



An
Bord
Pleanála

Inspector's Report ABP302767-18

Development

Demolition of single-storey sheds;
construction of 2 houses (reduced to
one by way of Additional Information)
and associated works.

Location

7-9 Blackberry Lane, Rathmines,
Dublin 6.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

2444/18.

Applicants

Ivan and Maureen Russell-Hill.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party -v- Grant.

Appellants

Kevin Downey and Others.

Observers

None.

Date of Site Inspection

7th December, 2018.

Inspector

Paul Caprani.

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1.0 Introduction

ABP302767-18 concerns a third party appeal against the decision of Dublin City Council to issue notification to grant planning permission for the demolition of a number of sheds and the construction of two dwellinghouses at a site on Blackberry Lane, off the Rathmines Road south of Dublin City Centre. The decision of Dublin City Council was the subject of a third-party appeal by a number of residents living in Grove Park to the immediate north of the subject site. The grounds of appeal argue that the proposed development will have an unacceptable impact on the residential amenity of the appellants in question.

2.0 Site Location and Description

- 2.1. The appeal site is located at the western end of Blackberry Lane a small cul-de-sac which runs westwards from the lower Rathmines Road just south of the Grand Canal and Grove Park. Blackberry Lane accommodates a mixture of residential and commercial development. Much of the residential development is located on the northern side of the lane and comprises of a more recently built two-storey terraced dwellings. There are also a number of commercial sheds and lock-up sheds located along the lane particularly on the northern side of the lane. The laneway is relatively narrow but is capable of accommodating two cars passing in opposite directions. Some on-street car parking is permitted on the southern side of the lane.
- 2.2. The appeal site is located in the western end and accommodates a series of single-storey sheds and a rear yard area which backs onto the rear gardens of Nos. 85 to 93 Grove Park which are located to the immediate north of the subject site. The sheds in question are generally in a poor state of disrepair and the site is unkempt and overgrown. A two-storey workshop is located on the contiguous site to the immediate east. The subject site is roughly rectangular in shape and has site dimensions of approximately 20 metres in length and between between 5 and 10 metres in depth. A total site area is stated on the planning application form as being 147 square metres.

3.0 Proposed Development

- 3.1. Initially planning permission was sought for the construction of two separate dwellinghouses on the subject site. Dwellinghouse No. 1 comprised of a one-bedroomed dwellinghouse with living accommodation at ground floor level and a bedroom, bathroom and laundry store at first floor level. The second dwelling located at the western end of the site comprised of a two-bedroomed dwelling with bedroom accommodation at ground floor level and living accommodation above. The rear yard area was to be divided in order to provide amenity space to the rear of both dwellings. The two-bedroom dwelling was also to incorporate a terraced area at first floor level at the western end of the site.
- 3.2. On foot of an additional information request, the plans were altered in order to accommodate one no. two-storey three-bedroomed dwelling on the subject site. All living accommodation was located at ground floor level and three bedrooms are located at first floor level. A courtyard area is to be provided at the western end of the dwelling. The dwellinghouse proposed is to incorporate a monopitched roof sloping to the rear. It rises to a ridge height of 6.37 metres above ground level. It is proposed to incorporate a selected brickwork finish on both the front and rear elevations. A perforated sliding screen is to provide access to the courtyard area to the west of the dwelling. Metal cladding is proposed on the roof which is also to accommodate two rooflights. The drawings indicate that the courtyard area and rear terrace are to incorporate hard landscaping. The overall internal floor area of the dwellinghouse is 106 square metres and the total amount of open space to the rear and side of the dwellinghouse amounts to 72 square metres.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Dublin City Council issued notification to grant planning permission for the revised development comprising of a single house on the 18th September, 2018 subject to 11 standard conditions.

4.2. Documentation submitted with Planning Application

- 4.2.1. The planning application was accompanied by drawings, public notice, planning application and fee etc. Also submitted was a short design statement by David Doyle Architects. It sets out details of the existing structures on site which it is stated are in very poor condition. In recent years the sheds have been used for storage purposes only. It is argued that the removal of the said structures from the streetscape would represent a significant visual planning gain. The statement goes on to set out the design approach in respect of the original two dwellings proposed.

4.3. Initial Assessment by Planning Authority

- 4.3.1. A number of letters of objection were submitted by a number of residences to the immediate north of the subject site fronting onto Grove Park. The content of these objections has been read and noted.
- 4.3.2. A report from the Roads and Traffic Planning Division stated that there is no objection to the proposed development subject to standard conditions. A similar report was received from the Engineering Department Drainage Division likewise concluding that there is no objection subject to standard conditions.
- 4.3.3. The initial planner's report expressed concerns particularly in respect of Dwelling No. 2 and the proposed terraced area at first floor level which could impact on the residential amenities of the dwellinghouses at Grove Park. Concerns were also raised in respect of sufficient legal interest in the site in question. The planner's report recommended that the following additional information be submitted in respect of the proposed development.
- The applicant is requested to submit a conservation report detailing any historic architectural, cultural or artistic/local interests with regard to the existing sheds on site.
 - The Planning Authority expresses serious concerns in respect of Dwelling No. 2 due to its two-storey height, external roof terrace and potential overshadowing and noise impacts arising from the proposal. The applicant is therefore requested to submit a shadow casting analysis assessing the impact of the proposal on the dwellings to the immediate north of the subject site.

- The applicant is requested to clarify that they have sufficient legal interest in the whole of the site and is requested to clarify whether or not it has ownership of the laneway area to the front of the proposed development.
- The applicant is requested to submit an ecological impact assessment having regard to the potential for buildings on site to accommodate species of ecological importance.

4.4. **Additional Information Response**

4.4.1. Further information was submitted on behalf of the applicant on 23rd August, 2018. It includes:

- An Architectural Heritage Report. It concludes that while the sheds are former cottages of a 19th century construction, there is no historic architectural or cultural significance which would provide any reason for the retention.
- A separate Ecological Impact Assessment was submitted by Scott Cawley. It concludes that the proposal does not have the potential to cause significant effects on any designated sites. Breeding birds and bats are also assessed and the habitats are considered not to be higher than anywhere associated with the local geographic area. A number of mitigation measures are also set out in the report to ensure that any potential impacts will be minimised.
- A shadow casting assessment was also undertaken. It is stated that given the concerns raised by the Planning Authority, the development has been altered to reduce the size and volume and the revised proposal now constitutes a single two-storey dwelling that has been reduced in height and length which has resulted in a commensurate reduction in shadow casting. The shadowing casting analysis compares the original design proposal with the revised design proposal for the vernal equinox, summer solstice and autumn equinox. Details of this analysis is contained in a pouch to the rear of the file along with the revised drawings.
- In relation to legal interest issues a letter was submitted from Patrick F. O'Reilly and Company Solicitors confirming that the applicants do not own any part of Blackberry Lane. However, it is confirmed that the applicants' have

a valid right of way for all purposes over Blackberry Lane and that Blackberry Lane is in the charge of Dublin City Council.

4.5. Further Assessment by Planning Authority

- 4.5.1. The planner's report assesses the revised drawings and additional information submitted and concludes that the redevelopment of the site is an acceptable form of development. It notes that the existing structures on site are in a state of disrepair and the site offers a valuable opportunity to develop a well located and serviced site for residential accommodation. While legal ownership issues have been raised reference is made to Section 34(13) of the Act. As such any land/title disputes are not a matter for the planning process. Dublin City Council therefore granted planning permission on foot of this report.

5.0 Planning History

No relevant planning history is contained on file.

6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council to issue notification to grant planning permission was appealed on behalf of the owners of 85, 87, 91, 93 and 95 Grove Park by Annette De Klerk. The appellants live in houses whose rear gardens back onto the subject site.
- 6.2. The grounds of appeal set out details of the appeal site and its context as well as relevant development plan policy as it relates to the subject site. The appeal goes on outline the application and its determination by Dublin City Council. Section 5 of the submission sets out the grounds of appeal and these are summarised below.

It is stated that the revisions incorporated into the additional information response goes some way to addressing the appellants' concerns. However, some concerns remain.

The submitted shadow analysis clearly indicates that there will be significant levels of overshadowing of the adjoining rear gardens to the north of the site. Significantly more than 50% of these gardens will be overshadowing in the early afternoon during

the autumnal equinox. These gardens will be completely overshadowed during the spring equinox during the early afternoon. Further analysis is required to ensure that the proposal is in compliance with relevant BRE standards.

Concerns are expressed in relation to overlooking and loss of privacy. Reference is made to the proposed westernmost bedroom (Bedroom No. 3) which benefits from a substantial window on the western flank at first floor level. This window directly overlooks rear gardens of Nos. 83, 85 and 87 Grove Park. This would result in significant loss of privacy to the adjoining residents.

The visual impact of the proposed development is also highlighted. It is stated that due to the roughly triangular shape of the site, the proposed dwelling has an awkward relationship with the rear gardens of dwellings at Grove Park. The rear elevation of the structure will rise to approximately 5.125 metres above ground level adjacent to the common boundary of No. 87 Grove Park. This it is argued, would have an unacceptable and visually overbearing impact on No. 87 Grove Park and also, albeit to a lesser extent, on 89 and 81 Grove Park. It is suggested that a bungalow type house with bedrooms in the attic space will provide a more satisfactory response to the appeal site's unique configuration.

It is argued that the proposed development is unapologetically modern in appearance, and while there is no objection to this in principle, such designs are required to be of the highest standard in order to complement and enhance the special character of the conservation area in which it is situate. The proposal would result in a new building with alien features including the proposed roof form and window proportions and this would be out of keeping with the streetscape and character of the area. The proposed infill development fails to respect or complement the prevailing scale or degree of uniformity in the surrounding townscape. The development plan requires that such infill development should replicate and positively interpret the predominant design and architectural features of the group as a whole.

Concerns are also expressed in relation to car parking availability and road safety considerations. It is suggested that vehicular movements to and from the site would be significantly constrained due to a pinch point on Blackberry Lane to the east of the appeal site. The courtyard could be used for off street car parking. Furthermore,

the applicant has made no effort to improve pedestrian or cycle access to the appeal site.

Finally, it is stated that No. 85 Grove Park enjoys “right of way” to Blackberry Lane from its rear garden. This right of way is currently obstructed and is subject to separate legal proceedings. While these matters might be considered to fall outside the planning remit, the appellants reserve the rights to pursue these matters through civil legal proceedings in the Courts.

7.0 Appeal Responses

- 7.1. The response to the grounds of appeal comprise of two separate letters one by the applicants and one by the architect on behalf of the applicants. The response is set out below.

A letter from the applicants, Ivan and Maureen Russell-Hill states that all the concerns raised by the Grove Park residents have already been fully addressed by the Planning Authority in its decision to grant permission for the proposal. It is stated that the applicant has worked on Blackberry Lane for 60 years and has always treated it as his second home. It is noted that none of the residents or businesses on Blackberry Lane have objected to the proposal. The area in question at the end of Blackberry Lane has been used for anti-social activity and anti-social behaviour which is totally inappropriate as young children live on the lane. With regard to evidence of legal title, the response includes a letter from the applicants’ solicitors addressing this issue. It is also stated that part of the lane is not under the control of Dublin City Council and has been well managed by residents and businesses of Blackberry Lane to date.

A separate letter from David Doyle Architects states that although the proposed dwellinghouse is of contemporary design, it is argued that it will not detract from the houses in Grove Park as there is no visual connection between the street and this portion of the lane. Reference is made to “The Brambles” on Blackberry Lane which constitutes an example of high quality infill housing design. This was granted by An Bord Pleanála under PL29S.242631. This development is closer to the neighbouring dwellings than the current application.

The overall design of the proposal including the sloped roof, was specifically designed to address the concerns of neighbours and the Planning Authority. It is stated that the existing trees and neighbouring buildings across the lane also give rise to some degree of overshadowing of the rear gardens of Grove Park during the year.

With regard to the issue of overlooking, it is stated that the window of Bedroom No. 3 does not directly face the rear elevations of the neighbouring buildings to the north. Views from the windows only give rise to oblique overlooking of rear gardens. However, the applicants are happy to frost the glazing in the window should it address any privacy concerns.

It is confirmed that the courtyard will not be used as a car park and the sliding metal gate is for aesthetic purposes only. Should the concerns of the appellants be addressed by narrowing this opening then the applicant is happy to comply with same.

By way of conclusion it is stated that the design was specifically altered to address concerns of neighbours and the Planning Authority by reducing the number of dwellings from 2 to 1. It is stated that a contemporary design has precedent in the area and the provision of new infill housing will radically improve the public realm at the end of the lane. An Bord Pleanála are therefore requested to uphold the decision of the Planning Authority.

7.2. Further Responses on behalf of the Appellant

7.2.1. A further response was received on behalf of the appellant by Annette De Klerk.

7.2.2. It is argued that precedent for modern/contemporary design elsewhere do not serve as appropriate justification for the proposed development on the appeal site. It is suggested that any such contemporary design must be of the highest standards. However, it is argued that this is not the case in respect of the current application before the Board. The proposal therefore is contrary to the zoning provisions in the development plan which seeks to protect the special interest and character of Dublin Conservation Areas. The appeal site will be highly visible from all directions along the laneway.

7.2.3. It is reiterated that the proposed development will give rise to overshadowing and loss of sunlight to the rear gardens.

- 7.2.4. In relation to overlooking it is argued that the bedroom serving Bedroom No. 3 remains problematic and it is submitted that a more permanent and appropriate solution will be for the omission of the window as the bedroom it serves already benefits from a south facing window.
- 7.2.5. In relation to car parking in the courtyard it is suggested that the proposed gate access should be replaced with a pedestrian door access from the lane to the courtyard. It is noted that the applicant has indicated a willingness to comply with such condition.
- 7.2.6. In conclusion, it is argued that the applicant has failed to appropriately address the contextual constraints associated with the site and this would result in significant adverse residential amenity impacts particularly for the dwelling to the immediate north of the site facing onto Grove Park. At a minimum, the proposed the dwelling needs to be scaled back from the boundary wall of the site so that its western extremity does not extend beyond the south-eastern corner of the rear garden of No. 87 Grove Park. However, it is considered that the Board should overturn Dublin City Council's decision and refuse planning permission for the proposed development.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The subject site is zoned Z2 “to protect and/or improve the amenities of residential conservation areas”. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respects the design of the surrounding development and the character of the area.
- 8.2. Policy QH22 seeks to ensure that new housing development close to existing houses has regard to the character and scale of the existing houses unless there is strong design reasons for doing otherwise.
- 8.3. Section 16.10.10 of the development plan specifically relates to infill development. It states that having regard to policy on infill site and to make the most sustainable use of land and existing urban infrastructure, the Planning Authority will allow for the development of infill housing on appropriate sites. In general, infill housing should comply with all relevant development plan standards for residential development:

however, in certain limited circumstances, the Planning Authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and underutilised land in the inner and outer city is developed.

8.4. 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.

9.0 **Planning Assessment**

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal, I consider the pertinent issues in determining the current application and appeal before the Board are as follows:

- Principle of Development.
- Impact on Residential Amenities.
- Design Issues.
- Parking and Road Safety Issues.
- Wayleaves and Lease Covenants.

9.1. **Principle of Development**

- 9.1.1. With regard to the issue of principle, the Board will note that the subject site is zoned Z2 – to protect and/or improve the amenities of residential conservation areas. Residential development is a permitted use under this land use zoning objective. The proposed redevelopment of the subject site is therefore permitted in principle subject to qualitative safeguards.

- 9.1.2. The National Planning framework seeks to regenerate and rejuvenate cities by encouraging more compact urban development thereby reducing land take for suburban development, utilising existing infrastructure, buildings and sites and reducing the need to travel long distances. Section 4.5 of the National Planning Framework highlights the importance of achieving urban infill/brownfield development. It notes that at a time when many people,, including those on average incomes wish to live close to the city centre more affordable homes must be provided in urban areas as part of the creation of mixed tenure facilities. To enable brownfield development, planning policies and standards need to be flexible focussing on design led and performance based outcomes rather than specifying absolute requirements in all cases.
- 9.1.3. There is little doubt in my opinion that the development of the subject site would accord with the broader principles set out in the National Planning Framework with regard to creating a more compact urban growth while simultaneously utilising brownfield serviced sites.
- 9.1.4. Finally, in relation to the principle of development, the proposal would undoubtedly improve the public realm at the western end of Blackberry Lane. This lane already accommodates a number of residential dwellings but the western end of the lane is unkempt, overgrown and offers a poor visual and environmental amenity particularly for the residents living along the road. The incorporation of a new dwelling with the commensurate tidying up of the vista at the western end of the lane would undoubtedly constitute a significant planning gain in terms of visual amenity.
- 9.1.5. I am therefore of the opinion that the proposed development is acceptable in principle subject to qualitative safeguards in terms of protecting surrounding residential amenity etc. These issues are assessed in more detail below.

9.2. **Impact on Residential Amenities**

- 9.2.1. In terms of overlooking, the Board will note that the site is a tight linear site with limited depth. The applicant has endeavoured to ensure that no direct overlooking will arise at first floor level as there are no first floor windows proposed on the rear elevation of the dwellinghouse. Rooflights are proposed in the rear pitch of the dwelling in order to provide natural daylight to the stairwell and corridor serving bedrooms 1 to 3 at first floor level. While the separation distances between the rear

returns of Nos. 85 to 93 Grove Park range between 9 and 17 metres, this separation distance is considered sufficient on the grounds that there are no windows at first floor level which will give rise to any direct overlooking. The window on the west elevation give rise to oblique views the rear gardens of no. 85 and to a lesser extent no.87, however in my view such impacts are deemed to be acceptable. It is of course open to the Board to omit this window by way of condition should it consider it appropriate. While a number of windows are located in the rear elevation at ground floor level the incorporation of ground floor boundary wall will prohibit any significant levels of overlooking. If the Board have any concerns in relation to overlooking it could also consider raising the height of the wall to 2 metres in order to address this issue.

- 9.2.2. In relation to overshadowing I note that the applicant in his response to an additional information request submitted a shadow analysis. It indicated that the level of shadow cast has been reduced in the revised design proposal over that associated with the original design proposal. It is also clear that the revised design proposal does not give rise to any significant levels of overshadowing which in my view would justify reasonable grounds for refusal. Outside the winter months, the overshadowing arising from the proposed development is limited to the rear section of backgardens associated with the dwellings to the north. I note that during the summer months, when the gardens offer the greatest source of amenity to occupants, the shadow cast by the proposed development will have a very limited effect on the rear gardens of the dwellings.
- 9.2.3. In terms of overshadowing the Board will also have regard to the fact that the subject site is located within an existing built up area with large numbers of buildings situated in close proximity to each other. The two-storey over basement dwelling on Grove Park together with the rear returns, some of which are two storeys in height, and boundary walls result in a significant level of overshadowing occurring in the absence of the proposed development. It is my view based on the shadow casting analysis submitted, that the additional overshadowing created by the proposed development is negligible in the context of the surrounding built environment.
- 9.2.4. Lastly, the grounds of appeal suggest in relation to residential amenity that the proposed dwelling will have an overbearing impact on the amenities currently enjoyed by the residents of Grove Park. The single storey rear returns associated

with Nos 85, 87, 89 and 91 are c.8 to 10 metres from the proposed dwelling. The separation distance between the main façade of the dwellings to the north and the subject site is in excess of 15 metres. While the proposed dwelling is two-storey in height it incorporates a monopitched roof which rises to maximum height of 6.37 metres. The lower part of the proposed structure which faces onto the dwellings in question rises to just over 5 metres in height. Furthermore, the rear elevation of the dwelling for the most part is set back from the common boundary with the incorporation of a rear terraced yard. Having regard to the overall height of the north elevation of the dwelling, together with the separation distances involved, I do not consider that the northern elevation of the proposed elevation is any different in size and scale to the rear returns of the existing dwellings to the north facing onto Grove Park and as such I do not consider that the proposed development would have any unacceptable impact in terms of being overbearing. The existing dwellinghouse at Nos. 85 to 93 are significantly greater in terms of height and scale to the proposed two-storey dwelling proposed in this instance. I can only conclude therefore that the proposed development is not unacceptable in terms of being overbearing.

- 9.2.5. Arising from my assessment above therefore I do not consider that the proposed development will have an unacceptable impact on adjoining residential amenity. The dimensions of the site can be considered somewhat awkward in terms of accommodating future development. However, I consider that the design in this instance has endeavoured to ensure that any potential impact on surrounding residential development has to be kept to a minimum. Furthermore, I would again refer the Board to statements contained in the National Planning Framework in respect of development in urban infill sites. It notes that *“although sometimes necessary to safeguard against poor quality design, planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objective in settlement of all sizes. This is in recognition of the fact that many current urban planning standards were devised for application to greenfield development sites and cannot account for the evolved layers of complexity in existing built-up areas”*.

9.3. Design issues

- 9.3.1. The grounds of appeal argue that the proposed development is unapologetically modern in design and appearance. However, it is suggested that this design is not of the highest standard. In response to this issue, I acknowledge that the subject site is located in a Residential Conservation Area and that there are numerous policy statements in the development plan which seek to protect the original street patterns and other features which contribute positively to the special interest of a Conservation Area. During the course of the planning assessment it was established that the existing buildings on site are of little historic significance. Furthermore, it cannot be reasonably argued in my view, notwithstanding the Z2 residential conservation land use zoning objective relating to the site, the subject site is not located in any area of specific historic or architectural interest. The Board will not from my photographs attached that the buildings to the immediate east of the subject site which are in commercial use are buildings dating from the 1960s and 1980s and are of no architectural merit whatsoever. Therefore, in my view the development of the subject site will in no way detract from or undermine the integrity of the built fabric of the area. As alluded to earlier in my assessment, I consider that the development of the subject site would significantly improve the public realm.
- 9.3.2. I also noted in my site inspection that there is no visual connection between the subject site and the more formal architectural layout of houses on Grove Park. In fact, the rear of the dwellings to the north which back onto the subject site are not readily visible from Blackberry lane. Equally the subject site is not visible from vantage points along Grove Park.
- 9.3.3. With this in mind I consider that the subject site is suitable to accommodate a dwellinghouse of contemporary design and such design will in no way detract from the character and appearance of the Conservation Area and the general appearance of the streetscape as suggested in the grounds of appeal. Therefore, the proposed development would in no way be contrary to policies which seek to protect the visual appearance and visual amenities associated with such residential conservation areas. On the contrary I consider that the proposed development of the subject site will generally improve the visual amenities of the area.

9.4. **Parking and Road Safety Issues**

- 9.4.1. The grounds of appeal argue that the proposed development would place an increasing demand for on-street car parking.
- 9.4.2. I acknowledge that no off-street car parking space has been provided to serve the proposed three-bedroom dwelling. While there is scope to provide one car parking space in the courtyard area to the immediate west of the dwellinghouse in the courtyard area. This area is proposed as a private amenity open space which is directly connected to the dining/living area and as such would provide an appropriate and important amenity space for the dwelling. I note that there are no off-street car parking spaces provided for any of the dwellinghouses along Blackberry Lane. All car parking is provided in the form of on-street car parking to serve the existing terraced dwellings further east along the lane. I consider a precedent has been created with regard to on-street car parking and I note that there is sufficient space to the front of the proposed dwellinghouse to provide an on-street car parking space to the front of the dwelling. While the western end of Blackberry Lane is narrow it is capable of accommodating an on-street car parking space. In terms of car parking standards, the subject site is located in car parking area 2 in the development plan which requires one car parking space per dwelling. The applicant in this instance has sufficient on-street space to the front of the dwelling to park one vehicle. The applicant however is unable to provide an off-street car parking space without forsaking private amenity space. Again, I would refer the Board to the National Planning Framework which states (page 67) that in particular general restrictions on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance based criteria in terms of appropriate general location/city centre/town centre/public transport hub. The subject site is located within easy walking distance of Lower Rathmines Road which accommodates a high number of frequent bus routes. Furthermore, Charlemont Luas Station is located within a 10-minute walk of the subject site. For these reasons I consider that off-street car parking standards in this instance could be relaxed.

9.5. **Wayleaves and Lease Covenants**

- 9.5.1. The grounds of appeal argue that No. 85 Grove Park enjoys a right of way to Blackberry Lane from its rear garden and the proposed development could impinge upon this legal entitlement.
- 9.5.2. The Development Management Guidelines for Planning Authorities (July 2007) issued by the Department of the Environment, Heritage and Local Governance notes that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are ultimately matters for resolution in the Courts. The Board will also have regard to Section 34(13) of the Planning and Development Act 2000 which states that a person is not entitled solely by reason of a permission to carry out any development. Therefore, it is in my opinion totally within the jurisdiction of the Board to grant planning permission for the proposed development and any legal disputes in relation to rights of way or easements can be determined separately in a Court of Law.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity 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 a European site.

11.0 **EIAR Screening Determination**

Having regard to the nature of the development, comprising of a single dwellinghouse in an urban area it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

12.0 Conclusions and Recommendation

Arising from my assessment above I consider the proposed development to be in accordance with the land use zoning objective pertaining to the site and will not give rise to any adverse impacts on surrounding residential amenity. I therefore recommended that the decision of the Planning Authority be upheld in this instance for the reasons and considerations set out below.

13.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Reasons and Considerations

Having regard to the residential conservation zoning objective relating to the site which permits residential development, it is considered that subject to conditions set out below the proposed development would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally 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.

15.0 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 drawings received by the planning authority on the 23rd day of August, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions required details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the 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. Details of the materials, colours and textures of all external finishes to the proposed dwelling shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

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.

4. A footpath shall be provided along the front of the dwellinghouse the cost of which shall be at the expense of the developer. Details of the proposed footpath shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of pedestrian safety.

5. Site development works and construction works shall be carried out in such a manner to ensure that the adjoining streets 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 the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

6. All recommendations set out in the ecological impact assessment submitted with the additional information received by the planning authority on 23rd day of August, 2018 are to be fully implemented to the satisfaction of the planning authority.

Reason: To preserve the biodiversity of the area.

7. Prior to the commencement of development and on the appointment of a contractor, a construction management plan shall be submitted to the planning authority for written agreement. The 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 and demolition waste.

Reason: In the interest of orderly development.

8. Details of cycle parking to be provided off-site shall be subject of written agreement of the planning authority prior to the commencement of development.

Reason: In the interest of sustainable transport.

9. 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.

Reason: In the interest of the proper planning and sustainable development of the area.

10. Site development and building works shall be carried out only between the hours of 7 a.m. to 6 p.m. Mondays to Fridays inclusive and between 8 a.m. to 2 p.m. 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.

11. The developer shall pay to the planning authority a financial contribution of €6,480 (fifteen thousand four hundred and sixty-nine euro) 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. The application of any indexation required by this condition 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.

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.

11. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

Paul Caprani,
Senior Planning Inspector.

14th January, 2019.