



An  
Bord  
Pleanála

## Inspector's Report PL29N/249017

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<b>Development</b>	Construct 3 houses with roof lights. Widened access and new access road, new boundary treatment.
<b>Location</b>	134 & 136 Castle Avenue, Clontarf, Dublin 3
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2280/17
<b>Applicant(s)</b>	Martin Dufficy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patricia Crosbie & Therese Bohan; John Bohan; Hakhamansh & Valerie Nikookam
<b>Observer(s)</b>	Sean Haughey; Dominick O'Grady; Helen Bohan; Aidan Kennedy; Wendy Shehan & Barry Rothwell; Betty Culhane; Joan McConnell; Des Henderson; Margaret Murray; Ken

Byrne & Julie-Woods Byrne; Denis  
Henderson; Emer McCarthy; Veronica  
Graham; Aileen Hennigan; Anne  
Cronin.

**Date of Site Inspection**

23<sup>rd</sup> October 2017

**Inspector**

Una O'Neill

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	6
3.4. Third Party Observations .....	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Planning Authority Response.....	9
6.3. Observations .....	9
6.4. Applicant Response .....	10
7.0 Assessment .....	12
8.0 Recommendation.....	24
9.0 Reasons and Considerations.....	24

## 1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 2249sqm, is located on Castle Avenue, northeast of the junction with Castle Grove, in a well-established residential area of the suburb of Clontarf, north of Dublin City. Kilester Dart Station, approx. 6m north west of the appeal site.
- 1.2. The site comprises 2 detached traditional hipped-roof single storey dwellings, dating from approx. 1930s/1940s, with extensive rear gardens. The site is on the eastern side of Clontarf Avenue with direct vehicular access onto the road from each house. The site is bounded to the north by a 2 storey gable fronted/dormer dwelling and to the south by a bungalow of the same design as those on the appeal site. The site is bounded to the east by the Central Remedial Clinic (CRC).
- 1.3. This eastern side of Clontarf Avenue, north of the Rugby Club up to the junction with Vernon Avenue, is predominantly characterised by detached traditional hipped roof bungalows, on generous plots, which have been modified with dormer inserts/extensions over the years. The exception to this is the dwelling immediately north of the subject site at 138 Castle Avenue which differs in style and scale. The western side of Castle Avenue is characterised by 2 storey red brick dwellings, primarily hipped roof in form.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - Construction of 3, c/147m<sup>2</sup>, 3 bedroom 2 storey detached dwelling houses in the rear gardens of house nos 134 and 136.
  - The demolition of the existing shed and widening of the existing entrance at 134 Castle Avenue to provide for a new access road and associated footpath.
  - The dwellings are of 2 storey gable fronted design, with staggered single storey side elements. The overall width of the dwellings is 8.6m, with an overall depth of 16m and overall height of 7.64m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

GRANTED, subject to 13 conditions. The following condition is of note:

C3 – Requirement for a Section 47 agreement to allow for provision of shared access over the proposed access way, to facilitate future development of lands to the south and also to the north of the proposed development.

C6 – a) Access to serve the three new houses only and any future housing development off the access road shall require the vehicular access and laneway to be upgraded to full carriageway standards.

b) A turning area within the site boundary of the existing house, No. 134 is required.

c) The developer to contact the Parks Department at Dublin City Council to request the removal of existing tree on the public footpath outside No.143 Castle Avenue, if required to facilitate the widening of the vehicular entrance.

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

#### **3.2.1. Planning Report**

The Planning Officer's report generally reflects the decision of the Planning Authority.

Of note, the proposal was amended on foot of a Further Information request from the Planning Authority. Further information was requested due to the lack of adequate drainage information; lack of a sunlight/daylight analysis and concern in relation to impact on no.138 and gardens of existing dwellings; request that windows on front elevation to be at least 11m from any adjoining 3rd party site and the original dwellings; a request was made to improve daylighting to masterbedrooms through obscured glazed high level opes not less than 1.8m above finished floor level was suggested; and a request in relation to assessment of habitats on site.

Following receipt of Further Information, the Planning Officer recommended a grant of permission.

#### **3.2.2. Other Technical Reports**

Engineering Department Drainage Division – Further information was issued requesting a flood risk assessment be submitted with the application. A further report noted no objection subject to conditions.

Roads and Traffic Planning Division – No objection subject to conditions.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

A number of submissions were made during the course of the application. The issues raised are covered in the grounds of appeal and observation to the appeal.

## 4.0 **Planning History**

No relevant planning history pertains to the subject site.

### **Following applications apply to adjacent house at 138 Castle Avenue:**

**PL29N.215156** (Reg Ref 4633/05) – Permission REFUSED for backland dwelling which would constitute piecemeal and haphazard backland development; would be prejudicial to possible future orderly development of lands to the rear; would by reason of overlooking and visual intrusiveness, seriously injure the residential amenity of adjoining property.

**3369/06** – Permission GRANTED for demolition of dwelling and construction of a detached one/two storey four-bedroom dormer style dwelling with rooflights.

## 5.0 **Policy Context**

### 5.1. **Dublin City Development Plan 2016-2022**

The application site is located within land use zoning objective Z1, the objective for which is *‘to protect, provide and improve residential amenities’*.

Section 16.10.8 relates to Backland Development and Section 16.10.10 relates to Infill Housing.

**Policy QH22:** To ensure that new housing development close to existing houses has regard to the character and scale of the existing houses unless there are strong design reasons for doing otherwise.

**Policy QH 19:** To ensure that new housing development close to existing houses reflect the character and scale of the existing houses.

## 5.2. **Natural Heritage Designations**

The site is not located within any designated Natura 2000 site. The nearest Natura sites are the South Dublin Bay and River Tolka Estuary SPA (0040240), North Dublin Bay SAC (000206), and the North Bull Island SPA (004006), to the south and south east and separated from the subject site. The South Dublin Bay and River Tolka Estuary SPA is approx. 500m to the south of the site.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

Three third party appeals have been lodged from Hakhamansh & Valerie Nikookam of 138 Castle Avenue (neighbouring the appeal site, to the north) Patricia Crosbie & Therese Bohan of 128 Castle Avenue (south of the appeal site); John Bohan (part owner of 130 Castle Avenue, south of the appeal site). The appeals are summarised as follows:

- The proposed development is an inappropriate, ad-hoc backland development in an established residential area on a restricted backland site. Development is not a mews development and is contrary to pattern and character of the area.
- Proposal would be contrary to Dublin City Development Plan policy and planning history of the area to protect residential amenities in an area of high architectural quality and contrary to zoning objective Z1.
- Design, scale, mass, bulk, fenestration and height of houses out of character with existing residential properties. Proposal will be overbearing and have a significant negative visual impact.

- Overlooking, loss of privacy, noise disturbance, and loss of property value will be experienced as a result of the development. Proposal is contrary to Development section 16.10.10 relating to Backland Development.
- Overshadowing from proposed development will impact in particular on no. 138 Castle Avenue due to proposed house no. 3. The proposed house is only 1245mm from the adjoining boundary.
- House no. 3 will be overbearing, given its scale and depth, on no. 138 Castle Avenue.
- A 1.8m timber panel fence is proposed at the boundary with no 138 Castle Avenue. The appellant is concerned that this will impact on the existing hedgerow and result in its removal. A tree survey has not been prepared as part of this application.
- Dwellings will be higher than existing dwellings on the site and have a negative visual impact when viewed from the street.
- Applicant has not accurately stated plot ratio and site coverage as applicant has included the existing 2 houses on the site in the calculations.
- Previous Board decisions have supported the high quality of the visual amenities of this part of Castle Avenue.
- Historical reason for refusal for 1 backland house to rear of no. 138 (neighbouring dwelling) by ABP still applies.
- Proposal would set a precedent for inappropriate backland development in the area. Council has through this permission tried to give de facto permission for further backland development at this location.
- Negative impact on the setting and privacy of the Central Remedial Clinic and the Orthopaedic Hospital.
- Proposed access onto the road will result in dangerous proliferation of such standard accesses on a road where traffic speeds regularly exceed the maximum permitted. No reference to Design Manual for Roads and Streets or NRA (TII) guidance.



- Access onto Castle Avenue will deteriorate for adjacent properties and proposed access is too close with the junction at Castle Grove.
- 5 parking spaces are provided for the 3 houses. Concern in relation to overspill of parking onto Castle Avenue.
- Traffic assessment was undertaken at 11.30-12 on a weekday. This off-peak period is not representative of the morning and evening volume of traffic.
- Proposed access from Castle Avenue has a width of 3m over a length of 16m, which would result in traffic hazard and would not allow for emergency vehicles to access the site.
- Requirement for a full vehicular access will result in removal of not one but three mature trees to achieve the required sight visibility splays.
- Applicants have not addressed concerns about flooding. A full and comprehensive flood report is required from the applicants. CRC experiences heavy spot pluvial flooding on their site, which was built on a former pond. This development could impact on the CRC site.
- Appropriate assessment not considered fully by Dublin City Council. The local surface storm water drainage system discharges directly to three Natura 2000 sites.
- Statutory notices did not highlight relocation of existing entrance for 134 Castle Avenue. The new roadway not only serves the 3 new houses but the existing house also. The statutory notices also inaccurately describe the development as mews houses and is therefore misleading.

## 6.2. Planning Authority Response

None received.

## 6.3. Observations

- 3 new houses will add to traffic in the area and cause pedestrian safety issues.

- The design of the houses will cause an eyesore and has no respect for the existing streetscape.
- The houses are aligned between the gap between the existing houses. This will detract from the pattern of development in the area causing serious detriment to the visual amenity of the existing built form.
- This precedent will increase density to an inappropriate level.
- Building houses in back gardens should only be permitted where there is a rear laneway, such as a mews dwelling.
- Design of dwellings is out of character with the area.
- Proposal will have an overbearing visual impact and will result in overlooking and overshadowing of existing bungalows. Proposal contrary to Section 16.10.10 of the Dublin City Development Plan in terms of building line, proportion, heights, parapet levels and materials of surrounding buildings.
- Proposal is too close to junction with Castle Grove which has been experienced many minor accidents.
- Flooding and drainage is a major issue in the area.
- CRC is undergoing anti-flood protection measures at present, which will have factored in existing drainage and soakage of nearby back gardens. This needs to be assessed.

#### 6.4. **Applicant Response**

The applicant has responded to the grounds of appeal and this response is summarised hereunder:

- The proposed dwellings will not be visible from Castle Avenue. A visual analysis including photomontages is submitted.
- The first party has designed the scheme so that it will not inhibit other backland development at this location. The applicant is willing to accept the imposition of a Section 47 condition to allow shared access of the entrance driveway, which the planning authority imposed on their grant of permission

under condition 3 and which the Board has previously imposed under a similar type of development, ref PL29N.244546.

- With regard to overlooking and impact on the neighbouring property no. 138, the dwellings have been designed with a shuttered oriel window at first floor level.
- A sunlight and daylight analysis is submitted and the impact on no. 138 is not significant.
- The proposed dwellings have been sensitively designed and have addressed section 16.10.10 of the Dublin City Development Plan .2016-2022.
- An ecological survey was undertaken as part of the application. The existing natural boundaries between the properties will be retained and maintained.
- The development complies with requirements in relation to fire access.
- Proposal allows for comprehensive, versus piecemeal, development at this location, close to high quality public transport node of the DART.
- To address condition 6(b) of the Planning Authority, the applicant has submitted a new site layout indicated a turning area within the site boundary of the existing house no. 134 to prevent cars from reversing out onto the new road.

#### **6.5. Further Responses**

Three responses to the applicant's response has been received from Patricia Crosbie and Therese Bohan, John Bohan, and Hakhamansh and Valerie Nikookam. These responses are summarised hereunder:

- The application is for an open ended outline permission for at least 25 backland dwellings and not for 3 houses. This has implications for assessment of access and AA screening.
- Proposal is not a mews development but a backland development. ABP has consistently refused permission for similar developments on Castle Avenue.
- 3 mature trees would need to be removed to gain a sightline of 120m, damaging the established mature streetscape.

- A flood study is required for this area. The CRC study in the past is itself flawed.
- The AA de minimis rule applied to this site was inappropriate, considering proposal could give way to a larger backland development, which has not been assessed.
- The proposed development involves the discharge of untreated surface waters to drains that discharge to three EU designated marine habitats just 900m from the site. It is assumed the drains discharge direct to the bay in the absence of other information.
- There is a clear pathway for pollution which would undermine water quality which would have an adverse impact on the Arctic Tern population. There is no basis to dismiss the possibility of a significant effect.
- To fulfil its statutory obligations the Board must request a full Natura Impact Statement addressing the potential of untreated surface water discharge with particular regard to the conservation objective to maintain food sources for the Arctic Tern population. A judicial review will be sought where this is not undertaken.
- The hedge along the northern boundary, on which the applicant relies for screening, is not 4.5m high. It is 2m high on the appellants side, as seen in a photograph submitted. The hedge should not be relied upon for screening.
- Loss of amenity to neighbouring dwellings will result given proximity of the development to northern boundary.
- Photomontages are inaccurate.

## 7.0 **Assessment**

- 7.1. Following a receipt of Further Information, the layout of the proposed development was amended with the garden depth of existing dwelling no. 136 reduced to ensure 11m between the proposed dwellings. The first floor level windows to the master bedrooms were recessed further with deeper louvres proposed. A flood risk assessment, ecological assessment, and sunlight/daylight analysis were also submitted with the application. It is this amended application which I am assessing.

7.2. The subject site is located within zoning objective Z1, the objective for which is '*to protect, provide and improve residential amenities*'. I consider the development as proposed to be acceptable in principle within the zoning objective for the area.

7.3. The primary issues for assessment include:

- Impact on Residential Amenity
- Design & Visual amenity
- Traffic and Parking
- Drainage and Flood Risk Analysis
- Appropriate Assessment

#### **Impact on Residential Amenity**

7.4. The grounds of appeal raise concerns in relation to overlooking, loss of privacy, noise disturbance, and loss of property value as a result of the development. The proposal is considered contrary to Dublin City Development Plan section 16.10.10 relating to Infill Housing. Overshadowing/overbearing impacts will result from proposed development, in particular on no. 138 Castle Avenue due to proposed depth and scale of house no. 3. It is stated that the applicant has not accurately calculated plot ratio and site coverage as the applicant has included the existing 2 houses on the site in the calculations. A 1.8m timber panel fence is proposed at the boundary with no 138 Castle Avenue, which will impact on the existing hedgerow and result in its removal.

7.5. First party response states that the proposed dwellings have been sensitively designed and have addressed section 16.10.10 of the Dublin City Development Plan 2016-2022. In relation to boundaries and concern over boundary with no. 138, the first party states that all of the natural boundaries between the properties will be retained and maintained.

7.6. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, issued by the Department of the Arts, Heritage and Local Government (2009), in relation to infill residential development, including backland development, state that a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of the established

character of an area, and the need to provide residential infill particularly in areas proximate to existing public transport corridors, which can revitalise areas by utilising the capacity of existing social and physical infrastructure.

- 7.7. Dublin City Development Plan 2016-2022 highlights in Section 16.10.8 that 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. Applications for backland development will be considered on their own merits.
- 7.8. The subject site is one of a group of house plots along this eastern section of Castle Avenue having considerable potential for backland development in an area where little such development has taken place to date. I note that one infill/backland development has taken place at no. 154 Castle Avenue, which is located at the junction with Vernon Avenue. This dwelling has a reduced garden size, with an infill dwelling inserted in the rear garden and accessed off Vernon Avenue. The dwelling appears to date from the 1960s and is a dormer hipped roof bungalow similar in style to the existing bungalow dwellings along this section of Castle Avenue.
- 7.9. In terms of design, the dwellings are of 2 storey gable fronted design, with staggered single storey side elements. The overall width of the dwellings is 8.6m, with an overall depth of 16m and overall height of 7.64m. The overall height of the existing dwellings on the site, which address the street, are 6.3m, therefore the proposed dwellings are approx. 1.34m higher.
- 7.10. I note the two storey element of proposed house no. 3 sits 1.24m from the northern boundary with neighbouring property no. 138. House no 1 is approx. 1-1.6m from the southern boundary with no. 132. In terms of a design solution, it would have been preferable to have the floor plan of dwelling no. 3 and dwelling no.1 flipped so that the single storey elements were located at the boundaries with the properties to the north and south. However, notwithstanding the floor plan of the dwellings, the wider issue relates to the gable fronted element of the design and the overall height of the dwellings which leads to increased perception of overlooking and results in an overbearing form. This is exacerbated in the case of house no. 3 on neighbouring house no. 138, due to the extended scale and form of house no.138 which has been redeveloped in recent years. Having regard to the existing context, I am of the view

that the proposed dwellings given their scale, form and design would be incongruous with the existing character of the area and would seriously injure the amenities of residential properties in the area. A contemporary hipped roof/dormer form would be more in keeping with this area and a change in design, particularly with regard to the roof profile, would greatly assist in visually minimising the dominance of the proposals, particularly given the backland nature of the development.

- 7.11. I note the design of the windows at first floor level are recessed with a louvre system, in order to mitigate overlooking. However, the design solution in my view is unsatisfactory in that the recessed nature of the windows (recessed by approx. 1m), with the external louvre system would limit daylight to these rooms and in addition, the scale of these windows at first floor level (1.5m wide x 1.5m deep) would increase the perceived level of overlooking at this backland location. Notwithstanding they limit the view out, the location of the first-floor windows, above the eaves level and into the roof/attic level, in addition to the overall gable fronted design of the dwellings, results, in my view, in increased perception of overlooking of neighbouring properties, loss of outlook given the scale of the dwellings, and the proposal being overbearing and incongruous in this backland context.
- 7.12. I note a further information request from the Planning Authority suggested that daylight to the master bedrooms could be supplemented with high level opes, however the response of the applicant was to recess the bedroom windows further. In addition, the Planning Authority by way of further information in relation to a daylight/sunlight analysis, suggested that the northern most dwelling no. 3 could flip the two storey and single storey elements, however the applicant in response noted that the daylight/sunlight analysis indicated there would be an imperceptible impact on no. 138 in terms of daylight/sunlight. While this may be the case, the scale of the dwelling at this boundary is in my view overbearing and would result in a loss of outlook.
- 7.13. The distance between proposed house 1 and no. 134 is 21m; between proposed house 2 to no. 134 and 136 is approx. 21m-25m; and between proposed house 3 to no. 136 is approx. 19m at its closest point and 25m to the main body of no. 136. I note the north and south elevation drawings contain inaccuracies in terms of the dimension shown for the rear garden depths, however I am satisfied that the dimensions indicated on the site layout plan and the floor plans are accurate. The

distances between the properties are sufficient in terms of protecting residential amenity between directly opposing windows, however given the introduction of a first-floor level with the gabled fronted design, the proposed development in terms of the height and form is considered incongruous considering the existing context of bungalows with dormer additions predominant in this area (with the exception of neighbouring property no. 138).

- 7.14. The distance from the dwellings to the rear boundary with the CRC is approx. 9m-11/11.5m. To the rear of the site is a hedgerow/fence boundary between the properties and beyond that is the parking area associated with the CRC building. The building directly to the rear of these properties is the school associated with the CRC. There will no significant impact on the CRC with regard to overlooking, overshadowing or loss of outlook.
- 7.15. In the case of house number 3, the location of the 2 additional parking spaces relative to front elevation is unsatisfactory and would have a negative impact on the amenity of this property, were it to be permitted. I note that the drainage arrangements and location of the attenuation within the rear garden impacts on the location of the footprint of the buildings, therefore a reduced footprint is something that should be considered in this instance to improve separation from the street edge and parking spaces.
- 7.16. The appeal site is one of a group of house plots along this section of Castle Avenue which has considerable potential for backland development and the proposal has been designed in a manner which allows for a comprehensive backland development of other properties. However, in my opinion, the proposed infill scheme overall, for reasons related to design and scale, amounts to overdevelopment of the site and fails to achieve a balance involving the reasonable protection of the amenities and privacy of adjoining dwellings and the protection of the established character of the area. The proposed development would set a precedent for further backland development of this design and scale and overall is considered contrary to the proper planning and sustainable development of the area.

### **Design and Visual Impact**

- 7.17. The grounds of appeal raise concerns in relation to design, scale, mass, bulk, fenestration and height of houses. The proposal will be overbearing and have a



significant negative visual impact. Dwellings will be higher than existing dwellings on the site and have a negative visual impact when viewed from the street. The proposal would set a precedent for inappropriate backland development in the area.

- 7.18. The first party states that the proposed dwellings will not be visible from Castle Avenue and has submitted a visual analysis including photomontages as part of the response to the grounds of appeal. The first party has designed the scheme so that it will not inhibit other backland development at this location. The applicant is willing to accept the imposition of a Section 47 condition to allow shared access of the entrance driveway, which reflects condition 3 of the planning authority and which the Board has previously imposed under a similar type of development, ref PL29N.244546. With regard to overlooking and impact on the neighbouring property no. 138, the dwellings have been designed with a shuttered oriel window at first floor level.
- 7.19. I note this eastern section of Castle Avenue, from approximately north of the Clontarf Rugby Club to the junction of Vernon Avenue, comprises approx. 14 detached dwellings dating from approx. 1930's/1940's, of vernacular hipped roof single storey design. A number of these bungalows have been modified over the years with dormer additions and rear extensions, but they have (with the exception of the dwelling at no. 138 neighbouring the appeal site and no. 150) to a large degree maintained their original form and character.
- 7.20. The proposed development is to maintain the existing dwellings at no.134 and no.136 in their current condition, with the only modification being to 134 where an existing attached shed to the side/rear is to be demolished and the existing entrance widened to 5.735m to facilitate a vehicular access route to the side and rear. The consistency in the style of dwellings along this section of the streetscape will therefore be retained and is to be welcomed.
- 7.21. Dwellings along this section of Castle Avenue, to the east and west, whether of single storey or two storey design are predominantly hipped roof in form. The proposed gable fronted design of these backland dwellings is at odds with the character and style of dwellings in the area.
- 7.22. I note the proposed dwellings are set back approx. 52m from the edge of the street (Castle Avenue). While the dwellings will not be overly visible from the footpath edge

(as suggested in the first party response to the grounds of appeal), there will be oblique/limited views of the dwellings from Castle Avenue (as illustrated on the drawing titled 'Proposed Contextual Elevation along Castle Avenue 2-2'). The dwellings will also be clearly visible from the rear of the neighbouring dwellings given their backland location. The design and height of the dwellings, with their gable fronted 2 storey form, is considered incongruous with the existing streetscape and the character of dwellings in the area and in my view fails to integrate satisfactorily in this backland context.

### **Drainage and Flood Risk Analysis**

- 7.23. The applicant submitted a flood risk assessment by Magahy Broderick Associates. It is stated that the site is within flood zone C and is not at risk from coastal, fluvial or pluvial flooding. A justification test is not required.
- 7.24. The grounds of appeal states that flooding and drainage is a major issue in the area. The CRC submission states the CRC is undergoing anti-flood protection measures at present, which will have factored in existing drainage and soakage of nearby back gardens. The CRC in their submission to the Planning Authority questioned if specific soakaway testing had been undertaken on the appeal site, what the invert level of the soakaways for the proposed development is relevant to the CRC car park behind the site to ensure there are no obvious pathways for migration of groundwaters to infiltrate the CRC site; query about what is the cover level of the gardens in relation to CRC levels; and if the construction and detailing of the soakaways is to be certified by a chartered engineer with suitable PI insurance. The CRC in their submission also request that the proposed soakaways are a minimum of 5m from the boundary wall.
- 7.25. I note that within the permission quoted by the CRC relating to their site (3276/16), that the main sources of flooding of the CRC related to pluvial flooding and specifically to inadequate hydraulic capacity of the existing surface water drainage system that serves the site and to volumes of surface water runoff that currently discharges to the site in particular from Vernon Avenue to the northern boundary. A survey of the surrounding area in that report noted that there are no significant areas adjacent to the western boundary of the CRC that have potential to discharge storm water runoff to the site.

- 7.26. I note the applicant did not answer all the specific questions raised in the Further Information Request and did not address the concerns raised by the CRC. However, Dublin City Council has accepted the report submitted and the Drainage Division has stated no objection to the proposal subject to conditions.
- 7.27. The appellants raise concerns that the surface water will drain to a surface water drain on Castle Avenue which appears to discharge to EU designated habitats to the south and this surface water appears to be untreated.
- 7.28. The appeal site has proposed drainage measures for the site, including soakaways that will link surface water to the surface water drain on Castle Avenue which will satisfy their attenuation and drainage needs.
- 7.29. I consider the development as proposed, based on the information presented, is acceptable in terms of SUDS and best practice drainage requirements and any flood risk issues and will not impact on neighbouring properties.

### **Access and Parking**

- 7.30. The grounds of appeal raise concerns in relation to volume of traffic on Castle Avenue; limited parking and potential for overspill onto Castle Avenue; restricted width of access roadway to serve the 3 dwellings to the rear of the site, particularly for fire access purposes; time of day speed survey was undertaken and inaccuracies in applicants traffic report; proximity of development to junction with Castle Grove.
- 7.31. The applicants in their response contend that the access to the site is more than suitable for the traffic generated as it will be a shared access route capable of serving as a route for all emergency traffic. Sightlines are above the minimum required.
- 7.32. The entrance to 134 Castle Avenue is proposed to be widened from 3.5m to 5.75m to access both no. 134 and the three new dwellings. The entrance lane will be 5.75m wide including a footpath and lay-by area at the entrance (4.8m carriageway width), narrowing to 4m for a length of 16m (3m single carriageway width and 1m footpath) and widening again to 5.7m, including a further lay-by area. There is a 'give way' indicated on the plans for those exiting the site to give priority to those accessing the site. The access arrangements are in my view considered acceptable and having considered the context of the site will not give rise to a traffic hazard.

- 7.33. In terms of parking, the applicants report states the site is within Zone 3 of the Dublin City Council parking matrix, where 1.5 car parking spaces are required per dwelling. However I note that a report from DCC Road Planning Division states the site is within zone 2, where there is a requirement for 1 space per dwelling. Table 16.1 of Dublin City Development Plan indicates the site is within Zone 2 and therefore 3 spaces are required to serve the 3 dwellings. The parking provision is overall considered acceptable, however, as noted above under 7.14 above, from a point of view of layout and residential amenity, the location of two additional parking spaces in front of proposed house no. 3 is not ideal and the layout plan should be amended.
- 7.34. The DCC Road Planning Division report notes that the widened access to no. 134 requires the removal of one tree. It is also noted that any further backland development at this location would require the proposed access and laneway to be a minimum width of 5m, with additional 1m wide footpath.
- 7.35. To address condition 6(b) of the Planning Authority decision, the applicant has submitted a new site layout in response to the third party appeals. The layout indicates a turning area within the site boundary of the existing house no. 134 to prevent cars from reversing out onto the new road. This is considered acceptable.
- 7.36. The applicant in the response to the grounds of appeal, stated he is willing to accept a section 47 condition, (condition 3 of Dublin City Council grant of permission), which would enable a right of way over the lane, to support a comprehensive redevelopment of adjoining backlands by other property owners. The redevelopment of the wider backland would be subject to a separate application and would only be undertaken subject to agreement with the property owners. As indicated on the potential layout submitted by the applicant showing neighbouring sites to the south, I consider that the granting of permission on this site would not preclude the redevelopment of other sites in the vicinity. The proposed laneway, which could be widened if necessary (into the lands of No. 132) to cater for further development, would be the initial building block for this overall redevelopment. As a grant of permission for this development, would likely set a precedent for the redevelopment of further similar backland sites in the vicinity, it is important that if the Board is minded to grant permission, that such a condition stipulating that this lane be available as a right of way be attached to any such decision.

## **Other Matters**

- 7.37. The first party raised concerns in relation to procedural issue and submission of a third party objection outside the appeal period. The Planning Authority was satisfied that the third party submission was received on time and having reviewed the file I am satisfied that all submissions were received within the statutory timeframe.
- 7.38. The grounds of appeal raise concerns in relation to the use of the term 'mews dwellings' in the description of development. The proposed use of the term 'mews' is in my view not in this instance applicable. Dublin City Development Plan provides guidance in relation to backland development which is applicable. I am satisfied that the description of development as per the statutory notices is nonetheless clear with regard to what is proposed and satisfies the legislation in this regard.
- 7.39. The grounds of appeal raise concerns in relation to the potential development of the back gardens of dwellings to the south of the appeal site and concern that the proposed development is trying to gain permission for such development by default through this application. I note the applicant has submitted a layout showing additional dwellings in the rear gardens of properties to the south of the appeal site. This is shown to address section 16.10.8 of the Development Plan which highlights that backland development can block access inhibiting development of a larger backland area and result in piecemeal development. The applicant is applying for three dwellings only. I note that the layout of the scheme as indicated would not prohibit the development north and south of the site for further backland development given the positioning of the houses and the access road. I therefore do not regard the development as being piecemeal in nature. The Planning Authority has imposed a section 47 agreement under condition 3 to further ensure that a comprehensive backland development is feasible in the long term, which I consider reasonable and prudent in terms of considering the proper planning and sustainable development of the area. I would highlight, however, that any further development would require a new application and would be assessed on its own merits, having due regard to the context of the site. This application assesses the proposal for three dwellings only and not the merits of any wider scheme.

## **Appropriate Assessment**

- 7.40. The appellants consider the AA de minimis rule applied to this site was inappropriate, considering proposal could give way to a larger backland development, which has not been assessed. It is stated that the proposed development involves the discharge of untreated surface waters to drains that discharge to three EU designated marine habitats just 900m from the site. It is assumed the drains discharge direct to the bay in the absence of other information. There is a clear pathway for pollution which would undermine water quality which would have an adverse impact on the Arctic Tern population. There is no basis to dismiss the possibility of a significant effect.
- 7.41. The site is a serviced site involving the development of rear gardens within an existing residential area. The applicant is proposing to connect to an existing surface water drain, which is assumed drains south to Dublin Bay.
- 7.42. The nearest Natura 2000 site is approx. 500m to the south of the site, the South Dublin Bay and River Tolka Estuary SPA (0040240). Also in close proximity to the site is the North Dublin Bay SAC (000206), and the North Bull Island SPA (004006), which are located to the south and south east and separated from the subject site. There are limited relevant pathways between the development and the aforementioned sites.
- 7.43. The conservation objectives for the South Dublin Bay and River Tolka SPA are to maintain or restore the favourable conservation status of habitats and species of community interest, including Light Bellied Brent Goose, Oystercatcher, Ringed Plover, Grey Plover, Knot, Sanderling, Dunlin, Bar-tailed Godwit, Redshank, Black-headed Gull, Roseate Tern, Common Tern and Arctic Tern and the wetlands which support them.
- 7.44. The conservation objectives for the North Dublin Bay SAC are to maintain or restore the favourable conservation status of habitats and species of community interest, including Mudflats and sandflats not covered by seawater at low tide, Annual vegetation of drift lines, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows, Embryonic shifting dunes, Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes), Fixed coastal dunes with herbaceous vegetation, Humid dune slacks, *Petalophyllum ralfsii*.

- 7.45. The conservation objectives for the North Bull Island Bay SPA are to maintain or restore the favourable conservation status of habitats and species of community interest, including Light-bellied Brent Goose, Shelduck, Teal, Pintail, Shoveler, Oystercatcher, Golden Plover, Grey Plover, Knot, Sanderling, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Turnstone, Black-headed Gull and the wetlands which support them.
- 7.46. The site itself is of low biodiversity value. The applicant proposes soakaways in the rear gardens of the proposed dwellings and permeable paving is to be utilised for the access road. The applicant must apply separately to any planning permission to Dublin City Council for a connection to the surface water network and in doing so must comply with the requirements of Dublin City Council in this regard, including compliance with the Greater Dublin Regional Code of Practice for Drainage works, whereby all new developments must incorporate SUDS. The applicant is proposing to utilise permeable paving and trench soakaways in this instance which will discharge to the surface water network along Castle Avenue. Any discharge will therefore have addressed issue of potential pollutants given best practice systems in place.
- 7.47. I am satisfied that standard construction management practices would be sufficient to avoid an indirect effect on water quality during construction. I consider that adequate attenuation is proposed within the site during the operational phase and therefore the potential for impact on the water quality within the designated sites is remote. In addition, the proposal for connection to the public foul network would mitigate any potential for impacts from wastewater.
- 7.48. It is reasonable to conclude that on the basis of the information on the file, which I consider to be adequate in order to issue a screening determination that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 0040240 (South Dublin Bay and River Tolka Estuary SPA), No. 000210 (South Dublin Bay SAC), No 000206 (North Dublin Bay SAC), No. 004006 (North Bull Island SPA) or any other European Site, in view of the site's conservation objectives, and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 Recommendation

- 8.1. It is recommended that permission be refused for this infill backland development of 3 detached 2 storey houses to the rear of existing bungalows.

## 9.0 Reasons and Considerations

It is considered that the proposed backland development of three houses, by reason of its scale, roof profile, height, design, and proximity to boundaries, constitutes inappropriate backland development and overdevelopment of the site, which would be out of character with the pattern of development in the vicinity and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area and would set an undesirable precedent for future development in this area.

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Una O'Neill

Senior Planning Inspector

13<sup>th</sup> February 2018