



An
Bord
Pleanála

Inspector's Report PL29S.248679

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| Development | Amend previously permitted 2no. dwellings |
| Location | 21 Ailesbury Drive, Ballsbridge, D4 |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 2527/17 |
| Applicant(s) | Tony Kilduff |
| Type of Application | Permission |
| Planning Authority Decision | Grant with conditions |
| Type of Appeal | Third Party |
| Appellant(s) | Jasper Brett |
| Observer(s) | None |
| Date of Site Inspection | 08/09/17 |
| Inspector | John Desmond |

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1.0 Site Location and Description

- 1.1. The application site is located in a mature residential area, south of Dublin city, c.120m north of Ailesbury Road and c.340m east of Donnybrook Road. The site is directly adjacent Old Belvedere Rugby Club to the north (rear). It is a corner site, with road frontage to the south (front) and east (side), and it abuts a similar residential property to the west.
- 1.2. This irregular-shaped site of c.692-sq.m (stated area) currently accommodates a 2-storey detached dwelling adjacent the western boundary and a single-storey garage adjacent the east and north boundary. The total floor area to be demolished is given as 282-sq.m, which may include the garage. The dwelling forms part of a small low-density housing estate dating, I expect, from the mid-20th century, which has some relatively recent infill development.
- 1.3. There is mature vegetation, including trees and shrubs on the site. The roadside boundary comprises a low (c.1m) high smooth-rendered wall. The entrance to the site is to the south. There are semi-mature trees within the grass verge to the south and east of the site.

2.0 Proposed Development

- 2.1. It is proposed amend the design of the two dwellings permitted under PL29S.246966 / reg.ref.5530/07 as amended by Reg.Ref.WEB1115/12 and as extended by reg.ref.5503/07/x1. The amendments comprise:
 - Modifications to location and scale of window and door opes to north and south facing elevations to House A;
 - Modifications to location and scale of window and door opes to east, west and south facing elevations to House B, with an additional window each in south and west elevations;
 - Associated internal rationalisation of floor space including removal of winter gardens;
 - Increase in House A floor space to 297-sq.m (from 281), including increase in basement by 16.5-sq.m;

- Increase house B floor space to 245.5-sq.m (from 218-sq.m) including increase in basement by 27.5-sq.m;
- Change roof finish from tile to slate and wall finish to selected brick;
- Insert side gable ridges;
- Modify vertical louvres positions;
- Plant and landscaping including pergola to front (south) of house B;
- Provision of 'open fencing' of 2.7m height to the south (south) of both dwellings.

2.2. Supporting documentation

- Engineers Report (Casey O'Rourke Associates) addressing proposed basement construction methodology, proposed drainage scheme and flood risk assessment.
- Planning Consultant Report (Thornton O'Connor) providing an overview of and rationale for the proposed development, detailing the planning history of the site, providing justification for the proposal having regard to the Council's planning policies and indicating that the proposed development can be screened out from Appropriate Assessment.

3.0 Planning Authority Decision

3.1. Decision

To **GRANT** permission subject to 8no. standard conditions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports (11/05/17) – The Planning Officer considered the elevation changes to be minor, noted that the proposed basement extensions were compliant with the requirements of the Development Plan in terms of extent (i.e. they are not greater than 50% of the garden/amenity space) and considered the development to be acceptable.

3.2.2. Other Technical Reports

Drainage Division Report (13/04/17) – No objection subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Two letters of observation were received on file (the Planner's Report only refers to one), from Jasper Brett of no.19 Ailesbury Drive (adjacent to the west of the site) and from Svetlana and Frank Lavery of no.30 Ailesbury Drive (this appears to be the property on the facing corner to the south). The points of objection may be summarised as follows:

- Size increase
- Disturbance caused by works – 9am should be the earliest start.
- Danger of earth slip from basement excavation.
- An artesian well was discovered when excavating the basement at no.30.
- Mismatch between the size of the dwellings and the minimal private open space provided.
- The private open space is of poor quality, being overshadowed and awkwardly shaped.
- Almost total excavation of site now proposed, with potential to impact on ground water regime, flooding and drainage issues, with no testing provided to indicate otherwise.
- The removal of the winter gardens further increases the floor area, which is not indicated in the public notices rendering the application invalid.
- Potential impact on the structural integrity of the adjacent property needs to be addressed by survey by a suitably qualified and experienced Chartered Engineer prior to commencement, with on-going monitoring during works and a post construction survey.

- Requests that specific limiting conditions be attached in the event of a grant of permission prohibiting the use of the attic space as living space, prohibiting the subdivision of the dwellings and excluded exempted development rights pursuant to A.6 of the Planning and Development Regulations.
- Permission should be refused.

4.0 Planning History

Reg.ref.Web1115/12 – Permission **GRANTED** by Dublin City Council (27/08/12) for alterations to permitted development (PL29S.226966 / reg.ref.5503/07) for the development of 2no. houses at no.21 Ailesbury Drive comprising:

- a reduction in width, footprint and floor area of house A (by 10-sq.m to 281-sq.m), increasing the gap to the side of no.19 to 1.2m;
- reduction in internal floor area of house B by 8-sqm, with reconfiguration of internal floor plans to provide additional bedroom (4no.)
- Reconfiguration of internal plans to house A, provision of additional basement terrace to rear and external basement store;
- Relocation of basement terrace from south to west of house B, with additional external basement store;
- Alterations to fenestration houses A and B;
- Re-orientation of 'A' pitched roof to house B through 90-degrees, with increased solar panel arrays.

Reg.ref.5503/07/x1 – Decision of Dublin City Council to **GRANT** permission (22/01/13) for extension of duration of permission extended to 16/09/18.

PL29S.226966 / Reg.ref.5503/07 – Permission **GRANTED** by the Board (07/06/17), upholding the decision of Dublin City Council to grant permission for demolition of existing house and garage and for the construction of 1no. dwellinghouses of 291-sq.m and 226-sq.m in area. Condition no.1 of the Board decision required the width of house A to be reduced to provide 1.2m separation distance from the side boundary with no.19.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

Land use zoning objective Z1 'to protect, provide and improve residential amenities'.

SI13: That development of basements or any above-ground buildings for residential use below the estimated flood levels for Zone A or Zone B will not be permitted.

S.16.10.15 Basements

5.2. Natural Heritage Designations

South Dublin Bay and River Tolka Estuary SPA Site Code 004024 c.1.5km to the east.

South Dublin Bay SAC Site Code 000210 c.1.5km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal by Jasper Brett of no.19 Ailesbury Drive (adjacent property to west) c/o Kieran O'Malley and Co. Ltd Planning Consultants, may be summarised as follows:

- The grounds of appeal include the points raised in the observation to the application, which were not taken into account in the Planner's Report due to a clerical error. The issues raised included:
 - Mismatch between the size of the dwellings and the minimal private open space provided.
 - The private open space is of poor quality, being overshadowed and awkwardly shaped.
 - Almost total excavation of site now proposed, with potential to impact on ground water regime, flooding and drainage issues, with no testing provided to indicate otherwise.

- The removal of the winter gardens further increases the floor area, which is not indicated in the public notices rendering the application invalid.
- Potential impact on the structural integrity of the adjacent property needs to be addressed by survey by a suitably qualified and experienced Chartered Engineer prior to commencement, with on-going monitoring during works and a post construction survey.
- Requests that specific limiting conditions be attached in the event of a grant of permission (see final bullet point, below)
- Permission should be refused.
- The limits to the hours of construction permit work from 07.00, an hour earlier than the original permission reg.ref.5503/07.
- The appellant's letter of objection was not taken into account by the Planning Authority in the Planner's Report (a letter from the Planning Authority confirms this occurred as the observation was inadvertently attached to the wrong file) and the decision of the Council is therefore invalid.
- Should the Board decide to grant permission conditions should be attached prohibiting the use of the attic space as living space, prohibiting the subdivision of the dwellings and excluded exempted development rights pursuant to A.6 of the Planning and Development Regulations.

6.2. Applicant Response

The response (12/07/17) of the applicant, Tony Kilduff c/o Thornton O'Connor Town Planning consultants, may be summarised as follows:

- The failure of the Planning Authority to process and consider the observation by Jasper Brett prevented the applicant from engaging with the observer and avoiding a third party appeal, as was done with the other observer, Mr Lavery.
- Many of the concerns raised by Mr Brett were also made by Mr Lavery and were therefore considered by the Planning Authority.
- Regarding concerns about the extended basement and its impact on local groundwater, the Planning Authority noted '*the increased area of the*

basement would not extend to more than 50% of the amenity / garden space' and therefore complies with policy (s.16.10.15 of the Development Plan 2016) – 21.5% for Building A and 29.9% for Building B.

- The Flood Risk Assessment (Casey O'Rourke Associates, Consulting Civil and Structural Engineers) submitted with the application concluded that the development has a low risk of flooding and the Council's Drainage Division had no objection.
- Regarding potential impact of construction on structural stability, the applicant is very conscious of the property rights and value of adjacent dwellings and is happy to appoint an engineer to undertake a pre-condition survey of Mr Brett's property prior to commencement of development.
- The applicant is happy for the Board to attach a condition limiting commencement of construction hours to 08.00 hours on weekdays.
- Regarding potential for further extension of the proposed dwellings, condition no.7 of the permission required compliance with all conditions attached to permission for the original development reg.ref.5503/07 (PL29S.226966), including condition no.9 of same which removed exempted development classes 1 and class 3 of Part 1 of Schedule 2 of the Regulations.
- The proposed development seeks relatively minor amendments to an extant permission, due to expire in September 2018, is intended to improve the quality of residential accommodation in a design scheme of the highest quality contemporary architecture.

6.3. Planning Authority Response

The response received 30/06/17 directs the Board to the Planner's Report.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

The main issues arising in this appeal may be considered under the following headings:

- 7.1 Policy / principle
- 7.2 Impact on neighbouring residential amenities
- 7.3 Visual impact on streetscape context
- 7.4 Other impacts
- 7.5 Other issues arising
- 7.6 Appropriate Assessment

7.1. Policy / principle

- 7.1.1. The principle of demolishing the existing dwelling and replacing it with two other dwellings, both with basement level, was accepted by the Planning Authority and, on appeal, by the Board. The said permission, whilst issued under the Dublin City Development Plan 2005, is extant, the life of the permission having been extended to 6th of September 2018 under Reg.Ref.5503/07/x1. The current application subject of appeal is for *'design amendments to a previously permitted 2no. dwelling residential scheme (approved in accordance with DCC.Reg.Ref.5503/07 (ABP Ref.PL29S.226966), as amended by Reg.Ref. WEB115/12 and extended by Reg.Ref.5503/07/x1)'*.
- 7.1.2. The amendments are relatively minor, with the most significant modifications relating to basement level, including an increase in floor space to both dwellings (16.5-sq.m to House A and 27.5-sq.m to House B as an external basement room). The other amendments include modifications to fenestration pattern, design and finishes and landscaping. In the context of the existing permission, the short period remaining to carry out same and the nature of the amendments proposed, there is no need to revisit the principle of demolition and replacement.
- 7.1.3. The proposed increase in basement size per dwelling would not exceed the recommended limit (50% of open space area) under the Development Plan 2016-2022 (s.16.10.15).

7.2. Impact on neighbouring residential amenities

7.2.1. The proposed amendments to the permitted development will not seriously injure the amenities of neighbouring property in terms of overlooking, overshadowing or visual intrusion or otherwise.

7.3. Visual impact on streetscape context

7.3.1. The potential visual impact on the streetscape context will not differ significantly compared to the permitted scheme, but I consider that the proposed alterations to fenestration pattern and material finishes are positive.

7.3.2. For clarity, the submitted plans (17-01-P-01A and 17-01-P-03A) and elevational drawings (17-01-P-07A and 17-01-P-08A) indicated that the proposed 2.7m high 'open fencing' to the south of the dwelling is not boundary fencing but a design element contained within the site and therefore the visual impact would be limited and there would be no adverse impact on passive surveillance of the public realm.

7.4. Other impacts

7.4.1. The excavation of the site to accommodate the proposed development, including extensive basement level, has potential to adversely impact on neighbouring property through land slippage but can be avoided through employment of best practice techniques for carrying out such works. In this regard, the applicant is happy to employ an engineer to carry out a condition survey of the appellant's property (no.19 Ailesbury Drive, adjacent to the west of the site) prior to the commencement of development and the details of basement construction have been set in the Engineering Report by Casey O'Rourke and Associates submitted with the application. As this entails undertaking a survey on third party lands outside the control of the applicant I do not consider it appropriate to address this issue by way of condition. Rather it is a civil matter that must be done by agreement between the parties.

7.4.2. The third party is concerned that the proposed excavations have potential to disrupt groundwater flow regime. An observer on the application submitted that he struck a well when constructing the basement at no.30 Ailesbury Drive (property on opposite corner to south). Neither the applicant's Engineer's Report nor the Council's

Drainage Division addressed the potential for impact on ground water regime. The EPA mapviewer and the GSI groundwater data viewer indicate that there are no groundwater wells or streams within the immediate vicinity. Given the relatively modest scale of the alterations at basement level, I do not consider this to be a significant issue.

7.4.3. A flood risk assessment is included in the Engineering Report which classified the risk of fluvial flooding (i.e. from a watercourse) and from flooding from a public sewer to the site as very low. In this regard I note that the site is located outside the flood zones (A and B) in the OPW draft flood mapping for the area (myplan.ie). Whilst it classifies that risk of groundwater source flooding as low, it indicates that the basement may be constructed below the water table and that the risk will be mitigated by use of a secant pile wall. The risk from fluvial flooding pluvial flooding (runoff from heavy rain event) is medium, but will be mitigated by a 300mm upstand at ground level to prevent infiltration to the courtyard. The Council's Drainage Division recommended conditions to reduce risk of flooding which were attached to the Council's decision.

7.5. Other issues arising

7.5.1. Due to a clerical error the Planning Authority did not have regard to the observations submitted by Mr Jasper Brett (appellant) to the application. Section 34(3) of the Planning and Development Act 2000, as amended, states:

A planning authority shall, when considering an application for permission under this section, have regard to - [...] (b) any written submissions or observations concerning the proposed development made to it in accordance with the permission regulations by persons or bodies other than the applicant.

7.5.2. The Planning Authority did not comment on this issue in its response to the appeal, but a letter from the Planning Authority to Mr Brett is appended to Mr Brett's appeal confirming that the observation was not taken into account due to a clerical and technical error whereby the observation was attached to the wrong file.

- 7.5.3. In considering this application *de novo*, including having regard to the written submission made to the applicant by Jasper Brett, the Board may consider this provision of the Act to have been complied with.
- 7.5.4. Should the Board decide to grant permission for the proposed amendments, the conditions attached to the original grant of permission PL29S.226966 (reg.ref.07/5503) remain appropriate conditions, including condition no.1 which required a 1.2m setback from the western boundary which has been provided in the proposed development.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the small scale nature of the proposed development, comprising relatively minor alterations to permitted development of 2no. dwellings within a built up area, it is not considered that the proposed development would be likely to have a significant effect, directly or indirectly, individually or in combination with other plans or projects on any European site. I consider no Appropriate Assessment issues to arise.

8.0 Recommendation

- 8.1. I recommend that permission be **GRANTED** for the proposed development subject to the conditions set out under section 10.0.

9.0 Reasons and Considerations

Having regard to the nature and scale of development proposed and the surrounding existing development, it is considered that proposed development would not seriously injure the amenities of property in the vicinity, would be consistent with the zoning objective pertaining to the site, Z1 'to protect, provide and improve residential amenities' and would be in accordance with the proper planning and sustainable development of the area, subject to compliance with conditions set out under section 10.0.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. Apart from the modifications permitted on foot of this decision, the development shall otherwise be carried out in accordance with the terms and conditions of Planning Permission PL29S.226966 (reg.ref.Reg.ref.5503/07) as amended by Planning Permission Reg.ref.Web1115/12, the duration of permission for which was extended under decision Reg.ref.5503/07/x1 to 16/09/18.

Reason: In the interest of clarity.

John Desmond

Senior Planning Inspector

14th September 2017