



An
Bord
Pleanála

Inspector's Report ABP-300569-18

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| Development | Construction of a house. |
| Location | 20 Howth Road, Clontarf, Dublin 3 |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 2802/17 |
| Applicant(s) | Francis Flynn |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party |
| Appellant(s) | Clonmar Management Ltd. |
| Observer(s) | None |
| Date of Site Inspection | 16 th March 2018 |
| Inspector | Una O'Neill |

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1.0 Site Location and Description

- 1.1. The subject site is located on the northern side of the Howth Road, east of the junction with Clontarf Road, approx. 3km north east of Dublin City Centre, in a well-established residential area.
- 1.2. No. 20 Howth Road is a semi-detached two storey over basement period dwelling situated on the northern side of Howth Road, set back 26.7m from the road. The site comprises a section of the rear garden of no. 20 and associated car port/garage. The site is bounded to the west and south west by a five storey apartment development and is bounded to the north by two mews dwellings with access from Crescent Place. Crescent Place comprises a row of mews dwellings recently constructed to the rear of neighbouring dwellings. The adjoining and neighbouring dwellings of no. 22 and no.s 24-26 have a mid-line of two additional infill single storey dwellings in the rear gardens, which are accessed via a cul-de-sac created to the rear of three of the mews dwellings on Crescent Place.
- 1.3. The site has an area of approx. 250sq.m. The basement level of no. 20 is at garden level, with a patio area immediately to the rear of the dwelling. The garden steps up to a lawn area, where there is also a 15sq.m. car port/garage, which is accessed from the side boundary wall of the garden via the Marino Crescent House apartment development, via a vehicular right of way. Parking spaces for the apartment complex are located along the other side of the boundary wall. A pedestrian gate to no. 20 also exists alongside the vehicular access on the side boundary.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Construction of a detached three bedroom dwelling, ground floor over basement.
 - Vehicular access via the car park of Marino Crescent House apartment scheme and pedestrian access via Crescent Place.
 - 3 car parking spaces.

3.0 Planning Authority Decision

3.1. Decision

GRANTED, subject to 13 conditions, including the following:

C2: Section 48 development contribution.

C4: Landscape plan to ensure provision of usable open space.

C5: Reduction of hard surface for parking.

C8: Removal of exempt development rights.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. Further information was requested by the planning authority in relation to the right of way to the development via Marino Crescent House apartments. While the legality surrounding the right of way is acknowledged to be a civil matter the planning authority considered the issue of importance in relation to the practicality of developing the site given it is effectively land-locked with the only access provided across an area not in the control of the applicant and where the third party whose property is to be crossed has expressed objections to the proposal. Reference is made to case ref PL29S.248938 where permission was refused, among other things, for issues relating to lack of demonstration of a sufficient legal interest. The planning authority also queried the design and organisation of the private open space and parking area, in addition to the proposed building line relative to the two neighbouring permitted backland dwellings.

Further information was received, which comprised a response to the right of way issues, a landscaping plan, a brief construction management plan and a copy of a letter from the property managers of the neighbouring apartments. Overall the planning authority considers, aside from the civil matter of the right of way, that the design of the proposed dwelling addressed the reasons for refusal of the previous An

Bord Pleanála decision and will not result in overshadowing, overlooking or overbearance of neighbouring properties.

3.2.2. **Other Technical Reports**

Drainage Division: 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**

One submission was received from Clonmar Management Ltd., the company that manages the Marino Crescent House apartment development which fronts onto Marino Crescent and through whose site the applicant has an established right of way. The issues raised are set out in the grounds of appeal.

4.0 **Planning History**

PL29N.245339 – Permission REFUSED for a two storey dwelling to the rear of existing dwellings at 20 Howth Road, by Frank and Marion Flynn.

R1: The proposed development is located within an area zoned “Z2”, where the zoning objective seeks “to protect and/or improve the amenities of residential conservation areas.” Having regard to the location of the proposed dwelling between the main dwelling and mews and to its scale and design without its own independent access, it is considered that the proposed development constitutes inappropriate backland development that would be contrary to the zoning objective for residential neighbourhoods (conservation areas). The proposed development would set an undesirable precedent for similar such developments and would, therefore, be contrary to the proper planning and sustainable development of the area.

R2: Having regard to the height of the proposed dwelling and to its proximity to the boundaries of adjoining properties to the north and north-east, it is considered that that the proposed development would give rise to undue overshadowing/

overbearing effects and would adversely impact on the existing and future residential amenities of these properties and would seriously injure the amenities, or depreciate the value, of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3674/15 – 26 Crescent Place, site to rear of 20 Howth Road. Permission GRANTED for the demolition of a commercial unit and construction of 2 semi-detached, mews dwellings.

4381/03 - Permission GRANTED on a site to the rear of no's. 27, 28 & 29 Crescent Place for a single storey detached 1-bedroom dwelling with off street car parking and private access road off Crescent Place. This resulted in a dwelling between the main house and mews houses.

5.0 Policy Context

5.1. National Policy Guidance

- Sustainable Residential Development in Urban Areas and associated 'Best Practice Urban Design Manual (2008)
- Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)
- The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)

5.2. Dublin City Development Plan 2016-2022

- Zoning objective Z2: To protect and/or improve the amenities of residential conservation areas.
- Chapter 5: Quality Housing.
- Section 16.10.2 Residential Quality Standards, Houses.
- Section 16.2.2.2 and 16.10.10, Infill Development.
- Section 16.10.8 and 16.10.15, Backland Development and Basements.

- Section 16.10.16, Mews Dwellings.
- Parking: Area 2 applies to the appeal site. 1 car parking space is required.
- Policy QH8: To promote the sustainable development of vacant or under-utilised infill sites, which respect the design of the surrounding development and the character of the area...

5.3. 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 east and separated from the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

One third party appeal has been received from Clonmar Management Ltd, the company that manages the Marino Crescent House Apartment scheme, through which the applicant has an established right of way. The grounds of appeal is accompanied by a report from DML consulting (December 2017) which assesses the load bearing capacity of the car park slab and its general condition in the context of it being used by construction traffic. The grounds of appeal is summarised as follows:

Vehicular Access

- The vehicular right of way and legal covenant is for the sole benefit of no. 20, and not the future owners of no. 20A.
- There is no direct access to any local road and no letter of support has been submitted giving the applicant the legal right to utilise the vehicular or pedestrian right of way proposed.
- There is a right of way for the applicant to access their garage with one vehicle via the apartment complex. This right of way does not allow for intensification of use.

- No construction traffic is allowed to use the right of way. There is a height barrier at the entrance to the development to prevent damage to the building caused by construction vehicles/higher vehicles accessing the car park. No construction materials should be off loaded and stored on what is an upper deck over a car park, due to health and safety reasons in relation to loading of material on the deck.
- Having no direct access to a public road has implications for the residential amenity of the adjacent dwellings both during the construction phase and later when the dwelling is occupied.
- The report from DML consulting, states that the upper deck, where surface parking currently takes place and over which the applicant has a right of way should not be utilised by construction traffic for reasons related to loading and highlights there is an additional risk to an exposed structural gable on the entrance ramp to the car park.

Residential Amenity

- Proposal is not a mews dwelling, but a backland, infill dwelling.
- The proposed quantum of open space for the new dwelling and the historic dwelling is unsatisfactory particularly given the size and historical significance of the existing dwelling.
- Dublin City Development Plan 2011-2017 states a third line of building between the main building and its associated mews is not permitted.
- The proposed dwelling will be 7.5m from adjoining property to the northwest and will overshadow it.

6.2. Planning Authority Response

None.

6.3. Observations

None.

6.4. Further Response from the Applicant

A further response was submitted from the applicant in response to the grounds of appeal, which is summarised as follows:

- Planning assessment should relate to proper planning and sustainable development of the area and not post-planning considerations in relation to implementation.
- Legal correspondence in relation to the two rights of way is submitted. The legal rights are unrestricted. There is no restriction on the number of vehicles allowed to use the right of way.
- An observation was submitted with the Clonmar Management Limited appeal. This is procedurally incorrect and should have been dealt with as a separate observation.
- The proposed dwelling is significantly different to the previously refused dwelling. The dwelling is single storey over basement and is smaller in scale being 109 sqm (compared to 302 sqm). Previous reason for refusal has been overcome.
- With regard to open space a tiered approach is proposed with a total of 100sqm of open space. The sloping nature of the area does not mean that it is unusable. It is south facing. The site is within 2-3 mins walk of the Crescent Park open space.
- There is no question that the applicant has sufficient legal interest to make this application. The legal issues raised in relation to the appeal are unrelated to 'legal interest'.

6.5. Further Response from the Appellant

A further response was received from the appellant, following receipt of the applicant's response, which is summarised as follows:

- Clonmar Management Ltd will not permit construction traffic to access the site via the existing right of way, nor will they permit any intensification of the existing right of way.

- The upper deck/access level to the subject site has not been designed to accommodate the weight of construction traffic.
- Concern is raised in relation to the impact of basement level works on the stability of the existing wall to the car park.
- The proposed development lacks a legal access to undertake works, requires digging down into the ground, and would negatively impact on neighbouring dwellings in this conservation area, materially contravening development plan requirements.
- The level of open space proposed is derisory, barely usable and poorly orientated.
- The right of way is for no. 20 only and does not support an intensification of use.
- This house introduces a third row of housing and would set an undesirable precedent.
- The proposal has not overcome previous reasons for refusal from ABP.

7.0 **Assessment**

- 7.1. The proposed development is for a single storey over basement dwelling in the backland of no. 20 Howth Road. The proposed backland dwelling will be positioned in between recently constructed semi-detached mews dwellings 26a and 26b (accessed from the lane to the rear) and the original house no. 20. Vehicular access is proposed via a right of way through the neighbouring apartment development.
- 7.2. Permission was previously refused by An Bord Pleanála for a dwelling on this site in 2015 (ref PL29N.245339). Permission was refused for reasons relating to impact of the scale and design of the dwelling without its own independent access on the conservation zoning objective for this area. A second reason for refusal related to the height of the proposal and proximity to boundaries which would give rise to overshadowing/overbearing effects and which would seriously injure the amenities or depreciate the value of property in the vicinity.

- 7.3. The difference between the previously refused permission and this application relates to the scale and design of the dwelling. The dwelling was previously two storey, whereas the proposed dwelling is single storey with below ground basement. The above ground element in this design rises slightly higher than the adjoining boundary wall. The proposed dwelling is built against the northern boundary wall of the adjoining site which now comprises two mews dwellings (previously an industrial unit).
- 7.4. The primary issues for assessment include;
- Access
 - Design and Impact on Residential Amenity
 - Appropriate Assessment

Access

- 7.5. Existing vehicular access to the garage in the rear garden of the existing dwelling is via a right of way through the adjoining apartment complex. Along the apartment side of the boundary wall and adjoining the garage are surface car parking spaces, located on what is described as the deck surface, above the below ground car park serving the apartment complex. The applicant has submitted, as part of the response to the third party appeal, a document dated from 1983 which grants the owners and occupiers of number 20 and their invitees 'full right and liberty at all times by motor vehicles only to pass and repass to and from the garage now constructed on the said number 20'. The applicant has submitted an additional document (no coloured map attached), dated March 2017, indicating a new right of way, on foot only, to number 20 via an existing cul-de-sac from Crescent Place. This cul-de-sac serves two single storey backland dwellings.
- 7.6. The applicant is the owner of the property and rear garden in question where the dwelling is proposed. This is not disputed and nor is the existence of the right of way. What is disputed by the appellant, is the terms for use of the existing right of way, which in the opinion of the appellant's is dedicated to number 20 to provide for vehicular access and does not provide for access for a the new dwelling or access for construction traffic.

- 7.7. The issue of ownership is a civil matter and I do not propose to adjudicate on the legality of the terms of the specific right of way. I note here the provisions of s.34(13) of the Planning and Development Act: “A person shall not be entitled solely by reason of a permission under this section to carry out any development”. Under Chapter 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007), it states, inter alia, the following: “*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*”.
- 7.8. I am satisfied that there is a legal right of way in existence to the site via the existing garage and that the applicant proposes to co-use this entrance for both the existing and the new dwelling. While this access arrangement is unusual in that it is through an apartment scheme, it is not uncommon to utilise an existing right of way for access to a new development. The proposed access would not give rise to a traffic hazard.
- 7.9. With regard to construction traffic, I note the concerns of the applicant and their supporting documentation in relation to the various measures undertaken by the management company to protect the building from damage, particularly by construction traffic. I consider that the issue of construction traffic is something that is within the responsibility of the applicant to resolve and subject to a detailed construction management plan. There appear to be potential solutions for construction traffic accessing the site, considering the surrounding road context and limited scale of the development. The issues raised in relation to the legality of using the right of way through the apartment development for construction traffic is a matter outside the remit of An Bord Pleanála.
- 7.10. A planning permission must be enacted in its entirety. Should it be determined in a separate legal forum that the access proposed cannot be legally utilised, then the applicant cannot choose just to enact one part of the permission, ie to proceed with building a dwelling with no access, as this would result in an unauthorised development. Any permission granted would be for a dwelling and associated vehicular access. The applicant has demonstrated sufficient legal interest over the site and access in question. The dispute arising as to the terms of the right of way is a civil matter.

Design and Impact on Residential Amenity

- 7.11. The appellants set out in their submission that the proposed backland dwelling will result in a third line of development on this plot and quotes the previous Dublin City Development Plan which stated 'backland development in conservation areas where the development proposed would introduce a third line of development between the parent building and its associated mews' would not be permitted. The current Dublin City Development Plan does not make this statement. It is stated in the Development Plan that the development of individual backland sites can conflict with the established pattern and character of development in an area and can cause significant loss of amenity to existing properties. With regard to the principle of backland development, each site must be assessed on its own merits and I consider further hereunder the impact on neighbouring properties.
- 7.12. No. 20 is a two storey over basement dwelling, which neighbours a five storey apartment scheme immediately to the west. Along the western boundary of the rear garden of no. 20 there is a line of perpendicular car parking spaces utilised by residents of the adjoining apartment scheme. Adjoining the site to the east there are two single storey backland dwellings accessed via a cul-de-sac to the rear of three mews dwellings fronting Crescent Place (albeit I note a planning history for one single storey backland dwelling only). To the northern boundary are two storey mews dwellings. This is a compact urban area, where modern developments have been accommodated alongside the original historic Victorian dwellings fronting the Howth Road. I consider the principle of further backland development at this location (subject to the scale being as proposed), which is in effect at the end of a street, adjoining two existing backland dwellings, would not impact on, or compromise further, the historic character of the existing dwelling or of neighbouring dwellings within this conservation area fronting Howth Road. In addition, given the manner in which the site is currently informally subdivided, with an immediate rear basement level patio garden, stepping up to a garage and a more landscaped rear garden area, I am of the opinion that the proposed dwelling given its low scale could be accommodated without undue impact on no. 20.
- 7.13. The scale of the proposed building is relatively modest when viewed from outside the site, with the angled roof rising marginally above the height of the boundary wall. There will be no impacts on the apartment scheme to the west in relation to visual

dominance or overshadowing, as this boundary is utilised for parking. Any disamenity in reality would be to future residents of the dwelling in terms of noise nuisance by the presence of cars along this boundary. The proposed dwelling is not in line with the neighbouring backland dwelling to the east, but sits north of it. However, the northern side of the neighbouring dwelling appears to operate as a car parking area, with the southern side being a garden area, therefore the proposed dwelling will not negatively impact on the amenity of the property to the east in terms of overshadowing or overlooking. With regard to the mews dwellings north of the site, I consider that the low scale of the proposed dwelling will not result in a negative impact on the amenities of those dwellings. On balance I do not consider the proposed development will be injurious to the amenities of the area or dwellings in the vicinity. The proposed dwelling overcomes the previous An Bord Pleanala refusal through its redesign and scale.

- 7.14. The submitted plans indicate a tiered approach to the garden to allow for light down to the basement level bedrooms. I note the condition attached by the planning authority that a detailed landscaped plan is required to ensure the private amenity space proposed is usable while allowing for access to light to the basement level bedrooms and am satisfied this issue can be dealt with by way of condition. Should the Board be minded to grant permission, the scale of the hardstanding area and positioning of the car parking could also be addressed by way of condition to further improve the amenity value of the proposed private open space.

Other Matters

- 7.15. The first party in response to the appellant's appeal, queries the validity of an 'observation' submitted within the appellant's submission. I note that while the heading was titled 'observation', it was submitted together with the appellant's submission, is referred to in the appellant's submission and is clearly part of it. The appeal as submitted is considered valid.
- 7.16. The third party has raised concerns in relation to the potential impact on deep excavations for the proposed basement level on the general stability of the wall relating to the underground car park. I am satisfied that subject to appropriate engineering/construction standards and supervision, the proposed excavation can be

undertaken without impacting the integrity of the adjoining structure. This issue can be addressed by way of condition, should the Board be minded to grant permission.

Appropriate Assessment

- 7.17. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would 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 is recommended that permission for the proposed single storey over basement dwelling to the rear of no. 20 Howth Road be granted.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Dublin City Development Plan 2016-2022, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or of property in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

(a) The parking area indicated shall be reduced in depth on its northern side from 12.5m to no greater than 7m, or as otherwise agreed with the planning authority, with three only parking spaces provided. One parking space shall be for the sole use of the proposed new dwelling and two spaces shall be for the sole use of the existing dwelling. The area no longer in use for parking shall be given over to the private open space of the proposed dwelling.

A revised site plan showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity.

3. The developer shall submit a detailed landscape plan, including a tiered approach to the garden area, with each tier horizontally level. Revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity.

4. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

5. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such

works and services.

Reason: In the interest of public health.

7. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.

Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including access arrangements for construction traffic, hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

10. A Construction Method Statement addressing excavation to basement level shall be prepared by a qualified structural engineer and shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public safety and residential amenity.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Una O'Neill
Senior Planning Inspector

25th July 2018