



An  
Bord  
Pleanála

## Inspector's Report PL 29S 249231

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<b>Development</b>	Permission for Retention of demolition of two rear extensions and partial demolition of sheds. Permission for completion of construction of two rear, two storey new extensions and revisions to site boundaries.
<b>Location</b>	Nos. 47, 48 and 48A Reuben Avenue, Rialto. Dublin 8.
<b>Planning Authority</b>	Dublin City Council.
<b>P. A. Reg. Ref.</b>	3280/17.
<b>Applicant</b>	Quotumas Investments Ltd.
<b>Type of Application</b>	Permission
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Dr Niall Stevans and Dr. Gerard Higgins.
<b>Date of Site Inspection</b>	17 <sup>th</sup> January, 2018
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The application site is formed from the original plots of two houses at Nos 47 and 48 and No 48A Reuben Avenue which is the site of a former industrial structure which was used printing works and subsequently a garage at a bend on the street to the south east side of which is No 49 Reuben Avenue, a recently upgraded and extended two storey end of terrace house. An entrance gate, for No 48A is located at the street frontage on the corner between No 48 and No 49 Reuben Avenue.
- 1.2. The two houses are unoccupied and have been subject to partly completed construction works. No 47 has a stated floor area of 38.6 square metres and No 48 has a stated floor area of 40.2 square metres. The stated site area for No 47 is 85.4 square metres and is 88.2 square metres for No 48).
- 1.3. The site location is on the north side of Rueben Avenue at a bend and the northern boundary adjoins the rear of residential properties on Reuben Street. The houses on both sides of the streets were constructed as two bedroom, two storey terraced houses some of which have been upgraded.

## 2.0 Proposed Development

2.1. The application lodged with the planning authority indicate proposals for:

2.2. Permission for:

Retention of:

Demolition of the rear extension (10.7 square metres) and first floor bathroom (4.4 square metres) at No 47

Demolition of the rear extension (14.5 square metres) and first floor bathroom (4.4 square metres) of No 48 and,

Demolition of the shed at the rear (64.7 square metres)

Permission for retention and for completion of:

The part constructed two storey rear extensions at the rear of both houses.

Each proposed extension contains living accommodation at ground level and a third en-suite bedroom at first floor level. (19.3 square metres at No 47 and 20.1 square metres at No 48 and,

Permission for:

Revisions to site boundaries. The revisions provide for separation of the shed structure and creation of individual rear private open space. A footprint for development at 48A Reuben Avenue is subject of a separate application future application. Proposals for the site boundaries directly at the rear of the dwelling footprints provide for 85.4 square metres site area and 25.2 square metres in private open space for No 47 and, 88.2 square metres site area and 25.1 square metre rear private open space for No 48. The stated plot ratio at the site of No 47 is 1.26 and 1.21 at the site of No 48 and the stated site coverage is 63% at No. 47 and 61% at No. 48.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated, 22<sup>nd</sup> August, 2017 the planning authority decided to grant permission for retention and permission.

Condition No 2 contains a requirement for permanent obscure glazing for the first-floor level rear elevation en-suite windows for Bedroom No 3 in both rear extensions. The reason provided is in the interest of privacy and amenity.

Condition No 4 contains a requirement for:

(a) Amendment to the site boundary at No 48A Reuben Avenue to take the site boundary for No 49 Reuben Avenue provided for under Exemption Certificate granted on 28<sup>th</sup> June, 2017 and,

(b) to indicate the revised site area at the site of No 48A Reuben Street at No 49 Reuben Street further to the boundary amendments. (It is noted in the condition that the site area at No 49A may not be 259.5 square metres.) A compliance submission is required within eight weeks of the date of grant of permission.

## **3.2. Planning Authority Reports**

### **Planning Reports**

- 3.2.1. The planning officer indicated no objection to the proposed demolition works, permission for the retention of which is subject of the application. The proposed rear gardens are acceptable to the planning officer who considers these proposals an improvement to the existing arrangements. It is pointed out that assessment of the proposed development at No 48A Reuben Avenue indicated on the plans does not come within the scope of assessment of the subject application.
- 3.2.2. It is indicated that clarification, (by compliance with a condition) and amendment to the boundaries at No 48A Reuben Avenue so that they coincide with the boundaries shown for the development at No 49 Reuben Avenue declared to be exempt development under Decision Order P 2224 is required. It is also pointed out that favourable consideration of the proposed development does not include use of sheds within the site.

### **3.2.3. Other Technical Reports**

The internal report of the Drainage Division indicates no objection to the proposed development.

## **3.3. Third Party Observations**

- 3.3.1. Submissions were received from the occupants or owners of properties on Reuben Avenue and Reuben Street in which issues raised include concerns about site boundaries, the condition of the existing buildings and part constructed extensions and structural stability possible future use of attic level accommodation, private open space, overdevelopment and overlooking and overshadowing and traffic congestion and parking in the area.

## **4.0 Planning History**

- 4.1.1. There is no record of planning history for the site. However, according to the planning officer's report the demolition and construction works completed and subject of the application are also subject to a current enforcement file (Reference No E0064/17 refers.)

There is also a prior enforcement history relating to commercial use. (Reference E0086/16 and E0455/05 refer.)

The rear extension recently constructed at No 49 is, according to a Section 5 Declaration issued by the planning authority under Decision Order P2224 exempt development and does not require planning permission.

Under P. A. Reg. Ref. 4496/19 an application was lodged for permission for a dormer window at No 49 which is undecided at the time of writing.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The operative development plan is the Dublin City Development Plan 2016-2022 according to which the site location is subject to the zoning objective: “Z1: *to protect, provide for and or improve residential amenities.*”

Guidance and standards for extension and alterations are in Section 16.2.2.3, 16.10.12 and Appendix 17.

## **6.0 The Appeal**

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

- 6.1.1. An appeal was received from Dr. Niall Stephens and Dr Gerard Higgins on their own behalf on 13<sup>th</sup> September, 2017. They reside at No 46 Reuben Avenue, the adjoining property to the west side of the appeal site Photographs and satellite images are included in the appeal.
- 6.1.2. According to the appeal, the existing returns to Nos 47 and 48 Reuben Avenue were almost completely demolished in January, 2017 leaving the internal walls at No 46 exposed to the elements. There is evidence of rising damp, cracks and movement at first floor level and leaks from the roof at No 46. Works continued with construction of the extension to roof level despite issue of an Enforcement Notice in January 2017 and works stopped in April 2017.

6.1.3. Dr Stephens and Dr Higgins confirm that they would have no objection to a high quality, well designed development that addresses the original footprint and characteristics of the terrace. They object to:

- The proximity of the second floor at the rear of No 47 as far as the boundary wall with No 46. Furthermore, an undesirable precedent would be set for similar development at the terrace.
- There is lack of justification for the demolition of the spaces described as single storey extensions in the application as these spaces are part of the original returns. The application is, in effect, seeking the demolition of the returns in entirety.
- The large shed structure has been partly demolished and new extensions at the rear of both houses are part constructed. This former 'printing press' shed was immediately connected to the two storey returns, especially at No 47. There was a back door to a courtyard walled by the house, the return of No 47 and the shed. No 48A was adjacent to the demolished two storey return.
- There is no justification for demolition for the double two storey returns which was carried out without consulting the appellant party and without regard for the structural stability of No 46.
- The demolition works impacted negatively on the scale and character of the original dwellings. Permission for retention should be rejected and the requirement for reinstatement of the dwellings should be reinstated should be enforced.
- The proposed first floor level of the extension to No 47 is too close to the boundary with No 46. It is less than two metre from the party wall. The proposed roof will damage the roof at No 46.
- The scale and design of the two storey extensions dominate the properties at the rear and there is no harmony in the design with the existing houses in the terrace. The height will have adverse impact on the relationship between buildings, especially between No 46 and 47. The gutter system would run along the boundary wall.

- The extensions would adversely affect the privacy of the dwelling at No 46. Four windows overlook the garden and the extension at No 47 is particularly imposing. The orientation of No 47 was such that the gardens of No 46 were not overlooked from the east. The second-floor smaller window will overlook the roof light and living room extension at No 46.
- The rear garden and living room at No 46 have restricted access due to a north-east aspect. The proposed extensions will obstruct daylight and sunlight access at No 46. A roof light was installed in the extension at No 46 and the existing extension which can be seen through the roof light already obstructs light through the roof light from morning to mid-afternoon. This loss diminishes the residential amenity of the appellant party's property,
- The proposed boundary redefinition does not improve residential amenities. There are no detailed plans available for construction of a large structure (former printing press) at the rear of the properties. (No 48A) There is a lack of clarity about this space and the redefinition of the proposed boundaries.
- It is assumed the two houses will be rental properties and that a new site is being created on which more residential units will be developed.
- There are no details of attic level plans. The attics have potential for a fourth double bedroom in each house. No 49 is being developed in a similar manner and should not be considered in isolation when considering the impact of Nos 47, 48 and 48A Reuben Avenue on local amenities. The plot ratios cannot be accurate especially if the attics are to be used as bedrooms. There could be three sets of four double bedroom houses. This would significantly increase the potential population density with consequent concerns about public health. There is no clarity about the space inside or outside each of the properties. It is not possible to make clear assessment of the impact of redevelopment resulting from redefinition of the boundaries providing for a new site.
- Three, four double bedroom houses would increase existing parking congestion on the local road which is a disk parking area on Mondays to Fridays. Congestion is most serious outside the hours of parking charges on Monday to Fridays A maximum of three permits per dwelling is allowed so



additional six vehicles could be parked on the street with the development in place. Occupation of No 49 would increase the demand and impact. The proposed development will contribute to an ongoing concern about congestion on Reuben Avenue, the capacity of which is insufficient

- It cannot be confirmed that the development carried out at No 49 is exempt from planning permission as the constructed development does not reflect the plans submitted to the planning authority. It should be reviewed and ensured that the works comply with building regulations.

6.1.4. The submission also contains some observations on the policies and objectives of the Dublin City Development Plan for the creation of sustainable communities and neighbourhoods, concerns about absentee landlords and unauthorised demolition works in the area. The proposed development conflicts with development plan policies under section 12.5.1 and 16.2.1 on quality of development and the built environment and section 16.3.3.3 on extension and alterations to existing dwellings.

6.1.5. Reference is also made to a High Court Judgement by Justice Kearns on unauthorised development and its removal being appropriate and proportionate where it was undertaken with the knowledge permission is required.

## 6.2. **Applicant's Response.**

6.3. There is no submission in response to the appeal from the applicant on file.

## 6.4. **Planning Authority Response**

In a submission received on 27<sup>th</sup> September, 2017 it is stated that the planning authority has no further observations to add to those with in the planning officer's report.

## 7.0 **Assessment**

7.1. The application is for permission and for permission for retention of works already part completed at Nos. 47 and 48 Reuben Avenue and the site area includes that of a former printing works shed at the rear to which there is access to the side of No 48. The application also includes proposals for revisions to the site boundaries for each

of the two dwellings and for the site of the former print works on which the applicant plans to develop a further dwelling according to the documentation available on file.

- 7.2. The issues central to the determination of the decision, further to the appeal by the occupants of the adjoining property to the west side of the site at No 46 Reuben Avenue considered below are:

Unauthorised Development and Damage to Adjoining Property.

Structural Stability,

Demolition works.

Site boundary changes.

Overdevelopment,

Overshadowing

Overlooking.

Traffic and Parking and,

Appropriate Assessment

**7.3. Unauthorised Development and Damage to Adjoining Property.**

- 7.3.1. The appeal contains a detailed account of the works that have been carried out at the appeal site properties, about the role of Dublin City Council regarding enforcement in relation to unauthorised development and about damage at the appellant party's adjoining property. These matters lie outside the remit of An Bord Pleanala but they can be addressed through the legal system.

**7.4. Structural Stability**

- 7.5. It would be advisable, if permission is granted for structural survey to be carried out and a report prepared by a fully competent person which would include mitigation and protective measures to ensure that adjoining properties are unaffected, in particular the stability of party walls and foundations. In this regard, it is noted that the existing properties are historic properties of early construction. It should be noted that dispute over damage to property is a matter for resolution through the legal system.

**7.6. Unauthorised Demolition works.**

7.7. The view of the appellant party that there were no extensions to the houses is reasonable in that the partial demolition of the original structure rather than later or ancillary additions was carried out is fully accepted.

**7.8. Site boundary changes.**

7.9. There is no objection in principle to the proposed change to the site boundaries for the two houses and the site of the former printing works shed. The point made in the appeal as to intervention to historic boundaries which includes severance of the linkage and interconnectivity between the houses, outbuildings and the shed structure is involved but this considered reasonable should it facilitate appropriate sustainable development. It is noted that Condition No 4 attached to the planning authority decision to allow for clarification and consistency with the boundaries for the adjoining development at No 49 Reuben Avenue. A similar requirement by condition can be included, if the proposed development is favourably considered.

**7.10. Overdevelopment.**

7.10.1. The plot width the terraced two storey houses on Reuben Avenue which is five metres is restrictive. There is limited capacity for additional development at first floor level at the rear of the houses beyond or greater than the original returns which a small internal space. Notwithstanding the narrow plot width, the original modest rear returns at circa two metres in width and depth at first floor level incorporated in the original dwelling design are well proportioned in scale, form and height.

7.10.2. The proposed replacement extensions infill the entire plot widths at first floor level, are four metres in depth beyond the rear building line of the main house, have a combined mono pitch roof falling at its highest from one metre below the original eight metres high roof ridge level, outwards over the four metres depth, to a height two metres below the original main roof ridge line. The parapet height, at 5.56 metres is well above the parapet height of the rear façade of the existing dwelling the height of which is at 4.4 metres. As a result, the extensions for which permission for retention and completion is sought are very excessive in proportion to the original modest dwellings having regard to these measurements and are and would be seriously injurious by way of visual obtrusiveness and overbearing impact on the residential amenities of the adjoining property to the west at No 46. Finally,

favourable consideration of the proposed development, if permitted would give rise to potential for undesirable precedent for further similar overdevelopment development at the properties on Reuben Avenue and surrounding street network.

- 7.10.3. It is considered that there is capacity for ground floor extensions, subject to restrictions on height and roof profile and, a reduced depth, not exceeding three metres beyond the original rear building line over the entire width of the sites as far as, but not encroaching on, or over the party boundary with the adjoining properties. A reduction from four metres to three metres in depth would be reasonable relative to the existing dwellings. Any such ground floor extension should be confined to a parapet height which does not exceed 3.3 metres. Subject to these limitations it would appear that ground floor extensions on each site could be accommodated without undue overbearing impact on the adjoining property at No 46.
- 7.10.4. In addition, it is considered that at first floor level there may be some capacity for a small first-floor bathroom projection with an external area of 2000mm x 2000mm, which would be similar in area to the original first floor return space within the dwellings which was demolished.
- 7.10.5. Notwithstanding the foregoing, a grant of permission for retention and for permission, providing for the major omissions and modifications identified and discussed above, whether by way of condition or a split decision is not feasible and would not be consistent with the recommendation with the Development Management Guidelines issued by DOECLG under Section 28 of the Planning and Development Act, 2000, as amended in that use of conditions for modifications should be confined to matters of minor issues and details, the permitted development would not reflect of the proposed development for which the application was made, and, due to potential for preclusion third parties' participation regarding major issues.
- 7.10.6. The concerns regarding future proposals for development on the site of the former printing works at the rear and east side of the appeal site properties and, about the development carried out at No 49 Rueben Avenue to the adjoining property to the south east have been noted. With regard to the lands at No 48A (which is subject to proposals for new boundaries along with No 47 and 48 in the current application), it should be borne in mind that the current application does not include proposals for development on this area the possible future development of a dwelling on which is

subject to a separate application. An opportunity for contribution to the planning review is available for all parties in connection with a separate planning application.

7.10.7. Although it is agreed that a comprehensive and integrated proposal for the entire site area within the site outline would have been beneficial for assessment purposes assessment of the current proposals subject to the application and appeal has been feasible. Future applications on the site of No 48 A and adjoining lands can be considered on their own merits, bearing in mind the interests of existing and permitted development on adjoining lands. The proposed development at Nos. 47, 48 and 48A, including the proposed revisions to the boundaries do not give rise to concerns as to adverse impact on No 49.

7.10.8. With regard to No 49 for which a Declaration confirming that development, details of which had been provided to the planning authority is exempt development, further investigation as to the nature of the works carried out would be a matter for the planning authority's enforcement section. It is noted that a planning application was lodged with the planning authority in respect of proposals for a dormer window at this property.

#### 7.11. **Overshadowing:**

7.11.1. Although it is considered that the proposed extensions would have a visually obtrusive and overbearing impact on the amenities of the rear garden at No 46 it is not agreed that the significant overshadowing of the property at No 46 to the west side of No 47 which has a single storey flat roof extension with a roof light opening onto a small rear garden/patio area through glazed patio doors would occur. Access to natural daylight to the internal space within the extension through the roof light would be relatively unaffected but some loss of access to morning sunlight from the east would occur.

7.11.2. The garden at the rear and a small enclosed courtyard at No 46 benefit primarily from sunlight from the west and the interior of the rear elevation would be unaffected. The obstruction of morning sunlight light from the east across the appeal site would be relatively marginal relative to existing conditions.

#### 7.12. **Overlooking.**

7.12.1. There is limited potential for overlooking of the adjoining property at No 46 from the first floor rear elevation bedroom windows in that owing to the site configuration. To

achieve a view of the rear garden at No 46 it would be necessary for an individual to stand at the window facing toward the property to the west. Nevertheless, it is understandable that the existence of fenestration at this level could give rise to perceptions of overlooking and intrusion on privacy. There is greater potential for overlooking across to upper floor windows at the rear of properties on Reuben Street. The separation distance falls below the standard recommended minimum distance of twenty-two metres. However, as the windows at the properties on Reuben Street face south westwards rather than directly across to the appeal site, the potential for overlooking to these properties would not be excessive.

### **7.13. Traffic and Parking.**

- 7.13.1. The proposed development comprises enlargement and upgrade to two existing dwellings which, according to the appellant could accommodate households of considerable size, especially if the attic level bedroom accommodation was to be provided. The dwellings on Reuben Avenue are reliant on shared on street parallel parking on both sides of the street in respect of which there is paid public display parking on Mondays to Fridays. Residents of the properties on the street are eligible for residential parking permits. The Appellant Party's concern as to exacerbation of an existing problem of excessive pressure of demand for on street parking relates to weekend and evening hours.
- 7.13.2. Even though the living accommodation within two dwellings would be enlarged as well as upgraded, no additional dwellings are proposed in the current application. The location is an inner urban area close to bus routes and LUAS red line stops at Fatima and Rialto Bridge which it is believed should reduce private car trip generation, ownership and demand for on street parking. It is not agreed that undue diminution in the availability of on street parking for road users would be attributable to the proposed development. It is noted that the existing dwelling at No 49 has been upgraded and extended as pointed out in the appeal and that the applicant has indicated future intentions to lodge an application for development on the site of No 48A. The latter would involve a new use replacing a former use and would be considered on its own merits with regard to parking and trip generation.

## 7.14. Appropriate Assessment

- 7.14.1. Having regard to and to the nature of the proposed development involving extensions and upgrades to two existing houses and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. In conclusion, it is considered that the proposed development is unacceptable and is not amenable to modification by condition or to a split decision. It is therefore recommended that the appeal be upheld that the planning authority decision be overturned and that permission for retention and permission be refused. Draft Reasons and Considerations are set out below.

## 9.0 Reasons and Considerations

Having regard to the to the zoning objective, Z1 ;"to protect, provided for and improve residential amenities", according to the Dublin City Development Plan, 20165-2022, to the established pattern, scale and architectural character of the development in the area, particularly the restrictive site configurations, narrow plot widths and the modest size of the two storey terraced houses, it is considered that the two storey extensions, permission for the retention and completion of which is proposed, would constitute substandard overdevelopment which is excessive in proportion to and, would fail to integrate satisfactorily with the existing development by reason of infill across the entire width of the existing houses to a depth of four metres beyond the original rear facades, an incompatible roof profile and, excessive height above the eaves height. As a result, the proposed development would constitute overdevelopment and would be obtrusive and overbearing in impact and seriously injurious to the residential amenities of the adjoining property at No 46 Reuben Avenue to the west side, would devalue property in the vicinity and, would set undesirable precedent for similar development in the area. The proposed development would thereof re be contrary to the proper planning and development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
18<sup>th</sup> January, 2018.