



An  
Bord  
Pleanála

## Inspector's Report ABP-301651-18

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### Development

PROTECTED STRUCTURE:

demolition of bin store and wall,  
construction of house and associated  
works

### Location

Dartry House, Orwell Woods, Rathgar,  
Dublin 6

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

3923/17

### Applicant(s)

Damien Reddy

### Type of Application

Permission

### Planning Authority Decision

Grant Permission

### Type of Appeal

Third Party

### Appellant(s)

Rathgar Residents Association  
Sheila Floyd

### Observer(s)

An Taisce

### Date of Site Inspection

22<sup>nd</sup> August 2018

### Inspector

Ronan O'Connor

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## 1.0 Site Location and Description

- 1.1. The appeal site is located off Orwell Park, adjacent to the Orwell Woods housing estate. On site is Dartry House, a Protected Structure, dating from c1840. The house is now bounded to the north and west by new housing developments, to the east by Orwell Woods and to the south by Dartry Park.
- 1.2. To the front of Dartry House is a mix of landscaping and hard surface car parking, as well as a refuse storage area to the south/south-east of the site. The site is relatively level to the point of the refuse storage area, and then is steeply sloping beyond this point with relatively dense mature trees beyond the area of the refuse storage area.
- 1.3. Pedestrian and vehicular access is off Orwell Woods. There is a pedestrian access gate to the new housing development to the west and south-west, which appears to be nearing the final stages of completion.

## 2.0 Proposed Development

- 2.1. PROTECTED STRUCTURE: demolition of bin store and wall, construction of house and associated works

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Grant permission. There are no conditions of particular note.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The report of the planning officer reflects the decision of the planning authority. Points of notes are as follows:
- Noted the previous refusal on the site.
- Was unclear how the proposed development materially differs from that which was refused under Planning Register Reference 2372/17.

- Appears that the size and location of the proposed house is the same except for an additional 3m wall to the front.
- Further Information was requested in relation to (i) how the proposed development differs materially from that refused under Planning Register Reference 2372/17/how the proposed addresses the reason for refusal.
- Further Information was received – application sought to clarify understanding and correct past misinterpretations of the proposal and site with regard to the previous refusal.
- Replacement of the bin store with a two-storey dwelling house is proposed/no significant increase in the footprint of the structure when compared to the existing bin store.
- Open space is not more usable as the front of the binstore is not an attractive environment for amenity.
- Applicant has now made available an additional amenity space of 80 sq. m. for the residents of Dartry House which was previously not available or accessible.
- The development will not seek to removal any mature trees from the site/proposes retention of all mature trees/only seeks removal of some immature trees in an area that is currently inaccessible for any use.
- Applicant has submitted a Tree Survey Report and survey drawings which indicate that the existing mature trees are restricting the growth of younger trees.
- Setting of Dartry House will be enhanced as a result of the removal of a binstore and replacement with a dwelling.
- Dwelling will provide overlooking and maintenance of the existing open space.
- In relation to overdevelopment, proposal occupies the same footprint of the binstore, reclaims land that was previously inaccessible, increase the available amenity by using existing inaccessible space as open space.
- Is concluded that the proposed development is fully compliant with residential standards, does not reduce open space for existing apartments and makes sustainable use of the land available.

### 3.2.2. Other Technical Reports

Roads – No objection.

Drainage – No objection.

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

- 3.4.1. A number of third party observations were received. The issues raised are covered in the grounds of appeal.

## 4.0 **Planning History**

23725/17 – **Refuse** – 3 bed house – for two reasons as follows:

1. Having regard to the location of the proposed development in the private open space area serving the 7 no. apartments of Dartry House, it is considered that the proposed development would contravene materially the stated conditions attached to the permission under reg. ref. 5976/07 by the removal of the majority of private open space serving the apartments. This would result in substandard residential development which would seriously injure the amenities of the 7 no. apartments of Dartry House and of property in the vicinity and would be contrary to the policies and objectives of the Dublin City Development Plan 2016-2022.
2. Having regard to the nature of the proposed development which involves the construction of a detached dwelling, relocation of a bin store and removal of mature trees, all to the front of the Protected Structure of Dartry House, it is considered that the proposed development would result in overdevelopment of this site, would be visually obtrusive and would detract from the character and setting of the protected structure. The proposed development would seriously injure the amenities of Dartry House and property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

4349/16 - **Grant** - PROTECTED STRUCTURE: Permission for modifications to residential units no. 25,26,27,28,29 of approved housing development PL. Ref. No. 2195/16 (this being a modification of the development permitted under planning

permission ref. no 3726/06 as modified by 3624/13) on a site measuring 1.24 hectares at No.'s 47-53 Orwell Park and adjacent to Dartry House (a Protected Structure), Rathgar, Dublin 6. The proposed development modifications will consist of the following: (a) modifications to unit no. 25 (House Type L1-3-bed 2-storey with developed roof space terraced house of 154 sq.m) to omit dormer on east/front elevation and provide new window at west gable wall of developed roof space level and to omit roof-light to en-suite on rear/west elevation, area increased to 156 sq.m, (b) modifications to unit no.'s 26,27,28,29 (House Type L2-3-bed 2-storey with developed roof space terraced houses to relocate dormer window of each house from east/front elevation to west/rear elevation and to omit roof light to ensuites on west/rear elevation of each house, and all associated site works.

5976/07 – **Grant** – Demolition of existing buildings to the north of Dartry House, conversion of Dartry House to provide a total of 7 no. apartments, the provision of a communal garden area and other works. Conditions of note are of follows:

- Condition No. 2 That the decision shall be carried out in conformity with conditions of the decision to grant permission by Reg. Ref. 4749/07 save as amended to conform with the revisions indicated in the plans lodged with Dublin City Council in connection with this application. REASON: In the interest of the proper planning and development of the area.
- Condition No. 4. The trees proposed along the eastern boundary with Orwell Woods site adjacent to the proposed surface car parking shall be of a semi-mature variety and shall be planted at the very latest in the first planting season following construction. Reason: To protect the amenities of adjoining residential properties.
- Condition No. 5. That through pedestrian access shall be retained from the grounds of Dartry House to the public open space of the formal gardens and this shall be fully accessible to members of the public including hours of opening. Details to be agreed in writing with the Planning Authority prior to the occupation any of the units. Reason: To ensure public access to the public open space.
- Condition No. 6. That an area of semi-private open space shall be apportioned to serve apartments 1 to 7 and this shall be clearly demarked within the grounds to

the side and front of Dartry House Reason: To provide for adequate residential amenity for future residents.

- Condition No. 7. That a screened bin storage area shall be provided within the grounds surrounding Dartry House. Sufficient access and egress must be provided to enable bins to be moved easily from the storage area to an appropriate collection point on the public street nearby. The access and egress area should have no steps and any ramp shall have a minimal incline Reason: To ensure a satisfactory standard of development.

*Appeal site and adjacent site*

4349/16 – **Grant** - PROTECTED STRUCTURE: Permission for modifications to residential units no. 25,26,27,28,29 of approved housing development PL. Ref. No. 2195/16 (this being a modification of the development permitted under planning permission ref. no 3726/06 as modified by 3624/13) on a site measuring 1.24 hectares at No.'s 47-53 Orwell Park and adjacent to Dartry House (a Protected Structure), Rathgar, Dublin 6. The proposed development modifications will consist of the following: (a) modifications to unit no. 25 (House Type L1-3-bed 2-storey with developed roof space terraced house of 154 sq.m) to omit dormer on east/front elevation and provide new window at west gable wall of developed roof space level and to omit roof-light to en-suite on rear/west elevation, area increased to 156 sq.m, (b) modifications to unit no.'s 26,27,28,29 (House Type L2-3-bed 2-storey with developed roof space terraced houses to relocate dormer window of each house from east/front elevation to west/rear elevation and to omit roof light to ensuites on west/rear elevation of each house, and all associated site works.

Appeal Ref 226198 (4749/07) – **Grant** - Planning permission for development on a site measuring 1.31ha at Orwell Park, Rathgar, Dublin 6 (on a site forming part of St Joseph's retirement and residential centre at nos. 47-53 Orwell Park and Dartry House, Orwell Park, Dublin 6). Dartry House is a Protected Structure. The development will consist of the demolition of existing buildings located to the north of Dartry House and fronting onto Orwell Woods and Orwell Park and the provision of 59 no. apartments (12 no. 1 bedroom, 25 no. 2 bedroom and 22 no. 3 bedroom) in 4 no. four storey over basement blocks with balconies and terraces; the conversion of the stables/outbuildings of Dartry House (a protected structure) to provide 4 no. 1

bedroom apartments and 4 no. 2 bedroom apartments with courtyard; the provision of 125 no. car parking spaces at basement level and 4 no. surface car parking spaces; and all associated infrastructure and site development works including landscaping and boundary treatments. A total of 67 no. residential units are to be provided. Access to the proposed apartments will be from Orwell Park via the vehicular and pedestrian access permitted under planning register references: 0115/03 and 5377/05.

218623 (1734/06) - **Refuse** - The demolition of existing buildings located to the north of Dartry House and fronting onto Orwell Woods and Orwell Park and the provision of 75 number apartments (24 number one bedroom, 39 number two bedroom and 12 number three bedroom) and crèche of 92 square metres in five number four-storey over basement blocks with balconies and terraces; the conversion of the stables/outbuildings of Dartry House (a protected structure) to provide four number one bedroom apartments and four number two bedroom apartments with courtyard; the provision of 121 number car parking spaces at basement level and four number surface car parking spaces; and all associated infrastructure and site development works including landscaping and boundary treatments. Access to the proposed apartments will be from Orwell Park via the vehicular and pedestrian access permitted under planning register reference numbers: 0115/03 and 5377/05, all on a site measuring 1.175 hectares at Orwell Park, Rathgar, Dublin (on a site forming part of Saint Joseph's retirement and residential centre at numbers 47-53 Orwell Park and Dartry House, Orwell Park, Dublin). Dartry House is a protected structure. For two reasons as follows:

1. Having regard to the location of the proposed development on a site which forms part of the curtilage of the protected structure, it is considered that the proposed development, which involves the severing of the protected structure from its curtilage and setting, would adversely affect the character and setting of the protected structure and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed apartment Blocks A and D, by reason of their height, in conjunction with their proximity to road and prominent penthouse feature, would seriously injure the amenity of adjoining residential property on Orwell Woods, would be out of character at this location and



would, therefore, be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy Context

### 5.1. Development Plan

Dublin City Development Plan 2016-2022.

- 5.1.1. The site is located in an area that is zoned Objective Z12 (To ensure existing environmental amenities are protected in the predominantly residential future use of these lands) under the provisions of the Dublin City Development Plan 2016-2022. Where lands zoned Z12 are to be developed, a minimum of 20% of the site, incorporating landscape features and the essential open character of the site, will be required to be retained as accessible public open space. The predominant land-use on lands to be re-developed will be residential, and this will be actively encouraged.

Relevant policies and standards of the Dublin City Development Plan 2016-2022 include:

- Policy CHC2 - To ensure that the special interest of protected structures is protected.
- Policy CHC5 – To protect Protected Structures and preserve the character and the setting of Architectural Conservation Areas.
- Section 16.2.1 Design Principles.
- Section 16.10.2 Residential Quality Standards – Houses– sets out standards to be achieved in new build houses.
- Section 16.10.3 Residential Quality Standards – Apartments and Houses.

- 5.1.2. The following Section 28 Ministerial Guidelines is of relevance to the proposed development.

- ‘Architectural Heritage Protection Guidelines for Planning Authorities’ (2011).

### 5.2. Natural Heritage Designations

- 5.2.1. None.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### Rathgar Residents Association

- No significant difference to earlier application 2372/17 which was refused.
- Dartry House is one of the most important and significant houses in the area.
- Extensive development on the grounds.
- Development plan requires that apartments be afforded private open space.
- Under the 2007 application (5976/07) 265 sq. m. were proposed immediately to the east of the house.
- Now proposed to dispense of this to facilitate this development.
- Reference was made to two new areas of amenity space only after the request for further information (Areas A and B).
- Having regard to application 4349/16, it is noted that much of the area marked 'A' is proposed to be taken in charge and cannot be considered as private amenity space.
- The new proposed private amenity space for the apartments would be significantly smaller, inadequate and inferior.
- There has been no formal application to alter the private amenity space for the apartments in Dartry House.
- Area marked 'A' has been added to the site area map which was originally submitted with the application/this area was part of the application 4349/16/this means one or other of the applications are invalid.
- Area marked 'A' is legally part of application 4349/16.
- Dartry House is a Protected Structure.
- The area is zoned Z2 Residential Conservation Area.
- Loss of trees.

- Moving waste disposal area to the front of Dartry House can only be seen as a further degradation of the status of this most important building.
- Will impact on the adjacent residences having regard to visual, odour and noise impacts.
- Would encroach on the embankment which is a significant amenity to the area.
- Consideration should be given to the importance of Dartry House, can be considered of regional if not national significance, and to the scale of development which has already taken place on the site.
- ABP requested to overturn the decision of the planning authority.

Sheila Floyd, 1 Orwell Woods, Rathgar, Dublin 6

- Development proposed varies little from the previous refusal (i) position on the site remains the same (ii) apart from minor elevational changes the proposed house is similar (iii) footprint is the same (iv) overall height is the same (v) bulk and volume is the same.
- How can the planning authority make a decision to grant based on the information submitted?
- No report from the applicant stating how the proposed development materially differs from that previously refused.
- No dimensions or area calculations.
- All 7 items of further information pre-date the issue of the request for further information/there was no new information submitted.
- No Planner's Report, Manager's Order or no Conservation Officer's Report on DCC's file.
- Car Parking – Visitors to the site park on double yellow lines and block residents driveways in the adjoining Orwell Woods development.
- Refuse vehicles cannot turn in front of Dartry House and have to reverse out the main gate blocking access for the residents of Orwell Woods.
- Access for emergency vehicles.

- Area of soft landscaping is below the standards as set out in Section 17.10.6 of the Development Plan/represents overdevelopment of the site.
- Would result in the subdivision of the original historic communal front area both in terms of physical and legally in terms of ownership/reinstatement is improbable/not easily reversible and therefore not in accordance with best conservation practice.
- Footpaths used as overflow car parking for residents of Dartry House/entrances to houses being blocked/concern over access for emergency services.
- Addition of the proposed dwelling in front of Dartry House will cause further parking congestion and infringe on access.
- No designated accessible parking spaces – Development Plan requires 5% provision.
- No opportunity to screen the car parking with planting/removal of the mature trees and planting to facilitate the siting of the new house and a new bin store directly in front of the historic structure will further increase the visual impact of the car parking.
- Existing landscaped forecourt is all that remains of the structure's original setting.
- Will affect the amenity of the residents of the adjoining Orwell Woods development.
- Protected Structure affords the same status as Leinster House – would a local authority grant permission for a 3 storey house at the front entrance gate on Kildare Street?
- Request that ABP overturn the decision of the planning authority.

## 6.2. Applicant Response

6.2.1. None.

## 6.3. Planning Authority Response

6.3.1. None.

## 6.4. Observations

6.4.1. One observation has been received from An Taisce. This is summarised below:

- Expresses support for the appeal.
- Setting to the front was compromised by Orwell Woods in the 1980's.
- Construction of a house would further erode the setting to the front.
- Refers to Policies CHC2 and CHC1 of the Dublin City Development Plan.
- Refers to previous refusal.
- Should be refused permission.

## 6.5. Further Responses

6.5.1. A further response has been received from Rathgar Residents Association supporting the Sheila Floyd appeal. This is summarised below:

- Proposal is the same as previous refusal.
- 3m high wall is a retrograde step.
- Agree with the issues raised by the appellant in relation to the additional information submitted, contravention of conditions attached to previous permissions, private open amenity space, impact on residential amenity, development standards and impact on the Protected Structure.

## 7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Principle of Development
- Design and Conservation/Impact on the Setting of Dartry House
- Open Space
- Residential Amenity
- Parking

- Appropriate Assessment
- Environmental Impact Assessment

## **7.2. Principle of Development**

- 7.2.1. The site is located in an area that is zoned Objective Z12 (To ensure existing environmental amenities are protected in the predominantly residential future use of these lands) under the provisions of the Dublin City Development Plan 2016-2022. Where lands zoned Z12 are to be developed, a minimum of 20% of the site, incorporating landscape features and the essential open character of the site, will be required to be retained as accessible public open space. The predominant land-use on lands to be re-developed will be residential, and this will be actively encouraged.
- 7.2.2. As such the principle of a residential dwelling a Z12 zoned site is therefore acceptable, subject to the detailed considerations below.

## **7.3. Design and Conservation and Impact on the setting of Dartry House**

- 7.3.1. The proposal is to demolish the existing bin store and replace it with a part single storey, party two-storey dwelling. The overall ridge height of the proposed dwelling is 6.327m.
- 7.3.2. The design approach of the structure appears to have been led by the need to try and minimise the appearance of the built form and its impact on the setting of Dartry House. The main bulk of the dwelling is to the south/south-east of the site, and the proposal utilises the change in levels to minimise the overall height above the height of the existing bin store. In and of itself there is no objection to this approach, solely having regard to the appearance of the dwelling itself.
- 7.3.3. The existing setting of the Protected Structure consists of a wooded area with mature and semi-mature trees on the site of the proposed dwelling, and other existing landscaping to the front, which serves to soften the visual impact of the bin store and the car parking area. The remaining areas of landscaping to the front and side still allow for the Protected Structure to be viewed as a single building with a coherent architectural character, that stands on its own, albeit diminished, grounds. Previous permissions have allowed development within the curtilage of the Protected Structure, but have always sought to maintain some level of open space around it, in

order to preserve its setting as much as possible, while allowing for much needed housing.

- 7.3.4. While I accept that the design approach has sought to minimise the visual impact of the dwelling, and therefore preserve as much as possible the setting of Dartry House, it is my view that the proposed dwelling, with its associated boundary walls, will be significantly more visible and have a more significant impact on the setting of the Protected Structure than the existing bin store, creating additional built form, and hardstanding area, and removing a number of mature trees. In addition, the bin store is proposed to be relocated to the eastern boundary, resulting in additional built form at this location. I consider that the cumulative impact of development on this, and on adjacent sites, will erode irreconcilably what remains of the setting of the Protected Structure.
- 7.3.5. I have had regard to the previous refusal on the site, for a similar development (2372/17) which was refused for two reasons, one of which related to the impact on the character and setting of the Protected Structure and overdevelopment of the site. While there has been some minor modifications to the design and location of the dwelling, I do not consider that these modifications overcome the previous reason for refusal. This is contrary to the view of the planning authority, who have taken a different view in granting this current application.

#### **7.4. Open Space**

- 7.4.1. The Third Party appellants' have raised the issue of the loss of open space serving the existing residents of Dartry House.
- 7.4.2. This issue formed a reason for refusal under application 2372/17. Under the current application, two areas 'A' and 'B' have been identified as open space to serve the residents of Dartry House. Area A is to the south of Dartry House, and it appears to be outside the appeal site boundary. This is an area of open space that, under previous applications was designated as a formal garden space associated with the development of houses to the rear.

- 7.4.3. Area B is an area to the south-east of Dartry House, to the immediate west of the proposed dwelling house. Currently this is a steeply sloped wooded area, which it is proposed to level out.
- 7.4.4. I have had regard to the landscape proposals, as detailed in the history file for planning application 5976/07 (conversion of Dartry House to 7 residential units and other works). The proposed landscape plan (Dwg. No. 7132/503) details a garden area for residents, mainly located to the south-west of the main Protected Structure.
- 7.4.5. Under this current application, an area of this existing open space, immediately to the east of the proposed dwelling, is now earmarked as private open space for the proposed dwelling. Additional existing open space is taken up by the two proposed car parking spaces, and the additional internal road surface. The remaining landscaped area remains for the use of residents of Dartry House, as well as the additional area 'Area B'.
- 7.4.6. It is my view that that area immediately to the front of the proposed dwelling house is effectively defensible space associated with this proposed house, and more than likely will not be used by the residents of Dartry House.
- 7.4.7. However, the loss of existing open space, is offset to a degree by the additional shared open space, Area B, which in my view would provide more useable semi-private open space, than that existing. While not included within the appeal site boundary, the overall masterplan for the site, as submitted under previous applications, demonstrates that the residents of Dartry House will have access to Area A as well as to other areas of Public Open Space as approved under planning permission 4349/16. There is an existing access gate from the appeal site to the as yet uncompleted 'Area A' and to the wider development site to the rear. Condition No. 5 of the previous permission on this site for the conversion of Darty House to residential unit (5976/07) requires that access to the public open space to the west of Darty house is facilitated for the residents of Dartry House.
- 7.4.8. As such I consider that the residents of Dartry House would still have sufficient communal open space.

## 7.5. **Impact on Surrounding Residential Amenity**

- 7.5.1. The proposed dwelling house is sufficiently set back from surrounding residential units to ensure that no impacts result from the dwelling. However, the relocation of



the bin store, to close to the boundary of No. 1 Orwell Woods, would detrimentally impact on the amenity of this dwelling, having regard to possible odour and noise issues. As such I do not consider that the relocation of the binstore, to this particular location, would be acceptable, having regard to amenity impacts.

## **7.6. Parking**

- 7.6.1. The issue of parking on surrounding streets was raised in the Third Party Appeal submissions. The proposed dwelling house is served by two car parking spaces. This is sufficient to ensure that no additional parking pressure on surrounding streets will result from the proposed development.

## **7.7. Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development, construction of a dwelling house, within a serviced area, and having regard to the separation distance to the nearest 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 the conservation objectives of any European site.

## **7.8. Environmental Impact Assessment**

- 7.8.1. Having regard to the nature and scale of the proposed development, a dwelling house, within a serviced area, and having regard to the separation distance to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **8.0 Recommendation**

- 8.1. Refuse permission.

## **9.0 Reasons and Considerations**

1. It is considered that, by reason of its location within the existing setting of Dartry House, and by reason of the excessive scale and bulk of the proposed dwelling, the proposed development would materially and adversely affect the

character and setting of the Protected Structure and would, therefore, seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

2. It is considered that the relocation of the bin store, to a location in close proximity to a residential dwelling, would seriously injure the residential amenity of adjacent residents by reason of odour and noise impacts. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Rónán O'Connor  
Planning Inspector

11<sup>th</sup> September 2018