

“Having regard to the location within an area subject to the zoning objective: Z2, residential conservation area and to the footprint infilling the entire width of the site the considerable depth, the massing and box form of the proposed development it is considered that the proposed development would be excessive in scale and proportion for the location and as a result would enclose and be overbearing in impact on the adjoining property to the west particularly by reason of the projection forward of the front building of the west elevation wall. As a result, the proposed development would be seriously injurious to the residential amenities of adjoining property and to the visual amenities and character of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.”

Jane Dennehy
Senior Planning Inspector
11th October, 2016