



An
Bord
Pleanála

inspector's Report ABP-303397-19

Development	Construction of courtyard dwelling, part two storey , part single storey with a single storey artist studio, and associated site works
Location	Site to the rear of 15 Church Gardens, Rathmines, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3824/18
Applicant(s)	Brian O'Cathain and Liz Nilsson
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Darrell and Susan Crowe
Observer(s)	Helen and Stephen Kane
Date of Site Inspection	29 th March 2019
Inspector	Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The site is located to the rear of No. 15 Church Gardens (A Protected Structure) and is bounded to the north by a part-single story, part-two storey crèche building, to the east by the rear gardens of No.'s 18 to 22 Castlewood Park, to the south by a recently constructed mews dwelling at No. 12a Church Gardens, and to the west by the rear gardens of 15 and 14 Church Gardens. The site is accessed via an archway running under No. 15 Church Gardens.
- 1.2. The immediate surrounding area is generally residential in nature. Rathmines Town Centre is located approximately 120m from the site.

2.0 Proposed Development

- 2.1. Construction of courtyard dwelling, part two storey , part single storey with a single storey artist studio, and associated site works

3.0 Planning Authority Decision

3.1.1. Decision

Grant Permission. Conditions of note are as follows:

- Condition 3 – Measures to minimise interference with the boundary walls of the Protected Structure to the east of the site.
- Condition 6 – The artist's studio hereby permitted shall be used in conjunction with the dwelling and must not be sold, let or otherwise conveyed as a separate entity.

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:

- Principle of backland development has largely been established through the adjoin development to the rear of No. 12 Church Gardens (2696/09)/contemporary style dwelling/aligns with the zoning objective.
- Clarification should be sought on the impact on the crèche windows adjacent to the site/use of the windows.
- No unreasonable overlooking/dwelling permitted under 2696/09 (12 Church Gardens) will further reduce overlooking/clarification sought on how overlooking of the garden of 13 Church Gardens can be managed.
- Overshadowing impacts are not considered to be unreasonable.
- Car parking location not ideal but preserves the remainder to the site for development and landscaping/no objection from Roads.
- Not considered the proposal will have an adverse impact on the setting of adjacent Protected Structures.
- Concern regarding the impact of the basement development on the protected structures/further information required.
- Amount of open space exceeds the development plan requirements.
- Clarification sought on the use of the nature of the artist's studio i.e. is it ancillary to the dwelling/home-based business or live/work unit.
- Further information was requested in relation to (i) impacts of construction on the Protected Structures (ii) proposals to prevent overlooking of the rear garden of No. 13 Church Gardens (iii) use of the crèche windows which overlook the site (iv) nature of the artist's studio.
- Further information was submitted on 14th November 2018 and was considered acceptable.
- The recommendation was to grant permission.

3.2.2. Other Technical Reports

- Drainage - No objection subject to conditions.
- Roads and Traffic Planning – No objection to the proposal.

- Conservation – ensure surrounding Protected Structures are not impacted by the development.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. Three number third party observations were received. The issues raised are covered within the grounds of appeal and the observation on the appeal.

4.0 Planning History

4.1.1. There is no planning history relating to the site.

Adjoining Sites

12 Church Gardens (rear of)

4.1.2. 3516/16 – Grant Retention Permission for RETENTION: Amendments to dwelling previously approved under Register References 2696/09 and 3032/14 and the rear boundary walls to the dwelling and single-storey garden sheds approved under Register References 2182/12 and 3032/14.

4.1.3. 3032/14 – Grant - The development will consist of amendments to the part single storey, part two storey, over basement three bedroom courtyard dwelling previously approved under register reference: 2696/09 and the rear boundary walls to the dwelling and single storey garden sheds approved under register reference 2182/12/

4.1.4. 2182/12- Grant- Permission for the re-positioning of the boundary walls to the rear of proposed new dwelling in previously approved planning application 2696/09 and the provision of single storey garden sheds to the rear garden and all associated site works.

4.1.5. 2696/09 – Grant – Construction of a three bedroom courtyard dwelling

5.0 Policy and 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 Z1 (To protect, provide and improve residential amenities) under the provisions of the Dublin City Development Plan 2016-2022. Under this land use zoning objective, residential development is a permissible use.
- 5.1.2. No. 15 Church Gardens is a Protected Structure as are the majority of dwellings on this side of Church Gardens and to the rear of the site along Castlewood Park.
- 5.1.3. 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.
 - Section 16.10.8 Backland Development - *Dublin City Council will allow for the provision of comprehensive backland development where the opportunity exists. Backland development is generally defined as development of land that lies to the rear of an existing property or building line. The development of individual backland sites can conflict with the established pattern and character of development in an area. Backland development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. By blocking access, it can constitute piecemeal development and inhibit the development of a*

larger backland area. Applications for backland development will be considered on their own merits.

- 16.10.15 Basements - It is the policy of Dublin City Council to discourage any significant underground or basement development or excavations below ground level of, or adjacent to, residential properties in Conservation Areas or properties which are listed on the Record of Protected Structures.

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

- 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011).
- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (May 2009).

5.2. **Natural Heritage Designations**

5.2.1. None.

5.3. **EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development, a single dwellinghouse, 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The grounds of appeal, as submitted by the Third Party Appellants, are as follows:

- Excessive height/lack of fixed datum/maximum height not in keeping not in keeping with precedents on adjoining sites.
- Visual impact/Proximity to property

- Level of Castlewood Park is 2 feet below that of current ground level on the appeal site
- Reducing the height would not impact the delivery of this project.
- Site to the rear of No. 6 Church Street which borders three properties has a permission for a single storey development – this should be the set precedent.
- Planner took no account of the impact on appellant’s property – two storey element is 1650cm from boundary wall/No. 12A is set back 4m from the boundary of No. 26 Castlewood Park.
- Plans took no account of the extensions at No. 18 Castlewood Park.
- Will impact on afternoon light from the south and west/reworked shadow study shown in Appendix 1
- Negative visual impact from street between 16 and 18 Castlewood Park is not shown /photo shown in Appendix 2
- Request the following amendments:
 - Reduce roof height to 6050cm/set max height from an objective datum level/set back to the 2 storey element by 4m from the boundary wall of 18 Castlewood Park
- Impact of basement and lack of surface water soakage/Swan river runs in the immediate vicinity of the site/culvert was removed when No. 12a was developed/long history of issues with the River Swan including the underpinning of No. 14 Castlewood Park/not considered by the planner.
- Basement does not appear to have a clear purpose/should be excluded.

6.2. Applicant Response

6.2.1. None.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. One no. observation has been received from Helen and Stephen Kane, No. 24 Castlewood Park.

- Do not have permission to connect to private drain in rear garden of No. 24.
- Possible future development of a development over the single storey element.

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
- Impact on Residential Amenity
- Design and Impact on Protected Structures
- Surface Water/Foul Drainage
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The site is zoned 'Z1' under the Dublin City Development Plan, 2016-2022. The principle of residential development is generally acceptable on 'Z1' zoned land, subject to safeguards.

7.2.2. Section 16.10.8 of the Development Plan refers to backland development. This states that, *inter alia*, the development of individual backland sites can conflict with the established pattern and character of development in an area and can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. However, it does not however rule out well integrated backland development and states that applications for backland development will be considered on their own merits.

7.2.3. I have had regard also to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009). Section 5.9 of these

Guidelines refers to infill residential development and notes that potential sites may include backland areas. In assessing applications for infill development, the guidelines note a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

- 7.2.4. Therefore, while the principle of a backland development can be supported within the residential land use zoning, it needs to be ascertained whether the proposed development on the appeal site is in keeping with the established character and pattern of development in the vicinity, and would not be detrimental to the amenities of adjoining residential properties.

7.3. Impact on Residential Amenity

- 7.3.1. The Third Party Appellant contends that the proposal, as a result of the excessive height and proximity to the boundary wall of No. 18 Castlewood Park, would have a negative visual impact and would also impact on afternoon light levels. The appellant also cites a negative visual impact when view from Castlewood Park, between No.'s 16 and 18. The appellant requests that the height is reduced to 6050cm in line with the surrounding developments and also to set back the 2 storey element by 4m from the boundary wall, as per the development at No. 12a.
- 7.3.2. As noted above, backland development does have the potential to impact on residential amenity, and such impacts can include impacts on visual amenity/overbearing appearance, impacts on daylight/sunlight/overshadowing of rear gardens and loss of privacy.

Visual Amenity/Overbearing Appearance

- 7.3.3. The highest element of the dwelling is 7.05m above the ground level of the sit and this slopes down to a height of 5.5m adjacent to the site to the north. The two storey element is set back approximately 1.6m from the boundary wall of No. 18 Castlewood Park at its closest point. The single storey element of the proposal essential borders the rear gardens of No. 20 and 22 Castlewood Park and wraps around to border the dwelling at No. 12a. This element is approximately 3.35m in height along the boundary walls to the north.
- 7.3.4. I have concerns in relation to the visual impact of the proposal when viewed from the rear gardens and I am of the opinion that the height of the 2 storey element

combined with its proximity to the boundary wall would result an adverse impact on visual amenity, and would result in development that is overbearing in nature, when viewed from the garden of No. 18 Castlewood Park. While there is a two-storey dwelling house (with a window box at second floor level) at No. 12a, the first storey element of this is set back 4m from the boundary wall reducing the overall visual impact. Furthermore, the extent of development at first floor level is greater in this instance, than what has been developed at No. 12a, and presents a far more dominant form of development. It is my view that the first floor element should be pulled back by at least 4m, from the boundary wall of No. 18 Castlewood Park. I also consider that the height should also be reduced to be more in line with the first floor element of No. 12a, which would necessitate a reduction in height of 1m. While this will necessitate a redesign, I consider that these amendments can be carried out within the scope of this appeal, and still allow for a dwelling with a generous floor area, whilst preserving the amenity of neighbouring dwellings.

Overshadowing

- 7.3.5. A Context Shadow Study (dated August 2018) was submitted at application stage. The accuracy of this has been queried by the appellant who has stated it does not take into account the extension to the appellant's dwelling, and the impact is therefore understated.
- 7.3.6. Notwithstanding the concerns of the appellant I do not consider the proposal would result in excessive overshadowing of neighbouring gardens, and I consider that neighbour residential windows are sufficient set back from the proposed dwelling so as to experience little or no impact as a result of the proposal, having regard to loss of daylight and sunlight.

Loss of Privacy

- 7.3.7. There will be no loss of privacy as a result of this proposal, having regard to regard to the orientation of the windows in the proposed dwelling relative to neighbouring windows.

7.4. Design and Impact on the Protected Structures

- 7.5. A Visual Impact Assessment was submitted at application stage and I have had regard to same.

- 7.6. The design approach is a contemporary one and is in line with the approach taken for other backland dwellings in the area. However, the excessive scale of the proposal, in terms of the height and extent of the first storey element, results in a development that is overscaled and overbearing in nature. The amendments as suggested above, pulling back the first storey from the rear boundary wall and reducing the overall height by 1m, would, in my view, result in a proposal that is in line with the constraints of the site, and would be a more appropriate scale of development.
- 7.7. In terms of the impact on surrounding protected structures, I note that the site is a backland site, and there are very limited views from surrounding streets towards the appeal site. The appellant notes that there is a visual impact when viewed from the gap between No. 16 and 18 Castlewood Park. I accept there is a view toward the appeal site from this point, and the dwelling will be seen from this point, but this is a fleeting view and would not detrimentally impact on the setting of the protected structures, either on Castlewood Park or on Church Road.
- 7.8. In my view, the architectural merit of the protected structures on Church Road and Castlewood Park derives from their streetscape elevations, and this proposal will have very little impact on the setting of same.
- 7.9. In relation to the basement element, I note that significant basement development is generally discouraged in the vicinity of Protected Structures and Conservation Areas, as per Section 16.10.15 of the Development Plan. In this case, I do not consider the basement extent is significant and impacts can be controlled by way of condition.
- 7.10. **Surface Water Drainage/Foul Drainage**
- 7.11. The appellant has stated that the River Swam flows in the vicinity of the site and the proposal has not taken account of same.
- 7.12. A Drainage Design Report has been submitted with the application. The report states that surface water run-off will be reduced by way of permeable paving, green roofs for the single storey elements and rainwater harvesting. It is proposed to connect to the existing combined sewer on Church Gardens. I note no objections have been raised by the drainage department. There is no concrete evidence on file that the proposal will impact on, or this site and surrounding sites will be impacted by, the Swan River.

7.13. An observer on the appeal has raised the issue of foul drainage and state that the applicant may not be entitled to connect to the private drain to the rear at No. 26 Castlewood Park. In this regard I refer to Section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development. Therefore, should the Board be minded to grant permission, the developers must be certain under civil law that they have all necessary rights in the land to execute the grant of permission.

7.14. **Appropriate Assessment**

7.14.1. Having regard to the nature and scale of the proposed development, the construction of a single 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.

8.0 **Recommendation**

8.1. Grant Permission.

9.0 **Reasons and Considerations**

Having regard to the provisions of the Dublin City Development Plan 2016 -2022, and to the nature, and scale of the proposed development, it is considered that, subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The proposal would preserve the setting of nearby Protected Structures. 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 14th day of November 2018,

except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposal shall be amended as follows:

(a) The first floor element shall be pulled back from the rear boundary wall of No. 18 Castlewood Park by a minimum of 4m.

(b) The maximum ridge height of the dwelling shall be reduced by 1m (i.e. the maximum parapet level shall be +30.08 OD).

Prior to commencement of development, amended plans indicating these changes shall be submitted to, and approved in writing by, the planning authority.

Reason: In the interest of design and residential amenity.

3. 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.

4. 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.

5. The following requirements in relation to construction adjacent to boundary walls should be strictly adhered to during construction:

Appropriate measures should be taken during the construction of the development to cause minimum interference to the boundary walls of the Protected Structures located to the east of the subject site.

Reason: To protect the character and integrity of the setting of adjoining Protected Structures.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority and Irish Water for such works and services.

Reason: In the interest of public health.

7. The artist's studio hereby permitted shall be used in conjunction with the dwelling and must not be sold, let or otherwise conveyed as a separate entity.

Reason: In order to safeguard the amenities of adjoining residential occupiers.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper

application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Ronan O'Connor
Planning Inspector

29th March 2019