



An  
Bord  
Pleanála

## Inspector's Report PL 29S 248241.

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<b>Development</b>	Demolition of garage and construction of a two storey house with attic accommodation, a pitched roof over the front and a flat roof with sedum finish over the single storey rear, a parking bay, landscaping and associated site works.
<b>Location</b>	No. 77 Charleville Close, Rathmines, Dublin 6. (Protected Structure.)
<b>Planning Authority</b>	Dublin City Council.
<b>P. A. Reg. Ref.</b>	4451/16
<b>Applicant</b>	Ann Dalby,
<b>Type of Application</b>	Permission
<b>Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Paul Mitchell and Catherine Brady.
<b>Observer</b>	John Redmond.
<b>Date of Site Inspection</b>	22 <sup>nd</sup> June, 2017.
<b>Inspector</b>	Jane Dennehy

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## **1.0 Site Location and Description**

- 1.1. The site which is formed by subdivision of the rear garden of No 149 Leinster Road, a two storey over garden level nineteenth century house. There is a garage, partly constructed in rubble stone which may have historically formed the rear boundary and coach house frontage onto Charleville Lane. It appears to have cement render to the upper walling on the south west side and front façade with a timber vehicular entrance door and pedestrian entrance door on the front façade and a roof overhead. The lower end of the garden and garage space has been subdivided to provide for two plots with frontage onto Charleville Close and the site subject of the application has a stated area of 176 square metres. The other plot (No 79 Charleville Close) has the benefit of a grant of permission for a dwelling under P. A. Reg. Ref. 3013/15.
- 1.2. Charleville Close is a former service lane to the rear of the houses on Leinster Road to the west and to the east from Charleville Road which may have been used for services and coach access and for workshops. Residential development which is somewhat haphazard has been developed on both sides of the lane on either side.

## **2.0 Proposed Development**

- 2.1. The application lodged with the planning authority indicates proposals for demolition of the existing garage and for construction of a three storey house with bedroom accommodation at first floor and attic level and living accommodation on the ground floor. There are two projecting bay dormer elements one to the front and one to the rear.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By Order dated, 24<sup>th</sup> February, 2017, the planning authority decided to grant permission subject to conditions which include requirements for modifications under condition No 3 which is reproduced in full below:

*“The development shall be revised as follows:*

- (a) The dwelling shall be set back by 2.5 metres from the proposed front building line and shall be reduced in overall depth by 2.5 m.*
- (b) The projecting elements at first and second floor levels serving the proposed bathroom at first floor level and the proposed study and en-suite at second floor level shall be omitted.*
- (c) the second floor element shall not be used as a bedroom.*

*Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing with the planning authority and such works shall be fully implemented prior to the occupation of the buildings: -.*

*Reason: In the interests of visual and residential amenity. “*

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

- 3.2.1. The planning officer in his report considered that in order for the development to be consistent with section 16.10.10 of the development plan, the projecting elements at second floor level and the projection forward of the building line of Nos 73 and 75 Charleville Close should be omitted by condition (See No 3 reproduced above) allowing for enhanced transition between buildings. Otherwise he considered the proposed development to be consistent with a range of development plan policies and objectives and in keeping with the scale and character of the permitted development for No 79 Charleville Close.
- 3.2.2. The internal reports of the Drainage Division and the Roads and Traffic Planning Division indicate no objections to the proposed development.

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

Submissions were received from two parties in which issues of concern raised relate to scale and design in particular the projecting elements at first and second floor

level, the building line and the raised roof profile at the rear and about effect on traffic safety and convenience.

## 4.0 Planning History

PL 29S 246622/P. A. Reg. Ref. 2372/16: The planning authority decision to refuse Permission for a mews dwelling was upheld following appeal for reasons relating to:

- Scale, height, and bulk resulting in overshadowing, overbearing, and overlooking impact on adjoining property.
- Scale, height and bulk and layout adversely affecting the existing property at No 149 Leinster Road because of the configuration of the rear garden and overdevelopment of the restricted site and potential undesirable precedent.
- Contravention of mews lane development policies in section 17.9.4 of the development plan and conservation area policies in section 17.10.8 of the development plan and,
- Substandard quality and quantity of private open space provision.

PL 29S 243839/P. A. Reg. Ref. 2423/14: The planning authority decision to refuse Permission for two, two storey mews houses with attic accommodation at Nos 77 and 79 Charleville Close was upheld following appeal for four reasons similar in nature to the reasons for refusal of permission for the mews dwelling under PL 29S 246622/P. A. Reg. Ref. 2372/16.

PL 29S 240553/P. A. Reg. Ref. 3440/11: A planning authority decision to grant permission for two, two storey mews houses with attic accommodation at Nos 77 and 79 Charleville Close was overturned following appeal for four reasons similar in nature to the reasons for refusal of permission for the mews dwelling under PL 29S 246622/P. A. Reg. Ref. 2372/16.

The Board's files are attached.

## 5.0 Policy Context

- 5.1. The operative development plan is the Dublin City Development Plan, 2016-2022 according to which:

- The site location is within an area subject to the zoning objective Z2 to protect and/or improve the amenities of residential conservation areas.
- Policies and objectives for infill housing are set out in section 16.10.10 which has requirements for compatibility with the existing character of the street having regard to building lines, proportions, heights, parapet levels and materials and to have a safe means of access.
- Policies and objectives for mews lane development are set out in section 16.10.16 according to which development is generally confined to two storey buildings with development being subordinate to the main building with acceptable privacy and private open space and complementing the character of the existing development on the mews lane and subject to suitable traffic conditions.

## 6.0 The Appeal

6.1.1. A third-party appeal was received from Paul Mitchell and Catherine Brady on their own behalf on 23<sup>rd</sup> March, 2017. They have objections and observations on the requirements of conditions and they also contend the terminology used in the conditions is ambiguous. According to the appeal:

- The rear building line at first and second floor levels should be flush with that of the permitted dwelling on the adjoining site under P. A. Reg. Ref.3013/15. The 1.5 metres protrusions beyond the dwelling at first and second floors will overshadow the adjoining properties especially at the upper floors.
- With regard to Condition 3 (a) there is no uniform front building line; the intention is that it be a staggered building line so it is unclear as to what building line is to be used as the basis for the required setback of 2.5 metres. If the requirement is applied to the ground floor and first and second floors it is not clear if the reduction of 2.5 metres includes the upper floor protrusions or only refers to the rear building line in the absence of Condition 3 (b) only. If not, there could be total protrusion of four metres. The following wording is recommended in the Appeal, "*The front and rear building line of the dwelling*

*shall match that of the adjoining permitted dwelling under Reg. 3013/15. The second-floor element shall not be used as a bedroom*

- The required omission under Condition 3 (b) for omission of projecting elements at first and second floor level are welcomed.

## 6.2. Applicant Response

6.2.1. A submission was received on 21<sup>st</sup> April, 2017 from the applicant's agent, Michael Kelly. Attached is a set of shadow study drawings and photographs.

6.2.2. It is stated in the submission that the applicant reluctantly agrees to the omission of the front attic level projecting element but the removal of the proposed rear projecting element is unreasonable because it casts fractional additional overshadowing effect over limited time and because similar elements re common features in residential development in Rathmines.

- There is no evidence in the appeal submission supporting the claim as to overshadowing of the permitted dwelling at No 81 by the 1.5 metre projection at the rear and that the rear building line should be flush with the adjoining. For a limited period, the roof of the permitted dwelling at No 79 would be overshadowed without impact on residential amenities. The overshadowing impacts of the proposed development would be negligible.
- Section Drawing PA-11 demonstrates that and mid-summer the garden wall of No 79 and 81 overshadows the width of the rear courtyard area for No 81. The wall was shown at a height one metre lower in the application drawing for the dwelling permitted under PL 29S 238517 at No 81 the permitted rear extension of which casts shadow over the external space to the rear of No 83. Section Drawing PA-2 shows that the proposed development would not cause additional overshadowing at mid-summer. Overshadowing of the proposed setback commences when sun shines parallel to existing properties at Nos 81 and 83. Very limited additional overshadowing would occur at the spring equinox which would reduce up to mid-summer.

Section Drawing PA-13 shows the projecting element at attic level omitted in section and that the rear projecting would have fractional additional

overshadowing effect on the roof of the rear extension at No 81 at the spring equinox.

- 6.2.3. As regards Condition No 3 (a) the plan and cross section for the two storey element matches that of the permitted development at No 79. It is setback 1.5 metres from the front building line of No 79 and Nos 81, 83 and 85 providing for a staggered context. Condition No 3 (a) is unclear regarding the 2.5 metres setback that is required. There are two building lines: one at ground floor level and a stepped building line at first floor level. Retaining part of the front building line at first floor level and setting the remainder back (1.5 metres) to the ground floor line is an appropriate response and should be permitted. The setback could be increased having regard to residential amenities at Nos 73 and 75 and No 79.
- 6.2.4. The planning authority appears to be concerned about views from the west in requiring the reduction depth of 2.5 metres. The following observations along with Figures Nos 1 to 5 in the submission should be taken into consideration.

An existing protected structure is 9.5 metres forward of the front building line of Nos 73 and 75. The proposed development would be 5.7 metres forwards of the building line of Nos 73 and 75. It is acknowledged that if constructed, there would be a limited reduction in eastern sunlight to the living room at No 75 and this would be less in effect than reduced western light to the front room at No 73 caused by the protected structure at No 71. Demolition of the garage at the appeal site will improve visual and residential amenity at Nos 73 and 75. The same logic should apply to the proposed development.

A 6.5 metre above ground level extension at the rear of No 148 Leinster Road projects seven metres beyond its rear wall and 1.8 metres being the rear wall for No 149 Leinster Road was permitted. It would therefore be inequitable for a 2.5 metres reduction in depth of the proposed development to be imposed because the current proposal has far less impact than the permitted development at No 149 Leinster Road. The Applicant's accommodation requirements would not be met within the internal space.



The impacts on Nos. 75, 79 and 81 would be limited in extent and benign in nature.

- 6.2.5. The omission of second floor master bedroom use under Condition No 3 (c) is assumed to be for reasons of overlooking of No 75. Overlooking from a study would be no different in impact to the proposed bedroom. The relationship between this level and No 75 is such that the latter cannot be overlooked. The appellant party has the benefit of a grant of permission for occupation of an attic at No 81 (PL 238517 refers).
- 6.2.6. It is previously acknowledged by An Bord Pleanala that Charleville Close is not a mews lane so the development plan provisions for mews lane development should not be applied. There are multiple three storey developments on Lad Lane which is a mews lane. Particularly a master-bedroom which formed a second floor under P. A. Reg. Ref. 3256/13.

### 6.3. **Planning Authority Observations**

- 6.3.1. In a letter received from the planning authority on 15<sup>th</sup> and 16<sup>th</sup> May, 2017 it is confirmed that the planning authority has no comments and reference is made to the planning officer report.

### 6.4. **Observations John Redmond and Niall McCurtain**

- 6.4.1. A submission was received from Keenan Lynch on behalf of Mr. Redmond, of 75 Charleville Close and Mr Mc Curtain of 73 Charleville Close on 19<sup>th</sup> April, 2017. According to the submission Mr Redmond has concerns about the effect of the interpretation and implementation of the modifications required under condition Nos. 3 (a) and (b) and it is requested that the wording of be amended.
- 6.4.2. With regard to setback of 2.5 metres from the front building line and a reduction in depth by 2.5 metres required under condition 3 (a) it is understood that the front building line is to be approximately 2.5 metres forward of the front building line of the house at No 75 and that the rear building line at first floor level is to match the further setback required at the front.

- 6.4.3. With regard to condition 3 (b) (Omission of second floor projecting elements) a rewording of the condition is requested to clarify whether omission of the projection at first floor level should be taken into consideration as part of the required 2.5 metre setback.
- 6.4.4. The rewording sought in the appeal by the appellant ignores transition and would result in a visually abrasive interface between Nos 75 and 77 in that almost the entire gable of No. 77 would be visible on approach along the laneway. Any revisions to the condition should include removal of the projecting roof elements. The requirement would also result in inadequate depth for a car.

**6.5. Further Submission of the Appellant.**

- 6.6. A submission was received from the Appellants on their own behalf on 29<sup>th</sup> May, 2017 in response to the observations of the applicant. According to the submission the applicant's response is unsatisfactory and unclear.

The appellants have not misrepresented the extent of overshadowing of the courtyard that would occur. The appellants also consulted with their neighbours (at No 83) about this.

The rear garden of No 149 is not wide as contended by the applicants. There is only sufficient capacity for one, not two houses.

The concerns and objections about protrusions beyond the rear building line, and about the terminology in Condition No 3 of the planning authority decision, and rear projecting element are reiterated. The shadow analysis submitted by the applicant is very basic and is substandard.

The applicant should mirror the design of the permitted development under P. A. Reg. Ref.3013.15.

**6.7. Further Submission of the Observer Party, (John Redmond and Niall McDonagh)**

- 6.8. A further submission was received from the observer party's agent on 29<sup>th</sup> May, 2017. According to the submission, it is acknowledged that it is open to the Board to consider the application *de novo* but submitted that the appellants are not entitled to raise issues that are not "under consideration by the way of the appeal as lodged".

- 6.9. Removal of the roof protrusions and overhang and the 2.5 metre setback which adequately addresses the relationship with the adjoining properties is acceptable.
- 6.10. The building at No 71 Charleville Close is not a protected structure I is in separate title from No 147 Leinster Road. At the time the applications for the Observer party's properties was considered and a setback for parking and for a footpath was required. The absence of a similar requirement for Nos 77 and 79 does not preclude consideration of the context of the road and the relationship with adjoining properties. The difficulties are a direct result of the transitional building line being ignored when the applicant for No 79 was considered. Although the building line at no 77 should align with No 79 the stepped building line is the most pragmatic solution.

## 7.0 **Assessment**

- 7.1. The assessment is divided in the following subsections.

Background and context.

Ground Floor footprint and site layout – impact on residential and visual amenity.

First and second Floor projections.

Second floor level use

Conclusion

### 7.1.1. Background and context

There are significant modifications to the previous unsuccessful proposal in the current application. There is increased setback and scope for manoeuvring of a vehicle and reduced depth allowing for increased rear garden size and a 3500 mm ground floor projection beyond the rear building line of No 79. Omission of the previously proposed upper floor element at the rear results in a reduced 1500 mm projection beyond the rear building line of the adjoining property at No. 79. The second floor (attic level) master bedroom is confined to space without projection with exception of an en-suite. The application site and that of the adjoining permitted development at No 79 are both formed from the rear garden and outbuilding space

facing on to Charleville Close at the rear of No 149 Leinster Road. The appellant party occupies No 81, the end unit of a group of three houses to the east side of the four metres wide plot of permitted development at No 79 Charleville Close. The occupants of No 73 and No 75 observer party is the occupant of No 75 to the west side of the appeal site are the Observer party. These two houses are setback and have deep front curtilages with on-site parking.

- 7.1.2. The issues considered central to the dispute between the parties are as to the requirements of Condition No 3 (a) and Condition No 3 (b) and 3 (c) attached to the planning authority decision and, corresponding issues about the building line as opposed to the principle of development of a dwelling on the site. It is also agreed with the appellant and applicant parties that the conditions require clarification but this can be addressed following assessment, prior to determination of a decision.
- 7.1.3. Historically, Charleville Close which crosses Charleville Road to either side parallel to Leinster Road would have been designed for and functioned as a services lane to the houses on Leinster Road. The building line of the lane frontage is likely to have been well defined and continuous with coach entrances and possibly workshops or outbuildings and yard space at the end of the rear gardens of the houses. (This however would need to be confirmed by review of historic mapping or other relevant documentation.) Fragments of the rubble stone construction survives, some of which appears to be incorporated in the lower façade and side wall of the existing garage structure on the appeal site and site of the permitted development at No 79 both of which are formed from the rear garden of the house on Leinster Road. The houses that have been constructed on the same side of the lane as the appeal site have a varied and haphazard building line and a range of single to small groups of two or three houses most of which are two storey.
- 7.1.4. There appears to be no specific plan or criteria with a statutory basis for the lane in terms of a statutory ACA, or designation as a Mews lane for which a specific policies and criteria would be applied within the development plan. Notwithstanding the current “Z2” (Residential Conservation Area) zoning objective for the wider area, the proposals for residential development along the lane appear to have been considered on a case by case by basis over twenty or more years ago. Given this planning context, some flexibility regarding the front building line and depth and

second floor or attic level habitable accommodation in consideration of the application may be reasonable.

7.1.5. Ground Floor footprint and site layout – impact on residential and visual amenity.

The footprint of No 71 Charleville Close, the existing historic single storey structure abutting the boundary with No 73 is circa nine metres forwards of the front building line of that house the site frontage of which is also setback. This structure is single storey and relatively low profile whereas the adjoining side gable of the proposed structure for the appeal site is two and a half storey and considerably higher. (8.5 metres to the ridge.) In terms of sense of enclosure or overbearing impact on No 75 the circumstances and potential impact are not comparable. A setback of the ground floor footprint by 2.5 metres so that the footprint extends 2.5 metres forward of the front building line of No 75 is recommended. This adjustment would eliminate overbearing impact and sense of enclosure by the gable end of the proposed dwelling on the amenities of No 75.

7.1.6. Although the plot width of the site of No 79 is confined at four metres in width, it is considered that the amenities of this permitted dwelling would not be adversely affected by overshadowing, height, or depth of the proposed ground floor beyond the rear building line of No 79 including the raised height glazing feature at the end, due to the low parapet height. This element of the proposed development would also not adversely affect the amenities of the property at No 81, the appellant's property to the east side of the permitted dwelling at No 79.

7.1.7. First and second Floor projections.

It is considered that the projecting bathroom element at first floor and study room element at second floor level can be accepted subject to the ground floor footprint setback of 2.5 metres being implemented. This projection is forward of the frontage adjacent to the permitted dwelling at No 79 and would have no impact on the amenities of No 75 or the visual amenities of development along the lane.

7.1.8. Second floor level use

It is considered that the exclusion of use of the second-floor level as a bedroom is unwarranted. Should it be accepted that the height and form of the dwelling is acceptable for the subject location, as appears to be the planning officer's view, it would suggest that the reasoning for the requirement for the omission is solely based

on generic standards for mews lane development within the development plan. Habitable use of the second level would not give rise to any concerns as to adverse impact on residential amenity or other planning standards at residential property in the vicinity. Given the extent and range of existing and permitted development on Charleville Close which includes attic level accommodation, the requirement of Condition No 3 (c) is onerous and is considered unwarranted.

#### 7.1.9. Conclusion

The requirement of Condition 3 (a) is considered justifiable and warranted. For the purposes of clarity, a new (revised) condition can be phrased clarifying that the 2.5 metres setback from the front building line as indicated in the ground floor plan with a corresponding overall reduction in depth of the ground floor footprint is to be implemented and that the rear building line remains in the position proposed resulting in an overall ground floor depth of 13.5 metres for the dwelling.

7.1.10. No amendments to the rear elevation glazing and accommodation at first and second floor levels are warranted and this view would appear to concur with the view of the planning officer in that no modifications are required according to the conditions attached to the planning authority decision.

7.1.11. With regard to the adequacy of the front curtilage and entrance arrangements, it is considered the required setback of 2.5 metres of the ground floor footprint will facilitate enlargement of the front curtilage facilitating access egress. It is however recommended that the gate proposed be omitted by condition so that waiting in the laneway with potential obstruction of free flow of pedestrian, cycle and vehicular movement along the lane is avoided. A condition can exclude the gate should permission be granted.

7.1.12. On *de novo* consideration of the proposed development otherwise, it is concluded that the application is consistent with development plan standards regarding private open space provision and the configuration, size, and layout of the proposed internal accommodation. The dwelling size, form, design, height, materials, and height, subject to the implementation of the recommended 2.5 metre setback from the proposed front building line would be acceptable and compatible with surrounding and permitted residential development along the lane. However, in view of the configuration of the site and the pattern and character of development of the area it

is recommended, should permission be granted that exempt development entitlements be removed by condition to facilitate further planning review should further development be considered.

#### 7.1.13. Appropriate Assessment

Having regard to the location of the proposed development which entails construction of a modest sized dwelling within an established residential area, it is considered that no appropriate assessment issues arise. 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. In view of the foregoing, it is considered that the permission should be granted. Draft reasons and considerations and conditions including a condition in which the requirements of Condition No 3 (a) (b) and (c) of the planning authority decision follow.

### 9.0 Reasons and Considerations

9.1. Having regard to the site size and configuration of existing and permitted development along Charleville Lane and to the layout, footprint, scale and height of the proposed dwelling it is considered that subject to compliance with the conditions set out hereunder, the proposed development would be satisfactorily integrated into the established pattern and character of development in the area, would not be seriously injurious to the residential amenities of adjoining and surrounding residential properties by reason of adverse visual impact, overdevelopment, overlooking and overshadowing, would provide for a satisfactory standard of residential development and amenity for the future occupants and would be acceptable in terms of traffic safety and conveniences. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and lodged with the application except as may otherwise be required to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed.

Reason: In the interest of clarity

- 2 The development shall be modified as follows: The footprint of the dwelling (at ground level) shall be setback by a distance of 2.5 metres from the front building line and the depth of the ground floor accommodation from the front to the rear in entirety shall not exceed or the rear building line shown on the site layout plan submitted with the application and a total depth of 13.5 metres. Prior to the commencement of the development the applicant shall submit and agree in writing revised plan and section drawings for the written agreement of the planning authority.

Reason: In the interest of the residential and visual amenities of the area.

- 3 Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations without a prior grant of planning permission.

**Reason:** In the interest of the residential amenities of the area.



- 4 Details of colours and textures of all the external finishes, inclusive of samples shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual and residential amenities of the area.

- 5 Details of the proposed boundary treatment including materials and finishes and for hard and soft landscaping within the perimeter of the site shall be submitted to and agreed with the planning authority prior to the commencement of the development.

**Reason:** In the interest of the visual and residential amenities of the area.

- 6 Water supply and drainage arrangements, including the [attenuation and] disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

- 7 Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of the residential amenities of the area.

- 8 The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be in respect of the retail unit only and shall be

paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Jane Dennehy**  
Senior Planning Inspector.  
22nd June, 2017.