



An
Bord
Pleanála

Inspector's Report PL06D.247206

Development	Demolition of existing house and construction of four houses and all associated site works.
Location	157 Orwell Road, Churchtown, Dublin 14
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D16A/0442
Applicant(s)	Orwell Homes Development Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Orwell Homes Development Limited.
Observer(s)	<ol style="list-style-type: none">1. Residents of Orwell Gardens2. John Campbell and Aideen Hayes3. Terry & Emilie Madigan4. Aoileann Nic Gearailt
Date of Site Inspection	25.11.2016
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site is situated north of Orwell Road, opposite the former Mount Carmel Hospital campus in Churchtown, Dublin 14. The site extends to 0.14ha (0.35 acres) and presently accommodates a single storey split-level bungalow (128.5 sq. m in area) dating from the 1940's. The site is of irregular shape and extends to a narrow point to its north eastern corner. The grounds of the dwelling are extensively overgrown with dense scrub and trees and in the most part is impenetrable on foot. Views into and across the site are achievable.
- 1.2. The front boundary of the site comprises 1m – 1.8m (varies) high rendered block wall with pillars. The site is bounded to the north by the rear gardens of a number of dwellings on Orwell Gardens (no.'s 13 & 20 – 28) embankment and timber fence. Whilst to the east are 3 no. large 2-storey dwellings which front onto Orwell Road. The party boundary with 159 Orwell Road comprises a block wall c. 1.8m in height with a railing on top.
- 1.3. There is a fall across the site from east to west and a substantial steep fall across the site from south to north. It is stated in the applicant's documentation that the ridge level of the houses in Orwell Gardens is roughly the same as the road level of Orwell Road at the western boundary of the site.

2.0 Proposed Development

- 2.1. Permission for:
 - Demolition of existing dwelling (128.5 sq. m)
 - Construction of 4 no. semi-detached 4-bedroom dormer style dwellings with 3 levels of accommodation at lower ground floor, ground floor and first floor dormer/roof levels. Approx. 193 sq. m each in area
 - Construction of retaining wall to rear and side of dwellings.
 - Two vehicular entrances from Orwell Road.
 - Landscaping and boundary treatments.
 - Site development works and services.

3.0 Planning Authority Decision

3.1. Decision

Planning permission refused. The reasons for refusal are set out as follows:

1. Notwithstanding the changes between the present proposal and that refused by the Board under file appeal reference number D15A/0057- PL06D.244793, having regard to the location of the proposed development on elevated ground above the adjoining residential development of Orwell Gardens, to its scale and bulk and proximity to the northern and eastern boundaries, including the proposed finish to the northern retaining wall which includes weep holes which will discharge surface water from the application site into neighbouring properties, it is considered that the proposed development would continue to represent significant overdevelopment of this site, would give rise to an overbearing appearance and would be visually obtrusive when viewed from adjoining properties in Orwell Gardens, and especially those to the north and northwest of the site, and would result in the discharge of surface water from the site into private gardens which is not acceptable. The proposed development would seriously injure the residential amenities of adjoining properties and would contravene the zoning objective of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, Objective A: To protect and/or improve residential amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would result in a limited quality of residential amenity for future residents by virtue of the substandard size of the gardens of two of the dwellings, which fall below the minimum standard of 75sq.m for 4 bed dwellings, as outlined in the 2016-2022 Dun Laoghaire Rathdown County Development Plan, the short depth of the rear garden space associated with all four of the dwellings along with their northerly aspect and the proposal to insert substantial screening to offset concerns of overlooking. The residential amenity of bedroom 3 and bedroom 4 of the proposed dwellings are also considered to represent a poor level of amenity for a new development in terms of natural light and ventilation, and the mitigation measures to prevent overlooking from gable to gable windows through the use of

opaque screening is not considered to be an acceptable permanent solution. The proposed development would, therefore, be contrary to the Zoning Objective of the site and to the proper planning and sustainable development of the area and would set an undesirable precedent for similar type development in the area.

NOTE: The Applicant is advised that the Planning Authority has serious concerns with regard to the creation of an area of land within the north eastern portion of the site, which will become essentially land locked and will not be included within the land holding of any of the proposed dwellings on site. No details have been submitted with regard to the access and future maintenance of this area of land and the plot of land along the western portion of the site, which will also be cut off from the proposed development. These areas should be incorporated into the gardens where possible and a revised layout is advised in this regard.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- **Planner's Report:** The planning report supports the draft decision to refuse planning permission. The Planner describes the site and notes the topography of the site which slopes downwards from east to west from a high point of circa 38 OD to a low point of circa 1 OD and from a south – north direction falling from a high point of 37 OD along the boundary with Orwell Road to 31 OD to the north of the site. The northern most half comprises the most steeply sloping area.
- The assessment highlights two previous applications for four number dwellings on this site and refusals of same by both the planning authority and The Board. The report sets out a table distinguishing the principle differences between the refused and the proposed development in terms of scale, width and rear garden depths. It notes that the applicant has reduced the size and height of the proposed units, however it is still considered that the proposed houses and the associated retaining wall would still present an overbearing, dominant presence when viewed from properties to the north and would

significantly impact upon existing residential amenity of these adjoining properties and therefore a refusal of permission is recommended.

3.2.2. Other Technical Reports

- Parks and Landscape Services: Request the Further information be submitted
- Transportation Planning Report: No objection
- Water Services: Refusal Recommended / Further Information Required.

3.3. Third Party Observations

A number of objections were submitted to the planning authority; issues raised are summarised in the planner's report on file and are similar in nature to those raised in the observations received and summarised below, in a succeeding section of this report.

4.0 Planning History

- 4.1.1. **A.B.P. Ref PL06D.244793 / P.A. Ref. D15A/0057** Refers to a proposal for demolition of house, construction of 4 no. new houses, retaining wall to rear and side, two vehicular entrances from Orwell Road and all associated works at 157 Orwell Road, Churchtown, Dublin 14. Permission was refused by the Board for 2 no. reason on the 26th August 2015 as follows:

1. 'Having regard to the location of the proposed development on elevated ground above the adjoining residential development of Orwell Gardens, and to its scale, bulk and height, and notwithstanding the changes between the present proposal and that refused by the Board under file reference PL06D243106, it is considered that the proposed development would continue to represent significant overdevelopment of this site and would give rise to an overbearing appearance and would be visually obtrusive, when viewed from adjoining properties in Orwell Gardens, and especially those to the north and northwest of the site. The proposed development would seriously injure the residential amenities of adjoining properties and would contravene the zoning objective of the Dun Laoghaire-Rathdown County

Development Plan 2010-2016. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area’.

2. ‘Having regard to its overall layout and design, it is considered that the proposed development would represent an unimaginative and inappropriate response to the constraints of this site and to its wider context, including the pattern of existing development in the vicinity, and would provide a limited quality of residential amenity for future residents by virtue of the short depth of rear garden space, its northerly aspect and the proposal to insert substantial screening to offset concerns of overlooking. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area’.

- 4.2. **A.B.P. Ref PL06D.243106 / P.A. Ref. D13A/0660:** Refers to a proposal to demolish the existing dwelling and to construct 4 no. 3 storey 5 bedroom semi-detached dwellings with attic accommodation. Construction of retaining wall at rear boundary, two vehicular entrances from Orwell Road, landscaping and boundary treatments, site development works and services. All at 157 Orwell Road, Churchtown, Dublin 14. Permission was refused by the Board for 1 no. reason on the 1st July 2014 as follows:

“Having regard to the location of the proposed development on elevated ground in close proximity to the north and north-western boundaries of the site and having regard to its height, scale and bulk and limited rear garden depth, it is considered that the proposed development will be visually obtrusive and will present an overbearing aspect when viewed from several locations on lower ground to the north of the application site. Furthermore, the proposed development would adversely impact on the residential amenities of several properties in Orwell Gardens by reason of overlooking. The proposed development would represent overdevelopment of the site and contravene the zoning objective in the Dun Laoghaire-Rathdown County Development Plan 2010-2016. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area”.

5.0 Policy Context

The Quality Housing for Sustainable Communities – Best Practice Guidelines, 2007 are intended to assist with the implementation of initiatives to promote better homes, better neighbourhoods and better urban spaces. With regards to residential units, it is emphasised that the design approach for new dwellings should aim to create visually attractive structures which are suited to the needs of occupants within a reasonable level of cost. The Guidelines detail appropriate space requirements and room sizes for different dwelling types. This includes target gross floor areas for various unit types and bedroom numbers; minimum areas for main living rooms; aggregate living and bedroom areas; and storage space. These standards are intended to satisfy requirements for normal living.

The document, Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, issued in December 2008 encourages the creation of high quality places with a distinct identity. In this regard, best practise design criteria are outlined to be incorporated into development proposals looking at context, connections, variety, efficiency, distinctiveness, layout, public realm, adaptability, privacy/amenity, parking and detailed design. In terms of density, the Guidelines state that the greatest efficiency in land usage on outer suburban/ greenfield site will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible), should be encouraged generally. Chapter 7 of the Guidelines refers to individual dwellings and specifically issues of daylight, sunlight and energy efficiency; privacy and security; car and bicycle parking; private and communal open space; residential density; access for all; and communal services.

5.1. Development Plan

The appeal site is within the area covered by the Dun Laoghaire-Rathdown County Development Plan, 2016 - 2022, and has a zoning objective 'A': 'to protect and/ or improve residential amenity'.

Chapter 8 Principles of Development

Section 8.2 Development Management

Section 8.2.3 Residential Development

Section 8.2.3.2 Quantitative Standards

Section 8.2.3.4 Additional Accommodation in Existing Built-Up Areas

Section 8.2.8.4 Private Open Space – Quantity

Section 2.1.3.3 Policy Res3: Residential Density

Section 2.1.3.4 Policy Res4: Existing Housing Stock and Densification

6.0 The Appeal

6.1. A first party appeal has been lodged by Simon Clear & Associates on behalf of the applicant, Orwell Homes Development Ltd. Their submission seeks to address the Planning Authority's decision to refuse permission. It is summarised as follows:

Background

- The planning authority considers the development acceptable in principle
- The site is capable of accommodating 4 dwellings
- The development is not a Material Contravention proposal
- The scale has been significantly reduced
- Neighbours on Orwell Road have now expressed concern regarding over reduction in scale and loss of streetscape contributions on Orwell Road
- All development standards have been met / can be met
- New issues have been raised in the planning authority decision, not in accordance with Development Management Guidelines. In any event are irrelevant.

- The Parks and Landscape Services Department recommended a request for additional information and not refusal to resolve issues of lands to the north east of the site not included as part of the application, boundary treatments, garden levels and materials.

Bulk and Scale

- Main rear building façade is now set 11 m away from the rear boundary with Orwell Gardens
- The roof ridge has been reduced to where the pairs of houses are now 200mm and 800mm below the ridge level of the existing bungalow and 2.5m below the level of the most recent application and 3.35m below the level of the first application. The planning officers report incorrectly states 1.9m difference.
- The roofline of the rear return is chamfered (hipped) down to lower ground eaves level to minimise the perception of height from the rear (Orwell Gardens)
- No windows on the rear elevation that would allow views to the rear
- Views from the top of the existing embankment into Orwell Gardens will not be available
- The separation distance between the upper ground floor reception room window in each house is 11m from the rear boundary and excess of 50m from the houses to the rear.
- The separation distance from the western boundary has been maintained at 7.5m and not 6.1m as stated in the planning officers report.
- All first floor windows are 11m from the rear boundary

Retaining Wall

- Has been reduced by a further 200mm to an average height of 1.65m

- Views from the kitchen / reception areas at garden level into Orwell Gardens are prevented by the proposed northern boundary fence to the rear, which will incorporate 1.9m solid timber panels in place of 1.2m high railings previously proposed.
- Rear boundary soft landscaping is proposed by way of trellis and variegated Ivy, attractive, high level of security and privacy.

Over development

- Four houses have been deemed acceptable in principle by the Planning Authority / ABP.
- The proposal has been significantly reduced in terms of scale, bulk and height.
- The proposed development meets Development Plan standards and would not have a significant negative impact on adjoining properties due to scale.
- The amenity areas, 'no man's land' indicated on the plans (70 and 71 sq. m) will be allocated to the end houses, the landscaped areas will be accessible via steps located to the sides of both houses.
- Total area of amenity space available to the end houses (to the rear of the building line) will be 116 sq. m and 221 sq. m
- There is no policy / standard requirement for 11m deep rear gardens
- Proposal meets the requirement for an overall size (75sq.m) of garden
- Standard of 22m between opposing first floor windows is respected.
- The proposed gardens are wider than average c. 10.5m

Garden Depth and Size

- The shape of the garden enhances the amenity of the proposed dwellings.
- Notwithstanding the submission that rear garden areas are appropriate the Board may consider the omission of the conservatories at lower ground level

and incorporation of this area into private open space, should it be deemed necessary. This would provide 11m depth over an area 6.5m wide.

- The applicant would also accept a condition that would de-exempt the construction of extensions or other structures within the garden space.
- The planning officer's criticism of the incline within the gardens themselves is not explained.
- The statement that 'the extensive use of steps throughout is likely to be unsightly and awkward' is misinformed.
- This is the third application on the appeal site and the issues raised are new issues not previously raised by the p.a. and should not have been raised at this stage.
- A single flight of steps leads from a paved area at the side of the houses down to the main garden, which is at one level.
- A key function of the retaining wall is to address the steep slope in the site and create level back gardens for the houses.
- The proposed gardens are wider than they are deep and will benefit from morning and evening sunlight from the east and west.
- The gardens will meet the requirements of the BER Guidelines at the Spring Equinox with 50% of the garden space receiving sunlight for more than 2 hours.
- From Spring to Autumn the gardens will be evening suntraps, receiving sun until sundown with light from the northwest.

Overlooking

- The rear boundary of the gardens will comprise of a 1.9m high timber fence, a hedge and a small number of trees within the gardens.
- The previous application proposed a 1.2m railing with boundary treatment to prevent overlooking, this issues does not arise in respect of the proposed

1.9m solid fence, which is itself sufficient to prohibit overlooking from the gardens and ground floor windows.

Bedrooms

- Bedrooms 3 and 4 are located in the rear return at ground and first floor levels.
- Bedroom 4 is located at ground floor level and has windows in the side gable of the return. For the inner two houses only an opaque screen is proposed, to overcome potential interlooking.
- Bedroom 3 is located at first floor level and is illuminated and ventilated by a roof light and a porthole window in the side gable of the return.
- Roof lights are an acceptable means of illuminating and ventilating bedrooms located in roof spaces.
- The bedrooms are fully compliant with building regulations.
- If the Board is concerned about potential interlooking either both or one of the porthole windows in the two inner houses could be omitted. A condition requiring stained or obscure glazing would also suffice.
- In light of the planning authorities concerns in relation to amenity, the proposed roof lights for bedroom 3 can be enlarged to 1,800mm x 1,800mm as shown on the revised roof plan.

Overbearing

- Considerable effort has been made to mitigate overlooking towards Orwell Gardens
- Notably:
 - 2.5m reduction in ridge height
 - The setting back of the main rear elevation to 11m from the boundary
 - The roof profile of the rear return, which is hipped

- The reduction in height of the retaining wall, which averages 1.65m
- Overbearing is a subjective criticism, which has been made without explanation, objective assessment or consideration of guidelines or reference data
- There is a balance to be struck between maintaining an appropriate scale on Orwell Road and addressing concerns in relation to Orwell Gardens.

Weep holes

- It is noted that this is the first time in three applications that weep holes has become a refusal reason.
- The weep holes only release below surface groundwater
- Rainwater from the roof is to be discharged to the surface water drain with appropriate SuDS attenuation
- An Bord Pleanala may condition the removal of the weep holes and the retaining wall can be designed for this situation accordingly

Appeal accompanied with revised drawings:

Drawing No.s 12-121-003, 12-121-004, 12-121-005, 12-121-006, 12-121-007, 12-121-008 & Ryan Consulting Engineers Letter:

- The weep holes relate only to the release of pressure in the rear wall from groundwater. Rainwater from the roof is to be discharged to the surface water drain with appropriate attenuation design to be agreed with the p.a.
- It is not proposed to provide pipe drainage from paving and grass areas. Rainwater from these will percolate to ground as an appropriate SuDS measure.
- Should An Bord Pleanala wish they may condition the removal of these weepholes and the retaining wall can be designed for this situation accordingly.

6.2. Planning Authority Response

- The drawings submitted did not clearly indicate that the intention was that the two no. end dwellings would have ownership over and direct access to the landscaped buffer areas at either end of the development.
- It is still unclear how the eastern most dwelling would gain access to the landscaped area to the north east of the site.
- A rear garden depth of below 11m for what appears as a two storey development to the rear, would only be considered appropriate where the rear garden was of a high standard.
- The proposed rear gardens offer limited amenity in terms of private open space due to their shallow depths and northerly aspect and low level due to the high dwellings located to their south and the retaining wall and screening proposed.
- Little or no sunlight would enter these gardens for much of the year.
- The incline / steep lawn area referred to in the planner's report is shown on the proposed eastern elevation of the proposed development drawing 12-121-008). This drawing conflicts with the garden levels shown on the proposed contiguous rear elevations of the proposed development on the same drawing.
- It is considered that the proposal still results in undue overlooking and loss of privacy and amenity of the properties to the north and would appear visually overbearing.
- The distance between the rear facades of the proposed dwellings and the northern boundary should be increased so as to protect the amenity of the properties to the north and to result in rear gardens of a more acceptable standard for the proposed dwellings.
- Another option would be to propose two dwellings with a north south orientation, which responds to the sloped nature of the application site and wooded setting of the site.
- It is acknowledged that this is a difficult site to develop.
- The use of opaque screening to offset overlooking between gable to gable window is not acceptable

- Concern with respect to the amenity of Bedroom 3 and 4
- The proposal to omit a porthole window to one of the 3rd bedrooms of the dwellings would result in a bedroom with just one roof light and this is not considered to provide acceptable amenity in a newly designed development
- Bedrooms located in the roof space have a lower roof light with a lower cill level which provides a visual link between the rooms and views from the building.
- The enlarging of the proposed roof lights would not address the issue of amenity to a satisfactory standard as required by the planning authority.
- Taken together with the size of the porthole windows and the need to mitigate overlooking between gable to gable windows, the proposed development does not provide a high enough standard of amenity.
- The applicant's proposal to remove weep holes and to provide an alternative solution is welcomed.
- It is recognised that any development of the subject site will require a retaining wall, due consideration should be given to the impact of this wall on amenity of the adjoining property.
- Use of random rubble faced stone wall finish to the proposed retaining wall would help to mitigate its visual impact.

6.3. Observations

A number of observations on the proposed development were submitted to the Board. The comments made within the observations are of similar content so they have been collated under the following headings:

6.3.1. Overshadowing / Loss of Light

- Shadow diagrams submitted illustrate that there would be very considerable overshadowing of Orwell Gardens properties arising from the proposed development.
- Concern with respect to overshadowing and loss of sunlight to the rear garden and rear rooms of No. 13 Orwell Gardens

- The extent of the overshadowing at midday, when the sun is at its high point, is particularly striking.
- The design of the proposed houses pays little regard to protection of the amenities of nearby property
- Excessive overlooking and overshadowing of adjoining property
- Result in reduction in the value of adjoining property, in particular no. 13 Orwell Gardens
- If the development is permitted at least 50% of the main garden area of No. 13 Orwell Gardens will receive no sunlight at all on 21st March.
- The sun will not rise height enough to clear the ridge of the two housing blocks, built on a height above Orwell Gardens.

6.3.2. Overlooking

- Bedrooms 3 and 4 have views into garden, kitchen and bedrooms of 12 Orwell Gardens
- Lower ground floor double doors and large windows face into garden, kitchen and bedrooms of 12 Orwell Gardens
- The rear of the first and second floors of the proposed development would overlook the entire rear garden of No. 13 Orwell Gardens
- Conservatories proposed to restrict the potential for overlooking will not eliminate the potential or perception of overlooking.

6.3.3. Negative Visual Impact

- The proposed boundary retaining wall is topped by a guard rail leaving the overall structure between 3.7m and 3.4m above existing lawns in Orwell gardens
- The visual impact is significant

- Overbearing appearance from the north / north west of the site (Orwell Gardens)
- The proposal presents an unbroken front of masonry and concrete across the horizon to the south.

6.3.4. Trees

- The residents of Orwell gardens reject the claim that existing trees which would be affected by the proposed development are of little or no value, or are suspect in terms of their health.
- Report commissioned from independent arborist indicates trees in question are in good health and of considerable amenity value.
- Query and concern with respect to impact upon trees not within the control of the applicant.

6.3.5. Quantum of Development / Overdevelopment of the Site

- The scale of the development has not been reduced since the last application PL06D.244793, which was refused by the Board as 'significant overdevelopment of this site'
- Too large a mass for this urban confined site
- Comparison of drawings submitted shows little significant change
- Densification argument put forward by the applicant takes no account of the characteristics of this modest site nor of the scale or elevated location of the proposed houses.
- The proposed GFA is 776 sq. m this is sixfold increase in the floor area from 128.5 sq. m
- Excessive radical changes in levels.
- Policy RES3 of the DLRCDP 2016 – 2022 with respect to residential densities is not respected.

- Section 8.2.3.2 of the DLRCDP 2016 – 2022 which states that high density will not be appropriate in every circumstance and qualitative built form can sometimes be a more important determinant should be taken into account.
- The applicant is trying to build a new site in order to bring the new houses much nearer the boundary with Orwell Gardens, in an elevated position
- The site area, in practical terms, has been overstated and the carrying out of the proposed development would require drastic ground level changes affecting adjoining properties.
- The quantum of development proposed is excessive
- There are more suitable sites for large scale development and large scale development is taking place in the vicinity

6.3.6. Amenity of Proposed Houses

- The four houses proposed are of substantial size, four bedrooms and small back gardens, which does not comply with the policy of the planning authority, (section 8.2.8.4 Private Open Space – Quantity refers).
- Rear gardens are north facing, limiting their amenity value, with a predominance of shadow the year round.
- Possibility that rear gardens could be a hostile environment for grass or other low level vegetation and would be paved over thus causing possible increased run-off of surface water on to the adjoining Orwell Gardens properties.
- Does not offer a proper standard of private open space to serve residents
- Proposed screening with trees and vegetation is inadequate particularly in winter and will severely reduce light levels to adjacent gardens and properties.
- Screening and vegetation will also severely reduce the internal light inside the proposed new houses and leave the rear gardens permanently dark and damp.
- Question the amenity value of the rear gardens proposed.

- Conservatory windows facing each other

6.3.7. Drainage

- Concern with respect to proposal for weephole in the rear boundary wall
- Water draining from the subject appeal site via weepholes into the rear gardens of dwellings in Orwell Gardens is unacceptable.
- Concern that heavy rainfall would cause overflow from surface water drainage system proposed, and find its way into Orwell Gardens properties.
- Flood Risk to houses in Orwell Gardens unacceptable
- There are two small office structures in the back gardens of no. 22 and 25 Orwell gardens, in close proximity of the boundary with the appeal site, which might be particularly affected.
- Orwell Gardens area has been designated as within Flood Zone A / Flood Zone B in the DRDCDP 2016 – 2022
- There is a history of flooding in Orwell Gardens.
- Concern with respect to proposals to pump effluent from lower ground floor to the level of the sewer on Orwell Road, possible complications or failure of the system may cause effluent to overflow.
- Instability of ground adjacent to the appeal site
- Concern with regard to surface water when half the site is rooted up and replaced (initially) with loose earth and much of the site surface is then paved or built over.
- Concern that in a 'cloudburst' much of the surface rainfall would flow down into the garden of no. 13 below.
- To date even in prolonged rainfall there has been no surface water flow from 157 Orwell Road into the garden of No. 13 Orwell Gardens
- Concern with respect to impact of weepholes on the Garden of No. 13 Orwell Garden and if weepholes are omitted the stability of the retaining wall.

6.3.8. Insufficient Interest

- Proposed development encroaches onto the properties of the Orwell Gardens Residents
- The applicant does not have sufficient interest in lands subject to planning permission
- The property boundary with no. 12 Orwell Gardens seems to have been measured incorrectly on site. This removes approx. 1m width running the full length of this east / west border.
- Site Plan Drawing 12-121-002 – indicates removal / interference with trees outside of the control of the applicant. However, on other drawings submitted, incl. landscape drawings a different situation is shown, whereby some of the trees are shown within the control of the applicant –
- An Independent Tree survey was commissioned by the residents of Orwell Gardens.
- Concern that existing trees within the properties of Orwell Gardens will be removed.
- Construction of a pre-cast concrete retaining wall immediately approx. to the boundary with adjoining dwelling will directly affect adjoining properties by way of construction works.
- Residents are opposed to the works and will not facilitate the carrying out of such works.

6.3.9. Absence of Construction Methodology

- Due to limited usable site area major landfill works and excavation of the existing ground is required.
- Potential for adverse impacts on the adjoining properties
- Construction impacts are potentially significant in relation to amenity and integrity of adjoining properties.

- No attempt has been made to describe how these works can be carried out without such adverse effects.
- Nature of the retaining wall foundations has not been included in the planning application and a geotechnical report should be included along with proper foundation details.
- Query if piling is proposed and impact to adjoining property.
- The retaining wall proposed will require significant land take from adjoining residents for safe construction

6.3.10. Interaction with residents

- There has been unsatisfactory interaction with the Orwell Garden residents
- Removal of almost all vegetation from the site of No. 157 has diminished the amenity of Orwell Gardens residents.
- The value of the amenity of the site (existing trees and shrubs) was highlighted in the previous Inspectors report, Ref. PL06D.243106
- Immediately following the Boards decision to refuse in that case, almost all of the trees and shrubs were removed from the site.

6.3.11. National Planning Policy

- The proposed development does not accord with
 - The Guidelines for Planning Authorities: Sustainable Residential Development in Urban Areas (2009) in relation to ‘infill’ sites, in part section 5.9
 - The Urban Design Manual: A best Practice Guide (2009)

6.3.12. Local Planning Policy

- The proposal is contrary to the DRDCDP 2016 – 2022

- Conflicts with the zoning 'A' – 'To protect and / or improve residential amenity'.
- Conflicts with Policy RES3: & RES4
- Conflicts with Residential Density,
- Conflicts with Section 8.2.3.2

6.3.13. O'Brien Horticultural Report

- It is asserted that trees to be removed along the northern site boundary are within the ownership of the lands to the north, and notwithstanding known issues in relation to their long term tenure / sustainability, it is asserted that these trees remain desirable and their owners intend to see their retention.
- Concern arises in respect of any potential approximate construction of a retaining wall and effect this would have upon these trees.

7.0 Assessment

7.1. I consider the key issues in determining this appeal are as follows:

- **Overdevelopment**
- **Discharge of surface water into private gardens / Flooding**
- **Other Matters**
- **Appropriate Assessment**

7.2. Overdevelopment

7.2.1. The applicant is seeking permission to demolish the existing bungalow and construct 4 no. semi-detached dwellings on the site. This is the third planning application for 4 number dwellings on this site in recent years. In 2014 on foot of PL 06D.243106 / Reg. Ref. D13A/0660 and again in 2015 on foot of PL06D.244793 / Reg. Ref. D15A/0057 permission was refused also for 4 houses on these lands, see planning

history, section 4.0, of this report above, for full details of reasons for refusal of previous proposals.

- 7.2.2. In the subject appeal case the planning authority has refused permission for two reasons. It is held that the proposed development continues to represent significant overdevelopment of the site and would give rise to an overbearing appearance, be visually obtrusive, when viewed from adjoining properties in Orwell Gardens. Also, that it would seriously injure the residential amenities of adjoining properties and would contravene the zoning objective of the Dun Laoghaire-Rathdown County Development Plan 2010-2016. It is further considered that its overall layout and design, would represent an unimaginative and inappropriate response to the constraints of this site and to its wider context, including the pattern of existing development in the vicinity, and would provide a limited quality of residential amenity for future residents by virtue of the short depth of rear garden space, its northerly aspect and the proposal to insert substantial screening to offset concerns of overlooking.
- 7.2.3. The site area is stated as 0.1397 ha. Ground levels fall steeply across the site, roughly from the south-east down to the northern and north-western boundaries by some 6 / 7 m. It is acknowledged by all parties that this is a difficult site to develop. It is proposed to significantly change the ground levels with cut and substantial fill across the northern half of the site, the proposed lower ground level of the dwellings would be set into the site, a concrete retaining wall is proposed along the northern, eastern and western site boundaries. Each pair of semidetached dwellings will share a vehicular entrance off Orwell Road.
- 7.2.4. In the grounds of appeal the applicant has submitted amended proposals seeking to address concerns raised by the p.a. I have had regard to those amended proposals submitted with the appeal. Most notably, enlarged dormer windows, removal of port hole window, incorporation of the 'garden amenity areas' / 'no man's lands' within the curtilages of the two end houses, elimination of weepholes and the glass conservatories should it be deemed necessary by An Bord Pleanála.
- 7.2.5. Given the planning history I do not agree with the assertion by the first party that four houses have been deemed acceptable in principle by the Planning Authority and An Bord Pleanála. Both of the previous residential proposals were deemed acceptable

in principle by reason of the zoning and existence of established residential development on the site were ultimately refused planning permission by reason of representing over development of the site.

7.2.6. The appeal site is Zoned 'A', which has the stated objective 'to protect and / or improve residential amenity' in the new DLRDCDP 2016 – 2022. I note that albeit the County Development Plan has changed since the previous proposals that the zoning of the site has not changed under the new DLRDCDP 2016 – 2022.

7.2.7. The first party asserts that the application is a reasonable compromise between protection of the amenity of existing residential property in the vicinity and for new infill development and densification in the serviced suburbs. It is contended that the proposal has been significantly reduced in terms of scale, bulk and height. Notably:

- 2.5m reduction in ridge height
- The setting back of the main rear elevation to 11m from the boundary
- The roof profile of the rear return, which is hipped
- The reduction in height of the retaining wall, which averages 1.65m

7.2.8. It is also contended that the proposed development meets Development Plan standards and would not have a significant negative impact on adjoining properties due to scale. That considerable effort has been made to mitigate overlooking towards Orwell Gardens while maintaining an appropriate scale on Orwell Road.

7.2.9. Observations on file from concerned residents opposing the proposal submit that the subject development represents a very modest amendment of the previous application and does not address the reasons for refusal given by the Board in the case of PL06D.244793.

7.2.10. From my assessment of the application and having carried out a site visit I agree with the concerns of the observers and I concur with the planning authority's refusal. The subject proposal does not address the previous reasons for refusal. The floor area of the proposed houses (193 sq. m) remains almost exactly the same as the previous proposal (209 sq. m), refused permission under PL06D.244793. With the exception of the ridge height, which has been brought down by increasing the area of flat roof over the footprint of the proposed houses and forming a mansard type

section to the rear of the main part of the house, the site layout remains broadly similar or exactly the same as the development proposed under PL06D.244793.

- 7.2.11. The appeal site is located on extremely elevated exposed ground and is highly constrained in terms of wide changes in levels across the site and shape. The existing house at No. 157 Orwell Road, is modest with limited semi basement accommodation, it is built up to the edge of the elevated part of the site and located some 12.4m from the boundary with Orwell Gardens. The intervening area comprises the steeply sloping escarpment edge. The lowest floor level of the proposed development would be elevated almost 3m over the nearest ground level of the gardens of the Orwell Gardens houses (Drg. 12-121-011), while the two upper floors would be pro rata elevated over the gardens. I agree with observers that the arrangement is not substantially different to that previously refused by An Bord Pleanála. While the floor levels of the proposed development, compared with the previous proposal, have been raised slightly, by 450mm in the case of the lowest floor level, the upper ground and first floor are substantially the same as previously refused.
- 7.2.12. Regard being had to amendments proposed to the northern party boundary, in order to mitigate overshadowing, loss of light and overbearing to adjoining properties. It is now proposed to construct a reinforced retaining wall 1.842m in height with green wood timber trellis facing adjoining properties topped with a 1.9m high timber panel fence as opposed to railing and tall planting.
- 7.2.13. Regard being had to the reduction in overall height of the dwellings, the number of windows facing north, the need for obscure glazing, reliance on rooflights and porthole windows or the introduction of screens.
- 7.2.14. I am of the opinion that the design approach clearly indicates overdevelopment of this suburban notably constrained and restricted site.
- 7.2.15. I have serious concerns with respect to aspects of the design and in particular proposals for screens to prevent 'interlooking' or roof lights only to serve bedrooms. I am of the opinion such measures would not provide an acceptable level of amenity in a newly designed development, being wholly undesirable and unacceptable.

- 7.2.16. I agree with the planning authority that the proposed development would adversely impact on several properties in Orwell Gardens by reason of overbearing, overshadowing, loss of light and overlooking. While the application is accompanied with only one sunpath study for March 21st at 9.00am, 12 noon and 3.00pm it is clear that significant overshadowing and overbearing impact would result to gardens to the north and in particular to No. 13 Orwell Gardens.
- 7.2.17. I agree with the planning authority with respect to limited amenity afforded to future residents. In particular, by way of private open space proposed due to size, the incline / steep lawn area and in particular to the connectivity and usability of the garden area proposed within the curtilage of the two end houses, given it is segregated by way of a retaining wall. The shallow depth of gardens, their northerly aspect, low level compared to the height of the proposed dwellings located to their south and the retaining wall and timber screen / fence proposed along the northern boundary are also serious issues. I would have concern with respect to the amount of sunlight which would enter these gardens. Regard is had to the sunpath analysis submitted with the application which indicates that on March 21st at 9.00am, 12 noon and 3.00 pm the rear gardens of the new units would be permanently in shadow.
- 7.2.18. I highlight that the issues raised by the planning authority and observers concerning inadequate private open space, overbearing impact, overshadowing, overlooking and visual impact, all stem from the general sense that the proposal represents an overdevelopment of the site. These issues are not new issues from the outset the Inspectors Report on foot of PL06D.243106 clearly states:
- 7.2.19. 'The gross floor area of the dwellings relative to the usable site area, the footprint of the dwellings relative to the usable site area, the proximity to the site boundaries, the need for the dwellings to share the vehicular entrances, the need for significant changes to the site profile, are, in my opinion, indicative of the overdeveloped nature of the proposal. There are large dwellings along Orwell Road, but those large dwellings are on large sites, what is being proposed is 4 large dwellings each on relatively small sites that have to share the front section of those sites. The development fails to take full cognisance of the pattern of development in the area. The changes introduced at appeal stage by the applicant fall far short of addressing the problems with the proposal'.

7.2.20. Overall I am of the considered opinion that the proposed development does not overcome the previous reasons for refusal and would continue to represent significant overdevelopment of this site. It would give rise to an overbearing appearance and would be visually obtrusive when viewed from adjoining properties in Orwell Gardens, and especially those to the north and northwest of the site. The proposed development would seriously injure the residential amenities of adjoining properties and would contravene the zoning objective of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, Objective A: To protect and/or improve residential amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. **Discharge of surface water into private gardens / Flooding**

- 7.3.1. Concern has been expressed by adjoining property owners to the north of the appeal site with regard to location of weepholes in the retaining wall / shared boundary. The issue of drainage and in particular weepholes was raised as an issue of concern requiring clarification in both of the previous Planning Inspectors Reports in the preceding appeals on this site.
- 7.3.2. The Inspectors Report in the case of PL06D.244793 states: 'The notion that water runoff will be focused on the weepholes into the neighbouring properties onto steep sloping ground, without remedial measures of adjacent properties, gives rise to concern'.
- 7.3.3. The issue of flooding has also been raised by concerned observers. This matter was also discussed in previous inspectors reports. The OPW CFRAMs mapping indicates that while the application site is not within a flood zone itself, that Orwell Gardens, located on lower ground, is within a Flood Zone A and B.
- 7.3.4. The Surface Water Drainage Section recommended further information be required in respect of SuDS measures on the site and also with regard to the level of discharge of surface water to the public sewers and refusal for the proposal to include weepholes in the retaining wall along the boundary with lower lands to the north.

- 7.3.5. I note the applicant's proposal, on foot of concerns raised by the Water and Drainage Department of the Council to remove the weepholes and to provide an alternative solution. This is welcomed but requires clarification in my opinion prior to any grant of planning permission on this site.
- 7.3.6. It is indicated on file that a flood risk identification has been conducted in accordance with the methodology set out in the publication '*The Planning System and Flood Risk Assessment*'. The results of stage 1 which deals with flood risk identification concluded that the available flood maps indicate no previous flooding on the subject site and these maps also indicate no fluvial, pluvial, groundwater or coastal flooding for either the 100 year or extreme events on the appeal site. It is also indicated that all new paving will be of a permeable nature and that a rainwater harvesting system will be employed for each house, overflow of roof rainwater from the rainwater harvesting systems will be discharged to the surface water sewer on Orwell Road.
- 7.3.7. Given the foregoing, it is my opinion, that no clear evidence has been submitted that would indicate that the proposed development would be at risk of flooding or would cause an unacceptable risk of flooding to adjacent properties, provided development is carried out to an appropriate standard.

7.4. **Other Matters**

- 7.4.1. Issues with respect to potential damage to neighbouring properties, location of 'seomra's' / 'home offices' near the shared boundary, legal entitlement to remove / impact upon trees on the party boundary / adjoining the party boundary, encroachment into garden area of adjoining properties and rights to construct the northern boundary retaining wall have been raised, I note the provisions of s.34(13) of the P & D Act 2000: '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. In addition, the developer would have to comply with other legal codes to ensure a proper standard of development, permission does not entitle anyone to damage third party property.

7.5. Appropriate Assessment Screening

- 7.5.1. An appropriate assessment screening report was submitted by the Applicant. It highlights that the location of the application site in relation to the nearest Natura sites, which are over 4 Km to the east. The sites are South Dublin Bay SAC and the South Dublin Bay and River Tolka SPA. I note that the previous Inspectors Report on this site also indicates that Dalkey Islands SPA, South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA are within the 15km circumference of the site.
- 7.5.2. The AA screening report submitted concludes that there is no likelihood of any significant effects on Natura 2000 sites arising from the proposed development, either alone or in combination with other plans or projects. It is considered that Stage 2 AA is not required.
- 7.5.3. The subject appeal site is not within any designated site. The site comprises an infill, zoned serviced site located within a suburban area. It is proposed to connect to public foul sewer.
- 7.5.4. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development, infrastructure services in place and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

- 8.1.1. I recommend that the decision of the planning authority be upheld and planning permission be refused to the proposed development.

9.0 Reasons and Considerations

1. Having regard to the location of the proposed development on elevated ground above the adjoining residential development of Orwell Gardens, and to its scale, bulk and height, and notwithstanding the changes between the present proposal and that refused by the Board under file appeal reference numbers PL06D.244793 and PL06D.243106, it is considered that the proposed development would continue to represent significant overdevelopment of this site and would give rise to an overbearing appearance and would be visually obtrusive, when viewed from adjoining properties in Orwell Gardens, and especially those to the north and northwest of the site. The proposed development would seriously injure the residential amenities of adjoining properties and would contravene the zoning objective of the Dún Laoghaire-Rathdown County Development Plan 2016 - 2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to its overall layout and design, it is considered that the proposed development would represent an unimaginative and inappropriate response to the constraints of this site and to its wider context, including the pattern of existing development in the vicinity, and would provide a limited quality of residential amenity for future residents by virtue of the short depth of rear garden space, its northerly aspect and concerns of overshadowing. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Fiona Fair
Planning Inspector
07.12.2016