



An
Bord
Pleanála

Inspector's Report ABP-301189-18

Development	Demolition of vacant factory building and construction of three 2 storey houses.
Location	10C Chapelizod Road, Chapelizod, Dublin 20.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4185/17
Applicant(s)	Nicola Ryan & Grainne Dunne
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Padraig McWeeney & Christopher Keane
Observer(s)	None
Date of Site Inspection	28/06/2018
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located in the centre of Chapelizod village, to the east of the junction of Main Street and Chapelizod Road. Access to the backland site is via an entrance point off the main street, to the side of no. 9 Mullingar Terrace (Mullingar House public house). A residential property Rose Cottage sits to the side and rear of Mullingar House. The rear garden of Rose Cottage forms part of the eastern boundary of the site. The appeal site opens out slightly towards the rear with its eastern boundary being shared with an open space serving the rear of Mullingar House. A single storey bungalow Mull Lodge to the rear of Mullingar House has a right of way across the subject site.
- 1.1.2. The site currently comprises a large part single, part two and part three storey factory in a dilapidated condition. To the west of the site is the protected structure Lions Villa. To the south-east of the subject site, facing Chapelizod Road is Mullingar House. To the east of the public house is a terrace of seven dwellings known as Mullingar Terrace. The northern boundary of the subject site comprises a section of the Phoenix Park wall. The Phoenix Park Wall is designated as a National Monument under section 2 of the National Monuments Act (1930).

2.0 Proposed Development

- 2.1.1. On the 2nd November 2017, planning permission was sought for the demolition of the existing factory (659sq.m.) and the construction of three two storey four-bed dwellings (total floor area 531sq.m.) on a site of 1,272sq.m. The proposed development has a plot ratio of 0.42 and a site coverage of 0.22. Five car parking spaces were proposed.
- 2.1.2. The application was accompanied by a planning report, Impact Assessment and an engineering report. The planning report states that the proposed dwellings will be occupied by the two applicants and their families.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 5th January 2018, the Planning Authority issued a notification of intention to GRANT permission subject to 12 no. conditions. Condition no. 8 states:

“The proposed development shall comply with the following;

- a. Prior to commencement of development, and on appointment of a contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise management measures and off-site disposal of construction/demolition waste.
- b. Prior to the commencement of development, the applicant shall submit a revised site layout plan reducing the number of car spaces to include a car circulation area in front of the proposed House A, for the written agreement with the Environment and Transportation Department of Dublin City Council.
- c. Prior to the commencement of development, the applicant shall submit details of refuse collection arrangements for agreement with Dublin City Council.
- d. All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.
- e. The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: In the interest of traffic management and public safety”.

3.2. **Planning Authority Reports**

- 3.2.1. **Drainage** Division: No objection subject to conditions.
- 3.2.2. **Roads & Traffic Planning:** No objection subject to conditions, including a condition requiring the redesign of the proposed parking, to allow a car circulation area in front of proposed House A.
- 3.2.3. **Planning Report:** Proposed rear gardens are substandard but are compensated by large south-facing front gardens. Financial levy in lieu of public open space to be attached. Recommendation to grant.

4.0 Planning History

- 4.1.1. **PL29S.207931:** Planning permission was granted to upgrade the existing vehicular entrance to the side of Mullingar House and The Lions Villa subject to two conditions.
- 4.1.2. **ABP-300818-18:** An application for leave to appeal was granted on the grounds that it had been shown that the development would differ materially from the development as set out in the application for permission by reason of condition no. 8 and that the imposition of condition no. 8 would materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land.

5.0 Policy Context

5.1. Sustainable Urban Housing Design Standards

- 5.1.1. These 2007 guidelines provide recommended guidance for internal design standards, storage areas and communal facilities, private open spaces and balconies, overall design issues and recommended minimum floor areas and standards. In December 2015 new Guidelines were published, updating the previous guidelines.

5.2. Sustainable Residential Development in Urban Areas 2009

- 5.2.1. The objective of the guidelines is to produce high quality and sustainable developments through key planning principles such as the provision of community facilities, efficient use of resources, amenity / quality of life issues and conservation of the built and natural environment. The Guidelines promote higher densities in appropriate locations. A series of urban design criteria is set out for the consideration of planning applications and appeals. Quantitative and qualitative standards for public open space are recommended. In general, increased densities are to be encouraged on residentially zoned lands, particularly city and town centres, significant 'brownfield' sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout.

5.3. Dublin City Development Plan 2016-2022

5.3.1. The subject site is located in an area zoned Z1 with an objective *‘to protect provide for and improve residential amenities’*. Residential use is permitted in principle in such zones.

5.3.2. **Policy QH8** aims to promote the development of under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.

5.3.3. **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.

5.4. Chapelizod and Environs ACA

5.4.1. The Chapelizod and Environs ACA was adopted in 2009. Of relevance to the subject site are the following policies:

- *Policy 6.1 - General Policy* It is the overall policy of Dublin City Council to protect and conserve the character and setting of the ACA as set out in this document
- *Policy 6.3 – New development:* Potential development sites within the ACA boundary are essential to the vibrancy and sustainability of the village. In considering the design and impact of all new development within the ACA, Dublin City Council will have regard to the effect of the following criteria and the impact of any development on the immediate surrounding of the site, the broader townscape or its landscape setting:
 - a. The height, scale and orientation of the proposed development.
 - b. The bulk, massing and density of the proposed development and its layout in relation to any building line and the surrounding plan form.
 - c. The quality and type of materials to be used in the construction of the development; any boundary treatments and landscaping.
 - d. The design and detail of the proposed development.
 - e. The retention of the traditional plot boundaries of the village.
 - f. The retention and maintenance of historic street furniture, surfaces and boundary treatments.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An agent on behalf of the joint owners of the properties at Rose Cottage, Mull Lodge, Mullingar House and no.s 7-8 Mullingar Terrace has submitted an appeal against the decision of the Planning Authority to grant permission. The appeal provides detail of the leave to appeal application granted by the Board (ABP-300818-18 refers).

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

- The proposed houses appear to be well considered but the proposed development does not meet minimum standards for vehicular access, turning points and footpath provision. Bin storage is too far removed from the proposed dwellings.
- A right of way exists along the side of 9 Mullingar Terrace over the subject site for Mull Lodge.
- The subject and adjoining sites are zoned Z1 and are within the Chapelizod Architectural Conservation Area.
- The appellants own no. 9 Mullingar Terrace (Mullingar House), Rose Cottage, and no.s 7 and 8 Mullingar Terrace. It is intended to develop the lands to the rear for residential development. This will involve the demolition of Mull Lodge.
- The appellants do not object to the proposed development but do object to any attempt by the applicants to block access to their lands.
- The proposed development has not demonstrated that it can accommodate vehicle movements – 6m is required to serve the proposed multiple units.
- The pinch point access of 3.740m at the entrance occurs at a steeply sloping incline to the main road. This is insufficient for emergency vehicles.
- The proposed turning circle would deplete the amenity space of house A. Drawings submitted. The redesign would affect houses B and C.
- The applicant's drawings do not show the vehicular right of way to Mull Lodge.
- The proposed development frustrates vehicular access to Mull Lodge. The proposed car parking would hinder the appellants access to the rear of their lands.

The re-ordering of the proposed car parking would further prohibit the appellants attempts to develop their lands.

- The proposed bin storage would cause noise and odour nuisance. Bins should be stored at the proposed houses.
- The proposed first floor window in House C overlooks the appellants lands.
- The Appellants attempt to lodge a joint application with the applicants was not acceded to.
- The proposed development in isolation of the adjoining site is inappropriate.
- To require the proposed development to meet development standards would result in the loss of one house and would be an inefficient and wasteful use of a scarce resource. A coordinated approach to developing both sites together would create a better environment.
- The Board is requested to refuse permission.

6.2. Applicant Response

6.2.1. The applicant has responded to the third-party appeal. The response includes a background to the project – outlining the need for the proposed development, details of the subject site and the existing and surrounding properties, a map of the right of way held by Mull Lodge through the subject site, the design principles behind the proposed development and details of meetings with the appellants. Figure 7 of the appeal response is an indicative masterplan for the subject site and the appellant's lands.

6.2.2. The applicant's response to the appeal can be summarised as follows:

- The objection to the appeal is a legal one, not a planning issue. The Board is requested to dismiss the subject appeal on the grounds that it has no merit.
- It is submitted that the appellants recent clearance of their lands and vehicular access to it, amounts to trespass.
- A traffic report demonstrates that the existing traffic, junction loading and pedestrian access to the subject site will be improved by the proposed

development. It demonstrates that the residents of Mull Lodge will benefit from the removal of industrial traffic.

- The applicants commit to store bins in the gardens of the proposed dwellings. Residents of Mull Lodge brought their bins to the main road. The proposed residents will do the same. The level of waste will decrease significantly.
- Permanent opaque glazing will be fitted to the easternmost first floor window of House C.
- The freehold and leasehold titles of the site have merged under the applicant's ownership.
- The right of way for Mull Lodge cannot be exercised to access 7 and 8 Mullingar Terrace.
- The response is accompanied by a Fire Consultant Report and a Traffic Report.
- The Board is requested to grant permission.

6.3. Planning Authority Response

6.3.1. None on file.

6.4. Appellants response to Applicants submission

6.4.1. The appellants response to the submission of the applicant can be summarised as follows:

- Repeats that the right of way has not been defined and asserts that applicant is seeking to exercise control over third party lands.
- The joint development solution will provide more housing.
- The tenant of no. 7 Mullingar House has no interest in the proposal.
- The proposed building line should be moved forward.
- The appellants seek a mutually beneficial agreement to development of all the sites.
- The appellants proposed layout of all sites offers the best solution to a joint but separate development.
- Details provided of communication between the two parties.

- The loss of Rose Cottage would wholly negate the viability of the appellant's lands.
- The site has been dormant for a considerable time so the proposed development would significantly increase traffic movements.
- The applicant's agreement regarding the bins and opaque glazing is welcomed.
- The appellants wish to develop their lands through unencumbered access. The Board is requested to refuse 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 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
- Right of Way
- Car Parking
- Other

7.2. **Principle of Development**

7.2.1. The third parties to the appeal do not object to the principle of development on the subject site. Subject to compliance with other planning considerations, the proposed re-development of an under-used, in-fill or backland site within a suburban village is in keeping with the zoning objective of the area - to protect provide for and improve residential amenities.

7.3. **Right of Way**

7.3.1. The Appellants state that the drawings submitted with the application do not clearly state that the indicated right of way provides for vehicular access as well as pedestrian access. They state that this may have compromised the assessment of the proposal by the Planning Authority. Without straying beyond the remit of what legally constitutes a right of way, it is common practice that a "yellow wayleave"

indicated on a site plan is accepted by the Board to provide for both pedestrian and vehicular access unless explicitly stated otherwise.

- 7.3.2. The extent and scope of the way leave and the right to access properties outside of the subject site is not within the remit of the Board or this appeal. That a right of way exists over the subject site is sufficient for the Board to take into consideration when assessing the merits of the proposal before it. The Board cannot adjudicate on the requirement of one land owner to release the backland development potential of a third party.

7.4. **Car Parking**

- 7.4.1. A traffic impact assessment of the proposed development and compliance with condition no. 8 of the Planning Authority's decision was submitted with the applicant's response to the third-party appeal.
- 7.4.2. The report compares the former use of the site as a factory with the proposed residential use. Using TRICS, the proposed use results in a net decrease in total vehicle movements of 88%. It is stated that this will have a positive effect on the private laneway and that access to Chapelizod Road will be easier with less queuing. In relation to vehicle movements within the site and the appellants submission that the proposed development cannot meet development standards, the report refers to section 4.3.4 of DMURS. The report states that for a shared surface, DMURS requires a width of 4.8m, not the 6m stated by the appellant. Noting that the private lane is 3.74m at points, the report refers to appendix 5 of the DCC development plan which allows flexibility in regard to restricted road widths over short lengths. The report states that as the proposed development will result in less vehicle movements then the private lane is of sufficient width to accommodate the proposed development. The report states that a "yield and go" system (drawing no. 068524-CUR-00-XX-D-700001) provided at the private laneway would force cars to give way to a car entering the lane. This will also ensure that no queuing occurs on Chapelizod Road. In response to the Planning Authority's condition no. 8, the number of car spaces is reduced to 4 no. A re-design (drawing no.s 068524-CUR-00-XX-D-500001 to 500006 refer) allows the cars to turn in front of the proposed dwellings without impacting Mull Lodge. The appellants claim of sterilisation or frustration of their lands for future development is refuted.

7.4.3. The applicant has addressed the concern of the Planning Authority in relation to vehicle movements on the subject site by the reduction of 1 no. car parking and the provision of a turning space in front of the proposed dwellings. Auto-track drawings show the movement of a SDV out of each of the proposed 4 no. car parking spaces and out of Mull Lodge.

7.4.4. I am satisfied that it has been clearly demonstrated that the subject site can safely accommodate the likely vehicle movements generated by the proposed three dwellings and the existing Mull Lodge.

7.5. **Other**

7.6. In response to the appeal grounds relating to bins, the applicant's response to the appeal states that refuse will be brought to Mullingar Terrace – an established pick up point, in compliance with the requirements of DCC for refuse collection.

7.6.1. In response to the appeal ground relating to emergency vehicles, the applicant states that a fire truck can park beside Mullingar House and a 46m hose will reach the proposed dwellings. This is stated to be in line with "The Recommendations for Site Development Works for Housing Areas". Drawing no. 068524-CUR-00-XX-D-5000010 refers.

7.6.2. I am satisfied that these matters have been satisfactorily addressed.

7.7. **Summary**

7.7.1. The proposed development of three residential dwellings on an under-used infill site within a village centre is in keeping with the zoning objectives of the subject site and the wider area. The proposed development will not adversely affect the residential amenity of the adjoining dwellings. The proposed development is considered to be in accordance with the DCC development plan and is in keeping with the proper planning and sustainable development of the area.

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 buildings, 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 structure or the wider Architectural 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, as amended by the plans and particulars submitted to the Board on the 17th day of April 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 car parking facilities hereby permitted shall be reserved solely to serve the proposed development. One clearly identified car parking space shall be assigned permanently to each residential unit and shall be reserved solely for that purpose. These residential parking spaces shall not be utilised for any purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units.

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 lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment including the satellite dish shown on the roof plan unless authorized by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

8. The construction stage shall be managed in accordance with a construction management and construction traffic management plan which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include details of noise management measures, dust control measures, arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Reason: In the interests of orderly development, amenity, safety and sustainable development.

9. 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

12th July 2018