



An
Bord
Pleanála

Inspector's Report ABP-300327-17

Development	Permission for Retention of a Variation of a grant of permission under P. A. Reg. Ref. 3279/08 for continuation of protection of basement from water ingress by means of pumping station with discharge to the public sewer.
Location	No 22, Carlisle Street, SCR, Dublin 8.
Planning Authority	Dublin City Council
P.A. Reg. Ref.	3223/17
Applicant	Andrew McDowell
Type of Application	Permission for Retention
P. A. Decision	Grant Permission
Type of Appeal	First Party X Condition No 2
Appellant	Andrew McDowell
Observers	(1) Siobhain Kavanagh. (2) Catherine Ashe and Donald Knox (3) Alan Saul
Date of Site Inspection	21 st and 26 th February, 2018
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site is that of a two storey terraced nineteenth century house on the west side of Carlisle Street off South Circular Road which has been extended at first floor, ground floor level and at basement level to the rear.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for continuation of the previously permitted arrangement for protection of the basement from water ingress with use of a pumping station to discharge water to the public sewer. (PL 230757/P. A. Reg. Ref. 3297/59 refers - See Section 4 below.)

3.0 Planning Authority Decision

3.1. Decision

By order dated, 7th November, 2017, the planning authority decided to grant permission subject to conditions. Condition No 2, the appealed condition is reproduced in full below:

“This Retention Planning Permission is granted for a limited period of 1 year from the date of this grant at which date the Permission shall cease and the pumping station and all associated fittings shall be removed from site unless a further Permission has been granted before the expiry of that date.

Reason: In the interests of proper planning and development of the area, and to protect the residential amenity of adjoining neighbours.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further to issue of a request for and receipt of further information submissions comprising some technical information on the pumping station and a written undertaking by the applicant to re-programme the backup generator so that it does it

automatically operate on Fridays and review of the internal report of the Drainage Division in which no objection to the proposed development is indicated, it was concluded that approval for a temporary period only would be appropriate.

3.2.2. Other Technical Reports

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

3.3. **Third Party Observations**

Submissions lodged with the planning authority indicate concerns about impact on residential amenities at adjoining properties, impact on foundations at adjoining properties, impact on discharge of water to the sewer, noise and fumes and encroachment on adjoining property.

4.0 **Planning History**

PL 230757/P. A. Reg. Ref. 3297/59: Permission was granted for demolition of the original rear return and for construction of the two storey extension and basement at the rear. extension at the rear.

Under Condition No 1, the proposed first floor bathroom extension was omitted from the grant of permission.

Condition No 2 is reproduced below:

“The proposed excavation and basement works shall be carried out in such a manner as to ensure no adverse impact on the water table or on the stability of the adjoining properties; to be ensured by and carried out under the supervision of a suitably qualified engineer.

Reason: To ensure an adequate standard of development and protect the structural stability of existing terrace of houses.”

The application included a structural report which included proposals for installation and underpinning works with mini-piles in boulder clay strata to form a cut off trench that allowed for temporary controlled pumping of ground water to facilitate the

construction of the basement wall and slab. Following installation of the walls and slab the water table was to revert to the original level.

The report of the Drainage division had included recommendations on the arrangements for the drainage of the basement which included a restriction on groundwater discharge to the Construction stage, and subject to Licensing by the Local Authority.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site location is subject to the zoning objective Z2: *To protect and/or improve the amenities of Residential Conservation Areas.*

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal against Condition No 2 of the decision to grant permission was lodged by Magahy Broderick Associates on behalf of the applicant on 20th November, 2017.

6.1.2. According to the appeal:

- There had been an assumption that the water table was below the basement level when it was constructed. The pump which was installed held the water table below the level of window which opens onto a light well.
- There is a legal dispute with the party that was responsible for construction of the basement over a contention that the pump is pumping ground water on a continuous basis.
- It is requested that there are special circumstances for the justification of pumping on a permanent basis. Therefore, it is requested that Condition No 2 be removed because it is the view of the applicant's agent that it is likely that demolition and reconstruction of the basement and extensions would be necessary in order to ensure full protection against water ingress that is not

dependant on reliance on the pumps. Furthermore, it is submitted that demolition and reconstruction works would have a significant impact on the neighbouring properties.

6.2. **Planning Authority Response**

In a letter received from the planning authority on 20th December, 2017 it is stated that the planning officer has no further observation and requests that the decision be upheld.

6.3. **Observations**

6.3.1. Submissions were received from the following three parties,

Siobhain Kavanagh, No 23 Carlisle Street.

Catherine Ashe and Donald Knox, No 20 Carlisle Street.

Alan Saul, No 21 Carlisle Street.

6.3.2. These three parties are occupants of neighbouring houses on Carlisle Street and they share similar concerns about the pumping station and it is requested that the prohibition on pumping into the public sewer system (within the original grant of permission) should be upheld.

- None of the Carlisle Street houses were constructed with basements and No 22 is the only house with a basement.
- There are continuous water ingress and drainage issues which demonstrate that the basement was not satisfactorily constructed and there is lack of management of the pumping in that the dwelling has been unoccupied. Lack of water tightness at the basement would adversely affect and cause adjoining properties to deteriorate by risk of flooding. The basement should be constructed to a standard to a proper standard so that a pumping station is not required for discharge of excess water. The original grant of permission provided for pumping facilities during construction only.
- Drainage problems in the rear garden of the adjoining property at No 21 are attributable to the construction of the basement. Major Remedial Works

shod be carried out to ensure that the basement is watertight. Waiver of Condition No 2 and continuation of the current pumping arrangement on a continuous basis is totally unacceptable.

- The shared public sewer in the area is at risk of being overloaded. Foundations will be compromised.

Assessment

- 7.0 The submissions made in connection with the appeal in which it is claimed that the excavation and construction works for the basement, which supports the two storey extension overhead were substandard and the water table is higher than initially recorded in pre development survey work are noted. Should be development, as implemented be substandard and fail to comply with the original grant of permission or the required standards within the Building Regulations applicable at the time of construction, resolution of the matter would fall within the remit of the planning authority and would be the responsibility of the developer.
- 7.1. Having reviewed the application and the appeal which is solely against condition No 2 which restricts the duration of consent to the continuation of the use the pumping station retention of the equipment to one year, it has been concluded that it would not be appropriate to determine the decision under the provisions of section 139 of the Planning and Development Act, 2000 as amended. *De novo* consideration of the application for permission for the proposed development and determination of the decision by the Board is warranted.
- 7.2. Irrespective of the issues relating to the standard of excavation and construction and the level of the water table, which it is submitted in the appeal is subject of a legal dispute, use of a pumping station for discharge of waters to the public sewer on a permanent basis for protection of basement constructed for a single dwelling unit especially within a residential conservation area from water ingress constitutes substandard development. Furthermore, in the subject instance it is considered that the proposed development would not accord with condition no 2 of the original grant of permission in that continuation of the use of the pumping station to discharge water to the public sewer became necessary, post construction and is required on an

indefinite basis as a means of management of water ingress from the water table to prevent risk of flooding and risk to the adjoining properties. In addition, the contentions in the third party observations as to noise and diesel emissions which negatively impact on residential amenities within the third party submissions are noted.

7.3. To this end, the application has arisen out of a circumstances whereby the proposed development has failed to satisfy and comply with the requirements of Condition No 2 of the original grant of permission for the development. Indefinite continuation of use of a pumping station to remove ground water ingress for discharge to the public sewer from substandard development cannot be justified and approved on planning grounds.

7.3.1. **Appropriate Assessment.**

Although there is some risk of localised flooding at the site and adjoining properties due to the construction below the water table and there is additional loading on the public sewer due to discharge to it from the pumping station, the small scale nature of the proposed development is such that no Appropriate Assessment issues would arise and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. It can be concluded that the proposed continuation of the previously permitted arrangement for protection of the basement from water ingress with use of a pumping station to discharge water to the public sewer is substandard, unacceptable in principle and, is not amenable to approval for a limited period. It is therefore recommended 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 Dublin City Development Plan, 2016-2022 according to which the site location is subject to the zoning objective, Z2; *To protect and/or improve the*

amenities of Residential Conservation Areas, and, to Condition No 2 attached to the original grant of permission under P. A. Reg. Ref. 3279/08 which contains that requirement that the excavation and basement works be implemented so as to ensure that there is no adverse impact on the water table or stability of the adjoining properties it is considered that the proposed continuation of protection of basement from water ingress by means of a pumping station with discharge to the public sewer by means of the previously permitted arrangements for protection of the basement from water ingress during excavation and construction constitutes substandard development. As a result, the proposed development would seriously injure the residential amenities and would devalue property in the vicinity and, would set undesirable precedent for further similar development. The proposed development would therefore be contrary to the proper planning and development of the area.

Jane Dennehy

Senior Planning Inspector

26th February, 2018.