



An
Bord
Pleanála

Inspector's Report ABP-301002-18

Development

PROTECTED STRUCTURE:

Demolition of domestic garages to rear of and construction of a 2-storey two-bed mews dwelling with first floor terraces, hard and soft landscaped garden area and a single car parking space. Demolition of a single-storey rear return extension and shed at the rear of 63 Marlborough Road, a Protected Structure. Minor internal alterations to 63 Marlborough Road along with alterations to the existing boundary wall to Carlisle Avenue to provide separate pedestrian and vehicular entrances, and all associated site works.

Location

63, Marlborough Road, and the garages at Carlisle Avenue, Donnybrook, Dublin 4

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4384/17

Applicant(s)

John, Ruth & Richard Rock

Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Carlisle Avenue Management Co.
Observer(s)	None
Date of Site Inspection	06/06/2018
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The site subject is located on the northern side of Marlborough Road, at the junction with Carlisle Avenue. The rectangular site comprises a two storey over basement dwelling facing Marlborough Road, with the gable elevation facing Carlisle Avenue. To the rear a single storey garage has vehicular access on to Carlisle Avenue and a pedestrian access on to a rear laneway. This rear laneway serves no.s 63-57 Marlborough Road and a detached dwelling to the rear of no. 57, 1a Carlisle Avenue.
- 1.2. The existing single storey garage has a brick façade and a tiled roof covering. A rubble granite wall with brick capping extends from the garages along Carlisle Avenue to the rear of the protected structure, with a doorway providing access to the rear garden of the protected structure. The site is adjoined to the northeast by the rear garden of No. 61 Marlborough Road.
- 1.3. No 63 Marlborough Road is a mid-nineteenth century end of terrace house with a more recent single storey extension to the rear. The rear garden is separated from the garage site by a recently erected wooden fence.
- 1.4. Carlisle Avenue is a quiet residential area with two-storey Victorian dwellings. The terraced dwellings, which have retained their front gardens and railings are arranged around a private residents' garden, which is also enclosed by iron railings.
- 1.5. Both Carlisle Avenue and Marlborough Road form part of a larger Residential Conservation Area.

2.0 Proposed Development

- 2.1. On the 28th November 2017, planning permission was sought for the demolition of the existing single storey garage (70sq.m.) and a single storey extension to the main dwelling at no. 63 (20sq.m.) and the construction of a two storey two-bedroom detached dwelling of 107sq.m. with vehicular and pedestrian access from Carlisle Avenue.
- 2.2. The application was accompanied by a Conservation Assessment, Method Statement for amendments to Granite Wall, and a Planning Report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 31st January 2018, the Planning Authority issued a notification of intention to GRANT permission subject to 12 no. standard conditions.

3.2. Planning Authority Reports

- 3.2.1. **Waste Management Division:** Condition recommended.
- 3.2.2. **Drainage Division:** No objection subject to conditions.
- 3.2.3. **Planning Report:** Proposed development seeks to address An Bord Pleanála reason for refusal by increasing the amount of open space for the existing dwelling with the demolition of the single storey extension. Existing dwelling would have 80sq.m. which complies with development plan standards. Proposed dwelling has 49sq.m. open space which exceeds the required 40sq.m. This is acceptable. Separation distance of 17m between dwellings is acceptable due to high level windows and obscure glazing at first floor. Overshadowing of adjoining property to north is compensated by quantum of open space. Due to visibility, proposed finishes must be agreed with the Planning Authority. Proposed dwelling complies with floor area standards. Recommendation to grant.

3.3. Third Party Observations

- 3.3.1. One objection to the proposed development was submitted to the Planning Authority by the Carlisle Avenue Management Company. The issues raised as those raised in the appeal to the Board.

4.0 Planning History

- 4.1.1. **PL29S.247776:** Planning permission was refused for the demolition of existing domestic garages, construction of a two-storey two-bedroom mews dwelling with first floor terrace, garden area and a single off-street car parking space for the following reason:

“The proposed development in the subdivided rear garden associated with Number 63 Marlborough Road, a Protected Structure, would result in an inadequate level of private open space to the existing dwelling to the standard required under Section 16.10.2 of the Dublin City Development Plan 2016- 2022. The proposed

development would, therefore, result in a substandard form of development which would neither protect nor improve the amenities of the existing residential property or of the wider area and would contravene the Z2 zoning objective ‘to protect and/or improve the amenities of residential conservation areas’.”

- 4.1.2. **2589/16** – Planning permission refused for the demolition of existing domestic garages, construction of a two storey 3 no. bedroom mews dwelling with first floor terrace, garden area and a single off-street car parking space and alterations to existing boundary wall to provide separate pedestrian and vehicular entrances, landscaping and associated works. The reason for refusal related to the failure to provide an adequate level of private open space for the amenity of the proposed dwelling and the existing house, which was considered would result in a significant negative impact on the character and setting of the protected structures, would seriously impact on the amenity of residences and set a precedent for similar development. It was concluded that the development would contravene the Z2 zoning objective ‘To protect and/or improve the amenities of residential conservation areas’.
- 4.1.3. **PL 29S.244877**– Permission refused for the demolition of a modern single-storey return to No 63 Marlborough Road and the associated garages accessed from Carlisle Avenue and for the construction of a two-storey two-bedroom mews dwelling to the rear of the site, alterations to boundary wall etc on the grounds of inadequate private open space provision which would result in a substandard development that would contravene the Z2 zoning objective.

5.0 Policy Context

5.1. Architectural Heritage Protection – Guidelines for Planning Authorities

- 5.1.1. This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principle of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).

5.1.2. With regard to **curtilage**, section 13.3.1 of the guidelines state that features within the curtilage and attendant grounds of a protected structure can make a significant contribution to the character of that structure. The designed landscape associated with a protected structure was often an intrinsic part of the original design concept and, as such, inseparable from the building. Where proposals are made for alterations to a designed landscape, ancillary buildings, structures or features within the curtilage or attendant grounds of a protected structure, a site inspection should be carried out by the planning authority in order properly to understand the potential effects of the proposed development. **Section 13.3.2** states that when assessing the contribution of structures or features within the curtilage or attendant grounds to the character of a protected structure, and when considering any proposals to alter such features, certain criteria must be considered.

5.2. **Dublin City Development Plan 2016 – 2022**

The subject site is located in an area zoned Z2, which has the stated objective “To protect and / or improve the amenities of residential conservation areas.” Residential use is a permitted use in this zoning category.

5.2.1. No. 63 Marlborough Road is a Protected Structure (no. 4974) in the Record of Protected Structures, volume 4 of the development Plan. The policies in relation to Protected Structures are set out in Section 11.1.5.1.

5.2.2. Policies of note in the development plan include:

CHC1: It is the Policy of Dublin City Council to seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

CHC2: To ensure that the special interest of protected structures is protected Development will conserve and enhance Protected Structures and their curtilage and will: (a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest (b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances (c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and

materials (d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure (e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works (f) Have regard to ecological considerations for example, protection of species such as bats. Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.

5.2.3. **Appendix 24** of the development plan refers to Protected Structures and Conservation Areas.

5.2.4. Standards for Residential Accommodation (houses) are set out in Section 16.10.2, and Mews Dwellings at 16.10.16.

5.3. **Natural Heritage Designations**

5.4. The nearest Natura 2000 sites, South Dublin Bay and River Tolka SPA (site code 004024) and South Dublin Bay SAC (site code 000210) are located c.2.5km to the east.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. An agent for the Carlisle Avenue Management Company has submitted a third party appeal against the decision of the Planning Authority to grant permission. The grounds of the appeal can be summarised as follows:

- The proposed development has not overcome the previous reasons for refusal in relation to the sub-division of the rear garden of no. 63, the impact on the protected structure and the provision of sufficient private open space for the proposed dwelling house.

Adverse Impact on Protected Structure

- The protection of protected structures is a key policy of the DCC development plan. The proposed development will materially affect the character of the protected structure at no. 63. Policy CH2 requires that development not harm the curtilage of structure.

- The proposed division of the plot of no. 63 does not comply with the established plot form for the conservation area or the protected structure.
- The proposed development did not assess this sub-division, nor did the assessment of the Planning Authority. This is contrary to section 11.1.5.3 of the development plan.
- While the proposed development reduces the number of bedspaces in the main dwelling house, the rooms labelled 'living room' could be used as bedrooms without planning permission. A dwelling of this size requires a substantial garden area.
- The proposed main house garden depth of 11m is less than the required 22m.
- The basement level of the main dwelling could be used as a separate residential unit as it is not connected to the main house and has a separate front door. Any occupation of this as a separate unit would be compromised by the removal of the single storey extension.
- The proposed development would have an adverse impact on the protected structure with the reduction in curtilage and disruption to the unified terrace. The proposed development would set an unwelcome precedent.

Inadequate Private Open Space

- Section 16.10.2 of the development plan requires a minimum 10sq.m. per bedspace with houses in the city generally expected to have 60-70sq.m. private open space. Rear garden depth is expected to be 22m unless it can be demonstrated that the development has been designed to protect privacy.
- The proposed dwelling has a rear garden of 40sq.m. The Planning Authority report did not assess the 60-70sq.m. requirement.
- The Appellant made the case in their objection to the Planning Authority that the proposed dwelling is not a mews. The Planning Authority assessed the private open space as a mews development and noted that the rear garden does not achieve the required 7.5m depth.
- It is submitted that the proposed development is not a mews as it will front onto and be accessed from Carlisle Avenue. The proposed dwelling is standalone,

accessible from a main street and does not display any characteristics of a mews. The laneway adjoining the site is not associated with the proposed dwelling. The proposed development should not have been assessed against the lower standards required of mews developments.

- The proposed rear garden depth of less than 7.5m does not meet the standards required for mews dwellings.
- The proposed development does not comply with section 16.10.2 or 16.10.16 of the development plan.

Impact on Privacy and Residential Amenity

- While the proposed high-level window will reduce overlooking, the proposed first floor terrace with full height glazed door will provide ample opportunity for overlooking.
- The Planning Authority assessment of the 17m separation distance does not consider the proposed first floor terrace. The terrace is just 5.6m to the rear boundary and 17m from the rear windows of no. 63
- The Planning Authority acknowledge that the level of screening is unclear. There are no grounds for a relaxation of the separation distances.
- The rear windows of no. 63 Marlborough Road will overlook the garden space for the proposed dwelling and vice versa. This was highlighted by the Bord Inspector in 2017. That the garden of the adjoining house would be overshadowed was also noted by the Inspector in the same report.
- The combination of all of these factors results in a substantial adverse impact on the amenity of adjacent residents.

Poor Quality of light for the proposed dwelling

- Section 16.10.2 of the development plan recognises the need for glazing to be 20% of the floor area of the room. The Planning Authority did not assess this element of the proposal.
- The applicants shadow diagram does not include a vertical sky component (VSC) test or average daylight factor (ADF) test. While the open plan living room will

likely pass the tests, it is not clear if the two bedrooms would, particularly the bedroom to the north which has daylight access only through the terrace.

- Page 326 of the development plan requires that bedrooms not be lit solely through rooflights. The northern bedroom will be illuminated through the lightwell above the terrace which is only 2m in width. It cannot be determined that the proposal would comply with the development plan.
- The Board is requested to refuse permission on the grounds of adverse impact on the protected structure, inadequate open space, the negative impact on the privacy and amenity if adjacent residential properties and the poor quality of light for the proposed dwelling.

6.2. Applicant Response

6.2.1. The first party response to the third party appeal can be summarised as follows:

- The appeal ignores the benefits of the proposed development, namely that the subject site is an infill development consistent with Sustainable Residential Development guidelines and the vision of the development plan to achieve a consolidated city. The proposed development has been altered to address previous reasons for refusal.

Amenity of no. 63

- The proposed development includes the demolition of the non-original rear return of no. 63 which was not included in the previous two applications which were refused on the grounds of inadequate open space.
- While the proposed development will result in a minor reduction in open space for the existing dwelling, 80sq.m. will be retained. This complies with development plan requirements.
- The proposed development is an appropriately designed mews. While there is a presumption against sub division of plots, the subject site contains a substantial structure of 3 no. garages. The site has already been dramatically altered. The proposed mews will have a smaller footprint.

- Three of the terrace of four dwellings on Marlborough Road have substantial structures to the rear. The proposed sub-division of the site is consistent with the pattern of development in the area. Aerial image of terrace submitted.
- The applicants reference to a rear garden depth requirement of 22m is incorrect. The 22m requirement refers to a minimum distance between opposing first floor windows. The development plan does not specify a rear garden depth for traditional dwellings.
- With regard to the appellants suggestion that the basement would be used as a separate residential unit, the applicant confirms that the house is a single family unit. No. 63 will retain 4 no. bedrooms and the proposed dwelling will have 2 no. bedrooms.
- As no. 63 is a protected structure any use of the basement as indicated by the appellant would require a new planning application.
- The demolition of the modern extension will return the protected structure to its original form. This is a conservation gain.

Private open space for proposed dwelling

- The development plan does not define “mews”. The proposed dwelling bounds an established mew laneway that serves 2 no. mews dwellings and provides access to two other units.
- The proposed dwelling is consistent with mews development across the city. The Planning Authority assessed the proposed dwelling as a mews.
- The proposed open space exceeds the development plan requirement by 23%.
- It is not practical to achieve the 7.5m development plan depth as the development has been designed to fit into an infill development in an existing plot.
- The proposed development complies with section 16.10.16(j) allows for a reduced depth where it is demonstrably impractical to achieve.

Impact on Privacy and Amenity

- No windows are proposed on the northern or eastern elevations of the proposed dwelling. Two windows facing the existing dwelling are of opaque glass and the third window is high level. This will ensure no overlooking occurs.

- The Planning Authority accepted that the proposed development would not result in overlooking. The condition requiring details of the first floor terrace screening will be complied with. The applicant will comply with such a condition should the Board decide to attach same.
- The shadow analysis submitted by the application demonstrates that there will be no undue impact on no. 61. It is noted that no. 61 did not appeal the decision of the Planning Authority.

Daylight

- The northern bedroom sources daylight from a vertical window on the western elevation as well as the uncovered internal courtyard directly adjoining the bedroom and access through a sliding door.
- The proposed dwelling has been carefully considered to maximise daylight, mitigate overlooking and protect the amenity of adjoining dwellings.

Design

- The proposed rendered wall on the northern elevation is a sympathetic design feature which considers existing residences.
- The proposed dwelling is set back inside the existing granite wall which is to be retained. The proposed first floor is set back along the mews laneway.
- The northern and eastern elevations do not contain windows to avoid overlooking.
- The cantilevered bedroom is clad in timber to offer relief and contrast.
- The dwelling incorporates a number of innovative design features to allow the development to integrate with the wider area, protect amenity, prevent overlooking and present a contemporary finish.

Conclusion: The Board is requested to grant permission.

7.0 Assessment

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant, the planning

authority and the Observer. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Private Open Space

7.2. Principle of Development

- 7.2.1. The Board has refused permission for the construction of a dwelling in the place of the existing garages on two previous occasions.
- 7.2.2. In the 2017 decision (PL29S.247776) the plot of no. 63 has been subdivided and the planning application was made on the garage site alone. Permission was refused on the grounds that the subdivision would leave insufficient private open space for the main dwelling (11sq.m.) – in which the single storey extension at ground level was to be retained.
- 7.2.3. In the 2015 Board decision (PL29S.244877) the non-original rear extension to no. 63 was to be demolished but the proposed dwelling was to be two-bed plus study and with car parking provided in the open space area. The inspector considered that the main dwelling with 8 no. bedspaces would require an area of private open space of 120sq.m. and the proposed two-bed plus study dwelling would require 75sq.m. of private open space. The Board refused permission based on insufficient private open space.
- 7.2.4. On both occasions, the Board refused permission on the single issue of private open space. The principle of demolishing the garage structure and providing a dwelling on the subject site, the impact that would have on the conservation area and on the protected structure status of the main dwelling at no. 63 were not raised as an area of concern in either decision by the Board. I note that both Inspectors considered the proposed contemporary dwelling to fit sympathetically within the subject site and the wider conservation area. I concur with those assessments. The proposed contemporary dwelling is an appropriate response to the infill site between the three storey terrace on Marlborough Road and the contained Victorian Square of Carlisle Avenue. The proposed dwelling is a clear modern intervention in the record of the built environment. I am satisfied therefore that the single issue outstanding is that of private open space and the impact on residential amenity.

7.3. Private Open Space

- 7.3.1. The currently proposed development is a mix of both previous applications – in that the non-original extension to no. 63 is to be demolished and the proposed dwelling is two-bedroomed. Car parking is to be provided within the footprint of the proposed dwelling, leaving the private open space for amenity use only.
- 7.3.2. The Applicant has confirmed that the main dwelling is in single family ownership and that the ground level unit is not in separate use nor is it intended to be in separate use. Given the protected structure status of the property, a change to multi-occupancy would require planning permission. As proposed, the main dwelling will have 4 no. double bedrooms, equal to 8 no. bedspaces. The demolition of the non-original extension of no. 63 results in private open space of 80sq.m. This complies with the standards of section 16.10.2 of the development plan that requires a minimum of 10sq.m. private open space per bedspace and exceeds the general requirement of 60-70sq.m. which is considered by the development plan to be sufficient for houses in the city. The Appellant states that the private open space for the existing dwelling does not achieve the development plan requirement of 22m depth. As noted by the applicant, the reference in the development plan to a 22m distance refers to the separation distance between opposing first floor windows, not a minimum garden depth.
- 7.3.3. The proposed dwelling with two double bedrooms (four bedspaces) has a ground floor private open space of 40sq.m. and two first floor terraces of approx. 7sq.m. This complies with the development plan requirements of 10sq.m. per bedspace. The depth of the proposed garden at 5-6m is less than the development plan requirement of 7.5m (section 16.10.16). The Appellant submits that this standard is not applicable to the proposed dwelling as it is not a mews and should be assessed as a standalone dwelling. I am satisfied that the proposed dwelling is a mews in the commonly accepted definition of the word – a dwelling to the rear of a period house (usually protected structure) with a laneway running to the rear. Paragraph (j) of section 16.10.16 requires a depth of 7.5m for the full width of a mews site unless it is demonstrably impractical to achieve. I am satisfied that the planning history of two Board refusals on the subject site has clearly demonstrated that compliance with rear garden depth of 7.5m cannot be achieved on the subject site. The proposed dwelling with 40sq.m. of private open space at ground level, with a southerly

orientation will provide adequate amenity and recreation space for the future residents of the proposed dwelling.

- 7.3.4. The Appellant calls into question the functionality of the proposed first floor terraces. With regard to the rear terrace adjoining the second bedroom, the appellant states that this terrace enclosed on all sides provides inadequate light to the bedroom. The Board will note that the proposed 2.2m wide terrace has full length sliding doors adjoining the bedroom and a full length window on the external wall. I am satisfied that this is sufficient to allow daylight and sunlight to enter the bedroom and that the proposed bedroom complies with the requirements of section 16.10.2 of the development plan with regard to aspect, natural light and ventilation.
- 7.3.5. With regard to the proposed terrace to the southern elevation of the mews dwelling, the appellant states that the 17m separation distance is inadequate to prevent overlooking of both the private open space and the first floor habitable rooms of the main dwelling. Should the Board decide to grant permission, it is recommended that a condition be added requiring a minimum 1.8m opaque screen be erected on both sides of the proposed terrace.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, 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.

9.0 Recommendation

- 9.1. I recommend permission be GRANTED subject to the following conditions

10.0 Reasons and Considerations

Having regard to the pattern of development in the vicinity and the nature, scale and design of the proposed residential building, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of neighbouring property, would not unduly detract from the setting of neighbouring protected structures or the wider Conservation Area, would represent an appropriate form of residential development

that would be compatible with its surroundings, and would be acceptable in terms of pedestrian and vehicular safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

11.0 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 first floor terrace on the southern elevation shall have opaque glass on both sides at a height of no less than 1.8m.

Reason: To prevent overlooking of adjoining residential properties.

3. Prior to the commencement of development, the applicant shall submit for the written approval of the Planning Authority, revised plans showing a car port of no less than 5m in length, to allow for the safe accommodation of a parked car.

Reason: In the interest of traffic safety.

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

Reason: To ensure adequate servicing of the development, and to prevent pollution.

5. Site development and building works shall be carried out only between the hours of 0800 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.

6. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

7. No additional development shall be erected above roof parapet level, including air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment unless authorized by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

8. 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.

Gillian Kane
Senior Planning Inspector

08 June 2018