



An  
Bord  
Pleanála

## Inspector's Report PL29N.248398

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<b>Development</b>	Construction of part-single, part-two storey house including new vehicular access and all associated works
<b>Location</b>	Rear of 48 Mount Prospect Avenue, Clontarf, Dublin 3
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4157/16
<b>Applicant(s)</b>	Eimear Brady & Niall Brereton
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First-Party v Condition Third-Party v Grant
<b>Appellant(s)</b>	Eimear Brady & Niall Brereton Ciaran & Kathleen O'Donohue
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26 <sup>th</sup> June 2017
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is located on Mount Prospect Park in Clontarf, 250m south of St. Anne's Park and 5km northeast of Dublin city centre. It has approximately 21m frontage to the west onto Mount Prospect Park and approximately 18m frontage to the north onto a laneway serving the rear of dwellings along Mount Prospect Park. The site forms part of the rear garden to No. 48 Mount Prospect Avenue and backs onto the rear garden of No. 50 Mount Prospect Avenue.
- 1.2. Number 48 Mount Prospect Avenue to the south of the site contains a 2-storey detached dwelling with a shed to the rear and vehicular access to the south from Mount Prospect Avenue. The existing site boundaries comprise a 2.1m-high wall onto the rear lane and front street with trees and a 1.8m-high hedgerow along the rear boundary with No. 50. Semi-mature street trees line the verge along Mount Prospect Park, adjacent to the site.
- 1.3. Within the immediate vicinity, Mount Prospect Avenue is primarily characterised by detached dwellings on large plots, while Mount Prospect Park is characterised by rows of terraced dwellings fronting onto narrow tree-lined streets. There are examples of more recent housing stock on infill and corner sites in the vicinity. Ground levels in the immediate vicinity generally drop gradually moving southeast towards the coast.

## 2.0 Proposed Development

The proposed development comprises the following:

- construction of a part-single, part-two storey four-bedroom detached house, with a stated gross floor area of 191sq.m;
- construction of a 2m-high boundary wall to the south to subdivide the site from No. 48 Mount Prospect Avenue;
- provision of a new 3m-wide vehicular access with sliding gate off Mount Prospect Park.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to 9 standard conditions, the following of which is of note:

- **C.7** – The development hereby approved shall incorporate the following amendments:
  - a) The floor to cill heights of the high level windows to Bedroom No. 2 on the north elevation and Bedroom No. 3 on the east elevation shall be increased to 1.8 metres.
  - b) The high level windows to the kitchen/dining/living room and to bedroom No. 2 on the east elevation shall be omitted.

**Reason:** In the interests of residential amenity.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the planning authority. During consideration of the application, the Planning Officer noted the following:

- Proposals meet standards regarding internal floor areas and garden space;
- Further information was requested to address concerns relating to overlooking, daylight and sunlight, drawing discrepancies, boundary treatments and addressing the laneway access;
- Shadow Study submitted by the Applicants shows compliance with the relevant standards;
- Attachment of condition would address overlooking of No. 50 Mount Prospect Avenue;
- Boundary with No. 50 Mount Prospect Avenue would be maintained;
- Revised proposals maintain the potential for further mews development along the laneway to the rear of the site.

### 3.2.2. Other Technical Reports

- Engineering Department – Drainage Division - **no objection** subject to conditions;
- Roads & Traffic Planning Division - **no objection** subject to conditions.

### 3.3. Prescribed Bodies

None.

### 3.4. Third-Party Submissions

3.4.1. The planning authority received **two** third-party submissions. The majority of issues raised in these submissions are largely covered in the grounds of appeal below, with the following additional issues raised:

- Concerns regarding height of development;
- Absence of rear garden to new dwelling;
- Overly dominant appearance and impact on streetscape;
- Impact on neighbouring gardens and access along laneway.

## 4.0 Planning History

### 4.1. Subject Site

- PL29N.246782 – Permission **refused** (August 2016) for two-storey four-bedroom dwelling (DCC Ref. 2594/16);

Reason for refusal related to impact on amenities and property in the vicinity, due to the quantum of development and proximity to neighbouring property to the east.

- PL29N.244911 – Permission **refused** (August 2015) for two-storey four-bedroom dwelling (DCC Ref. 3718/14);

Reason for refusal related to overdevelopment of the site and overbearing effect on adjoining dwelling due to scale and proximity to boundaries.

## 4.2. Surrounding Sites

Planning permissions in the area are generally reflective of the suburban character of the area and largely relate to applications of a domestic nature and scale. There are examples of infill detached housing to the rear of neighbouring properties, including Nos. 46 (DCC Ref. 1446/92), 47 (DCC Ref. 2181/99) and 69 (DCC Ref. 1575/93) Mount Prospect Avenue dating from the 1990s and No. 49 & 49a Mount Prospect Avenue (DCC Ref. 4185/09) dating from May 2010.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective "to protect, provide and improve residential amenities".
- 5.1.2. The most relevant planning policies for the proposed development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan. Design standards for infill development are set out under Section 16.2.2.2 of the Plan and issues for consideration in assessing proposals for corner/side garden sites are set out in Section 16.10.9.

### 5.2. National Guidelines

- 5.2.1. Ministerial Guidelines titled 'Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities' and the accompanying 'Urban Design Manual' are relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. Third-Party Appeal

The appellants' property, No. 50 Mount Prospect Avenue, is located adjacent to the east of the appeal site. Their principal grounds of appeal can be summarised as follows:

- Precedent set by previous planning decisions refusing development on the subject site;
- The subject site is too small and restricted to absorb the quantum of development proposed and would lead to overdevelopment of the site;
- Proposals would set precedent for overdevelopment of similar infill/corner sites in the vicinity and fails to respect the character of the area;
- Proposals have a negative impact on the visual amenities of the area, as a result of the excessive scale and bulk of the development and results in significant loss of sunlight to the appellants' rear garden;
- Proposed dwelling is closer to the appellant's house than the two previously refused permissions, would have overbearing impact on their property and would result in overlooking of their property;
- The existing three mature trees along the eastern boundary would need to be removed;
- Revised proposals submitted in response to the Council's Further Information request are not in compliance with relevant development standards, including site coverage, plot ratio and private amenity space;
- Proposals would result in substantial diminution in the value of appellants' property;
- Conditions are suggested to address access along the rear laneway;



- No objection to the principle of a house on the site, but a reduced scale and height for the dwelling is suggested with increased set back from the site boundaries.

The grounds of appeal are accompanied by computer-generated three-dimensional images of the proposed development and photographs of the site from the appellants' property.

#### 6.1.2. First-Party Appeal

A first-party appeal has been lodged against Condition 7 attached to the planning authority decision, with the following grounds raised:

- The applicants would like the high-level windows on the eastern elevation serving bedroom no. 2 and the living space to remain part of the proposed development, as they have been designed to allow morning sunlight into their respective rooms and as they would not impact on the privacy of No. 50 Mount Prospect Avenue. The applicants would be satisfied to have these high-level windows conditioned to have a minimum sill height of 1.8m above finished-floor level and to be fixed shut, as opposed to being omitted entirely.

#### 6.2. **Applicants' Response**

The applicants' response to the appeal includes the following:

- The applicants have sought to address the previous reasons for refusal on the appeal site, including the position of the two-storey element and matters raised within notes attached to the Board's decision (PL29N.246782);
- A contemporary design, including mono-pitch roofs, is considered to be a more appropriate design response for developing the site, while also addressing living standards and local amenities;
- Consequent to the further information response, the proposed dwelling was reduced in floor area by 13 sq.m and positioned further away from the northern and eastern boundaries;
- Proposals meet the minimum standards in terms of floor area and provide double the requirement of private amenity space;

- Shadow Diagrams submitted reveal that there would not be an unacceptable loss of light to neighbouring gardens;
- Compared with previous proposals, the proposed development would have significantly less impact on the property at No. 50 Mount Prospect Avenue;
- The applicants' proposals do not restrict the potential for further developments off the rear laneway, and it would not be in order for the Board to attach a planning condition requesting the applicants cede land to the Local Authority.

### 6.3. **Planning Authority Response**

The planning authority did not make any further comments on the grounds of appeal.

### 6.4. **Observations**

None.

### 6.5. **Further Response**

A response by the third party to the first-party appeal against Condition 7 was submitted and can be summarised as follows:

- Appellants support the attachment of condition 7, as it would be in the interests of neighbouring residential amenities;
- The subject windows referenced in condition 7 were only included by the applicants when they submitted revised proposals in response to the Council's Further Information request and this restricted the appellants from commenting on this matter;
- The original design for the proposed dwelling, provided sufficient light to the living space and bedroom no. 2 via rooflights and other windows.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. It is considered that the proposed development complies with Development Plan standards relating to internal layout and room sizes. Matters raised within the first-party appeal are specifically addressed within Section 7.3. The main issues arising in the grounds of appeal are as follows:

- Principle of the Development;
- Impact on Residential Amenity;
- Impact on Visual Amenity;
- Other Matters

### 7.2. Principle of the Development

7.2.1. The principle of developing the proposed house on an infill site on lands zoned 'Z1 - Sustainable Residential Neighbourhoods' is acceptable, subject to planning and environmental considerations addressed below. The grounds of appeal state that the proposed development addresses the two previous refusals of planning permission for a dwelling on the appeal site. Neither of the previous applications were refused based on the principle of a dwelling on the site. The first of these applications (DCC Ref. 3118/14) proposed a two-storey dwelling comprising pitch and hip roofs, with a height of approximately 7.7m and a floor area measuring approximately 192sq.m. This application was refused permission on appeal (ABP Ref. PL29N.244911) in August 2015, generally on the grounds of the excessive scale and bulk of the proposed development. Subsequently, a revised application (DCC Ref. 2594/16) was submitted for a two-storey dwelling with pitch and hip roofs, with a reduced roof height of approximately 7.25m and with an increased floor area measuring approximately 220sq.m. Permission for this revised dwelling was refused on appeal (ABP Ref. PL29N.246782) in August 2016, primarily on the grounds of the excessive quantum of development proposed.

7.2.2. In comparison, it is noted that within the current proposals, the maximum height of the dwelling has only been marginally reduced to 7.1m, but that the floor area has

been reduced to 191sq.m (See Drawing No. 2015-142-A1-500). By introducing a more contemporary design, as opposed to the previous approach drawing from the design and scale of surrounding housing stock, the revised proposals successfully reduce the overall scale and bulk of the building on site. Furthermore, it is noted that at first-floor level the proposed building is set further off the boundary with No. 50. In my opinion, this application significantly addresses the concerns raised regarding proposals to develop a dwelling on the site, by reducing the quantum, bulk and scale of the development and by positioning the proposed dwelling further from the eastern boundary at first-floor level. A more detailed assessment of these issues is set out below.

### 7.3. Impact on Residential Amenity

- 7.3.1. The Development Plan requires proposals for infill site developments to have regard to the impact on the residential amenities of adjacent dwellings and the grounds of appeal contend that these amenities would be adversely affected by the subject proposals.
- 7.3.2. The grounds of appeal assert that the proposed development would have an **overbearing** impact onto the adjoining property to the east at No. 50 Mount Prospect Avenue, which is set marginally below the appeal site. The previous proposals were set back in from the common boundary and the reasons for refusal in both applications, referenced the overbearing impact on No. 50. It is noted that the first-floor element of the proposed building would be positioned 3m from the side boundary with No. 50, in comparison with the 1.2m and 1.0m set in proposed respectively under the 2015 and 2016 refused applications. Computer-generated images of the proposed development have been prepared on behalf of both the applicants and appellants, with some slight differences in the image details, but both sets would appear to accurately portray the position, scale and bulk of the proposed dwelling. When viewed from the rear of No. 50, the ground floor of the proposed dwelling would be largely screened from view by the boundary. Views of the first-floor to the proposed dwelling from the rear of No. 50, would show this sitting between the rear outbuilding to No. 48 and the dwelling at No. 2 Mount Prospect Park, the latter of which would form the backdrop to views of the proposed dwelling.

Consequently, the proposed dwelling would not have a significant overbearing impact onto No. 50 Mount Prospect Avenue.

7.3.3. The proposed dwelling is directly west of the rear garden serving No. 50 Mount Prospect Avenue. A set of Shadow Diagrams accompany the planning application. Having regard to siting and orientation, the new house could not be viewed as having an adverse impact on No. 50 Mount Prospect Avenue in terms of **overshadowing** of the rear garden, particularly given the boundary treatment and the scale of the proposed dwelling relative to the overall scale of the neighbouring garden. A laneway separates the appeal site with No. 2 Mount Prospect Park and accordingly no undue impacts arising from overshadowing of this property would emerge.

7.3.4. The grounds of appeal assert that the proposed development would result in **overlooking** into the rear of the adjoining property at No. 50 Mount Prospect Avenue. The planning authority attached condition 7 to their decision to address this, and the applicant has subsequently submitted an **appeal of the condition**, noting that they have no issue to increased sill heights and fixing shut of high-level windows, but that windows should not be omitted. At ground-floor level, facing east towards the rear garden of No. 50 and 1.5m from the side boundary, a high-level window is proposed to serve the living and dining space, while a standard height window is proposed to serve the utility room. At present the hedge along the lateral boundary between Nos. 48 & 50 will provide some screening from these windows into the rear garden, however, this boundary could deteriorate or be replaced with a lower treatment over time. While a permanent 2m-high boundary along the eastern boundary would resolve this issue, a requirement for east-facing ground-floor windows to be non-opening and fitted with obscure glazing would provide a more definitive solution.

7.3.5. The first-floor level to the eastern elevation accommodates high-level windows serving as secondary windows to bedrooms which would be 3m from the boundary. I note that the planning authority sought to have one of the first-floor windows omitted and one increased in sill height by 0.1m, however, in my opinion the potential for overlooking can be readily addressed in this case by conditioning both these high-level windows to be non-opening and fitted with obscure glazing. These windows also serve to break up the brick façade. The planning authority also

conditioned that the sill height of the north-facing bedroom window be increased by 0.1m, however, I do not consider that this or any amendments to this window would be necessary when considering the context at first-floor, 2.3m from the laneway and facing the side elevation of No. 2 Mount Prospect Park, which only features a landing window. Consequently, subject to conditions, the proposed development would not have a detrimental impact on the residential amenities enjoyed by the occupants of adjacent dwellings, as a result of undue overlooking or loss of privacy.

7.3.6. The grounds of appeal raise concerns regarding the extent of **private amenity space** proposed to serve the property. Based on Development Plan standards (10sq.m per bedspace) the minimum amount of private open space required would be 80sq.m, with approximately 98sq.m garden space provided in the proposed development along the southern side of the appeal site. Potential for further loss of this space should be addressed via condition. While it would be desirable to position the garden space to the rear of the dwelling, this is not a specific requirement of the Development Plan or National Guidelines and it is often not feasible in an infill site such as the appeal site. Furthermore, the garden is screened from the public realm and neighbouring properties by proposed and existing boundaries, thereby ensuring an adequate level of privacy for residents using this space.

7.3.7. In conclusion, the proposed development would provide for a suitable level of amenity for future residents, and subject to conditions, it is considered that the proposed development would not have a detrimental impact on the residential amenities of neighbouring dwellings or dwellings in the vicinity.

#### 7.4. **Impact on Visual Amenity**

7.4.1. With regard to new houses on infill sites, the Development Plan states that such development should respect and enhance its context and should be well-integrated with its surroundings, ensuring a more coherent cityscape. The relationship of the proposed house with the **adjacent dwellings**, specifically No. 2 Mount Prospect Park and Nos. 48 & 50 Mount Prospect Avenue, is noted, including the slight difference in respective ground levels. The general proportions of the new dwelling complement those of the adjacent dwellings, but a more contemporary design to the proposed dwelling differentiates this from adjacent and neighbouring dwellings. In terms of height, scale, massing and layout, the proposal can be reasonably viewed

to be in keeping with adjacent dwellings and would not be obtrusive or incongruous when viewed from adjacent dwellings.

- 7.4.2. It is noted that this area is not provided with any conservation status. The Development Plan lists a range of criteria to be assessed for proposals of this nature, including the **character of the area**, compatibility with adjoining dwellings and building lines. Acknowledging that there is an established building line and rhythm of terraced housing on the street to the north and a variety of styles to detached housing generally to the south, the introduction of an additional detached unit, with adequate separation from neighbouring dwellings, mirroring the positioning of an infill development directly to the west, to the rear of No. 46 Mount Prospect Avenue, and with two-storey element over 5m from the primary frontage, the proposed development would not unduly impact on the character of the area.
- 7.4.3. With regards to the **visual impact** of the proposals, it is noted that views of the proposed development would only be available from the immediate streets and from neighbouring properties facing the site. Existing street trees are not proposed for removal and these provide extensive screening along Mount Prospect Park. Where visible the proposed dwelling would be viewed against the backdrop of existing dwellings within the immediate area. In conclusion, the proposed development would not be so detrimental such that it would detract from the visual amenity of the area and the proposed development should not be refused for this reason.

## 7.5. Other Matters

- 7.5.1. It is noted that the proposed development meets the parking requirements of the Development Plan, and the Roads & Traffic Planning Division of Dublin City Council has no objection to the development. The access arrangements proposed and the small scale of **traffic and parking** associated with one additional house would not create any issue regarding traffic safety or the capacity of the road network.
- 7.5.2. Having regard to the lack of a significant impact on the residential or visual amenities of property in the vicinity discussed above, there is no evidence to support the appellants' contention that the proposal would negatively affect **property values** in the area.

7.5.3. The grounds of appeal seek conditions to be attached to the proposed development, to address access arrangements along the rear **laneway**, which is not in control of the applicants. In this regard, I note that the applicants have set the proposed dwelling away from the laneway and the planning authority was satisfied with this.

## 8.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is 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.

## 9.0 **Recommendation**

I recommend that permission is **granted** in accordance with the following reasons, considerations, and conditions.

## 10.0 **Reasons and Considerations**

Having regard to the zoning, nature and scale of the proposed development, and to the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions below, the proposed development would not be out of character with development in the area, would be acceptable in terms of visual impact and traffic safety, and would not seriously injure the residential amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information received by the planning authority on 27<sup>th</sup> March 2017, except as may otherwise be required in order 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 particulars.

**Reason:** In the interest of clarity.

2. The proposed development shall be amended as follows:

- a) All proposed windows at ground-floor and first-floor on the eastern elevation of the proposed dwelling shall be non-opening and fitted with obscure glazing.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

3. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenity.

4. Water supply and drainage arrangements, including the 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.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

6. Notwithstanding the exempted development provisions of the Planning & 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 shall take place within the curtilage of the new house without a prior grant of planning permission.

**Reason:** In order to ensure that a reasonable amount of garden space is retained for the benefit of the occupants of the new dwelling.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of 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 & Development Act 2000, as amended. The contribution 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning & Development Act 2000, as amended, 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.

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Colm McLoughlin  
Planning Inspector

17<sup>th</sup> July 2017