



An
Bord
Pleanála

Inspector's Report

ABP-304301-19

Development	New house to rear and side of existing property with acces via laneway as per planning ref no WEB1018/19.
Location	159 Vernon Ave, Clontarf, Dublin 3.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2173/19
Applicant(s)	Fraser Snr & Gertie McMullen
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Cormac & Natalia Farrelly
Observer(s)	None
Date of Site Inspection	21 st August 2019.
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.063ha, is located on the east side of Vernon Avenue, in the suburb of Clontarf, Dublin 3. The 50kph speed restriction applies in this area. There are public footpaths in the area; and public lighting is in place.
- 1.2. The site forms part of the curtilage of an existing two-storey house; and is located to the east and south of the house. The site is irregular in shape; and contains the remains of a number of half-demolished concrete sheds associated with a former dairy use. The site is overgrown and derelict. A number of shallow trial holes have been opened throughout the site – nearly all of which contain standing water. The site slopes very gently downhill from northwest to southeast.
- 1.3. To the northwest, the site abuts the curtilage of no. 159C (from which the site is carved) – the boundary with which is undefined at present. To the north, the site abuts the curtilage of an electricity substation – the boundary with which is a 2.5m high concrete block wall. To the east, the site abuts the curtilage of a large, two-storey, detached house in Vernon Heath – the boundary with which is a 2.5m high concrete block wall (capped but not plastered). To the south, the site abuts the rear garden of no. 157C Vernon Avenue – the boundary with which is a 2.2m high concrete block wall (which is capped, but not plastered). To the southwest, the site abuts a vacant site – the boundary with which is undefined. To the west, the site abuts Vernon Avenue – the boundary with which is the existing vehicular entrance to no. 159C Vernon Avenue.

2.0 Proposed Development

- 2.1. Permission sought on 1st February 2019, for residential development as follows-
 - Part single- and part two-storey, three-bedroom house (126m²) to the rear of an existing house. The house will have a barrel roof – split in two for the single- and two-storey sections.
 - Detached, single-storey shed/utility room of 20m².
 - Connection to the public watermain in Vernon Avenue.

- Connection to the existing public surface water sewer in Vernon Avenue – to include underground attenuation of 4.75m³. It is proposed to divert a combined sewer within the site (which currently serves the existing house – no. 159C) and to discharge foul/surface water from the existing house to it; and to discharge foul waste from the proposed house to it. This pipe would appear to discharge to Vernon Heath estate – to the southeast.
- Revised vehicular access (permission already granted, ref. WEB1018/19) will serve the existing house (159C), the proposed house (159B) and a third remaining site within the wider curtilage (no. 159A – for which permission has been granted for a house, ref. 2162/19).

2.1.1. The application is accompanied by the following documentation of note-

- Planning Application Report – dated 14th January 2019.
- Drainage Report – dated 30th January 2019.

3.0 Planning Authority Decision

By Order dated 28th March 2019, Dublin City Council issued a Notification of decision to grant planning permission subject to 10 no. conditions – the principal ones of which may be summarised as follows-

1. Development to be carried out in accordance with plans and particulars submitted with the application.
2. Development contribution of €12,614.40.
4. No flat roof area shall be used as a roof garden or patio.
5. Dwelling shall not be occupied until the revised entrance (permitted under WEB1018/19) has been completed.
6. Relates to drainage.
7. Relates to hours of construction.
10. Relates to naming and numbering.

4.0 Planning History

Ref. 2162/19: Refers to an application by Fraser McMullen Jnr, to construct a five-bedroom house, on site 159A Vernon Avenue – sharing a vehicular access with no. 159C and with the current appeal site. Permission was granted on 2nd May 2019. There is no development to date on foot of this permission.

Ref. WEB1018/19: Permission granted to Fraser Snr & Gertie McMullen, on 25th April 2019, for alterations to existing 3.6m wide vehicular access to no. 159 Vernon Avenue. There is no development to date on foot of this permission.

Ref. 2600/15: Permission granted to Ian McMullen, on 17th July 2015, for a two-storey house on the site immediately to the east of the current appeal site (within Vernon Heath estate). There is no development to date on foot of this permission.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Dublin City Development Plan 2016-2022.

- The site is zoned 'Z1' – “To protect, provide for and improve residential amenities”.
- Policy QH8 states- “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”.
- Policy QH22 states- “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”.
- Section 16.10.8, in relation to ‘Backland Development’, states that DCC will allow for the provision of comprehensive backland development, where the opportunity exists.
- Section 16.10.10, in relation to ‘Infill Housing’, states that DCC will seek to make the most sustainable use of land and existing urban infrastructure, at

appropriate sites. Regard must be had to the character of the street and the need to relate to existing building heights and design.

5.2. **Natural Heritage Designations**

The site is neither within nor immediately adjoining any natural heritage designation. The closest such are the North Bull Island SPA (Site code 004006) and the North Dublin Bay SAC (Site code 000206) – located some 1.15km to the southeast.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The appeal from Cormac & Natalia Farrelly of 157C Vernon Avenue, received by An Bord Pleanála on 24th April 2019, can be summarised in bullet point format as follows-

- The proposed house will be located on higher ground. First floor windows will overlook the rear garden and living-room/kitchen of no. 157C Vernon Avenue.
- The house would be overbearing and visually intrusive.
- Parking spaces for this house (and the proposed house on site 159A) directly abut the boundary wall of the appellants' house; and would be to the rear of all other parking provision for houses on this road. Noise from car engines would be unacceptable.
- There is no other example of backland development on Vernon Avenue. The character of the area is of detached dwellings, in linear form, along the street.
- The appellants' property would be devalued by this development.

6.1.2. The appeal is accompanied by two, annotated, photographs of the appeal site.

6.2. **Applicant Response**

6.2.1. The response of Brennan Furlong, Architects, agent on behalf of the applicants, Fraser Snr & Gertie McMullen; received by An Bord Pleanála on 23rd May 2019, can be summarised in bullet point format as follows-

- The site originally formed part of the farm buildings of the now-demolished Wood Park House.
- The ground levels on site fall generally from west to east. The finished floor level of the proposed house is 16.6m, and the roof at 22.9m. The ridge level height of the appellants' house is approximately 26.0m. The level of the appeal site is only marginally higher than the level of the appellants' site.
- There are 4 no. windows at first floor level in the southern elevation of the proposed house: one serves a stairs & landing. This first floor façade is a minimum of 21.0m from the boundary wall with the appellants' garden. Such a separation distance will ensure that there will be no loss of amenity for the appellants.
- Screen planting within the rear garden of the appellants' house further protects the privacy of ground-floor living space. The appellants also have a garden shed, approximately 5m long, located on the boundary, which gives further privacy to the rear garden.
- The house has been located in the extreme northeastern part of the property – to limit the impact on residences to the south. The height of the roof has been kept as low as possible – and is 3.1m lower than the ridge-line height of the roof on the appellants' house.
- The site is zoned for residential development within the Dublin City Development Plan. Permission has been granted for a five-bedroom house immediately to the southwest – adjacent to the appellants' house – ref. 2162/19.
- The design of the proposed house will minimally impact on surrounding properties.
- Permission has been granted for a three-bedroom house immediately to the east of the appeal site – within Vernon Heath.
- Permission ref. WEB1018/19, clearly indicated that access would be provided to the rear of this site. There was no objection or appeal made in relation to that application. Permission was also granted, ref. 2162/19, for a house on site 159A – which indicated parking off the new laneway. This parking is

located 5.4m from the boundary of the appellants' property. There was no objection or appeal to this development either. Parking for the proposed house will be 18m from the appellants' house. It seems likely that this element of the appeal relates to an already permitted parking provision for site 159A.

- The finished floor level of the appellants' house would appear to be 0.6m below the level of the proposed house – based on planning drawings submitted for the three houses at 157A-C Vernon Avenue
- There is ample precedent for car-parking to the rear of properties on the eastern side of Vernon Avenue; serving new properties constructed behind [numbers included]. There are many other examples of similar-type development on the western side of Vernon Avenue also. A cursory look at maps for the area, will bear out these claims.
- The development plan specifically allows for backland development.
- There is no proposal to include any farming use within the development.
- The proposed house is not higher than the existing extended dormer bungalow on the site.
- The house will not be out of context with what exists; and with what has been permitted in the area.
- Photographs submitted by the appellants appear to have been taken from first floor level.

6.2.2. The response is accompanied by drawings showing vision from the ground and first floor levels of the proposed house (towards the south), and separation distances from the appellants' property.

6.3. **Planning Authority Response**

There was no response from DCC to the grounds of appeal submitted.

6.4. **Observations**

None received.

6.5. Further Circulation

- 6.5.1. An Bord Pleanála referred the 1st Party response to the grounds of appeal (received on 23rd May 2019) to the other parties to the appeal: for comment on or before 20th June 2019.
- 6.5.2. There were no responses received.

7.0 Assessment

The principal issues of this appeal relate to residential amenity, access and drainage.

7.1. Development Plan

- 7.1.1. The site is zoned for residential use. I would be satisfied that the development accords with the policies in the Plan for both 'infill' and 'backland' development. Permission has previously been granted by DCC for a new vehicular access to the wider 159 Vernon Avenue site (ref. WEB1018/19), from which it is clear that additional development was contemplated on the site.
- 7.1.2. Policy QH8 states- "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". I would be satisfied that the proposal represents an acceptable densification within this suburban area. Policy QH22 states- "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". I would be satisfied that the proposed house has been located on the site so as to limit the impact on the adjoining no. 159 and no. 157C Vernon Avenue. Section 16.10.8, in relation to 'Backland Development', states that DCC will allow for the provision of comprehensive backland development, where the opportunity exists. Whilst this development of itself, could not be regarded as comprehensive backland development; taken in conjunction with recent developments and permissions for houses on what was formerly Wood Park House, it could be seen as such. Section 16.10.10, in relation to 'Infill Housing', states that DCC will seek to make the most

sustainable use of land and existing urban infrastructure, at appropriate sites. Regard must be had to the character of the street and the need to relate to existing building heights and design. I would be satisfied that regard has been had to the character of the area. There is no uniform house design or style within this part of Vernon Avenue. The proposed house will be largely hidden to the rear of existing no. 159 Vernon Avenue. I am satisfied that the development comprises an acceptable form of infill development; and is in accordance with this section of the Plan.

7.2. Layout & Design

- 7.2.1. The proposed house as been located in the northeastern corner of the site – as far as possible from existing and proposed houses in the area. It is set back only 2m from the high, northern and eastern boundary walls. Ground floor windows to living areas, which address these high walls, will offer poor daylighting and amenity. I note that the positions of permitted houses: on the adjoining site to the east within Vernon Heath; and on site 159A, have not been indicated on drawings submitted.
- 7.2.2. A rear garden of 70m² is to be retained for existing no. 159C Vernon Avenue. This house is located approximately 1.0m above the level of the house on the appeal site. A separation distance of 12.5m is proposed between the two houses. Whilst first-floor windows of the existing no. 159C will directly overlook the proposed house, I note that there is only one kitchen window within the new house which could be impacted. It would be possible to erect a boundary wall and undertake screen planing to mitigate this impact – should the future residents so require.
- 7.2.3. The design of the house is distinctly modern. It will largely be screened from view from Vernon Avenue by the existing no. 159C – being similar in height. There is no established architectural style in this area. The proposed style is acceptable in this backland location. The appellants' house is of two-storeys, with attic accommodation within a steeply-pitched roof. The ridge-line height of the appellants' house (and the adjoining no.s 157A & 157B), is approximately 3m higher than the roof height of the proposed house. External finishes in the proposed house include render, brick and cedar shingles; with corrugated metal roof cladding to the half barrel vault-like structures. A 1.8m high timber fence will screen the private amenity

space from the shared laneway access with no.s 159A and 159C. A private amenity area of approximately 175m² is proposed for the new house.

- 7.2.4. The proposed house is modest in size (126m²). It is part single- and part two-storey. It will be located approximately 0.6m above the level of the appellant's house. I note that Vernon Avenue runs gently down towards the sea to the south. The appellants claim that first-floor windows within the southern elevation of the house will impact negatively on the amenity of residents of no. 157C Vernon Avenue. The respective houses are located at right angles to one another: therefore, there will be no direct overlooking of living areas. The ground floor of the proposed house is located approximately 16m from the 2.5m high boundary wall of the garden with no. 157C. First floor windows within the proposed house are set back approximately 21m from the boundary with no. 157C. These separation distances are more than adequate to protect the residential amenity of the occupants of no. 157C – in the context of suburban development. I further note that a garden shed and semi-mature tree (located adjacent to the northern boundary wall of the appellants' garden) give further screening to the house and rear garden. I would note that the amenity of the rear garden of the permitted house on site 159A, is likely to be impacted to a greater degree than the amenity of the appellants' house. Condition 4 of the Notification of decision to grant permission required that flat-roofed areas be not used as a roof garden or patio. This would appear to be reasonable; and a similarly-worded condition should be included in any grant of permission to issue from the Board.
- 7.2.5. I note that a first-floor window in the eastern elevation of the proposed house is located only 2.0m from the site boundary. Permission has been granted for a two-storey house on the adjoining site to the east (within Vernon Heath estate). It is not known whether this window will result in an unacceptable degree of overlooking of the adjoining house/garden, as the position of the permitted house on the adjoining site has not been indicated on drawings submitted. It was not possible for this Inspector, to peruse drawings of the permitted house on the adjoining site, on the website of DCC. The window in question is one of two lighting the bedroom. It would be possible to attach a condition to any grant of permission, requiring that this window be in obscured glazing, in order to protect the amenities of the adjoining property within Vernon Heath – whether a house is constructed or no on the site.

7.3. Access & Parking

- 7.3.1. The access arrangements to this site have already been determined, by permission ref. WEB1018/19. Whilst there is no development to date, on foot of this permission, the current application indicates that access is to be taken from the revised laneway arrangement. To this extent, the matter of access has already been determined. Condition 5 of the Notification of decision to grant planning permission, required that the house not be occupied, until such time as the access arrangements, provided for by permission ref. WEB1018/19, had been put in place. This would appear to be reasonable.
- 7.3.2. There are two parking spaces provided for the proposed house. The 3rd Party appeal relates to potential disamentiy caused to residents of no. 157C, by way of noise from cars. There will be no disamentiy caused from parking located in this part of the site. This is a suburban area. I note that there is a road to the rear of no. 157C – serving the Vernon Heath estate.

7.4. Water

7.4.1. Water Supply

It is proposed to connect to the existing public watermain in Vernon Avenue. There is no report on the file from Irish Water, as to the acceptability or otherwise of this arrangement.

7.4.2. Foul Effluent

The application is accompanied by a Drainage Report. No. 159 Vernon Avenue currently discharges foul waste to a 150mm diameter combined sewer, which discharges in the southeastern corner of the site – in the direction of the Vernon Heath estate. This combined sewer would appear to only serve no. 159. As part of the proposed development, it is proposed to divert this combined sewer (to facilitate the development of site 159A – where permission has already been granted for a house on this site. The diverted sewer is to be 150mm diameter. Surprisingly, the opportunity has not been taken to separate the foul and surface water waste from the existing no. 159 – particularly where new sewers are to be laid. As there is no report on the file from Irish Water, it is not known what the opinion of that

organisation is, in relation to the proposed arrangement. Foul effluent from the proposed house will be discharged to the diverted combined sewer.

7.4.3. Surface Water

A number of shallow trial holes were opened on the site to establish the water table in the area and soakage. The Drainage Report deals with one large trial hole (photographs included) which contained water on the date of site inspection by this Inspector. It was concluded that attenuation of 4.75m³ was required for this site – with outfall throttled to 1 litre/second, using a ‘Hydrobrake’ control mechanism – to discharge to an existing 225mm diameter surface water sewer in Vernon Avenue. I note that surface water from the existing no. 159 Vernon Avenue will continue to discharge to the diverted combined sewer – in the direction of Vernon Heath estate. The Engineering Department – Drainage Division of DCC had no objection to these arrangements.

7.4.4. Flooding

There is an existing 450mm diameter surface water drain entering the site – immediately adjacent to the eastern boundary. A manhole cover on this drain was uncovered on the date of site inspection by this Inspector; and revealed water within the drain. The Drainage Report, submitted with the application, states that this drain does not appear on DCC maps; and is likely to be a private land drain serving houses in Vernon Heath and the lands of St. Anne’s Park to the north. This drain is stated to run within a 450mm diameter pipe, along the eastern boundary of the site – to discharge in the direction of the Vernon Heath estate. The proposed house is located approximately 1m from this manhole and drain. If the drain should ever have to be repaired/replaced, there is insufficient space remaining to carry out this work – hemmed in between the high boundary wall with Vernon Heath and the proposed new house. I further note that permission has been granted for a house on the other side of the boundary wall (within Vernon Heath). I would be concerned that any blockage or damage within this drain at this location could lead to flooding of the appeal site and possibly the house itself. I note that the Engineering Department – Drainage Division of DCC, did not have any concerns in relation to this land drain.

7.5. Other Issues

7.5.1. Development Contribution

Condition 2 of the Notification of decision to grant planning permission requires payment of a development contribution of €12,614.40. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

7.5.2. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development and 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 stage, and a screening determination is not required.

7.5.3. Appropriate Assessment

Having regard to limited nature of the proposed development, and to the fact that it will be connected to the public sewer network, 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 an European site.

7.5.4. Hours of Construction

Condition 7 of the Notification of decision to grant permission related to hours of construction. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

7.5.5. Construction and Demolition Waste

There will be a considerable amount of C& D waste generated by this development – arising from the need to complete demolition of old dairy sheds and concreted slab over much of the site. A condition should be attached to any grant of permission to issue from the Board, requiring appropriate disposal of such waste.

7.5.6. Numbering

Condition 10 of the Notification of decision to grant permission relates to naming and numbering. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

7.5.7. Devaluation of Property

The appellants have claimed that the proposed development will devalue their property. No documentation or evidence has been submitted to substantiate this claim. I would be satisfied that the proposed development would not result in devaluation of the appellants' property.

7.5.8. Archaeology

There is no indication of any archaeological sites in the immediate vicinity of the appeal site. Having regard to the limited area of the site, and to the extensive ground disturbance which has already taken place in this former farmyard complex, I would not consider that an archaeological monitoring condition would be warranted in this instance.

8.0 **Recommendation**

I recommend that permission be granted for the Reasons and Considerations set out below, and subject to the attached Conditions.

9.0 **Reasons and Considerations**

Having regard to the zoning of the site for residential development, the pattern of development and the permissions granted in the immediate area, it is considered that, subject to compliance with the attached conditions, the proposed development would not be detrimental to the residential amenities of the area, would not be prejudicial to public health and would, therefore, 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, 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 out in accordance with the agreed particulars

Reason: In the interest of clarity.

2. The proposed house shall not be occupied until such time as the laneway access, as provided for in permission ref. WEB1018/19, has been completed.

Reason: In the interest of orderly development and traffic and pedestrian safety.

3. Details of external finishes of the proposed house, shall be submitted for the written agreement of the planning authority, prior to commencement of development.

Reason: In the interest of visual amenity.

4. No flat-roof area shall be used as either a roof terrace or patio.

Reason: To prevent overlooking and loss of amenity to adjoining residential property.

5. The first floor window in the eastern elevation of the proposed house, shall be in permanently obscured glazing.

Reason: To prevent overlooking of the adjoining garden to the east, in the interest of residential amenity.

6. Water supply and drainage arrangements, including the disposal of surface water within the site, shall comply with the requirements of the planning authority for such works and services. In particular, the foundations of the house shall be carried down below the invert level of the 450mm diameter land drain pipe running along the eastern boundary of the site.

Reason: In the interest of public health and to ensure that there is no damage caused to the existing surface water drain within the site.

7. The applicant or developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of this

development.

Reason: In the interest of public health and orderly development

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground within the site.

Reason: In the interests of visual and residential amenity

9. The proposed house shall be numbered 159B Vernon Avenue.

Reason: In the interests of urban legibility.

10. Site development and building works shall be carried out only between the hours 0800-1900 Mondays to Fridays inclusive; between the hours 0800-1400 on Saturdays; and not at all on Sundays or public holidays. Deviations from these times will only be allowed in exceptional circumstances, where prior written approval has been received from the planning authority.

Reason: To safeguard the amenities of residential property in the vicinity.

11. Construction and demolition waste shall be managed in accordance with a Construction Waste and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "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 interest of sustainable waste management.

12. 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.

**Michael Dillon,
Planning Inspectorate.**

22nd August 2019.