



An  
Bord  
Pleanála

## Inspector's Report PL29S.247014

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<b>Development</b>	Construction of house to the side of existing house to include balcony and roof terrace.
<b>Location</b>	Side of No.5 Church Avenue, Sandymount, Dublin 4.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2850/16
<b>Applicant(s)</b>	David and Peter Keenahan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Peter Keenahan
<b>Observer(s)</b>	John Tobin, Mary O'Connell and Others
<b>Date of Site Inspection</b>	15 November, 2018
<b>Inspector</b>	Stephen Kay

## 1.0 Site Location and Description

- 1.1. The appeal site is located on Church Road in Sandymount and comprises an area located to the west of the existing end of terrace dwelling which is No.5. The existing terrace comprises two storey red brick dwellings. The site currently comprises part of the garden of No.5 Church Avenue.
- 1.2. There is an existing laneway that runs to the west and rear of the site and this connects Church Avenue with Bath Street. The area immediately to the west of this laneway, fronting onto Church Avenue is currently undeveloped and to the north this undeveloped area bounds the curtilage of St Matthews Church which is a protected structure.
- 1.3. The existing house at No.5 Church Avenue has a stated floor area of 141.8 sq. metres and this includes a two storey rear extension which is stated in the application form to have a floor area of 39.8 sq. metres.
- 1.4. Church Avenue is a very heavily trafficked road that connects the Sandymount area with the access to the east Link bridge and the southern port. There is currently no on street parking on the street and parking is limited in the surrounding area with a high demand due to the general lack of off street parking spaces to serve residential properties.
- 1.5. The appeal site has a stated area of 290.1 sq. metres.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of an end of terrace three bedroom dwelling on the site to the side of (west of) No.5 Church Avenue. The design of this dwelling is contemporary and comprises three storeys with a flat roof with private terrace at roof level.
- 2.2. The stated floor area of the proposed dwelling is 118.3 sq. metres and the layout indicated comprises a total of 5 no. bedspaces. The dwelling is orientated to face west towards the area of open space that is located on the opposite side of the laneway that currently runs to the side and rear of the site. Private amenity space is

proposed in the form of a small rear yard area of c. 15 sq. metres, a balcony at first floor level facing west and serving the main living area and a rooftop terrace area having an area of 23.5 sq. metres. .

- 2.3. The development is proposed to be connected to the existing public water supply and drainage networks. There is no on site car parking proposed as part of the proposed development.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

The Planning Authority issued a Notification of Decision to refuse Permission for a single reason as follows:

- The proposed development of a three dwelling in a residential conservation area would constitute over development of the site by virtue of its scale and massing and would materially contravene section 17.9.1 of the development plan by reason of inadequate open space. The proposed development would also have a significant negative impact on the conservation area and would therefore seriously injure the amenities of property in the vicinity.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. Planning Reports

The report of the Planning Officer notes the submissions received and the relevant policies for infill dwellings, residential standards and development in conservation areas. The visually prominent location of the site within the conservation area is noted. Report concludes that while there may be some potential to develop an infill dwelling in this location that the current proposal represents over development of the site and would have a significant visual impact on the conservation area. Refusal of permission consistent with the Notification of Decision which issued is recommended.

##### 3.2.2. Other Technical Reports

Archaeology – No objection subject to conditions including requirement for retention of a suitably qualified archaeologist to oversee construction works.

Roads and Traffic Planning - Note the fact that no car parking is proposed and that there is high pressure on existing spaces. Recommends further information that requires the revision of the layout to provide one off street parking space.

Drainage – No objection.

### 3.3. **Third Party Observations**

The following is a summary of the main issues raised in the observations submitted to the planning authority:

- Negative impact on privacy of surrounding properties,
- Negative impact on conservation area and on the setting of St Matthews Church which is a protected structure.
- Implications for car parking,
- Height and design of proposed dwelling out of character with existing development.
- Over development of the site.

## 4.0 **Planning History**

There is no planning history on the appeal site referred to on the file.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The relevant development plan is the Dublin City Development Plan, 2016-2021. It should be noted that the application was assessed by the Planning Authority under the provisions of the previous 2011-2017 Dublin City Development Plan.

The following plan provisions are of relevance to this assessment:

The site is located in an area that is zoned Objective Z2, '*to protect and or improve the amenities of residential conservation areas*'. The plan states that the general objective for such area 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.

The indicative plot ratio for Objective Z2 lands is 0.5 – 2.0 and the site coverage is 45 percent.

The site is located within a conservation area (red hatching on the land use zoning and objectives map).

The site is also located within a zone of archaeological interest.

**Policy SI09** requires that all proposals for minor developments (including small scale infill development, that are located in Flood zones A or B shall be assessed in the context of the Guidelines for Planning Authorities on flood risk management.

**Paragraph 16.2.2.2** relates to infill development and requires that development respects and enhances its context and is well integrated into its surroundings.

**Paragraph 16.10.9** relates to corner / side garden development and requires that such developments, inter alia, respect the character of the street, open space standards for both existing and proposed dwellings, the provision of appropriate car parking facilities.

**Paragraph 16.10.10** relates to infill housing and requires that infill housing complies with all relevant development plan standards for residential development.

**Paragraph 11.1.5.4** relates to development in ACAs and Conservation Areas.

**Policy CHC4** requires the protection of the special interest and character of all of the city's conservation areas. Specifically, it is required that new development would not harm features that contribute to the special interest of the conservation area, harm the setting of a conservation area or constitute a visually obtrusive or dominant form.

**Paragraph 11.1.5.6** requires that new development should have a positive impact on local character.

In terms of private amenity space, a minimum standard of 10sq.m of private open space per bedspace will normally be applied. Generally, up to 60-70m<sup>2</sup> of rear garden area is considered sufficient for houses in the city. In relation to proposals for house(s) within the inner city, a standard of 5-8sq.m of private open space per bedspace will normally be applied.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The following is a summary of the main points raised in the grounds of appeal:

- That the refusal of permission relates to the provision of open space and the scale and massing of development. On open space the calculation would be altered if the ground floor room was not identified as a bedroom. This room is intended more as a home office / study.
- That the amount of open space required to serve the dwelling is 45.5 sq. metres and as recognised in the report of the planning officer there is provision for a minimum standard of 25 sq. metres.
- That given the prominent location of the site and the location within the conservation area then a site specific design solution is required. Submitted that a stock solution could do more damage than good to the area. Requested that the Board would look again at the proposed three storey solution. In the event that it is not considered that the three storey design is acceptable then that would be accepted or the Board may wish to examine if there are options to modify the proposal to make it acceptable.

### **6.2. Planning Authority Response**

Response received stating that the reasons for granting permission are clearly set out in the Planners Report and that it is not intended to respond in detail to the grounds of appeal.

### 6.3. Observations

An observation on the grounds of appeal has been received from the occupants of five residential properties in the surrounding area. The issues raised in this observation can be summarised as follows:

- That the content of the submissions of the observers to the planning authority have not been addressed in the first party appeal.
- That contrary to the first party appeal, the report of the planning officer does give several cogent reasons for the refusal of planning permission. These include over development of the site, the breaking of the building line and the impact on the conservation area.
- That notwithstanding the comments in the appeal regarding the third bedroom the fact is that when the house is sold or rented it will be on the basis of a three bedroom property.
- That there is no provision made for car parking which is already at a premium in this area. The omission is contrary to development plan policy.
- That the development does nothing to 'protect or improve' the amenity of residential conservation areas.
- That the proposed development is inconsistent with the plan requirements for corner / side gardens as set out at 17.9.6 of the Plan.
- That the structure would tower over its neighbours and would block light as well as being visually incongruous and out of keeping with the Victorian / Edwardian architecture of the rest of the street.

### 6.4. Further Responses

The application details were referred by An Bord Pleanála to An Taisce, the Heritage Council and the Development Applications Unit of the Department of Arts, Heritage and the Gaeltacht for comment. No response to these referrals has been received within the time period specified in the section 131 letters.

## 7.0 Assessment

7.1. The following is a summary of what I consider to be the main issues relevant to the assessment of this appeal:

- Principle of Development
- Design, Layout and Compliance with Development Plan Standards
- Visual Impact and Impact on Conservation Area and Adjacent Protected Structure
- Other Issues

### 7.2. Principle of Development

7.2.1. The appeal site is located on lands that are zoned Objective Z2, to protect, provide for and improve the amenities of residential conservation areas', under the provisions of the Dublin City Development Plan, 2016-2021. Residential development and infill development such as that proposed in the subject application are permissible uses on lands zoned Objective Z2 subject to compliance with other relevant development plan policies and standards.

7.2.2. I note the fact that there are a number of references in the City Development Plan to the promotion of densification and the efficient use of urban lands. This includes Policy QH8 which seeks to promote the sustainable development of vacant or underutilised infill sites. Paragraphs 16.10.9 and 16.10.10 relating to corner / side gardens and infill housing also note the potential benefits of such development in making efficient use of serviced residential lands. There is therefore general policy support for appropriate infill development.

7.2.3. It is noted that the reason for refusal cited in the Notification of Decision to refuse Permission issued by the Planning Authority makes reference to the fact that the proposed development would materially contravene the development plan by virtue of the substandard provision of private amenity space. The provisions of s.37(2) of the Planning and Development Act, 2000 (as amended) are therefore applicable in this case.



### 7.3. Layout and Compliance with Development Plan Standards

- 7.3.1. The report of the planning officer notes the fact that the proposed development proposes a total of c. 46 sq. metres of private amenity space of which only 14.7 sq. metres is proposed to be provided to the rear of the rear building line at ground level. The lack of private amenity space provision is the basis for the conclusion of the Planning Officer that the proposed development would constitute the overdevelopment of the site.
- 7.3.2. The first party appeal contests the conclusion of the planning officer and the observers to the appeal that there is inadequate open space provision proposed. Specifically, it is stated that the third bedroom at ground floor level is more of a study / office than a bedroom and it is noted that there is provision in the development plan for a reduced open space standard of 25 sq. metres to be applied. In terms of private open space provision, I would agree with the third party observers that the layout of the proposed dwelling is such that what is proposed is a three bedroom house with a total of 5 no. bedspaces. The ground floor room may be used as a study however it is the largest of the three bedrooms and is likely to be used as such. Development plan policy requires that a minimum private amenity space provision of 10 sq. metres per bedspace be provided and this would result in a requirement for 50 sq. metres. The reduced standard of 5-8 sq. metres per bedspace referred to in the first party appeal, which gives a reduced requirement of 25 sq. metres, applies to city centre locations and is not in my opinion applicable in this location.
- 7.3.3. As will be set out later in this report, I have significant concerns with regard to the design and built form proposed and the potential impact on the conservation area in which the site is located. For these reasons I do not consider that the rooftop amenity space is feasible in design terms and also consider that the proposed first floor balcony in the western elevation is problematic. Without these elements the proposed development is very significantly short in terms of private amenity space provision.
- 7.3.4. I also note the fact that the proposed sub division of the site would result in the remaining area of open space to the rear of the building line at No.5 Church Avenue being reduced to c. 45 sq. metres. There would be additional space to the south of

the existing side extension however the private open space provision for this existing dwelling at No.5 would also in my opinion be significantly compromised by the proposed development.

- 7.3.5. The reason for refusal cited in the Notification of Decision to Refuse Permission issued makes reference to the material contravention of the development plan policy with regard to private amenity space provision. I do not see how any of the criteria set out at s.37(2)(b) of the Planning and Development Acts are applicable in the circumstances of this appeal. No case is presented in the first party appeal as to how the criteria at s.37(2)(b) may be applicable in this case and I do not consider that the proposed development is of strategic or national importance, that there are conflicting objectives in the development plan with regard to private amenity space or that there is regional or other planning policy support for the form of development proposed. I am also not aware of any decisions issued for similar forms of development since the making of the development plan which was only on 21<sup>st</sup> October this year. In view of the above, I do not therefore consider that it is open to the Board to grant permission in this case. Notwithstanding this assessment, as set out above I consider that the open space provision is seriously deficient and that permission should in any event be refused on this basis.
- 7.3.6. As noted in the report on file from the Roads and Traffic Division of the council, the proposed development does not incorporate any off street car parking. Development plan standards requires the provision of one off street parking space per unit and I would share the concerns of the planning authority and the third parties regarding the proposal for no off street provision. The vicinity of the appeal site is already the subject of significant pressure for on street parking with a limited availability of such spaces in close proximity to the site and a general lack of off street parking to serve the existing housing stock. The road on which the site is located, Church Avenue, is very heavily trafficked with vehicles travelling to and from the east link bridge and the south docks. Given the lack of parking and high traffic levels in the vicinity of the site I would agree with the planning authority and observers that any development of the site requires off street parking to be provided and that the absence of such parking further indicates the over development of the site.

#### **7.4. Visual Impact and Impact on Conservation Area and Adjacent Protected Structure**

- 7.4.1. The main basis of which permission has been refused by the Planning Authority relates to the adverse visual impact of the proposed development on the conservation area in which it is located. The scale and form of development proposed is clearly very different from the established pattern of development in the immediate vicinity. It is acknowledged that the wider context of the site incorporates a commercial use on the Beach Road / Church Avenue junction to the south east, however the block to the north of Church Avenue within which the site is located and which forms the conservation area comprises generally two storey Georgian buildings as well as St Matthews Church of Ireland church which is a protected structure. The location of the site at the end of the terrace and with an open area to the west also means that the site is very visually prominent.
- 7.4.2. Given the visual prominence of the site and its location within a conservation area I do not consider that the proposed contemporary design is appropriate in this location. The design, together with its scale, would in my opinion result in a development that would constitute a visually obtrusive and dominant form of development that would be harmful to the setting of the conservation area and the adjacent protected structure. I therefore consider that the proposed development would be contrary to Policy CHC4 of the development plan which seeks to protect the character and appearance of conservation areas. I also consider that the scale, design and form of development proposed is contrary to the provisions of the development plan relating to corner / side gardens (16.10.9) and infill housing (16.10.10) as it does not adequately have regard to the existing character of the street and design of adjoining properties, particularly in terms of established building line, proportion, heights, parapet levels and materials.
- 7.4.3. The first party appeal requests that in the event that the proposed design is not considered acceptable, that the Board would examine options for the modification of the design. A reduction in scale to two storey would go some way to helping the development to better integrate with the surroundings however it would not address the issues of the design approach, lack of private amenity space and car parking referred to above. I do not therefore consider that there are amendments that can

be made to the proposed design by way of condition that would enable a grant of permission to be considered.

## **7.5. Other Issues**

- 7.5.1. The observers to the appeal raise concerns with regard to the potential for the proposed development to have an adverse impact on residential amenity by virtue of overshadowing. Any overshadowing issues that may arise would in my opinion be largely confined to the existing residential property at No.5 Church Avenue. In terms of residential amenity, I also note that there may be the scope for overlooking from the proposed rooftop terrace to the rear of the property located to the north of the laneway at the rear of the appeal site and which fronts onto Bath Street.
- 7.5.2. The location of the site within a zone of archaeological potential is noted. In the event of a grant of permission conditions requiring the engagement of an archaeologist to oversee the construction works is recommended.

## **8.0 Recommendation**

- 8.1. In view of the above it is recommended that permission be refused based on the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. Having regard to the contemporary design approach, to the three and part four storey scale of the development, to the Objective Z2 (residential conservation area) zoning of the site and to the location of the site within a conservation area and in close proximity to a protected structure, it is considered that the design, scale and siting of the proposed dwelling would constitute a visually dominant and incongruous form of development that would have a significant negative impact on the character and setting of the conservation area in which it is located and on the adjoining protected structure. The proposed development would therefore be contrary to Policy CHC4 of the development plan which seeks to protect the character and

appearance of conservation areas, would be contrary to the provisions of the development plan relating to corner / side gardens (16.10.9) and infill housing (16.10.10) as it does not adequately have regard to the existing character of the street and design of adjoining properties, and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the scale of accommodation proposed, the extent of site coverage, the lack of on street parking provision and the inadequate provision of private amenity space that can be incorporated into a design appropriate for its location in a conservation area, it is considered that the proposed development would constitute over development of the site and would be contrary to sections 16.10.2 and 16.38 of the development plan by reason of inadequate open space and the absence of off street parking. The proposed development would therefore seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

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Stephen Kay  
Planning Inspector

18 November, 2016