



An
Bord
Pleanála

Inspector's Report ABP-301850-18

Development

Construction of 2 no. semi-detached, 2 storey, 2 bed houses, new boundary treatments, connection to local authority and Irish Water storm, foul & watermain systems and all associated site works.

Location

Infill site at Chapel Avenue, Dublin 4 (lands also known as 1a St. Marys Terrace, Bath Street, Dublin 4)

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4386/17

Applicant(s)

Sheila Hamilton

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Niamh McKenna

Observer(s)

Brian O'Grady

Date of Site Inspection

17th September 2018

Inspector

Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The site is located on the western side of Chapel Avenue, on a site that runs to the rear of St. Mary's Terrace and St. Joesph's Terrace. It is currently in use a roofing contractors and there are a number of portacabins on the site.
- 1.2. To the north-east of the site there are residential properties that have rear elevations facing onto the site. No.'s 1-3 St. Joesph's Terrace are two-storey end of terrace and mid-terrace redbrick properties that have single storey and two-storey rear returns. No's 4 to 9 St. Joesph's Terrace are new build properties that are two-storey to the street, with projections at roof level that provide additional accommodation.
- 1.3. To the south-west are Nos. 1-4 St. Mary's Terrace, two-storey terraced redbrick properties. The surrounding area is predominantly residential with a number of commercial uses in the immediate vicinity.
- 1.4. The main access to the site is from Chapel Avenue. A rear laneway to the north of No. 1 St. Mary's Terrace appears to give access to the site also.

2.0 Proposed Development

- 2.1. Construction of 2 no. semi-detached, 2 storey, 2 bed houses, new boundary treatments, connection to local authority and Irish Water storm, foul & watermain systems and all associated site 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 note are as follows:

- Noted the previous refusal on the site for construction of 4 units.
- In principal there is no objections to providing residential accommodation on this site, as it would be a better use than the existing storage yard and would provide a better aspect onto Chapel Avenue.
- Concerns in relation to the proximity of House 2 (plot 2) to the rear boundary wall of No. 3 St. Joesph's Terrace.
- Further Information was requested in relation to (i) setting back of house 2 from St. Joesph's Terrace (ii) section to clarify if attic accommodation is being provided (iii) amended drawings showing the correct roof profile (iv) clarify use of the yard to the rear of the proposed houses (v) submit an appropriate flood risk assessment.
- Additional Information submitted: Drawings showing setback from St. Joesph's Terrace; attic to be used for storage; gable end roof profile; yard to be retained by applicant as part of the family business; submitted flood risk assessment.
- Was considered that applicant has dealt with issues of concern.
- Recommendation to grant permission.

3.2.2. Other Technical Reports

Drainage – No objection following receipt of additional information.

Archaeology – Recommend condition.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. Four observations were received. The issues raised are as follows:

- Development of 6 houses on St. Joesph's Terrace has caused damage to property and has illegally rerouted the sewers/High Court proceedings/Has not

been rectified despite High Court Proceedings/Concerned that the 2 new houses will also be served by as yet unproven foul water sewer

- Impact on daylight and sunlight
- Proposal is considerably improved since the last refusal/Residential on street parking would be preferable to the existing situation/Issue of car parking has not been addressed.
- Use of laneway to access the yard is unsuitable for their level of activity. Laneway is private property with limited rights of access.

4.0 Planning History

Appeal Site

3381/17 - Refuse – 4 residential units for two reasons relating to (i) overdevelopment of the site and impact on amenity/poor design of the units and (ii) failure to comply with the minimum storage requirements.

9, 11, 13 Pembroke Street

3660/09 – Grant – 6 residential units.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022.

- 5.1.1. The vast majority of the site is zoned Objective Z2 (To protect and improve the amenities of residential conservation areas) under the provisions of the Dublin City Development Plan 2016-2022. The remainder is zoned Z1 (To protect, provide and improve residential amenities). Under these land use zoning objectives, residential development is a permissible use.
- 5.1.2. Relevant policies and standards of the Dublin City Development Plan 2016-2022 include:
- 5.1.3. Policy CHC4 - To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting all conservation areas will

contribute positively to the character and distinctiveness; and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

- Section 16.2.1 Design Principles.
- Section 16.2.2.2 Infill Development.
- 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.

5.1.4. Policies, objectives and standards for infill residential development are set out in Sections 16.10.10 'Infill Housing'.

5.1.5. The following Section 28 Ministerial Guidelines are of relevance to the proposed development.

- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (May 2009).

5.2. **Natural Heritage Designations**

5.2.1. None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The Grounds of Appeal, as submit on behalf of the Third Party Appellant, Niamh McKenna, 3 St. Joesph's Terrace, are as follows:

- Owns No. 3 St. Joesph's Terrace, Pembroke Street, Dublin 4
- Proposed site is immediately adjoining and to the south.
- Will have a significant impact on the small back garden which already has a high wall built by another developer.
- Loss of daylight and sunlight.
- Proposed house looks directly into the rear garden.

- Would also have an overbearing impact on No.'s 1 and 2 St. Joesph's Terrace.
- A dormer bungalow with one bedroom would suit this plot.
- Proposed projecting box window will not prevent overlooking.
- No dimension of the window and the proposed angle is not on the drawings.
- Will have an impact on the enforceability of any future planning decision.
- Ask ABP to refuse the development.

6.2. Applicant Response

6.2.1. The applicant's response to the Third Party Grounds of Appeal are set out below:

- Have worked tirelessly to comply with suggestions made by the planning officer.
- When appellant purchased her property in 1998 there was storage shed where the 'high wall' now is/this was almost the height of appellant's house/jutted out 14 feet from the rear of the existing houses/was dismantled 10 years ago/leaving side wall/appellant requested that this side wall be made higher/this request was complied with.
- Drawings/designs submitted in the second planning application were significantly modified to comply with the planning authorities recommendations
- There is no way to see into the appellant's property as a huge tree blocks the property.
- Appellant's house is part of a row of houses/most of her neighbours can see into here garden, or part of it.
- Walls that exist between the properties are on average 6 and a half foot high.
- The issues the appellant complains of already exists.
- 6 no. photographs are enclosed with submission.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. 1 no. observation has been received from Brian O'Grady, 3 St. Joesph's Terrace.

- Joint owner of 3 St. Joesph's Terrace along with Niamh McKenna (appellant).
- Back garden is more than a yard/has a sunny aspect being on the south-west side of the house.
- 6 houses have been built directly adjoining No. 3.
- These are 3 storeys high, higher than the adjoining 2 storey houses and are also deeper stretching a lot further out the back.
- Has a very significant impact on house – on all the rooms at the back of the house and on garden – kitchen window faces the very high wall of the newly built houses.
- New houses completely overshadow and are overbearing.
- Unfair for permission to be granted on the other side of our property – will take a very significant amount of light – will have a window looking directly into our garden/will leave our property boxed in.
- Will take an even greater amount of light as the houses to be built are to the south.
- Overlooking from first floor window/window is to be angled/however can still allow a person to look our directly.
- Already a significant impact from the houses on the right hand side of property.
- Has already causes a significant devaluing of our property.
- Will have an overbearing impact and will impact on the light of other properties on St. Joesph's Terrace and St. Mary's Terrace.
- Fair solution would be to grant permission for 2 bungalows instead of 2 no. two-storey houses.
- Plenty of examples of bungalows on nearby roads and even on Chapel Avenue/there is one across the road from the site of the proposed 2 houses.
- There are two rows of bungalows around the corner on Pembroke Street.

6.5. Further Responses

6.5.1. A further response has been received from the Third Party appellant, responding to the First Party appeal submission. This is summarised below:

- A before and after photograph is submitted showing the impact of the adjoining development.
- The vegetation to the rear of No. 3 is self-seeded and due to be removed in September/these are not trees but bushes.
- Previous application which was refused is not relevant to the subject application.
- Not true that other dwellings on St. Joesph's Terrace can overlook rear garden.
- Further information shows an angled window on first floor plan/attached photograph shows a larger window angled in the opposite direction.
- Floor plans omit north sign/difficult to tell impact on sunlight/daylight levels/Impact on 21st March and 21st September is not demonstrated.

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 the proposed development
- Residential Amenity
- Design and Visual Amenity/Impact on the character of the conservation area.
- Road Access and Traffic Safety
- Other Issues
- Appropriate Assessment
- Environmental Impact Assessment

7.2. Principle of the proposed development

7.2.1. I note that the majority of the site is zoned Z2 'Residential Conservation Area' with a small portion zoned Z1. It is noted that residential development is an acceptable land use within both the Z2 and Z1 zoning matrices. As such the current proposal for two residential units is acceptable in principle, subject to the considerations below.

7.3. Residential Amenity

7.3.1. The properties that have the most potential to be impacted as a result of this proposal include the properties on St. Joesph's Terrace to the north and north-east of the site and those properties on St. Mary's Terrace to the south-west of the site.

7.3.2. The Third Party Appellant (the joint owner of No. 3 St. Joesph's Terrace), and the observer on the appeal (also the joint owner of No. 3 St. Joesph's Terrace) state that the proposal would result in overlooking, would be overbearing and would result in overshadowing and a loss of daylight and sunlight, especially when considered in combination with the approved and recently constructed development to the north-west (No's 4 to 9 St. Joesph's Terrace). It is further stated that no details of the angled window have been submitted.

7.3.3. The applicant, in their response to the Third Party Appeal, state that no overlooking will result due to the large tree to the rear of No. 3. It is also stated that overlooking of the garden already occurs from neighbouring properties. In relation to the impact of the high wall the appellants state that this was previously extended in height at the request of the owner of No. 3, and that a larger structure was previously at this location.

7.3.4. The appellant, in response to the First Party, states that the trees are in fact bushes and are due to be removed. It is further stated that the impact on sunlight in March and September is not considered.

7.3.5. In relation to the impact on No. 3, proposed House No. 2 is set in off the south-eastern boundary of this property by 1.5m at the closest point. The ridge height of the rear elevation of proposed House No. 2 is 5.096m. I consider that this setback, combined with the limited ridge height of the rear elevation will ensure that the proposal does not appear overbearing when viewed from the rear garden space of No. 3 St. Joesph's Terrace, either in and of itself, or in combination with the recently constructed development to the north-west.

- 7.3.6. In relation to overlooking, I note that there are two windows to the rear of proposed house No. 2. One of these windows serves a bathroom and is obscure glazed. The other window serves a bedroom and is designed so it is angled away from the rear space of No. 3 St. Joesph's Terrace. The angled design to the window, combined with the setback from the rear space of No.3 St Joesph's Terrace is sufficient to ensure that no overlooking will result. There is sufficient detail on the drawings of this window, and the proposed angle, to ensure future compliance and enforceability on this issue.
- 7.3.7. In relation to overshadowing of the rear yard of No. 3, the applicants have submitted a shadow analysis, as part of the Architectural Design Report, which demonstrates the impact of the originally submitted proposal, which was closer to neighbouring boundaries. Specifically in relation to the rear space of No. 3, the shadow analysis demonstrates an impact of overshadowing on mid-winter mid-morning and afternoon sun. There is little to no impact in mid-summer and the rear yard receives a significant amount of sunlight throughout the day. It is unfortunate that the shadow analysis does not show the situation in March and September, as raised by the appellant. Furthermore, the shadow analysis was not revised to take into account the additional set back, which was originally 0.994m from the boundary at the closest point and is now 1.5 m from the boundary. However, the impact of a greater setback would be less than demonstrated in the shadow analysis and, in my view, the impact on the rear garden on No. 3 St. Joesph's Terrace is not so material so as to warrant a refusal of the application.
- 7.3.8. In relation to the impacts on No's 1 and 2 St. Joesph's Avenue, and on properties on St. Mary's Terrace, the shadow analysis demonstrates only a limited impact on these properties. I concur that the impacts will be limited, due to the extent of overshadowing that already exists as a result of rear projections and boundary walls.
- 7.3.9. The proposal will not overlook other properties bordering the site and is set back sufficiently from the boundaries to ensure that the houses will not be overbearing.

7.4. **Design and Visual Amenity/Impact on the character of the Conservation Area**

- 7.4.1. Section 16.10.10 'Infill Housing' of the Dublin City Development Plan states that infill housing should:

- Have regard to the existing character of the street by paying attention to the established building line, proportion, heights, parapet levels and materials of surrounding buildings.
- Comply with the appropriate minimum habitable room sizes.
- Have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard.

7.4.2. In relation to design, the proposed dwellings, as detailed in the revised drawings submitted at further information stage, have sought to reflect the scale and proportions, heights, parapet lines and materials of the surrounding two-storey terraced dwellings. While the two houses sit deeper than the surrounding house types, I do not consider that this, in and of itself, is unacceptable. The overall appearance and scale of the dwellings is in keeping with the surrounding pattern of development and will have a positive impact on the visual amenity of the area, relative to the existing visual impact of the roofing contractor's yard.

7.4.3. Having regard to the above, it is considered that the proposal will make a positive contribution to the character of the residential conservation area.

7.5. **Other Issues**

7.5.1. Parking/Access – No parking or vehicular access is proposed. The site is well served by public transport and as such it is not considered parking is required on this site.

7.5.2. Residential Design Standards – The proposal complies with the standards set out in Development Plan in relation to overall floor area, minimum room sizes and private open space.

7.5.3. Foul Drainage/Stormwater Drainage– The issue of foul drainage has been raised by observers at application stage and it was questioned if there is sufficient capacity within the existing foul sewer network to accommodate the two dwellings. There is no commentary within the application documents in relation to this issue. The Drainage Division raised no 'in-principle' objections to the proposal but noted that the drainage for the proposed development shall be designed on completely separate system with a combined final connection discharging into the public combined sewer system. This can be ensured by way of condition.

7.5.4. Flooding - The site is not located within a flood zone.

7.5.5. Archaeology - The site lies within a Zone of Archaeological Interest. Appropriate conditions should be attached should the Board be minded to grant permission.

7.6. Appropriate Assessment

7.6.1. Having regard to the nature and scale of the proposed development, a the development of two dwelling houses, 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.

7.7. Environmental Impact Assessment

7.7.1. Having regard to the nature and scale of the proposed development, two dwelling houses, 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. I recommend that planning permission should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the zoning objective for the site, the pattern of development in the vicinity and the policies of the current Dublin City Development Plan 2016-2022, it is considered that the proposed development would not seriously injure the residential or visual amenity of the area, and would not detract from the character or setting of the conservation area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 23rd 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. Prior to the commencement of development, details of the materials, colours and textures of all external finishes including samples, shall be submitted to and agreed in writing by the Planning Authority.

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

3. Notwithstanding the provisions of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), no extensions, garages, stores, offices or similar structures, shall be erected without the prior grant of planning permission.

Reason: In the interests of residential and visual amenity and in order to ensure sufficient private open space be retained for the new dwelling.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 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.

- 5 Proposals for a house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all street signs, and house numbers, shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility

- 6 The applicant is required to comply with the following Drainage Division requirements:

(i) The developer is required to comply with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (available from www.dublincity.ie Forms and Downloads).

(ii) Dublin City Council's drainage records are indicative and must be verified on site.

(iii) The drainage for the proposed development shall be designed on a completely separate system with a combined final connection discharging into the public combined sewer system.

(iv) The development shall incorporate Sustainable Drainage Systems in the management of stormwater.

(v) The outfall manholes from this development must be constructed in accordance with the Code of Practice for Development Works – Drainage.

(vi) All private drain fittings such as, downpipes, gullies, manholes, Armstrong Junctions, etc. Are to be located within the final site boundary. Private drains should not pass through property they do not serve. Reason: In the interest of the proper planning and sustainable development of the area.

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

waste.

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

- 8 The following Archaeological requirements shall be complied with:
- A. No construction or site preparation work may be carried out on the site until all archaeological requirements of the Planning Authority are complied with.
 - B. The project shall have an archaeological assessment (and impact assessment) of the proposed development, including all temporary and enabling works, geotechnical investigations, e.g. boreholes, engineering test pits, etc., carried out for this site as soon as possible and before any site clearance/construction work commences. The assessment shall be prepared by a suitably qualified archaeologist and shall address the following issues. i. The archaeological and historical background of the site, to include industrial heritage. ii. A paper record (written, drawn, and photographic, as appropriate) of any historic buildings and boundary treatments, etc. iii. The nature, extent and location of archaeological material on site by way of archaeological testing &/or monitoring of the removal of overburden. iv. The impact of the proposed development on such archaeological material.
 - C. The archaeologist shall forward their Method Statement in advance of commencement to the Planning Authority.
 - D. Where archaeological material is shown to be present, a detailed Impact Statement shall be prepared by the archaeologist which will include specific information on the location, form, size and level (corrected to Ordnance Datum) of all foundation structures, ground beams, floor slabs, trenches for services, drains etc. The assessment shall be prepared on the basis of a comprehensive desktop study and, where appropriate/feasible, trial trenches excavated on the site by the archaeologist and/or remote sensing. The trial trenches shall be excavated to the top of the archaeological deposits only. The report containing the assessment shall include adequate

ground-plan and cross-sectional drawings of the site, and of the proposed development, with the location and levels (corrected to Ordnance Datum) of all trial trenches and/or bore holes clearly indicated. A comprehensive mitigation strategy shall be prepared by the consultant archaeologist and included in the archaeological assessment report.

E. No subsurface work shall be undertaken in the absence of the archaeologist without his/her express consent. The archaeologist retained by the project to carry out the assessment shall consult with the Planning Authority in advance regarding the procedure to be adopted in the assessment.

F. Two copies of a written report and a digital report (on compact disc) containing the results of the archaeological assessment shall be forwarded on completion to the Planning Authority. The Planning Authority (in consultation with the City Archaeologist and the National Monuments Service, Department Arts Heritage and Gaeltacht, shall determine the further archaeological resolution of the site.

G. The developer shall comply in full with any further archaeological requirement, including archaeological monitoring, and if necessary archaeological excavation and/or the preservation in situ of archaeological remains, which may negate the facilitation of all, or part of any basement.

H. The developer shall make provision for archaeological excavation in the project budget and timetable.

I. Before any site works commence the developer shall agree the foundation layout with the Planning Authority. J. Following submission of the final report to the Planning Authority, where archaeological material is shown to be present the archaeological paper archive shall be compiled in accordance with the procedures detailed in the Dublin City Archaeological Archive Guidelines (2008 Dublin City Council), and lodged with the Dublin City Library and Archive, 138-144 Pearse Street, Dublin 2.

Reason: In the interest of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of

development.

- 7 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.

Rónán O'Connor
Planning Inspector

20th September 2018