



An  
Bord  
Pleanála

## Inspector's Report

**ABP-304168-19**

<b>Development</b>	Demolition of house and single storey shed and construction of a two storey and part single storey dwelling
<b>Location</b>	15, Maxwell Road, Dublin 6
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	4456/18
<b>Applicant(s)</b>	Mr & Mrs James Molohan.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission subject to conditions.
<b>Type of Appeal</b>	(1) Third Party (2) First Party v Condition 5
<b>Appellant(s)</b>	(1) Margaret Roche. (2) Mr & Mrs James Molohan.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	30 <sup>th</sup> May 2019.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site measuring 255m<sup>2</sup> is located at 15 Maxwell Road, Dublin 6. The site is presently occupied by a detached two storey and part single storey dwelling which occupies the corner junction of Maxwell Road and York Road. The structure with a floor area of 50 sq.m is a one bedroomed dwelling with orientation to the north east. There is a shed structure to the northern side of the dwelling. The floor level of the house is approximately 400mm lower than the existing footpath level and access is pedestrian only off Maxwell Road. The boundary onto Maxwell Road is defined by a random rubble stone wall and the boundary to York Road by a mixture of stone, concrete blocks and timber fencing. The house is finished with lined painted render, timber windows and doors and natural slate roof. A single storey extension to the northern side with mineral felt flat roof and a flat roofed entrance porch to the eastern elevation.
- 1.2. The house is of mid-19<sup>th</sup> century origin and appears on the 25" 1887-1913 OS Map and not present on the 6" historical map 1837-1842. The surrounding area is residential in character.

## 2.0 Proposed Development

- 2.1. The application as set out involves permission for demolition of the existing dwelling and shed and construction of a new two storey and part single storey dwelling, new vehicular access gates and boundary wall of York Road, off street parking for one car, raised boundaries along Maxwell Road and all associated site works. The proposal involves the incorporation into the site of a strip of the adjacent garden of no 23 Maxwell Road into the site and documentary evidence of consent of the relevant owner to this is provided.
- 2.2. Application details outline desire for the provision of an on-site car parking space for health reasons and this is supported by documentation from consultant physician.
- 2.3. Planning report outlines the design approach whereby the proposal seeks to replicate and reinforce the corner feature by rebuilding a similar white block. The remainder of the new dwelling will be a series of two storey and single storey elements wrapping around the two storey elements having the effect of reducing the bulk and stepping down the structures towards their neighbours and boundaries.

Proposed building materials include white render, clay stock brick, zinc cladding, random rubble walls.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1 By order dated 22<sup>nd</sup> March 2019 Dublin City Council issued notification of decision to grant permission and 9 conditions were attached which included the following:

Condition 2. Development Contribution €9,370.52 in accordance with the Development Contribution Scheme.

Condition 3. Use of yellow brick to be limited and predominant brick colour be red to ensure the development is in keeping with the surrounding character of the area.

Condition 4. Flat roofs proposed shall not at any time be used for the purposes of terrace or private amenity space for the dwelling hereby approved.

Condition 5. The vehicular access to York Road shall be omitted from the development as the removal of on street car parking spaces to facilitate private vehicular accesses contrary to Dublin City Council Policy.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

3.2.1.1 Planner's initial report questions whether the shell of the building could be retained and reused, and further information was requested to investigate the feasibility of such an approach. The use of red brick in lieu of buff yellow considered more appropriate to ensure that structure is more sympathetic

3.2.1.2 Following additional information submission the reporting planner accepts that the condition of the property and prohibitive cost renders its retention unfeasible. Permission was recommended subject to conditions.

##### **3.2.2. Other Technical Reports**

3.2.2.3 Engineering Department – Drainage Division. No objection subject to standard conditions regarding compliance with greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

Transportation Planning Division notes policy of the Dublin City Development Plan to minimise loss of on street car parking spaces. Section 15.38.9 outlines there will be a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on street car parking spaces. There are 105 pay and display/permit parking spaces on York Road and 92 permit holders while on Maxwell Road there are 92 Pay and display permit parking spaces and 42 permit holders. The applicant would be entitled to have an on-street car parking space on York Road to the front of the dwelling designated as a disabled parking space. Given proximity to junction the entrance creates potential traffic hazard and would require removal of streetlight post. Entrance should be omitted.

### **3.3. Prescribed Bodies**

3.3.1 No submissions.

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

3.4.1 Observations are submitted by the following third parties

William F O Byrne, 31 Maxwell Road,

Rathgar Residents Association

Thomas McCann 26 Maxwell Road.

Mairead de Blaca, 27 Maxwell Road.

Margaret Roche 23A York Road.

Brendan O Neill, 25 Maxwell Road.

3.4.2 Objections raise common issues which I have summarised as follows:

- Proposal involves the demolition and rebuilding of a unique and characterful premises.
- Proposal is completely out of sympathy with the local neighbourhood in terms of styling proposed materials and scale.

- Proposal fails to address the Development Plan requirement that new developments must contribute positively to the character and distinctiveness of a conservation area.
- Design, material finishes, bulk, scale and dominant position present as a piece of unrelated and unsympathetic architecture.
- Incongruous colours out of character.
- Design is sprawling and fragmented.
- Concern that flat roofed area would be used as external raised terrace at a future date
- Floor area exceeds indicative standard of 45%.
- Loss of parking detrimental to established residents.

## 4.0 Planning History

**3402/18** Permission refused for demolition of two storey house and single storey shed and construction of two storey house garage and associated site works. Refused on basis of design bulk and scale out of character in a conservation area.

**4586/17** Permission refused for demolition of the existing two storey house and single storey shed and construction of a new two storey house garage and associated site works. Refused on grounds of failure to justify demolition. By reason of design bulk and scale incongruous and out of character in a residential conservation area.

## 5.0 Policy Context

### 5.1. Development Plan

Site is located in area zoned Z2. "To protect and / or improve the amenities of residential conservation areas."

QH8 *“To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.”*

QH22 *To ensure that new housing development close to existing houses has regard to the character and scale of the existing houses unless there are strong design reasons for doing otherwise.*

### **5.5.8 Demolition and Re-use of Housing.**

“The demolition of existing housing is generally discouraged on sustainability grounds as it may lead to a loss of residential accommodation and streetscape character.”

Policy QH23 *“To discourage the demolition of habitable housing unless streetscape, environmental and amenity considerations are satisfied, and a net increase in the number of dwelling units is provided in order to promote sustainable development by making efficient use of scarce urban land.”*

### **16.10.9 Corner / Side Garden Sites.**

The Planning Authority will have regard to the following criteria in assessing proposals for the development of corner / side garden sites:

- The character of the street
- Compatibility of design and scale with adjoining dwellings, paying attention to the established building line, proportion, heights, parapet levels and materials of adjoining buildings
- Impact on the residential amenities of adjoining sites
- Open space standards and refuse standards for both existing and proposed dwellings
- The provision of appropriate car parking facilities and a safe means of access to and egress from the site.
- The provision of landscaping and boundary treatments which are in keeping with other properties in the area
- The maintenance of the front and side building lines where appropriate.

### **11.5.5 Architectural Conservation Areas and Conservation Areas,**

CHC4 “To protect the special interest and character of all of Dublin’s Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.

*CHC5 To protect protected structures and preserve the character and setting of Architectural Conservation Areas. The City Council will resist the total or substantial loss of Non-protected structures which are considered to make a positive contribution to the character and appearance of an Architectural Conservation Area, unless it can be demonstrated that the public benefits of the proposals outweigh the case for retention of the building.” ...*

*“Where an existing structure is considered to make a neutral or negative contribution to an ACA the City Council will encourage:*

*“Its demolition and replacement with a high-quality building with enhanced environmental performance.”...*

*“Demolition will only be permitted where Any replacement building will be of exceptional design quality and deliver an enhancement o the area and improvement in environmental performance on site, taking into account whole life-cycle energy costs”*

Policy MT14 To minimise loss of on-street car parking, whilst recognizing that some loss of spaces is required for, or in relation to, sustainable transport provision, access to new developments, or public realm improvements.

16.38 Car Parking Standards.

16.38.9 On Street Car Parking.

There will be a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on on-street car-parking spaces.

## 5.2. Natural Heritage Designations

None

## 5.3. EIA Screening

- 5.2.1 Having regard to the nature and scale of the proposed development on zoned and serviced land, and to the nature of the receiving environment, 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 Appeals

### 6.1. Grounds of Third-Party Appeal

6.1.1. The third-party appeal is submitted by Margaret Roche, 23A York Road. Grounds of appeal are summarised as follows:

- Decision making procedure leading to the grant of permission is flawed.
- Development is grossly out of character and would represent an incongruous insertion into a conservation area
- Destruction of a traditional Irish cottage, part of the estate of the previous manor house in the area and its replacement with a brutalist bunker style edifice.
- Ivy Cottage was constructed as a gate lodge for a manor house, Salem house which was the centre of a significant parcel of land in the area. Is of historical importance and represents a visible link with history of this conservation area.
- Structural condition report based on superficial examination based on walk through should not be relied upon to justify the destruction of a building with the historical significance and visual amenity of Ivy Cottage. The question of whether the existing cottage can be replicated is not addressed. The decision to grant was taken without a full and proper examination of the issues and is deficient in administrative law terms.



- Policy CHC4 of the Dublin City Development Plan requires new development must contribute positively to the character and distinctiveness of the conservation area. Proposal is completely out of character.
- Development is substantially larger than the existing structure and location on corner site amplifies this effect.
- Other recent development has been required to replicate exactly existing structures.
- First Party appeal of refusal for vehicular access onto York Road should be refused on grounds of traffic hazard.
- Concerns set out in planning report have not been properly addressed prior to granting permission.

## **6.2. First Party Appeal**

6.2.1 The first party appeal is submitted by Hamilton Young Architects on behalf of the applicant Mr & Mrs James Molohan. The appeal is against Condition 5 which omits the provision of off-street parking provision and is summarised as follows:

- There are currently 6 spaces available between the corner of York Road and Maxwell Road and yellow line markings on York Road on the east side of the road. There are 3 houses on this stretch all with off street parking. There are 18 on street parking spaces available on that stretch of York Road with all residents bounding it having off street car parking facilities. The proposal does not contravene Policy MT14 given that residents are not largely reliant on street car parking.
- Similar case 2887/18 where permission was granted for off street car parking.
- Based on serious health and mobility issues as detailed in application the applicants are anxious to purchase and use an electric car and will be unable to do so without access to off street charging.
- Drg. NO PA-01-01A showing 4 no existing on street car parking spaces along York Road immediately in front of the proposed new access point and also the proposed arrangements resulting from the proposed vehicular access. A distance of 10 metres will be provided between 2 no retained on street car spaces. This distance is adequate to allay concerns regarding visibility.
- Lamp Post will be repositioned to facilitate the development.

## 7.0 Assessment

7.1. Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider that the key issues arising in this appeal can be considered under the following broad headings.

- Principle of development
- Quality of design and layout, residential amenity.
- Parking – First Party Appeal
- Other matters

### 7.2. Principle of development

7.2.1 As regards the principle of development, the site is zoned Z2 *“To protect and/or improve the amenities of residential conservation areas.”* It is the policy of the Dublin City Development plan QH23 to discourage the demolition of habitable housing unless streetscape, environmental and amenity considerations are satisfied and a new increase in the number of dwelling units is provided in order to promote sustainable development by making efficient use of scarce urban land. I note policy of the Planning Authority with regard to demolition within a conservation area provides that demolition will only be permitted where *“Any replacement building will be of exceptional design quality and deliver an enhancement to the area and improvement in environmental on-site, taking into account whole life-cycle energy costs.”*

7.2.2 I note the conservation assessment report by David Young, Conservation Grade 1 architect which was submitted with the application. It outlines that the existing structures retain only a fraction of the features of the original house. Ground floors have been replaced, original slates have been replaced with fibre cement slates and all windows and doors bar one window have been replaced with white deal. External wall render is poor and spalling. Floor to ceiling height at ground is 2130mm. It is noted that the most valuable feature of the property is its actual location on the corner of Maxwell Road and York Road, giving a strong bookend to both roads and a strong corner. The report concludes that the new proposal including the rebuilding of

this important corner respects the environment and is consistent with conservation guidelines.

7.2.3 I note that when requested by the City Council to consider the feasibility of retention and incorporation of the existing structure into the redevelopment proposal the applicant submitted a structural condition report by Doherty Finnegan Kelly, Consulting Engineers which also includes a number of photographic plates. The report contends that the property is in very poor condition from a structural point of view with significant signs of structure settlement movement at ground floor and first floor level and significant falls across the floors. While it is technically feasible to carry out extensive underpinning it is asserted that the cost would be significant given the overall structural and general condition of the building. Underpinning would prevent further subsidence but would not overcome the existing problems of the falls the cracking of the walls due to subsidence, the off plumb lintels and rising damp. There is no means of ventilation to either of the roof structures and possible dry rot would be of concern. Significant signs of dampness and rising damp in evidence.

7.2.4 I note that the existing structure on site provides a very restricted level of accommodation and is not in line with modern standards. Having reviewed the structure and photographic evidence it is clear that many of the original features of the dwelling have been removed. I consider that the proposal provides for the more efficient use of serviced urban lands delivering a substantially enhanced modern level or residential accommodation and a more energy efficient structure. Based on the details submitted it is my considered view that the demolition of the dwelling has been justified and therefore it is appropriate to assess the merits of the proposal in its detail.

### **7.3 Quality of Design and Layout – Residential Amenity.**

7.3.1 On the matter of the quality of the design and layout and impact on the streetscape. I note the development plan requirement CHC5 that where demolition of an existing structure which makes a neutral or negative contribution to an architectural conservation area is, the city council will encourage its demolition and replacement

with a high-quality building with enhanced environmental performance. Any replacement building will be of exceptional design quality and deliver an enhancement to the area and improvement in environmental performance on-site, taking into account whole life-cycle energy costs. I note that the proposed replacement dwelling represents a significant departure from the pattern that exists. The design is of its time and in my view responds positively to its context. The creation of a new white block corner feature structure to reflect the structure to be demolished is a positive design proposal. The use of a mix of red brick characteristic of the area further seeks to embed the proposed dwelling to this locale . The proposed dwelling provides for a good standard of residential amenity. I note that the third-party criticism of the design favouring a more traditional approach however I consider that the contemporary approach is appropriate as opposed to the creation of pastiche architecture.

7.3.2 As regards impact on established residential amenity I note that the design appropriately mitigates impact arising in terms of overlooking. The upper floor window facing the adjacent dwelling on York Road includes timber screening to protect visual amenity. Shadow impact drawings demonstrate that the proposed dwelling will not have a significant effect. I note third party concerns with regard to potential for use of flat roofed areas as future balconies however this can be addressed by way of condition. I consider that the impact in respect of overshadowing and outlook is acceptable in the site context and the proposed development will not give rise to undue negative impact on residential amenity.

#### **7.4 Parking - First Party Appeal of condition 5**

7.4.1 The first party has outlined a case for the provision of off-street car parking space on basis of medical (health and mobility) and in order to enable the applicant to provide on-site electrical charging point. This proposal involves the loss of two existing on-street parking bays. I note that the decision of the planning authority to omit the parking was on the basis of Development Plan Policy MT14 and provisions of Section 16.38.9 where there is a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on on-street car parking spaces. The First Party notes that within this area a number of established residents have off street parking facilities and therefore there is not a large reliance

on on-street parking. Having considered the issue I conclude that the first party has made a reasonable case. I note the proximity of the proposed entrance to the road junction however I consider that the proposal is acceptable from a traffic safety perspective.

## **7.5 Appropriate Assessment**

7.5.1 As regards the issue of Appropriate Assessment, having regard to the nature of the proposed development and proposal to connect to existing public services together with separation distance from any designated European Site and having regard to the source pathway receptor model, it is not considered that the proposed development is likely to have significant effect either individually or in combination with other plans or projects on a European Site. It is therefore considered that appropriate assessment under the Habitats Directive (92\43\EEC) is not relevant in this case.

## **8. Recommendation**

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that the Board uphold the decision of Dublin City Council to grant permission subject to the following conditions.

### **REASONS AND CONSIDERATIONS**

Having regard to the Dublin City Development Plan 2016 – 2022 and the Best Practice Guidelines, entitled Quality Housing for Sustainable Communities, the proposal would be compatible with the visual and residential amenities of the area would not impact unduly on the residential amenities of adjacent dwellings and would afford a satisfactory standard of amenity to future occupiers. The proposed development is acceptable from a traffic safety perspective. No Appropriate Assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on 27/2/2019 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.

**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 commencement of development.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the attenuation and disposal of s water shall comply with the requirements of the planning authority for such works and s

Reason: In the interest of public health.

4. Flat roofed areas shall not be used for the purposes of terraces or private amenity space.

Reason: In the interest of residential amenity.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with, *“Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”*, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interests of sustainable waste management.

6. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning 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 – 2015. The contribution shall be paid prior to the 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 the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 – 2015 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.

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Bríd Maxwell  
Planning Inspector

1<sup>st</sup> July 2019