



Development

Development on the eastern side of Block C, (formerly Rathgar House) comprising: a single storey room (kitchen and stores) at lower ground level on place of a single storey food preparation room, and a covered walkway approved under reg. ref. 2212/13 (PI29S.241956), a freestanding platform lift and supporting structure between lower ground and ground floor levels, a walkway with handrails and gates between the front (north) of the Block C and the upper level of the platform lift for service and emergency access, a stairway linking the lower ground level and the walkway, ground mounted air handling units and input flue to service the adjoining kitchen at lower ground level and wall mounted refrigeration units on the existing extension to Block C to service the adjoining cold store at lower ground floor, an extract flue from the kitchen at lower ground level on the eastern

elevation of an existing extension to Block C to service the adjoining cold store at lower ground level, a fire escape only door constructed from a ground floor window opening in the eastern elevation of Block C.

Location

Block C, Orwell Nursing Home, 112
Orwell Road, Rathgar, Dublin 6

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

2993/16

Applicant(s)

Orwell House Ltd.,

Type of Application

Retention Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Orwell House Ltd.,

Observer(s)

Rathgar Residents Association
Peter and Cathy Dunne.

16/11/2016

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site refers to the rear of Block C of the Orwell Nursing Home a large Nursing Home complex of a number of blocks constructed around the three storey former Rathgar House (Block B). Block C, the subject of the appeal refers to a series of later addition extensions to the original house, some single, some two storey.
- 1.1.2. The subject site refers to a C shaped area of the site and of Block C at lower ground and ground floor level. The topography of the site and the wider area is that it slopes eastwards to the Dodder, resulting in significant ground level changes throughout the site. These ground level changes have resulted in a lower ground floor of Block C that is accessible from within Block B (the original dwelling) and from north and south of the site along the eastern boundary only. Currently, the area of the subject appeal comprises a gated deliveries ramp that runs from the front of Block B/ C to the side and rear in the form of a concrete path / walkway. At the southern end of the walkway there is a service goods lift and a metal stair case to the lower ground level. At this location on the ground level are three refrigeration units, a fire escape door and an extractor flue from the kitchen. At lower ground level there is an air handling unit, the entrance to the service lift and an entrance to the lower ground level kitchen area.
- 1.1.3. The subject site is bound to the east by the rear wall of The Barn, a two storey former industrial building in use as a residence since 1902. The topography of the area is such that the gutters, roof and skylight of The Barn are at the same level as the concrete walkway to be retained at the nursing home.

2.0 Proposed Development

- 2.1. Permission was sought to retain the following:
- a single storey room (kitchen and stores) at lower ground level on place of a single storey food preparation room, and a covered walkway approved under reg. ref. 2212/13 (PL29S.241956),
 - a freestanding platform lift and supporting structure between lower ground and ground floor levels,

- a walkway with handrails and gates between the front (north) of the Block C and the upper level of the platform lift for service and emergency access,
- a stairway linking the lower ground level and the walkway,
- ground mounted air handling units and input flue to service the adjoining kitchen at lower ground level and wall mounted refrigeration units on the existing extension to Block C to service the adjoining cold store at lower ground floor,
- an extract flue from the kitchen at lower ground level on the eastern elevation of an existing extension to Block C to service the adjoining cold store at lower ground level,
- a fire escape only door constructed from a ground floor window opening in the eastern elevation of Block C

2.2. Details provided in the application form are:

- total site area 6,300sq.m.
- floor area of buildings to be retained within the site: 6,982.86sq.m.
- total floor area of new and retained development: 7,078.96sq.m.
- floor area of buildings to be demolished: 13.80sq.m.
- proposed plot ratio: 1.12
- proposed site coverage 33%

2.3. The application was accompanied by a **cover letter** that stated that the proposed development deals with the replacement of the single storey structure to the side and rear of the main building and a door to replace a window to an existing stairwell. The letter states that the proposed development is not part of the protected structure, being a single storey flat roofed extension (Planning Authority reg. ref 0494/95 refers) and a replacement stairwell. A **planning report** submitted with the application outlines the planning history of the site and the submission of compliance drawings to the Council.

3.0 **Planning Authority Decision**

3.1. **Decision**

By order dated 21/07/16 a notification of decision to REFUSE permission issued. The reason for refusal stated:

“The retention of the works due to their nature, cumulative impact and wholly inappropriate elevated position directly abutting a residential unit would seriously injure the residential amenity of this dwelling by reason of loss of privacy and noise disturbance. The development would therefore be contrary to the Z1 zoning objective which aims to protect, provide and improve residential amenities. The retention of the works would result in an unacceptable and unjustifiable form of development, set an undesirable precedent for similar such development and as such would be contrary to the proper planning and sustainable development of the area.”

3.2. **Planning Authority Reports**

3.2.1. **Planning Report:** Works are unauthorised and are currently the subject of enforcement proceedings. Lower ground level adjoining the kitchen and cold store room has been extended to provide additional stores. Use of rooms adjoining has been changed from that permitted under PL29S.241956. External air handling units are less than 3m from adjoining dwelling. Metal stairs lead from this area to roof of new extension which is being used as an access route to the kitchen. New door has been opened in side of protected structure. New refrigeration units on this wall. Person on access route has direct view into adjoining home through skylight. Serious concerns regarding proximity of works to adjoining dwelling and impact of works on the residential amenity of the dwelling. Planning Authority does not accept applicants submission that ramp stairs and platform goods lift were accepted by Planning Authority under compliance submission for condition no. 6. Compliance submissions cannot approve or justify additional development which has no relevance to the condition and were not part of the development. Works are wholly inappropriate and can be relocated elsewhere within the grounds. Recommend permission be refused on the

grounds of the cumulative impact of development in close proximity to a residential property.

3.2.2. **Other Technical Reports**

- **Conservation Officer:** Grant of permission recommended. No objection.
- **Drainage Division:** No objection subject to standard conditions.

3.3. **Third Party Observations**

Three submissions regarding the proposed development were submitted to the Council. The issues raised can be summarised as follows:

- Proximity of works to be retained to The Barn and the impact of those works on the residential amenity of the dwelling in terms of noise, reduced privacy,
- Lack of / insufficient detail on drawings

4.0 **Planning History**

4.1. The subject site has a long planning history. Relevant details as follows:

- 4.1.1. **PL29S.241956** (Planning Authority reg. ref. 2212/13): Planning permission was granted for the retention of works as constructed and new work. The permitted replacement extension of Block B was not to be constructed. At lower ground level a gap of 1m would be retained between Block B and The Barn. The lower ground floor rooms were to comprise a prep area, a cold room and male staff changing rooms. At ground floor repair works were to be carried out to the roofs of the extensions. See appended drawings. The permitted scheme did not have a goods lift, air handling units, refrigeration units or a fire-escape at the rear of Block B.
- 4.1.2. **PL29S.235381** (Planning Authority reg. ref. 3276/09): Permission granted for demolition of modern three-storey bedroom wing and existing extensions to side and rear of Rathgar House Nursing Home; conversion of 108/110 Orwell Road (as sheltered accommodation); the restoration and refurbishment of Rathgar House (as nursing home); new development to comprise nursing home with accommodation and day care facilities also new sheltered accommodation all in six new Blocks (Blocks A-G) providing

accommodation for 110 no. nursing home beds and 17 no. sheltered accommodation units.

- 4.1.3. **PL29S.223140** (Planning Authority reg. ref. 1455/07): Permission granted for revisions to reg. ref. 1132/05 (PL29S.212938) comprising reconfigurations to provide 50 no. nursing home units and 33 no. sheltered living units.
- 4.1.4. **PL29S.212938** (Planning Authority reg. ref. 1132/05): Permission granted for the demolition of existing building, construction of nursing home, day care facilities, 57 sheltered living units and refurbishment of Rathgar House.
- 4.1.5. Planning authority ref. **3582/03** - Permission refused for the demolition of nursing home (67 no. bedrooms); demolition of Nos. 108-110 Orwell Road; construction of 3-storey over basement nursing home (68 bedrooms and day care facilities) totally 5,071m² on 0.63 hectare site; closure of 3 no. existing vehicular entrances and provision of one entrance. The reasons for refusal related to the adverse impact on streetscape and character of area; overdevelopment by reference to plans for Rathgar House, excessive site coverage and inappropriate location and disposition of on-site private open space for residents; detrimental to setting of Rathgar House (protected structure) by reference to loss of certain mature exotic trees and overdevelopment, incongruous footprint, excessive site coverage, massing and proximity to boundaries.

5.0 **Policy Context**

5.1. **Dublin City Development Plan 2016-2022**

- 5.1.1. While the application was assessed by DCC under the 2011-2016 development plan, the Dublin City Development Plan 2016-2022 was adopted on the 21st October 2016 and therefore is the operative plan for the subject site and for the proposed development before the Board.
- 5.1.2. In the plan, the site is zoned 'Z1 Sustainable Residential Neighbourhoods' which has the stated objective "to protect, provide and improve residential amenities".
- 5.1.3. Policies of note in the development plan include:

QH14: To support the concept of independent living and assisted living for older people, to support the provision of specific purpose-built accommodation, and to promote the opportunity for older people to avail of the option of 'downsizing'. To support the promotion of policies that will:

- Encourage/promote full usage of dwellings units
- Incentivise property owners of underutilised dwellings to relocate to smaller age friendly dwellings.
- Actively promote surrendering larger accommodation/financial contribution schemes without compulsion.

5.1.4. **Section 16.19** of the development plan refers to Nursing Homes. The plan states that there is a continuing and growing need for nursing homes and in particular, because of the ageing population structure in the suburbs, for elder care homes. Such facilities should be integrated wherever possible into the established residential areas of the city, where residents can expect reasonable access to local services. In determining planning applications for change of use of a residential dwelling or other building to nursing/elder care home, the following factors should be considered:

- Compliance with standards as laid down in the Statutory Instrument No. 226 of 1993, Nursing Homes (Care and Welfare) Regulations, 1993
- Compliance with the Health Information and Quality Authority (HIQA) National Quality Standards for Residential Care, Settings for Older People in Ireland (February 2009), in particular Section 6
- The effect on the amenities of adjoining properties
- Adequacy of off-street parking
- Suitable private open space
- Proximity to local services and facilities and
- The size and scale of the facility proposed: the scale must be appropriate to the area.

6.0 The Appeal

6.1. Grounds of Appeal

Orwell House Ltd.

6.1.1. The planning history of the subject site is outlined by the Appellant, as follows:

- The area between Rathgar House (Block C) and The Barn was occupied by extensions. It was intended to demolish these extensions and construct a three storey building to be known as Block B under PL29S.212938. Block B was to provide staff facilities and a day room at basement level, office and kitchen at ground floor and a terrace at first floor level (floor plans attached to appeal). An external goods lift was permitted at the front of Block B adjacent to The Barn.
- Under PL29S.223140 revisions to the previous permission were permitted. The extensions to Rathgar House to be demolished and replaced with a three storey building would house nursing home bedrooms at basement and first floor levels with a kitchen and dining room at ground floor level. The permission included an external goods lift to the front of Block B.
- The development was revised again under PL29S.235381. The proposed three storey block would comprise a kitchen and offices at basement level with nursing home bedrooms at first and second floor levels.
- Permission to retain certain development and construct additional accommodation and ancillary facilities was granted under PL29S.241956. The permission retained the three storey block with a kitchen prep area and staff changing rooms at ground floor level, a treatment room, office and two nursing home bedrooms at ground floor level. The permission included a lower ground floor level walkway adjacent to The Barn.
- It is submitted that the above shows that permission has been granted for development that was more significant than that currently proposed, notwithstanding the objections and appeals of neighbours.

6.1.2. Rational for proposed development to be retained:

- In response to condition no. 6 of PL29S.241956 a revised site layout plan was submitted to the Council. The revised plan indicated a ramp, stairs and platform goods lift on the north-eastern corner of Block C. The

ramps, stairs and lift were to provide access to the lower ground floor kitchen. Under section B5 of the Fire Safety Certificate an external route for fire personnel to travel from the front of the site to the lower ground floor level at the side of Block A was required. The subject ramp was to provide such a route outside the building. It is submitted that the proposed goods lift and location of stairs is consistent with the details provided in previously permitted schemes. In response to condition no. 10 a drawing showing a cooker hood exhaust a fresh air supply was shown. The Council approved both compliance submissions.

- It is stated that best practice is to separate the entrance of goods and exit of waste from resident interface areas. Due to the ground level differences between the front and rear of the site, the service area as constructed is the only practical location for same. It is stated that the location had been identified and approved in all the previous applications. It is submitted that relocation of the service area would be difficult to achieve.
- It is stated during the removal of the roof light the roof of the existing high dependency unit was found to be in poor condition. A replacement flat concrete roof was finished at the same level as the original flat roof. A construction methodology was agreed with the residents of The Barn to ensure that there would be no impact on the structure of the adjoining building.
- The location of the external platform and stairs as shown in the approved compliance drawing was found to require extensive excavations and possible stress to both Rathgar House and The Barn. A decision was taken to relocate the proposed good lift and stairs to the rear of the single storey extension, an area which required no excavation and no stress on either building. It was considered that this location would have no material impact on the adjoining property as all of the active frontages of The Barn are on the opposite side.
- The Fire Safety Cert issued after PL29S.241956 required a direct external access route from the front of the site to the rear along the south-east façade of Block A leading to the front of Block C. The external

stair at the rear of the single storey extension provides this route. An existing fire escape stairwell opens directly onto the flat roof of the single storey side extension. A window opening on this wall was converted to a fire escape door to provide emergency access from the stairwell. It is not intended for daily or casual use.

- The air handling unit has been moved from above the flat roof of the single storey side extension as shown on the compliance drawing to a position on the lower ground level immediately adjacent to the single storey side extension. The unit is required to be proximate to the kitchen it serves. Its location on the roof of the single storey extension would have interfered with the route over the flat roof from the front of the site to the external stairs and platform lift. The new location was considered to have no impact on The Barn as the boundary wall is blank.

6.1.3. The grounds of the appeal can be summarised as follows:

- It is submitted that the grounds for objection to the proposed walkway would not arise if the residents had not installed an openable skylight in place of a fixed louvered roof light. It is stated that the resident's concern's in previous applications related to the impact of development on their living room window, balcony and patio on the southern elevation.
- The walkway to be retained is for transporting goods to and front the kitchen access point between 07.00 and 19.00. Deliveries will occur approx. 6/7 times a day. It is noted that DCC approved similar arrangements under 2212/13 (PL29S.241956) where access from the front of the site was through this area.
- The fire door will be code-locked.
- The platform lift is for goods only and cannot be operated without a key that is available to kitchen and maintenance staff only.
- Drawing no. PL-R-03 shows plant and equipment as follows:
 - ground mounted air handling units and input flue at lower ground level adjoining the kitchen. The noise level is LwA6 82.0dB(A) and LwA5 74.0dB(A),

- wall mounted refrigeration units on the existing extension adjoining the ground floor cold storey. Noise level is LwA6 34dB(A) and LwA5 30dB(A),
- extract flue from the kitchen at lower ground level. Noise level is LwA6 68dB(A) and LwA5 64dB(A),
- It is submitted that the change in activity and noise is not to the extent that it would have a serious or unacceptably negative impact on the amenities of the adjoining residents. It is noted that a complaint made to the Council Environmental Health Officer was not pursued. It is submitted that this infers that the City Council considers the noise levels to be acceptable.
- The Board is requested to grant permission.

6.2. **Planning Authority Response**

- No further comment to make. The planners report on file adequately deals with the proposal.

6.3. **Observations**

6.3.1. **Peter and Cathy Johnson, The Barn, Orwell Road, Rathgar.**

The issues raised in the observation can be summarised as follows:

- Wish to support the decision of the Council to refuse permission.
- It is submitted that the scale of the unauthorised work is unacceptable and inappropriate for the site.
- The walkway and metal staircase are used throughout the day by people pushing metal trolleys, by maintenance and other staff, 365 days a year. The lift is in constant use and reverberates through the house due to a lack of insulation. The AHU is noisy, running seven days a week up to 24 hours a day. The extractor fan that lets cooking odours into their house is close to their skylight. Three refrigeration units across from the skylight run intermittently (independently or simultaneously) which is extremely intrusive. The fire escape door is not used solely as a fire escape. The extension that was rebuilt is over 0.5m higher than the original. The noise from the sewage pump occurs at one minute intervals, vibrating

through the walls of the Barn. Diagram submitted showing location of above in relation to The Barn.

- It is submitted that, contrary to the Applicants suggestion, the roof of the extension was not decayed. The replacement building is 3.7m longer than the permitted plans and is 0.5m higher. Under PL29S.212938 the replacement building was to be 4.58m below the adjoining Block B whereas the new flat roof is 4.07m below the parapet, making it over 0.5m higher than the original roof. Diagram submitted. The unauthorised demolition of the building was done to accommodate the rooftop walkway, metal staircase and service lift.
- The Observers engineer was told there would be a 50mm gap between any new work and The Barn and this would be filled with insulation. This has not been complied with. The precast slabs touch the wall of The Barn, thereby connecting the nursing home and The Barn. Photos submitted.
- PL29S.212938 showed no external goods lift. Under PL29S.223140 the proposed goods lift was to the front of Block B as there was no kitchen at lower ground level. Under PL29S.235381 there was no goods lift or exit to the passageway from the kitchen. The passageway was a dead end and did not connect to the car park at the front. Under PL29S.241956 there was no goods lift. The proposed 'covered walkway' was an internal corridor inside the original single storey extension. This cannot be compared to the unauthorised development. Diagram submitted.
- The planning history of the nursing home is long and protracted. It is submitted that plans have been cherry-picked to make interpretation difficult and that conditions have been abused to justify works. The Observers do not have confidence that conditions will be complied with noting that 4 no. flag poles remain on site despite being omitted by way of An Bord Pleanála condition (condition 8a of PL29S.241956).
- It is submitted that the capacity of the nursing home has increased to 170 beds – permission was granted for 135 no.

- The construction management plan required by condition no. 12 of PL29S.241956 did not mention the demolition or rebuilding works to Block B. The works caused damage to The Barn.
- Condition no. 13 of the DCC decision 2012/13 stated that access to roofs was for maintenance only. Condition no. 18 stated that there was to be no additional development above roof level. The omission of both conditions by the Board had serious consequences for The Barn.
- Photo submitted showing proximity of the unauthorised walkway to the skylight in The Barn. The skylight provides light and ventilation to the family room and is now at shoulder height of people on the walkway.
- The lift shaft looks down on to the terrace of The Barn. The Barn has been mis-drawn as several meters longer on the application drawings.
- The current skylight replaced an openable skylight that was installed in 1902. The applicants suggestion that it was fixed are rejected as is the applicant suggestion that the Observers concerns are unreasonable.
- The unauthorised walkway has allowed trespass into The Barn grounds and damage to the roof. Previously the distance between the gutters of The Barn and the ground level was between 3m and 4.5m. It is now 1.2m. Drawing and photo submitted.
- The Barn is a pre-1830 industrial / mill building that was converted to residential use in 1900. Being one room deep it is susceptible to noise. Steel girders running through the house carry noise and vibrations through the house. The cumulative impact of the noise from the service lift, the foul sewer and general workings of the nursing home have seriously impacted the residential amenity of The Barn. It is submitted that this will get worse when the home operates at full capacity. The lift shaft is 2m from the patio and not the 2.834m shown on the plans. And the metal staircase is 0.3m not 0.7m. Photo submitted.
- It is submitted that the air handling unit does not service the adjoining kitchen and could be relocated elsewhere. The applicants overlook the fact that the noise of the unit at 8m from the patio is very intrusive.
- The extractor fan is too close to The Barn given the level of noise it generates. The previous extractor fan had a motor inside the attic and

the flue was further away. The wall mounted refrigeration units run intermittently 24/7. This will increase when the building is at full capacity. These units should be relocated.

- The foul sewer pump as permitted under PL29S.241956 was in an earthen area with a tree to ameliorate noise. The constructed unit is beside the concrete slab of the goods lift which exacerbates the noise as there is no insulation.
- The applicants assumption regarding the noise complaint and the EHO is incorrect. The EHO could not take readings of the plant as it is unauthorised. It is noted that the Applicant refers to the intensity of use of the walkway 'at the moment', leading the Observers to believe use will intensify.
- The service lift can be relocated to the north of Block C, similar to that proposed under PL29S.235381. Diagram submitted. When the single storey building was demolished a clear pathway lead to the front of the site. This can provide a route for emergency personnel. The refrigeration units and extractor fan could be blocked off and a fire escape stair could be fitted. The applicants argument that there are no alternative locations is rejected.
- The applicants argument that excavation adjoining The Barn is not justified is rejected as deeper excavations were permitted in previous permissions.
- The applicants suggestion that compliance drawing justify the unauthorised works is rejected. It is noted that the subject works were not labelled on the compliance drawings and were not referenced in the conditions. The observers support the Council's rejection of these claims. It is submitted that the compliance drawings submitted to the Board as part of the subject appeal are not the drawings submitted to the Council for compliance. Diagram submitted. It is noted that the compliance drawings do not identify The Barn as a residential property.
- The Board is requested to refuse permission.

6.3.2. **Rathgar Residents Association**

The issues raised in the observation can be summarised as follows:

- The development to be retained has taken place next to the rear wall of The Barn. The rear wall of The Barn has become part of an open terrace of the Nursing Home. Due to the topography of the area, The Barn is at a lower level than the nursing home. The elevated walkway is nearly at the roof level of The Barn. Users of the walkway can look into the skylight of The Barn. This is an excessive intrusion and invasive overlooking of the residents of the house.
- The development to be retained has a major impact on the residents of The Barn. The noise of the lift motor is unacceptably intrusive and can occur from early morning to late at night.
- The air handling units, input flues for the kitchen and wall mounted refrigeration units produce a continuous noise throughout the day and into the night. Noise and smells are intolerable at this proximity.
- The applicants suggestions that earlier proposals that were not advanced are similar to the current proposal is incorrect. The applicants suggestion that the provision of a sky light in The Barn provides an opportunity for an invasion of their privacy is rejected.
- This unauthorised development has resulted in a serious reduction in the residential amenity of the residents of The Barn. The Board is requested to refuse permission.

7.0 **Assessment**

On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the proposed development
- Impact on Adjoining Property
- Other
- Appropriate Assessment

7.1. Principle of the Proposed Development

- 7.1.1. Nursing homes are not noted as being permitted in principle in Z1 zones but section 14.8.1 of the DCC 2016-2022 development plan notes that in both new and established residential areas, there will be a range of uses that have the potential to foster the development of new residential communities. These are uses that benefit from a close relationship with the immediate community and have high standards of amenity, such as convenience shopping, crèches, schools, nursing homes, open space, recreation and amenity uses. The vision for residential development in the city is stated to be one where a wide range of accommodation is available within sustainable communities.
- 7.1.2. The principle of a nursing home development on the subject site has been established with a long planning history of development permitted by An Bord Pleanála.

7.2. Impact on Adjoining Property

- 7.2.1. A low level hum from plant / equipment on the subject site was clearly audible from within upper floor rooms of The Barn. The noise was considerably pronounced on the external balcony / terrace of The Barn at the southern end. I note that the Applicants state that the location of the equipment and plant is the only suitable location within the site. I do not accept that submission. In deciding to alter the permitted lower ground level layout, the Applicant would have been aware of the consequences for plant and equipment. The Board considered the location of the various rooms at lower ground and ground level under PL29S.241956 and found them to be acceptable in terms of the impact on the adjoining properties. The applicant decided to alter that layout – as is their entitlement within the parameters of exempted development provisions- and therefore the consequences of such changes must be borne by the Applicant. I am satisfied that the installation of noise generating plant and equipment in such close proximity to a long standing residential property, represents a serious injury to the residential amenity of The Barn.

- 7.2.2. The applicant states that the fact that the EHO of the Council did not respond with details of noise monitoring levels demonstrates the Council's acceptability of the noise levels. I do not agree with that assumption. There can be a multitude of reasons why further correspondence did not issue to the Applicant regarding the monitoring. One cannot assume to know the reason and use it as a justification for unauthorised development.
- 7.2.3. Users of the covered walkway to be retained can clearly see into the living quarters of The Barn. This is a significant intrusion on the privacy and residential amenity of The Barn. I do not accept the Applicants reasoning that the residents of The Barn cannot object to the proposed development on the grounds that they installed an openable skylight next to an existing nursing home. Firstly, the openable skylight replaced an older openable skylight. Secondly, the residents of The Barn could have reasonably expected that development would be constructed as permitted on the adjoining site and that their replacement skylight would open on to a 3m drop to ground level. That the applicant constructed an unauthorised development adjoining The Barn, thereby seriously and significantly injuring the residential amenity of The Barn, is not something the residents of the dwelling could reasonably have been expected to anticipate.
- 7.2.4. I am satisfied that the development of a concrete walkway with an as yet undefined number of users right next to the boundary wall of The Barn, is an unacceptable and significant intrusion on the privacy and residential amenity of the adjoining dwelling.
- 7.2.5. I am satisfied that the covered walkway and bridged walkway, the metal stair case linking the covered walkway with the lower ground level, the free standing platform goods service lift, the three refrigeration units, input flue to the kitchen and the ground mounted air handling units, all within close proximity of a residential dwelling would seriously injure the residential amenity of the adjoining dwelling in terms of noise and impact on privacy. I consider that the fire escape door in place of a window is acceptable in principle. Likewise, the internal modification of rooms at lower ground level is acceptable in principle. However, noting that it will be my recommendation that permission be refused for the ancillary plant and equipment, the service

goods lift and the covered walkway and stairway, the layout of the lower ground floor rooms may no longer be feasible. The Board may wish to issue a split decision permitting those two elements that are considered acceptable (the fire escape door and the lower ground level internal modifications). However, given that the feasibility of retaining the kitchen at this location may be compromised and the possibility the area between the rear of Block C and The Barn may continue to be used as a service route, it is recommended that permission be refused for the development in its entirety.

7.3. **Other**

- 7.3.1. The applicant states that the proposed works to be retained were shown on drawings submitted to the Council in compliance with condition no.s 6 and 10 of the Boards decision under PL29S.241956. The applicant submits an extract from the compliance drawing noting that an exhaust from the cooker hood rises above the parapet and a fresh air supply from an AHU to the kitchen is shown on the roof (in compliance with condition no. 10). I note that the residents of The Barn dispute the accuracy of this submission.
- 7.3.2. Condition no. 6 of the Boards order states that *“a minimum of 15 number bicycle places shall be provided at the development. These shall be secure, conveniently located, sheltered and well lit. Prior to commencement of development, the applicant shall submit a revised site layout plan indicating the location of the required cycle spaces”*. Condition no. 10 states that *“before the use thereby permitted commences, a scheme shall be submitted to and approved in writing by the planning authority for the effective control of fumes and odours from the premises. The scheme shall be implemented before the use commences and thereafter permanently maintained”*.
- 7.3.3. Notwithstanding the alleged discrepancy, the inclusion of equipment on a compliance drawing relating to bicycle parking spaces and an odour control programme, does not grant planning permission for said equipment. Irrespective of whether the Council approved the compliance drawing or not, the works to be retained, the subject of this appeal are currently unauthorised. The identification of the works on a compliance drawing is not

akin to a grant of planning permission and could not be reasonably deemed to be so by any party to the development. On this matter I concur with the Planning Authority completely: the applicant cannot be lead to believe that the Council approved of the location of the unauthorised works by virtue of their inclusion on a compliance drawing.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Dublin City Development Plan 2016 – 2022, the planning history of the site and all other matters arising. It is considered that the proposed single storey rooms (kitchen and stores) to be retained at lower ground level, the fire escape door to be retained at ground level, the proposed covered walkway, freestanding platform lift and supporting structure between lower ground and ground floor levels, walkway with handrails and gates between the north of Block C and the upper level of the platform lift for service and emergency access, the stairway linking the lower ground level will cause significant and material injury to the residential amenity of the adjoining property known as The Barn, by virtue of excessive noise and invasion of privacy. I recommend permission be REFUSED subject to the following conditions:

9.0 Reasons

1. The proposed development to be retained, in very close proximity to an established residential dwelling of long standing would cause significant and material injury to the residential amenity of the adjoining property known as The Barn, by virtue of excessive noise and invasion of privacy. The

proposed development is contrary to the policy of the development plan for Z1 zones which seeks to to protect, provide and improve residential amenities and is considered to be contrary to the proper planning and sustainable development of the area.

Gillian Kane

Gillian Kane
Planning Inspector

18 November 2016