



An
Bord
Pleanála

Inspector's Report PL29S.248167

Development	Demolition of existing industrial sheds and the erection of 2no. two storey detached houses, 4 car parking spaces, re-instatement of driveway.
Location	Land between and behind no's 404,406, 408, 410 Clogher Road, Crumlin, Dublin 12.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4357/16
Applicant(s)	Paul Tully
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Paul Tully
Observer(s)	Denise Doorly and Garech Delaney
Date of Site Inspection	25 th of May 2017
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1.1. The application site is on the eastern side of Clogher Road, Crumlin, relatively close to the junction with Parnell Road, and the Grand Canal is to the north of this. The 705sq.m site has a gated access onto Clogher Road, and comprises lands to the rear of existing dwellings at nos.404,406,408 and 410 Clogher Road. The site comprises a yard area and three single storey sheds currently in use as steelwork fabrications. It is currently in operation and signage has been erected on the side of no. 408 'Monarch Steel Works Ltd, Gates & Railings'.
- 1.1.2. There are lands zoned for community uses i.e. lands associated with Our Lady's Hospice, Harold's Cross are located to the rear (east) of the site. The sheds adjoin the boundary wall of the Hospice site and the top of them can be seen to the west from the landscaped grounds.

2.0 Proposed Development

- 2.1.1. This is to consist of the demolition of 194sq.m of existing industrial sheds, change of use from steelwork fabrications premises to residential, namely the erection of two two storey detached houses, four carparking spaces, re-instatement of driveway and crossover and associated works on land between and behind nos. 404,406, 408 and 410 Clogher Road.
- 2.1.2. Drawings including a Site Layout Plan, Floor Plans, Sections and Elevations have been submitted with the application. The application form provides that the floor area of the buildings to be demolished is 194sq.m, the proposed new floor area within the development is 229sq.m. The proposed plot ratio is given as 32% and site coverage as 19%.
- 2.1.3. Also included is an extract from the Greater Dublin Strategic Drainage Study and the Drainage Layout which is included in the Site Layout Plan.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 17th of February 2017, Dublin City Council decided to refuse permission for the proposed development for the following reason:

The proposed development would constitute piecemeal backland development in the area, and, in itself and by the undesirable precedent set for similar development, would seriously injure the amenities of property in the vicinity, and would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planner's Report

This has regard to the locational context of the site, planning history and policy, the departmental reports and to the submissions made. They noted the planning history of refusals relative to previous applications for residential development on this site and of unauthorised development. They considered that the erection of the proposed two storey dwellings in the former rear garden areas of these terraced dwellings would constitute piecemeal backland development, conflict with the established pattern and character of development in the area and in itself and by the undesirable precedent set for similar development would seriously injure the amenities of property in the vicinity. They considered that the proposal would be contrary to planning policy in the DCDP 2016-2022 and to the proper planning and sustainable development of the area and recommended that the proposal be refused.

3.3. Other Technical Reports

3.3.1. The Road Planning Division

The Roads, Street & Traffic Department of the Council had regard to the submissions made, parking issues and noted the substandard width of the access road from the site to Clogher Road. However, they had no objections subject to a number of recommended conditions.

3.3.2. Engineering Department Drainage Division

They had no objections to the current proposal subject to compliance with current drainage standards including SUDS and recommended a number of conditions. This included that an appropriate flood risk impact assessment be carried out.

3.4. **Third Party Observations**

3.4.1. A number of submissions have been received from local residents including from the subsequent Observers. Concerns include the following:

- The development is sub-standard in urban design and architectural terms. Overdevelopment of this restricted, backland site and would set undesirable precedent.
- Visually it would not successfully integrate with the character of the surrounding area.
- It would not respond to its immediate context or the established pattern of development in the area and will devalue adjoining properties.
- It does not make a positive contribution and will create a precedent of further piecemeal development in similar end of terrace properties.
- They have regard to the planning history including relative to enforcement issues and of refusals for residential development on this site.
- A significant part of the site is not part of the steelworks fabrication premises but is in private garden use. It will have an adverse impact on the back garden of no.404 Clogher Road.
- The scale and height of the proposed houses would overlook and overshadow all adjoining properties.
- Invalidation concerns relative to site boundary issues and layout as shown on the plans submitted. The Public Notices are misleading and they provide details of this.

- No details of boundary treatment have been provided, and there is concern that mature planting along the boundary with no.412 Clogher Road will be removed (photos have been submitted).
- The access to the proposed development is insufficient for the scale and density proposed. It will lead to congestion and public safety issues on Clogher Road.
- There is no provision of safe pedestrian access into the scheme and they have concerns about on-street parking.
- Proximity of the access to a bus stop on Clogher Road.
- Noise and disturbance will ensue.
- Issues regarding waste management.
- Landscaping and Open Space are deficient within the scheme.
- The distances to adjoining properties are not provided on the plans but appear less than 22m.
- The proposed development would not comply with planning policy for the residential Z1 land use zoning.

Our Lady's Hospice & Care Services and the Religious Sisters of Charity (who are the landowners of the hospice lands to the rear of the site), object on the grounds of the impact on existing houses and potential impact on any future development in the grounds of the Hospice. Also the possible expansion of the Hospice services on their site (zoned Z15 – institutional and community uses) having regard to issues of overshadowing, overlooking, noise, sunlight and daylight impacts.

4.0 Planning History

4.1.1. Regard is had to the recent planning history of the site which includes the following:

- Reg.Ref.2293/16 – The Council refused permission for the demolition of 194sq.m of existing industrial sheds, change of use from steelwork fabricators premises to residential, namely the erection of one two storey detached and two storey semi-detached houses, four car parking spaces and re-instatement of driveway and crossover and associated works. This was refused for

reasons including sub-standard development, overshadowing and poor aspect would be seriously injurious to the residential amenity of existing and future residents and contrary to the proper planning and sustainable development of the area.

- Reg.Ref.2877/15 – The Council refused permission for a similar type development to the above on the subject site. This was refused for reasons including would be seriously injurious to the amenities of adjoining properties and would inhibit the future development potential of the neighbouring site to the east and contrary to planning policy in the DCDP 2011-2017.

Copies of these decisions are included in the Planning History Appendix to this Report.

- 4.1.2. It is of note that the Planner's Report provides that there is also a Planning Enforcement History. Ref. E0643/03 relates. This provides that an Enforcement file was opened on the 19th of June 2003 in regard to intensification of use of commercial area to the rear of nos.406-410 Clogher Road, Crumlin. They provide that this Enforcement File was closed on the 7th of June 2007 as it was considered not expedient to take action.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

This is the pertinent plan and includes the following:

Section 2.3.3 refers to 'Promoting Quality Homes' and includes: *The provision of quality housing that is suitable for citizens throughout their lives and adaptable to people's changing circumstances is fundamental to creating a compact city with sustainable neighbourhoods.*

Section 5.5 refers to National and Regional Housing Strategy.

Policy QH1 seeks: *To have regard to the DECLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007); 'Delivering Homes Sustaining Communities – Statement on Housing Policy' (2007), 'Sustainable Urban Housing: Design Standards*

for New Apartments’ (2015) and ‘Sustainable Residential Development in Urban Areas’ and the accompanying ‘Urban Design Manual: A Best Practice Guide’ (2009). Section 5.5.2 seeks to provide for Sustainable Residential Areas. This includes Policy QH7: To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

QH8: To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.

Section 14.1 refers to the ‘Zoning Principles’ - As shown on Map H the site is within the Z1 Residential Land Use Zoning where the Objective is: *To protect, provide and improve residential amenities.* The lands to the east are within the Z15 zoning i.e: *To protect and provide for institutional and community uses.*

Chapter 16 provides the ‘Development Standards’ and regard is had in particular in this case to the following Sections:

Section 16.2.2.2 refers to Infill Development and this includes: *To ensure that infill development respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape.*

Section 16.2.2.4 refers to Boundary Walls and Railings.

Section 16.4 has regard to the Density Standards 16.5 to Plot Ratio standards and 16.6 to Site Coverage.

Residential Quality Standards for houses are referred to in Sections 16.10.2 and 16.10.3. Section 16.10.4 refers to Making Sustainable neighbourhoods.

16.10.8 refers to concerns with Backland Development and 16.10.10 to criteria relevant to Infill Housing.

16.38 and Table 16.1 refer to Car Parking Standards.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A First Party Appeal has been received from the Applicant Paul Tully. This seeks to address the reasons behind the refusals and includes the following:

- The scheme is very much reduced in scale from the previous refusals which proposed three houses to the current proposal of two houses.
- The application site is zoned 'Z1' residential and is outside the curtilage of and has no connectivity to the Hospice lands to the east.
- The proposed development would not inhibit the future development potential of the neighbouring site to the east. These lands remain zoned 'Z15 Institutional and Community' in the current DCDP 2016-2022. The lands adjacent to the application site are open space.
- The previous refusals on this site, Reg.Refs. 2877/15 and 2293/16 were not appealed to ABP. This application addresses the reasons for past refusals satisfactorily.
- The proposed House types 'A' and 'B' are sufficiently set back from the rear boundaries of nos.404,406,408 and 410 Clogher Road.
- The issue of overlooking does not arise and bathroom windows will be obscure glazed, or roof lights can be inserted. The current application was not refused due to adverse impacts on adjoining sites.
- There are a number of other properties on the same side of Clogher Road to the south west of the proposed site that contain overdevelopment. This is by way of overbearing and overshadowing two storey extensions and the construction of sheds, which greatly reduce private open space.
- Haphazard and piecemeal development has occurred on other sites on this side of Clogher Road (they attach a Google Earth Map showing that in many instances this takes the form of large rear extensions and sheds).
- The proposed development is not injurious to the residential amenity of properties in the vicinity.

- It does not set an undesirable precedent for similar development in the area. The proposed development represents an improvement in the residential amenity of Clogher Road and constitutes proper planning and sustainable development.
- They note that the Roads and Traffic Planning Division and Drainage Division have no objection to the proposed development subject to conditions being attached.
- They provide that the application is similar and consistent with a number of planning permissions granted in the area relative to infill and backland development and provide details of these.
- They consider that this is sustainable urban development pursuant to sustainable public transport links.
- They conclude that the reasons of the past planning refusals have been addressed in the current application, compliance with the DCDP 2016-2022 standards have been demonstrated and that precedent for this type of development has been set in other permissions granted.

6.2. Planning Authority Response

- 6.2.1. There is no response from Dublin City Council to the grounds of appeal.

6.3. Observations

- 6.3.1. An Observation has been submitted from Denise Doorly and Garech Delaney, whose concerns include the following:
- They are concerned that the blue line boundary has been omitted and site boundaries include part of the rear garden of no.404 Clogher Road which is currently intact, and not part of the industrial premises. (Fig. 1 refers).
 - The wording on the planning notices is misleading and incorrect.
 - They note the residential land use zoning and provide details of the planning history of the site, including relative to unauthorised development and enforcement issues.

- The site is not comprehensive backland, nor is it an infill site, but rather 3 back gardens belonging to the subject properties nos. 410,408 and 406 respectively, the latter purchased as recently as 2008. (Fig.3 refers)
- There are concerns about congestion, including the narrowness of the access point onto Clogher Road. They note the proximity of the bus stop to the access and query how emergency vehicles will be able to access the site.
- They note the other applications in the area referred to as precedent cases by the applicant and consider these are not comparable to the subject site.
- They consider that modest single and some two storey extensions to existing houses and garden shed structures cannot be considered comparable to the proposed development.
- The scheme would constitute an overdevelopment of the site (Fig.2 refers). The proposed development contravenes section 5.9 (infill development) of the Sustainable Residential Development in Urban Areas.
- They conducted a site survey, a photomontage was developed (Fig.5) which clearly shows the piecemeal nature and overdevelopment of the applicant's proposal.
- They refer to opposition to the current and previous applications on this site.
- They note that the Applicant is the Third Party in a current appeal for an extension at no.420 Clogher Road, (Ref.PL29S.238142 refers) and that he owns the adjoining property no.422 which is also tenanted.
- This is not a comprehensive backland site, it is 3 back gardens which have been the subject of unlawful development and will be irreversibly destroyed if this development proceeds.
- They consider that the applicant intends to remove the yard but only if he is granted permission for residential. The amenities of the existing houses have been adversely affected.
- They are in agreement with DCC reasons for refusal to the current application. They consider that in the interests of the amenities of the area

and encouraging bio-diversity in close proximity to the Grand Canal the back gardens of these properties should be reinstated.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. The subject site is zoned 'Z1' the residential objective being: *To protect, provide and improve residential amenities*, and the provision of dwellings in a residential area is permissible in principle, subject to a detailed assessment. It is queried whether this development which is to be located to the rear of Nos. 404,406,408 and 410 Clogher Road and accessed via a narrow entrance from Clogher Road can be considered as a sustainable infill/backland development. In this respect Section 16.10.10 of the DCDP 2016-2022 provides: *Having regard to policy on infill sites and to make the most sustainable use of land and existing urban infrastructure, the planning authority will allow for the development of infill housing on appropriate sites.*
- 7.1.2. There is concern raised by the Observers and in the Submissions made that the proposed development by reason of its siting, scale and design would constitute undesirable backland development which would seriously injure the amenities of adjoining houses and other neighbouring properties including overlooking to the adjoining lands of Our Lady's Hospice, Harold' Cross to the east. Also that it would lead to a substandard form of overdevelopment on this restricted site in terms of the size and aspect of the units and inadequate private amenity open space, relevant to the existing housing.
- 7.1.3. The First Party provides that this is an infill residential development within the area zoned 'Z1' residential and the proposed development would integrate with and not impact adversely on the amenities of the residential development in the area. They consider that it would provide an improved offer to the existing (albeit unauthorised) steel fabrication business on site. They also note the curtilage of the site does not impinge on the Hospice lands to the east. They consider that the reduced scheme addresses the previous refusals on this site.
- 7.1.4. Section 16.10.8 of the DCDP 2011-2017 refers to Backland Development. This includes: *The development of individual backland sites can conflict with the*

established pattern and character of development in an area. Backland development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. It does not however rule out well integrated backland development and also includes: Applications for backland development will be considered on their own merits.

The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009). Section 5.9 of these Guidelines refers to infill residential development and includes: *Potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. These also provide: In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.*

Therefore, while the principle of an infill and perhaps backland development can be supported within the residential land use zoning, it needs to be ascertained whether the proposed development of 2no. two storey houses on the subject site would be sustainable on this restricted site area and would not constitute undesirable piecemeal backland development and be detrimental to the amenities of adjoining residential properties or the character of the area. Regard is had to these issues including precedent in the Assessment below.

7.2. Regard to Planning History

- 7.2.1. As noted in the History Section above, there have been two recent refusals by the Council for residential on this site. These are Reg.Refs.2293/16 and 2877/15. These both sought permission for 3no. two storey houses on the subject site. The current application is for a reduced scheme to provide 2no. two storey houses on the site.
- 7.2.2. Note is also had that the current use for steel fabrication works and the associated works appears to be unauthorised development that have been in situ for some time. The Observer contends that the amendments to section 35 of the 2010 Planning Act must be considered in the context of the application, as the scale of existing unlawful

commercial development by the applicant should prohibit any future planning applications sought by him in this location. In this respect it is of note that the Planner's Report provides a history relative to unauthorised development. However, it must be noted that enforcement is within the remit of the Council and not within the remit of the Board

- 7.2.3. The First Party considers that the proposed development i.e for residential on this site would be a preferable use in accordance with the land use zoning. It is noted that the sheds adjoin the boundary wall of the landscaped grounds of the Hospice to the east. While they are not very visible from the grounds the top of the sheds can be seen. However, noise from the steel fabrication works could be heard from the grounds. Therefore, it is not considered that the current steel fabrication works use of the site is compatible with the 'Z1' Residential zoning or of the site or the 'Z15' Institutional/Community usage of the lands relative to the Hospice.

7.3. Regard to Boundary issues

- 7.3.1. There are concerns that the Site Layout Plan is misrepresented, in that it indicates that the steelworks fabrication facility currently occupies the rear garden of no.404 which is incorrect as pointed out and seen on site this garden is currently intact, with a boundary wall between it and the steel works site. It is of note that this differs from that shown on the existing Site Layout Plan. However, it is provided nos. 404,406,408 and 410 are all rented properties and that the site shown in red on the Site Layout Plan is in the ownership of the applicant. Having regard to the plans submitted the site is bounded by no.412 Clogher Road to the north and by no.402 Clogher Road to the south. It is noted that the Observers at no.412 are concerned that part of their side boundary wall that adjoins the subject site has been removed and have enclosed photographs showing this.
- 7.3.2. There is concern that the proposed houses i.e. House 'A' 113sq.m and House 'B' 116sq.m would extend above the boundary wall shared with Our Lady's Hospice Harold's Cross by 4m. Also that the houses would overlook no.412 Clogher Road having regard to the first floor windows being less than 22m apart.
- 7.3.3. The Submissions made include that the Religious Sisters of Charity, are the landholders of the lands to the rear (east of the site) which incorporates the

Provincial House, the Education Centre and Our Lady's Hospice. It is provided that these lands represent a major community asset in the south city inner-suburban area and are undergoing continuing redevelopment and expansion of essential health and support services to the community. The lands associated with Our Lady's Hospice, Harold's Cross are located to the rear (east) of the proposed development site. The north-western boundary of these lands abuts the subject site. They consider it important that the proposed backland development does not exploit the currently underdeveloped nature of the north-west lands within the institution in a way that would inhibit optimum future institutional development. It is provided that the zoning is transitional and a very significant consideration is the preservation of the amenities and privacy of persons that are in the residence and in the care of the institution and in its grounds, from undue overlooking from adjoining properties.

7.3.4. The First Party provides that the rationale that the proposal 'would also inhibit the future development potential of the neighbouring site to the east' is fundamentally flawed as the proposal is clearly outside the curtilage of the lands to the east which are the grounds of Our Lady's Hospice and Care Services facilities. Therefore, they do not propose to encroach on these lands. They also note that these grounds have no connectivity to the site or to Clogher Road. This was seen on site and it was noted that the roof of the shed could be seen marginally above and adjoining the boundary wall from the grounds of the Hospice.

7.3.5. However, while regard is had to the issues raised, it is of note that the issue of boundaries and ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "A person shall not be entitled solely by reason of a permission under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts..."

7.4. Design and Layout and impact on the Amenities of Adjoining Properties

7.4.1. The Site Layout Plan shows the proposed siting of the 2no. two storey 3no. bedroom detached dwellings is to be at the wider rear area of the site. The total floor area for

House type 'A' is given as 113sq.m and House type 'B' is 116sq.m. In view of the orientation of the site, House type 'A' is shown east/west facing with the frontage facing the access drive, while House type 'B' is set further forward than House type 'A' with in general a north/south aspect. They are shown on the elevations with varying hipped roofs c.7.4m to ridge height.

7.4.2. The proximity to the eastern boundary has been noted and there are concerns about overlooking and loss of aspect towards the Hospice grounds. However, it is noted that the first floor plans for the houses show that only smaller landing and bathroom windows in House type 'A' will face east. It is recommended that if the Board decides to permit that these be obscure glazed.

7.4.3. Regard is also had to the restricted site area and to the impact on the proximate dwellings facing Clogher Road. Section 16.10.2 of the DCDP 2016-2022 provides: *At the rear of dwellings, there should be adequate separation between opposing first floor windows. Traditionally, a separation of about 22m was sought between the rear of 2-storey dwellings but this may be relaxed if it can be demonstrated that the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers.* In this case the side elevation of House type 'B' is shown within 14m of the first floor rear windows of no. 408 Clogher Road. However, it is noted that it has been designed so that there are no windows included in the proposed side elevation of this dwelling. The Site Layout Plan shows that the rear of House type 'A' would be just within 22m from the first floor windows in the rear of no.412 Clogher Road. It is recommended that if the Board decides to permit that it be conditioned that the proposed development be sited a minimum of 22m from this property.

7.4.4. House type 'A' has a total garden area of c.107sq.m. This comprises side and rear garden areas. It is noted that part of the footprint is within 2.3m of the rear boundary wall with the Hospice grounds. House type 'B' is shown with a garden area of 95sq.m. and c.4m from the Hospice boundary. The majority of this garden area is to be to the side i.e. within what is now the rear garden of no.404, which is to be subdivided. The subsequent private amenity space of this property is to be reduced to c. 25sq.m. This is below the minimum standards relative to private open space per bedspace as noted in Section 16.10.2 of the DCDP 2016-2022. The site which is outside of the canals is not within the inner city area. This Section includes: *Generally, up to 60-70m² of rear garden area is considered sufficient for houses in*

the city. However, it is noted that the existing houses facing Clogher Road do not (nos.408, 406) and will not (404) have this level of private open space remaining due to the subdivision of the rear gardens of these properties. Therefore, it is considered that the proposed development will result in a reduction of the amenity of the existing houses in that there will be substandard private amenity space for the existing properties.

7.5. Access and Parking

- 7.5.1. Access to the site is via the existing entrance to the steel fabrication business between nos.408 and 410 Clogher Road. This is a narrow access c.3.5m in width to Clogher Road. On the day of the site visit it was noted that there are a number of vehicles, associated with the business parked along the southern side of this access road. Clogher Road is a wide road and a busy route and on-street parking is not available in the immediate vicinity. There is a bus stop within close proximity to the south of the access.
- 7.5.2. The Site Layout Plan indicates 4no. on-site parking spaces i.e 2no. spaces for each dwelling. Section 16.38 of the current DCDP provides the parking standards. As shown on Map J the site is within Zone 3 relative to parking standards. Table 16.1 provides the Maximum Car Parking Standards for Various Land-Uses. This is 1.5 relative to Zone 3 i.e 3 no. spaces are to be provided for 2no. dwellings.
- 7.5.3. The Council's Roads and Traffic Department, Road Planning Division recommends the omission of the internal road car parking space and it is recommended that if the Board decides to permit that this be included. They also acknowledge that the access road is substandard, approx. 3m in width at the junction with Clogher Road. However, having regard to the limited number of car parking spaces, the provision of a circulation area and sufficient space for a passing bay within the site they do not object and consider that adequate car parking has been provided within the site to serve the development. They also noted the proximate location of the bus stop to the access but did not object as it is not obstructing the access. They considered that there is a potential of overspill car parking and additional traffic movements from the current development, and that the proposed development would not result in traffic hazard. In this respect the proposed development represents an improvement on the current unauthorised development.

7.6. Impact on the Character and Amenities of the Area and Precedent

- 7.6.1. There is concern that this is not a comprehensive backland development and will result in a piecemeal development that will seriously compromise the residential amenity of both the future occupants and those of the existing 6 adjoining houses (i.e nos.402 to 412), all facing Clogher Road. Regard has been had to the impact on the residential amenities of adjoining properties above. While residential use could be considered an improvement on the current steel fabrication use, the issue is whether it would be permitted in this location if the unauthorised use and subdivision of the rear gardens of nos. 406 – 410 had not previously taken place. Therefore, it needs to be considered from first principles.
- 7.6.2. The First Party considers the issue of precedent and provides details of a number of grants of permission pertaining to backland development. In terms of proximity these include (within c.100m of the site): Reg.Refs. 4992/04 and 2894/07. These referred to a site to the rear of no.44 Parnell Road and in the case of the latter permission was granted for a 3 storey apartment building over single storey basement carpark on a site of 0.1ha to the rear. (A copy of the latter decision is included in the Appendix to this Report).
- 7.6.3. In Reg.Ref. 316/95 (c.120m from the site) permission was granted for a site to the rear of residential properties at the junction of Clogher Road and Parnell Road and the redevelopment of the Christen Brothers site at Parnell Road. This included the demolition of school buildings and the construction of residential development consisting of 18 terraced dwellings and 2 blocks of apartments, 4 stories in height with a total of 72 no. apartments with associated access routes and landscape works.
- 7.6.4. In Reg. Ref. 3930/00 permission was granted on appeal (Ref.127120 refers) for the construction of 2no. semi-detached two storey dwelling houses with entrances to Rutland Grove and associated works at the rear of 262 and 264 Clogher Road. (A copy of this decision is included in the Appendix).
- 7.6.5. It is noted that the Observers consider that the precedent cases listed by the First Party are not comparable to the issues raised in the context of the restricted nature of the subject site. In this regard it must be noted that many of these developments were carried out some time ago, are in a different context/location not proximate to

the subject site and were carried out under earlier DC development plans and not under the policies and objectives of the current 2016-2022 Plan. While regard is had to precedent, each case is considered on its merits and in the context of the proper planning and sustainable development of the area. Therefore, depending on the circumstances that arise, it is not necessarily the case that precedent should be adhered to. In this case it is considered that the proposed development could set an undesirable precedent for such uncoordinated piecemeal backland development on these narrow back garden areas that are in proximity to the grounds of the Hospice.

7.7. Drainage issues

- 7.7.1. The details submitted with the application include an extract from the Greater Dublin Strategic Drainage Study as a reference against which their proposals have been developed in compliance with Development Policy, Planning and Drainage Design. The Site Layout Plan submitted includes a Drainage Layout. They provide that currently the site is covered in concrete (it was noted on site that this does not include the rear garden of no.404) and surface water is directed to the combined sewer. They indicate a series of soak-a-ways to be designed to BRE Digest 365 to remove the entire surface water loading from the combined sewer. They provide that the OPW Flood Maps show no reports of flooding in the vicinity of Clogher Road.
- 7.7.2. It is noted that the Council's Engineering Department Drainage Division has no objections subject to compliance with current standards relative to drainage and incorporation of SUDS. They also consider that an appropriate flood risk impact assessment in accordance with the OPW Guidelines should be carried out. It is recommended that if the Board decide to permit that this be conditioned.

7.8. Appropriate Assessment

- 7.8.1. The current proposal is for the construction of two houses in a fully serviced urban area. Having regard to the nature and scale of the proposal, no appropriate assessment issues arise and it is not considered that the proposal 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. It is recommended that having regard to the documentation submitted, the submissions made by the parties and to the site visit and assessment above that permission be refused for the proposed development for the reasons and considerations below.

9.0 Reasons and Considerations

1. Having regard to the proposed layout and the restricted nature of the site, it is considered that the proposed development of two dwellinghouses to the of rear numbers 404,406,408 and 410 Clogher Road would constitute undesirable piecemeal backland development and would lead to substandard private open space for these existing properties and would represent overdevelopment. It is considered that the overall layout and design would seriously injure the amenities of the area and of property in the vicinity and would set an undesirable precedent for further such backland development in the rear gardens of these properties. The development proposed would, therefore, be contrary to Section 16.10.2 (Residential Quality Standards – Houses -private open space) and Section 16.10.8 (Backland Development) of the Dublin City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

30th of May 2017