



An  
Bord  
Pleanála

## Inspector's Report ABP-301129-18

### Development

Construction of a two-storey detached dwelling in the rear/ side garden of the existing dwelling, the formation of a new vehicular entrance with parking area to the side of the proposed dwelling, boundary division and all associated site works including connecting to the existing storm and foul sewers.

### Location

44, Jamestown Avenue, Inchicore,  
Dublin 8

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

4487/17

### Applicant(s)

Damien Joyce

### Type of Application

Permission

### Planning Authority Decision

Refuse

### Type of Appeal

First Party

### Appellant

Damien Joyce

### Observer(s)

Collette & Andrew D'Arcy

### Date of Site Inspection

06/06/2018

### Inspector

Gillian Kane

## 1.0 Site Location and Description

- 1.1. The subject site is located in the side garden of an existing two storey semi-detached dwelling – no. 44 Jamestown Avenue. The overall site is located on the north-eastern side of the crossroads of Jamestown Avenue and O'Donoghue Street, in the suburb of Inchicore. The residential area is to the south of the CIE lands in Inchicore and to the east of the Jamestown Industrial Estate.
- 1.2. The site of the proposed dwelling, formerly the rear garden of the existing dwelling, has been separated from the dwelling by a concrete block wall. Metal fencing has been erected around the site. To the north of the site is the rear garden of no. 30 Oblate Drive. Of the four pairs of semi-detached dwellings address the crossroad, the southern two corners (no.s 59-57 and 53-55) have been developed with an additional dwelling in the side / rear garden – no 59a was constructed to the west of and attached to no. 59 Jamestown Avenue and no. 55a was constructed as a standalone detached dwelling in the rear garden of no. 55.

## 2.0 Proposed Development

- 2.1. On the 12<sup>th</sup> December 2017 planning permission was sought for the construction of a two storey two-bed dwelling (64sq.m.) in the side garden of no. 44 Jamestown Avenue (total site area 123.44sq.m.). Proposed plot ratio of 0.52 and site coverage of 26%. The application was accompanied by an Engineering Service Report.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 14<sup>th</sup> February 2018 permission was REFUSED for the following reason:

1The proposed additional house would be substandard with regard to the minimum provision of gross internal floor area for a two storey / two bedroom / three-person house, as set out under the Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (DoEHLG) 2007. The rear garden of the proposed house is inadequate in depth, providing inadequate separation distances between the proposed house and the nearby residences while promoting opportunities for overlooking. Further, the proposed additional house would excessively breach the building line established by no. 44 Jamestown Avenue, contrary to the requirements of Section 16.10.9 (Corner / Side

Garden Sites) of the Dublin City Development Plan 2016-2022, to maintain the building lines. Therefore, the proposed development, by itself or by the precedent a decision would make to grant planning permission for similar substandard development, would be seriously injurious to the residential amenity of both existing and potential residents, and would be contrary to the proper planning and sustainable development of the area.

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

- 3.2.1. **Roads & Traffic Report:** Proposed development involves access of 3.5m wide off O'Donoghue Street. Proposed development will not impact existing lamp standard or telecom boxes. No objection to proposed development.
- 3.2.2. **Drainage Division:** No objection subject to standard conditions.
- 3.2.3. **Planning Report:** Proposed development breaches the building line established by no. 44 Jamestown but matches that of no. 55a Jamestown Avenue. This is contrary to section 16.10.9 of the development plan. Proposed private open space meets required standards of 30sq.m. for both the existing and proposed dwellings. Rear garden depth of 4.5m for proposed dwelling is inadequate and would facilitate overlooking. Proposed dwelling does not meet internal floor area standards of 70sq.m. There are no exceptional site conditions for the proposed development to comply with the Parking in Front Gardens leaflet. Refusal recommended.

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

- 3.3.1. Observation submitted by Colette & Andrew D'Arcy. Issues as raised in the third party appeal.

## 4.0 **Planning History**

- 4.1.1. On the subject site:

Planning Authority **Reg. Ref. 3052/17:** Planning permission was refused for the construction of a two storey dwelling in the side garden of no. 44 Jamestown Avenue, on the grounds of insufficient private open space, overshadowing of rear garden of existing dwelling, encroachment into existing dwelling and inadequate vehicle entrance.

- 4.1.2. On the adjoining site at no. 42 Jamestown Avenue:  
**PL29S.218450:** Planning permission granted for a two storey dwelling attached to the side of no. 42. This dwelling has not been constructed.
- 4.1.3. Houses in side gardens have been granted permission at no. 59 Jamestown Avenue (1204/07 refers), no. 53 Jamestown Avenue (1988/05 refers) and no. 55 Jamestown Avenue (1572/04 refers.)

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016 -2022

- 5.1.1. In the Dublin City Development Plan 2016 -2022 plan, the site is zoned '**Z1 Sustainable Residential Neighbourhoods**' which has the stated objective "to protect, provide and improve residential amenities". Within Z1 zones 'Residential' is a permissible use.
- 5.1.2. **Chapter 16** includes the Development Management Standards and has regard to Design, Layout, Mix of Uses and Sustainable Design. **Table 16.1** provides the Maximum Car Parking Standards for Various Land-Uses and **Table 16.2** the Cycle Parking Standards. Applicable to the proposed development are the following:
- Indicative plot ratio for Z1 zones is 0.5 to 2.0,
  - Indicative site coverage for the Z1 zone is 45-60%
- 5.1.3. **Section 16.10.2** of the development plan refers to residential quality standards for Houses. It states that in relation to floor areas: Houses shall comply with the principles and standards outlined in section 5.3 'Internal Layout and Space provision' contained in the then DEHLG 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007). Rear gardens and similar private areas should: be screened from public areas, provide safe and secure play areas for children, be overlooked from the window of a living area or kitchen, have robust boundaries; and not back on to roads or public open spaces.
- 5.1.4. Section **16.10.9** of the development plan refers to corner / side garden sites stating that the development of a dwelling or dwellings in the side garden of an existing house is a means of making the most efficient use of serviced residential lands. Such developments, when undertaken on suitable sites and to a high standard of

design can constitute valuable additions to the residential building stock of an area and will generally be allowed for by the planning authority on suitable large sites. However, some corner/side gardens are restricted to the extent that they would be more suitable for extending an existing home into a larger family home rather than to create a poor quality independent dwelling, which may also compromise the quality of the original house. The planning authority will have regard to the following criteria in assessing proposals for the development of corner/side garden sites: • The character of the street, • Compatibility of design and scale with adjoining dwellings, paying attention to the established building line, proportion, heights, parapet levels and materials of adjoining buildings • Impact on the residential amenities of adjoining sites • Open space standards and refuse standards for both existing and proposed dwellings • The provision of appropriate car parking facilities, and a safe means of access to and egress from the site • The provision of landscaping and boundary treatments which are in keeping with other properties in the area • The maintenance of the front and side building lines, where appropriate.

## **6.0 The Appeal**

### **6.1. Grounds of First Party Appeal**

6.1.1. The Board is requested to grant permission for the proposed development. The proposed development has been revised to address the concerns of the Planning Authority and revised plans are submitted with the appeal. The appeal submission addresses the site location and description, planning history, proposed development, design of the proposed dwelling, compliance with the development plan, the planning merits of the proposed development and the grounds of the appeal.

- The proposed development is a simple high-quality design optimising the site. It carefully considers and sits well within the site. No single elevational treatment exists in the wider area. The proposed dwelling adopts some of the architectural features on the existing house, visually enhancing the streetscape and protecting the residential amenity of the surrounding residents.
- The proposed dwelling complies with the policies of the development plan in relation to design and layout of dwellings. The amended proposal complies with the minimum room sizes and dimensions and overall floor areas of the development plan and will provide good quality and adaptable living spaces.

Separation distances are sufficient to avoid overlooking, overshadowing and overbearing.

- The proposed development complies with the zoning objective of the development plan and is in accordance with the proper planning and sustainable development of the area.
- The proposed development offers an efficient use of land in close proximity to Inchicore Village.

6.1.2. The grounds of the appeal can be summarised as follows:

- The proposed dwelling is to be revised as follows: increase to 70sq.m. to comply with Quality Housing guidelines and omission of first floor bedroom window to avoid overlooking of surrounding dwellings.
- The proposed development has been designed and considered to fit into the subject site. It does not constitute over development of the site and will not have adverse impacts on surrounding properties.
- The proposed development complies with the Councils policy on corner & backland sites, on infill development and the policies of the Sustainable Residential Development in Urban Areas Guidelines. The proposed dwelling has been designed to ensure that there will be no adverse impact on the amenities and privacy of the adjoining dwellings. There is a clear need to provide residential infill dwellings in this residential area with excellent links to public transport and local amenities.
- The guidelines note that a 22m separation distance may not always be achievable and that innovation and flexibility will be required.
- Refusal reason no. 1- The proposed amendments to allow for a dwelling of 70sq.m. meets the criteria set out in the Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustainable Communities (DoEHLG) 2007.
- Refusal reason no. 2 – the amended proposal ensures that there is no opportunity for overlooking of adjoining properties or amenity spaces. The orientation of no. 42/44 Jamestown Avenue ensures that the private open space is not overlooked as they are north facing and the proposed rear garden lies at an oblique angle to

the north. The rear garden of no. 30 Oblate Avenue faces south and would overlook only the gable of the proposed dwelling which has no windows. No. 29 Oblate Avenue currently overlooks the rear garden of no. 44 so no change would arise.

- The proposed dwelling has 30.6sq.m. of private open space, which is in accordance with section 16.10.2 of the development plan. There are significant areas of open space in the wider area – public park and playground on Ring Street, Lansdowne Valley Park, Irish National War Memorial Park and Phoenix Park within walking distance.
- There are no habitable room first floor windows facing east. The west facing first floor windows do not oppose any dwellings on the opposite side of the road. The separation distances are sufficient to avoid overlooking.
- Reason for refusal no. 3 – The siting of the proposed dwelling is not dissimilar to the approved development at no. 55a Jamestown Avenue (planning ref. 1572/04) which is set back 1.3m from the public pavement. The oblique angle of the crossroads sets a building line along the east-west axis primarily. There are a variety of building lines along O'Donoghue Street:
  - the gable of 10 Nash Street meets the pavement to the east
  - the gable of 30 Oblate drive is 2.3m from the pavement
  - the corner of 44 Jamestown Avenue is set back 3.6m
  - the corner of 46 Jamestown Avenue is set back 5.6m
  - the corner of 57 Jamestown Avenue is set back 4.3m
  - the corner of 55 Jamestown Avenue is set back 5.8m
  - the gable walls of 37 and 43 Jamestown Road meet the public pavement.
  - The proposed development is set back 1.6m from the pavement and therefore would not be incongruous with the variety of building lines established in the area
- A number of infill developments with private open space below the minimum have been granted permission such as PL29S.202963 10 Richmond Place, two storey dwelling with 30sq.m. private open space.

- The proposed development complies with the development plan requirements for overshadowing of open space and adverse impacts on adjoining properties. The Board is requested to allow for a relaxation of standards due to the need to increase housing stock.
- The proposed development will not be obtrusive in height, form or scale. It does not create a negative visual impact and it complies with the requirements of the development plan. The Board is requested to grant permission for the proposed development.

## **6.2. Planning Authority Response**

6.2.1. None on file.

## **6.3. Observations**

### **6.3.1. Colette & Andrew D’Arcy 42 Jamestown Avenue**

- Submit that their garden will be severely over shadowed, leading to a feeling of overcrowding.
- The Appellants decision to increase the floor space to 70sq.m. reduces the already minimal outdoor space, which is not suitable for a family home.
- The propose driveway is concerning given the speed cars drive in the area. A driveway in the middle of the two roads is problematic as it is very close to the junction. Visibility will be poor. The road is used by residents, CIE workers and those from the Jamestown Industrial Estate.
- Work has begun in the side garden of the subject site: a dividing wall, piped sewerage and water supply. The existing house is up for sale, separated from the new plot.
- Work on the existing house is regularly carried out at 6am on Sunday and Saturday mornings. Photos attached. It is submitted that conditions regulating construction times would not be adhered to.
- The owner of the subject dwelling did not make the application, does not live in the area and has stated that he wishes to build and sell. It is submitted that the proposed dwelling will not help the housing crises.



- It is submitted that the proposed development will not benefit the area.

## **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 on file. 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
- Impact on Residential Amenity
- Car Parking

## **7.2. Principle of Development**

7.2.1. The subject site although physically and separated from the original dwelling and indicated as a separate site on the site drawings, is essentially a house in a side garden. The description of the development clearly indicates that the proposed dwelling is in “the side / rear garden” of the existing dwelling at no. 44 Jamestown Avenue.

7.2.2. Development plan policy on houses in side gardens is set out in section 16.10.9 of the development plan. The policy notes that houses in side gardens are generally on large sites and that there may be sites that are more suitable to an extension of the existing dwelling rather than an additional dwelling. The policy requires that the character of the street, the compatibility of the proposed development, impact on residential amenities, open space, car parking landscaping and building lines are taken into account. The issues of open space, car parking and impact on residential amenities are discussed in greater detail below.

7.2.3. With regard to the building line, the breach of the established building line created by no. 44 was cited in the Planning Authority’s reason for refusal. The applicant responded to that reason, stating that the oblique nature of the pairs of semi-detached dwellings facing the crossroads is such that a definitive building line for the subject site does not exist. I concur with this assessment. The proposed dwelling,

facing O'Donoghue Street rather than James Avenue takes a building line reference from the end-of-terrace dwelling on Oblate Avenue. The proposed dwelling, set back 1.6m from the public footpath, is a distinct detached dwelling. It would not be read as a continuation of the semi-detached pair of no. 42 and 44 Jamestown Avenue.

7.2.4. I am satisfied that the breach of the building line established by no. 44 is not relevant as this is not the building line to which the proposed dwelling should adhere. I note the positioning of no. 55a Jamestown Avenue, to the south of the subject site. The proximity of no. 55a to the public footpath is not problematic and does not disrupt the streetscape. The nature of this urban area changes from the semi-detached dwellings addressing the crossroads to the tighter urban grain on Nash Street and Oblate Drive. The proposed dwelling, located between the two streetscapes reads as a separate and distinct entry into the wider area, with similarity in finishes and plot size but distinction in building line and the form of the dwelling.

7.2.5. Subject to compliance with all other planning considerations, the proposed development is acceptable in principle.

### **7.3. Private Open Space**

7.3.1. Drawing no. 16001-PLA-112 submitted to the Board showing a revised floorplan for the proposed side garden dwelling, does not impact the quantum or layout of the proposed rear garden. The proposed three bedspace dwelling requires a minimum of 30sq.m. private open space according to section 16.10.2 of the development plan. A rear garden of 30.6sq.m. to the rear of the dwelling is proposed.

7.3.2. The Planning Authority raised a concern that the depth of the proposed rear garden at 4.1m-4.7m is inadequate and would facilitate overlooking. I am satisfied that no overlooking will occur, as only a bathroom window is proposed on the rear (east) elevation. Should the Board decide to grant permission a condition requiring that this window be glazed in opaque glass can be added.

### **7.4. Impact on Residential Amenity**

7.4.1. In response to the decision of the Planning Authority to refuse permission, the applicant has amended the proposed dwelling to increase the floor space to 70sq.m. This ensures that the proposed dwelling complies with the requirements of table 5.1 of the Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustainable Communities.

- 7.4.2. The additional floorspace shown on the revised plans does not impact the rear open space or the proposed car parking space. The extended floorspace allows for the provision of a bedroom window on the first-floor western elevation, thereby removing the possibility of overlooking. No windows are proposed on the northern elevation or the first-floor eastern elevation. The proposed dwelling will not overlook the adjoining gardens on Oblate Drive or on Jamestown Avenue.
- 7.4.3. The positioning of the proposed dwelling to the north of the Jamestown Avenue dwellings will ensure that no overshadowing of the private open space of no. 42 or 44 will occur. Likewise, that the dwellings on Oblate Drive are to the north of the subject dwelling means no overshadowing of these gardens will occur.
- 7.4.4. I am satisfied that the proposed revised dwelling will not adversely affect the residential amenity of the adjoining properties and will comply with the requirements of the development plan for houses in corner / side gardens.

## 7.5. Car Parking

- 7.5.1. The Planning Authority stated in their planning report that the proposed on-site car parking space at 3.5m wide does not meet the criteria for exceptional site conditions. The policy document referred to by the Planning Authority: "Parking Cars in Front Gardens" states a preference for narrow vehicular entrances stating that generally the vehicular opening shall be between 2.5m and at most 3.6m. The proposed entrance is 3.5m in width and was deemed acceptable by the Transport department of the Planning Authority. I am satisfied that the proposed car parking is acceptable and in compliance with development plan policy.

## 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 of the site, and to the nature, scale and extent of the proposed development, and having regard to the provisions of the current Development Plan for the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of property in the vicinity, would comply with the provisions of the Development Plan, and would be acceptable in terms of traffic safety and convenience. 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, as amended by the further plans and particulars submitted to An Bord Pleanála on the 12th day of March 2018 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 bathroom window on the eastern elevation shall be fitted with opaque glazing.

**Reason:** In the interest of protecting the residential amenity of adjoining dwellings.

3. 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 and to ensure a proper standard of development.

4. 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 amenities of property in the vicinity.

5. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of orderly development and the visual amenities of the area.

6. All boundary treatments shall be in accordance with those indicated in submitted documentation.

**Reason:** In the interests of residential and visual amenity, and to ensure the provision by the developer of durable boundary treatment.

7. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) 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 interests of orderly development

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.

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Gillian Kane  
Senior Planning Inspector

13 June 2018