



An  
Bord  
Pleanála

## Inspector's Report ABP-300377-17

### Development

#### PROTECTED STRUCTURE:

Retention permission for works to Nursing Home: 1. A fire escape only door. 2. Safety handrails on the roof of the existing extension. 3. A fire escape staircase constructed linking the lower ground level to the escape route from the fire escape door. 4. Ground mounted air handling units and input flue. 5. The Air Handling Extract Flue to the Eastern elevation of Block C at ground floor level. Permission is sought for: 1. An extension of the existing pedestrian ramp with handrails and gates. 2. A new sound baffle enclosure.

### Location

Orwell Nursing Home, 112, Orwell Road, 108-110 Orwell Road, Rathgar, Dublin 6

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

3864/17

### Applicant(s)

Orwell House Limited

### Type of Application

Permission.

### Planning Authority Decision

Grant Permission

### Type of Appeal

Third Party

**Appellant(s)**

Peter & Cathy Johnson.

**Date of Site Inspection**

16<sup>th</sup> March 2018.

**Inspector**

Bríd Maxwell

## 1.0 Site Location and Description

- 1.1 The appeal site is located in a well established residential area within the valley of the River Dodder on the southern side of Orwell Road, Rathgar. The subject site, which has a stated area of 6,300m<sup>2</sup> refers to the rear of Block C of the Orwell Nursing Home, a large Nursing Home complex comprising of a number of blocks constructed around the three storey former Rathgar House (Protected Structure). The appeal site relates to Block C a series of later addition extensions to the original house, some single, some two storey.
- 1.2 The appeal site refers to a loosely C shaped area at the eastern extremity of Block C. The topography of the site and the wider area is that it slopes eastwards to the Dodder, resulting in significant ground level changes throughout the site. Currently, the area of the subject appeal is closed off to general use but comprises a ramped concrete pathway that runs from the front of the building (ground floor level) to the side and rear to lower ground level. This pathway provides access to an internal corridor accessing the block C kitchen area. At the southern end of the pathway to the rear of the building there is a metal framed stair case intended to provide access between ground floor and lower ground level. To the rear wall of Block C kitchen area are air handing units. At the upper / ground level there is an escape door onto the flat roofed external area which has a metal safety railing adjacent. An air handling extract flue and compressor are provided to this flat roofed area to the side of the building.
- 1.3 The site is bound to the east by the rear wall of *The Barn*, a two storey former industrial building now in use as a residence (home of the third party appellants). The topography of the area is such that the gutters, roof and skylight of The Barn are at a similar level as the flat roofed pathway area of the nursing home.

## 2.0 Proposed Development

2.1. The application as set out seeks permission for

Retention for the following works on the eastern side of Block C (formally Rathgar House) of the nursing Home:

1. A fire escape only door constructed from the ground floor window opening in the eastern elevation of Block C.
2. Safety handrails on the roof of the existing single storey extension to form an escape route from the fire escape door.
3. A fire escape staircase constructed linking the lower ground level to the escape route from the fire escape door.
4. Ground mounted air handling units and input flue to service the adjoining kitchen at lower ground level providing ventilation to catering kitchen of block C.
5. The air handling extract flue to the Eastern elevation of Block C at ground floor level.

Permission is sought for

- 1 The extension of the existing pedestrian ramp with handrails and gates between the front (north) of Block C and the lower ground level.
2. A new sound baffle enclosure around the existing lower ground floor level air handling units.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 8<sup>th</sup> November 2017, Dublin City Council issued notification of its decision to grant permission and six conditions were attached thereto. Condition 3 requires that works to the protected structure be carried out with input from a conservation architect.

Condition 6 requires that during construction and demolition phases the development to comply with BS5228 “Noise Control and Construction on open plan sites Part 1. Code of practice for basic information and procedures for noise control”.

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

#### 3.2.1. Planning Reports

Planner’s report notes the planning history and asserts that the proposals are relatively minor and have no impact on the protected structure. Critically the proposals differ materially from that which was refused under Planning Register 2993/16.

#### 3.2.2. Other Technical Reports

Conservation Officer indicates no objection subject to condition.

### 3.3. **Third Party Observations**

- Submission from Rathgar Residents association assert that reasons for previous refusal still apply. Concern regarding noise impacts.
- Submission from Peter and Cathy Johnson, *The Barn* object on grounds of negative impact on residential amenity arising from noise nuisance and loss of amenity. Note court proceedings regarding unauthorised development have been adjourned pending a decision on the application.

## 4.0 Planning History

The subject site has a long planning history including the following:

**PL29S247103** (2993/16) Application to retain single-storey food preparation area walkway, lift, a walkway with rails/ gates, stairway, air units and flue, fire escape on eastern side. Refusal of DCC was confirmed by An Bord Pleanála on the following grounds:

*“The proposed development proposed to be retained, located in very close proximity to an established residential dwelling of long standing, would seriously injure the residential amenities of the adjoining property known as The Barn, by virtue of excessive noise, vibration, general disturbance and invasion of privacy. The development proposed to be retained would be contrary to the zoning objective, as set out in the current Dublin City Development Plan for Z1 zones, which seeks to protect, provide and improve residential amenities, would seriously injure the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.”*

**PL29S.241956** (2212/13): Planning permission was granted for the retention of works as constructed and new work. The permitted replacement extension of Block B was not to be constructed. At lower ground level a gap of 1m would be retained between Block B and The Barn. The lower ground floor rooms were to comprise a prep area, a cold room and male staff changing rooms. At ground floor repair works were to be carried out to the roofs of the extensions.

**PL29S.235381** (3276/09): Permission granted for demolition of modern three-storey bedroom wing and existing extensions to side and rear of Rathgar House Nursing Home; conversion of 108/110 Orwell Road (as sheltered accommodation); the restoration and refurbishment of Rathgar House (as nursing home); new

development to comprise nursing home with accommodation and day care facilities also new sheltered accommodation all in six new Blocks (Blocks A-G) providing accommodation for 110 no. nursing home beds and 17 no. sheltered accommodation units.

**PL29S.223140** (1455/07): Permission granted for revisions to reg. ref. 1132/05 (PL29S.212938) comprising reconfigurations to provide 50 no. nursing home units and 33 no. sheltered living units.

**PL29S.212938** (1132/05): Permission granted for the demolition of existing building, construction of nursing home, day care facilities, 57 sheltered living units and refurbishment of Rathgar House.

**3582/03** - Permission refused for the demolition of nursing home (67 no. bedrooms); demolition of Nos. 108-110 Orwell Road; construction of 3-storey over basement nursing home (68 bedrooms & day care facilities) total 5,071m<sup>2</sup> on 0.63hectare site; closure of 3 vehicular entrances and provision of one entrance. Reasons for refusal related to the adverse impact on streetscape & character of area; overdevelopment by reference to plans for Rathgar House, excessive site coverage & inappropriate location and disposition of on-site private open space for residents; detrimental to setting of Rathgar House (protected structure) by reference to loss of certain mature exotic trees and overdevelopment incongruous footprint, excessive site coverage, massing and proximity to boundaries.

## 5.0 Policy Context

### 5.1 Dublin City Development Plan 2016-2022

5.1.1 The Dublin City Development Plan 2016-2022 refers. The site is zoned 'Z1 Sustainable Residential Neighbourhoods' which has the stated objective "to protect, provide and improve residential amenities".

Policies of note in the development plan include:

**QH14:** To support the concept of independent living and assisted living for older people, to support the provision of specific purpose-built accommodation, and to promote the opportunity for older people to avail of the option of 'downsizing'. To support the promotion of policies that will:

- Encourage/promote full usage of dwellings units
- Incentivise property owners of underutilised dwellings to relocate to smaller age friendly dwellings.
- Actively promote surrendering larger accommodation/financial contribution schemes without compulsion.

**Section 16.19** of the development plan refers to Nursing Homes. The plan states that there is a continuing and growing need for nursing homes and in particular, because of the ageing population structure in the suburbs, for elder care homes. Such facilities should be integrated wherever possible into the established residential areas of the city, where residents can expect reasonable access to local services. In determining planning applications for change of use of a residential dwelling or other building to nursing/elder care home, the following factors should be considered:

- Compliance with standards as laid down in the Statutory Instrument No. 226 of 1993, Nursing Homes (Care and Welfare) Regulations, 1993
- Compliance with the Health Information and Quality Authority (HIQA) National Quality Standards for Residential Care, Settings for Older People in Ireland (February 2009), in particular Section 6



- The effect on the amenities of adjoining properties
- Adequacy of off-street parking
- Suitable private open space
- Proximity to local services and facilities and
- The size and scale of the facility proposed: the scale must be appropriate to the area.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The third party appeal is submitted by Peter and Cathy Johnson, *The Barn* Orwell Road. Grounds of appeal are summarised as follows:

- Works proposed to be retained and the proposed ramp adversely impact on home with particular regard to noise nuisance and loss of amenity.
- Contentious and protracted planning history including 2016 application which was refused and reasons for refusal remain valid.
- Issue of noise has not been addressed.
- None of the five extensions between the back of *The Barn* and Rathgar House are part of the protected structure and were to have been demolished under permissions 1132/05 PL29S212938, 1455/09 PL29S223140 and 3276/09 PL29S235381. The conservation report is largely irrelevant and misleading.
- *The Barn* is particularly vulnerable structurally and with regard to noise penetration. Ground floor is 3.8m below the lower ground floor level of Orwell Nursing Home. The back wall is not a party wall. *The Barn* is a long narrow building only one room deep. A series of 6 steel beams run through it from back to front and upper level floor joists are supported on these steel beams, any banging or noise at the back of the house reverberates through the entire building.

- There are two large conical cupola roof vents on the ridge at either end of the building and the chimney on the southern gable end. Skylight at the back of the house provides light and ventilation to family room which is 1.5m, above ground floor level of the nursing home. Balcony patio area is located at the southern gable end.
- Concern that walkway / ramp will be used as a service route for goods and services to the kitchen and as an exit for waste for the transport of equipment and by maintenance and construction personnel. Noise of metal trolleys will be significant.
- The applicants claim permission granted for a covered walkway at lower ground level and a paved path to the front however there was no mention of these on plans or in the text of the 2013 application and the term covered walkway first appeared in the 2016 application which was refused.
- Submission form the applicants promises ‘full sound separation from the boundary / party wall, with impact sound proofed handrails’ but no detail is provided. Concrete ramp directly abuts the back wall of the house which is not a party wall and no sound proofing is indicated in between.
- Wall which ran adjacent and parallel to the back wall of house has been demolished without planning permission.
- There was never a continuous passageway along the back of house nor was there a service route until the applicants built an illegal raised walkway recently demolished under the terms of the planning enforcement notice.
- Alternative routes to service the kitchen are available. The second route currently used by the applicants for foods deliveries and waste removal. As such there is no need for the proposed enlarged service ramp at the back of house.
- Fire door has already been refused by An Bord Pleanála and is included in the DCC enforcement notice. Concern that it is used not only as fire door. Kitchen and other staff can access it using a fob.
- Flat roof was raised by over 0.5m when the extension was demolished and rebuilt.

- Area delimited by the safety handrails now forms a balcony which could be used by the staff as a smoking / recreational area. Conversations are clearly audible and anyone standing at the handrails would be able to look into the family room through the skylight which is only 1.6m away.
- Plant is highly objectionable because of the noise and smell.
- Extractor flue continuously running except when kitchen not in use.
- The three wall-mounted refrigeration units have recently been moved upward to the flat roof of the two storey extension in line with cupola ventilators. Noise therefore has not been addressed as they run intermittently concurrently 24/7 and the noise is extremely intrusive at night in the upper bedrooms. These units were refused retention permission by DCC and An Bord Pleanála and are subject of the enforcement notice the applicants have not sought retention permission for these newly located units although they appear on the plans.
- Concern that compliance drawings are misleading.
- The decision to grant permission on the basis that the single storey room platform lift and walkway with handrails and gates do not form part of the current application overlooks the fact that the single storey building has not been removed but has been partially demolished and modified to create a much wider continuous passageway which is far removed both in length and width from the internal corridor for which permission was granted.
- Planning officer also overlooks the fact that all the plant refused permission under the 2016 application (AHU unit, extractor fan, flue, refrigeration units) is still in situ and is a source of serious noise nuisance,
- Acoustic survey appended by Decibel Noise Control demonstrates legitimate noise complaint. It notes its assessment of two sources of offending noise namely the air handling unit and an extract fan against *BS4142:2014 Methods for rating and assessing industrial and commercial sound*, commonly used as noise assessment guidance. It is noted that in relation to the level of the potentially intrusive noise (specific noise) with a steady state background (LA90) after due penalty allowance for any readily identifiable character in the noise, a difference of around +5dB is likely to be an indication off an adverse

impact, depending on the context. It is asserted that the excess of rating noise over background noise +7dB arising from the AHU and extract fan would give rise to justified complaint.

- Survey noted an identifiable low frequency droning noise in the upper floor drawing room of the Barn measured with the window and external doors closed. The noise level does not satisfy standard noise criterion applied by DCC.
- Assessment notes that whilst the proposed 2m high sound baffle may provide some acoustic merit for the air handling unit noise it in no way controls noise from the extract fan. The report concludes that the noise from the air handling unit and extract fan operated by the Orwell House Nursing Home when assessed in accordance with accepted guidance and standards, such as Dublin City Council noise criteria, EPA Guidelines and BS4142:2014, would give rise to justified cause for noise complaint from occupants of the adjacent dwelling known as *The Barn*.

## 6.2. Applicant Response

The applicant did not respond to the grounds of appeal

## 6.3. Planning Authority Response

Dublin City Council did not respond to the appeal.

## 7.0 Assessment

- 7.1 The key issue raised in this appeal relates to the issue of impact on established residential amenity. I note that the key concerns relate to noise disturbance and odour arising from the location of plant and equipment in close proximity to the appellant's established dwelling *The Barn*. Other concerns arise in relation to potential disturbance and intrusion on privacy based on the use of the passageway and the roof pathway area delimited by safety rails.
- 7.2 On the issue of retention of the fire escape door, and metal safety railing to roof escape pathway and metal framed stairs, I consider that that these elements of the development are acceptable in principle. I consider that subject to use solely for fire escape purposes undue negative impact on the adjacent dwelling will not arise. Furthermore, I consider that an extended ramped passageway link to the car park is acceptable in principle subject to use limited to escape purposes. I note that the application is vague with regard to the intended use of this passageway and the third party concerns arising from potential noise in the event of use for food deliveries and waste removal are therefore valid concerns.
- 7.3 The elaborate planning history on the site is detailed at section 4.0 above. The Board has heretofore taken due cognisance of the proximity and vulnerability of the appellant's dwelling, *The Barn*, having regard to its context. The third party appellant questions the appropriateness of facilitating retention of the elements outlined in the current application in light of the most recent refusal PL29S247103 2993/16. The third party further notes that elements of plant on site are not depicted on the plans including the refrigeration units relocated to flat roof of two storey flat roofed section of block C. The plans submitted further do not depict accurately the air handling unit to the side of the existing block C and are somewhat inexplicit in reference to "air handling extract flue and compressor".
- 7.4 The third party appeal submission is accompanied by a noise assessment by Decibel Noise Control which notes its assessment of the two sources of offending noise which are proposed for retention, namely the air handling unit and extract fan. The assessment is based on survey November 19<sup>th</sup> 2017 (the planning application

was submitted to DCC 15<sup>th</sup> September 2017). The survey noted an identifiable low frequency droning noise in the upper floor drawing room of *The Barn* measured with the window and external doors closed. In the context of relevant guidance *BS4142:2014 Methods for rating and assessing industrial and commercial sound*, it is noted that in relation to the level of the potentially intrusive noise (specific noise) with a steady state background (L<sub>A90</sub>) after due penalty allowance for any readily identifiable character in the noise, a difference of around +5dB is likely to be an indication of an adverse impact, depending on the context. It is asserted that the excess of rating noise over background noise +7dB arising from the air handling unit and extract fan give rise to justified complaint. The report clearly concludes that the noise from the air handling unit and extract fan operated by the Orwell House Nursing Home when assessed in accordance with accepted guidance and standards, such as Dublin City Council noise criteria, EPA Guidelines and BS4142:2014, give rise to justified cause for noise complaint from occupants of the adjacent dwelling known as *The Barn*. The assessment comments that in regard to the intention to install 2m high sound baffle around the air handling unit this will not control noise from the extract fan.

- 7.5 I note that the first party does not provide any technical specification with regard to the level of noise attenuation predicted to be provided by the sound baffle. The first party asserts that “The ramp is to be constructed in concrete with full sound separation from the boundary party wall with impact sound proofed handrails”. Again no detailed specification is provided. In my view a detailed assessment of noise arising and detailed mitigation measures would be required to demonstrate that the residential amenity of the established dwelling is appropriately protected.
- 7.6 Having visited the appeal site and considered the application in its detail, I consider that the level of information provided is deficient in terms of the failure within to address the legitimate concerns of the third party appellant. In particular, I consider that in the absence of detailed specifications in regard to the noise attenuation to be provided it has not been demonstrated that the noise generating elements of the development proposed for retention and proposed development would not continue to result in material injury to the residential amenity of the adjoining dwelling *The Barn*. On this basis, I recommend refusal of permission for retention of ground mounted air handling units and input flue, the air handling extract flue to the eastern

elevation of block C at ground floor level, extension and amendments to existing ramp to side passageway. I have noted that the elements of the development related to the fire escape door and route with regard to compliance with the current building regulations in particular Part B K and M, are acceptable in principle and in this regard a split decision is recommended however I note that this option was not adopted by the Board in the previous decision.

- 7.7 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, and proximity to the nearest European site, no appropriate assessment issues arise and it is considered that 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.
- 7.8 I have read the submissions on file, visited the site, and have had due regard to the provisions of the Dublin City Development Plan 2016 – 2022, the planning history of the site and all other matters arising. Having regard to the established use of the site it is considered that the provision of fire escape only door constructed from the ground floor window opening on the eastern elevation of Block C, safety handrails on the roof of the existing single storey extension to form and escape route from the fire escape door and a fire escape staircase constructed linking the lower ground level to the escape route from the fire escape door would not impact unduly on the residential amenities of the adjacent dwelling and would be in accordance with the proper planning and sustainable development of the area. It is considered that based on the information provided it has not been demonstrated that the development proposed for retention comprising ground mounted air handling units and input flue to service the adjoining kitchen at lower ground level providing ventilation to catering kitchen of Block C and the Air handling Extract Flue to the eastern elevation of block C at ground floor level and the proposed development of extension of the existing pedestrian ramp with handrails and gates between the front (north) of Block C and the lower ground level and a new sound baffle enclosure around the existing lower ground level air handling units would not continue to cause significant and material injury to the residential amenity of the adjoining property known as *The Barn*, by virtue of excessive noise, disturbance and invasion of privacy. I recommend a split decision as follows:

## **Recommendation 1. Grant**

Having regard to the planning history on the site and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention comprising a fire escape only door constructed from a ground floor window opening in the eastern elevation of Block C, safety handrails on the roof of the exiting single storey extension to form and escape route from the fire escape door, a fire escape staircase constructed linking the lower ground level to the escape route from the fire escape door, would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development to be retained shall be 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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The door and route shall be used for fire escape purposes only.

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



## **Recommendation 2 : Refuse**

Refuse permission for retention of ground mounted air handling units and input flue, the air handling extract flue to the eastern elevation of block C at ground floor level. Refuse permission for: an extension of the existing pedestrian ramp with handrails and gates and a new sound baffle enclosure.

### **REASONS AND CONSIDERATIONS**

Having regard to the planning history on the site and on the basis of the submissions made in connection with the planning application and appeal the Board is not satisfied that the proposed development to be retained comprising ground mounted air handling units and input flue to service the adjoining kitchen at lower ground level providing ventilation to catering kitchen of Block C and the air handling extract flue to the eastern elevation of block C at ground floor level and the proposed development of extension of the existing pedestrian ramp with handrails and gates between the front (north) of Block C and the lower ground level and a new sound baffle enclosure around the existing lower ground level air handling units, in close proximity to an established residential dwelling of long standing would not continue to cause significant and material injury to the residential amenity of the adjoining property known as *The Barn*, by virtue of excessive noise and other disturbance. The proposed development is contrary to the policy of the development plan for Z1 zones which seeks to protect, provide and improve residential amenities and is considered to be contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell

Planning Inspector

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26<sup>th</sup> March 2018