



An
Bord
Pleanála

Inspector's Report

ABP-304597-19

Development	Construction of detached house. Works to include new boundary treatments to front, new vehicular access, drainage + landscaping
Location	Site located beside 22 Botanic Park/ rear of 146 Botanic Ave, Dublin 9
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2023/19
Applicant(s)	Brooklawn Property Holding.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	George Sharpson and others
Observer(s)	John P O'Brien.
Date of Site Inspection	20 th September 2019
Inspector	Suzanne Kehely

1.0 Site Location and Description

1.1. The site of 269 sq.m. is a small residual plot in a 1970s housing development off Botanic Avenue on its southern site. It is a triangular plot between the side of no. 22 Botanic Park and the rear boundaries of nos. 146 and 148 Botanic Avenue which are Protected Structures. The site is hard surfaced with some wide bollards. It is bounded on two sides by high boundary walls that enclose the adjoining gardens and curtilages. It has a frontage of 23.4m which is partially kerbed and the footpath is dished to the front.

2.0 Proposed Development

2.1. It is proposed to construct a two-storey detached house and works include new boundary, vehicular access and landscaping. The house is formed by a pair of staggered blocks with a stepped frontage along the road and angled with the rear boundaries of Botanic Avenue. It is modern in style but references the existing development of Botanic Park in roof pitch, rendered finish and proportioning of windows.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. **Further information:** By Order on 1st March 2019 the planning authority requested further information in respect of

- Justification for loss of amenity space
- Overshadowing of neighbouring properties – shadow analysis requested.

3.1.2. **Grant of permission:** By Order on 12th April the planning authority issued notification of a decision to grant permission subject to 11 conditions

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Acceptable in principle

- The planning history is noted and particularly the condition requiring provision for maintenance of open space as it was noted at that time that that would not be taken in charge.
- Following assessment of further information, the site is not significant as an amenity for the residents of the area. In this regard, the rationale for developing the site as set out in further information is accepted. This referred to the layout of the estate and the natural preferred play area at the end of the cul-de-sac, the purpose-built playground in Griffith Park in close proximity, majority of residents would like to see it developed as site frontage is used by Botanic Avenue residents for car parking which obstructs surveillance of site as play area and it is essentially an eyesore.
- The area is served by Griffith Park of 7.5ha which includes a playground.
- The existing layout of site is not considered to contribute to amenities.
- Noting the style, set back of building line set by house numbers 19-22 and the proposed ridge height at 367mm below that of the adjacent house, the proposed house is not incongruous with character and scale of neighbouring dwellings.
- The shadow study submitted as further information demonstrates that the proposed development would not result in significant overshadowing

3.2.2. Other Technical Reports

Drainage Division: No objections subject to conditions

Transportation Planning Division: no objection subject to conditions.

3.3. Prescribed Bodies/Consultees

No reports

3.4. Third Party Observations

3.4.1. Objections were received by the planning authority from and on behalf of residents in nos. 22 Botanic Park, 146, 148, 150 and 152 Botanic Avenue and Iona and District Residents' Association in respect of

- Loss of light in garden, conservatory and dwellings.
- No change in circumstances since last refusal.

- The site is open space for a children’s play area within the development. A permission would contravene a condition of permission for the original development requiring the provision of such for the development as upheld in subsequent applications to develop the site.
- Large detached houses are out of character.
- Detract from visual setting of protected structures.

4.0 Planning History

4.1. An Bord pleanala reference PL29N.232056 refers to a decision to refuse permission for a dwelling on the same site for the stated reason:

- The site of the proposed development was originally conditioned as a play area and open space. It is considered that the proposed development would contravene materially a condition attached to the existing permission for development namely, condition number 1 attached to the permission granted by Dublin Corporation under planning register reference number 2035/69, would seriously injure the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

5.1.1. The objective for the site is Z1 ‘To protect and/or improve residential amenities.’ It is adjacent to Z2 lands where Section 14.8.2 applies. The general objective for such areas is to protect them from unsuitable new development or works that would have a negative impact on the amenity or architectural quality of the area.

5.1.2. Chapter 16 set outs development standards generally and in particular section 16.2.2.2 refers to infill development for gap sites within existing established urban areas and states that it is particularly important that proposed development respects and enhances its context and is well integrated with its surroundings ensuring a more coherent cityscape. DCC will therefore seek:

- To ensure that infill development respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape,
- In areas of varied cityscape significant quality infill development will demonstrate that positive response to context including characteristic building plot widths, architectural form, and the material and detailing of existing buildings where these contribute positively to the character and appearance of the area.
- Within terraces and groups of buildings of unified design and significant quality infill development will replicate and positively interpret the predominant design and architectural features of the group as a whole,
- In areas of low-quality varied townscape, infill development will have sufficient independence of form and design to create new compositions and points of interest and have regard to the form and materials of adjoining buildings where these make a positive contribution.

5.1.3. Section 16.10.9 of the plan sets out the requirements with regard to the development of houses in side gardens . In addition to the design criteria other considerations include impact on amenities of adjoining sites, open space, parking , boundary treatment and landscaping and the maintenance of building lines where appropriate.

5.1.4. Section 16.10.2 refers to residential housing standards including private open space.

- 10 sq.m. per bed space will normally be applied and within inner city this drops to 5-8 sq.m. Rear gardens and similar private areas should be screened from public areas, provide safe and secure play areas for children, be overlooked from the window of a living area or kitchen, have robust boundaries...

5.1.5. Other Relevant policies

- Policy QH8 -To promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals with respect to the design of the surrounding development and the character of the area.
- Policy QH 22 – 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.

5.2. Natural Heritage Designations

- 5.2.1. The site is located about 120m south of the River Tolka which is about 3km upstream of the South Dublin Bay and River Tolka Estuary SPA.

5.3. EIA Screening

- 5.3.1. 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 EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

G. Sharpson has lodged an appeal on the following grounds, as summarised:

- The land is reserved for amenity use by condition and provides a valuable play area for the occupant of the estate. It is continued to be used as such and is subject on ongoing funding plans and requests for facilities by voluntary organisations.
- Not comparable to Griffith Park as it has surveillance.
- Ad hoc substandard development that cannot accommodate development and would be contrary to zoning
- It would result in overshadowing of neighbouring properties.
- Detrimental impact on setting and character of Protected Structures. It would for example detract from the roofscape.
- The open space has a natural function such as ventilation and the site is also a historic footprint of the past.
- Precedence of refusal for permission for development of the site in the case of 4558/08 on the basis of contravention of permission for approved development that required maintenance of the subject site an open space and also on the

basis of injury to amenity. These reasons for refusal were also the basis for refusal on appeal notwithstanding the grounds which referred to the perpetual state of dereliction, anti-social behaviour, not in charge and proximity to Griffith Park.

- The decision by the council is ultra vires as it materially contravenes a condition of permission.

6.2. Applicant Response

- The proposal is for a small scale infill development on a disused site and its continuous use as an active play area is disputed. An appended letter from a former resident of the estate clarifies the use and condition of the site in former years.
- The original houses are well served by Griffith Park.
- The development meets with the requirements of the planning authority.
- The shadow analysis clearly indicates that the design avoids any overshadowing of adjacent property.
- The setting of properties along Botanic Avenue is well protected by the separation distance. It is submitted that the streetscape is the intrinsic quality of the Protected Structures along this road and this is not being impacted.
- A pre-application consultation with the planning authority indicated favourable consideration for sensitive development on the site.
- The main issue is whether or not one house is fair and reasonable on a neglected and disused site in a well-established area.
- Residents welcome the development of a disused eyesore.

6.3. Planning Authority Response

- No further comment

6.4. Observations

- 6.4.1. Residents in 10 of the houses in Botanic Park signed a letter supporting the proposed development on the basis that it has been disused for decades and has never been a playground. They would prefer to see a house in the area which would complete the development and remove an eyesore.

7.0 Assessment

7.1. Issues

- 7.1.1. This appeal is against a decision to grant permission for a proposal to develop a small triangular site reserved as open space in a small cul-de-sac development south of Botanic Avenue and close to Griffith Park. The issues relate to principle and loss of open space and impact of proposed dwelling on neighbouring dwellings primarily by reason of overshadowing and overlooking.

7.2. Principle

- 7.2.1. While the site is zoned to protect and improve residential amenities and in principle permits infill housing such as that proposed, the site provides an open space intended for the convenience of the residents of Botanic Drive in accordance with the plans and conditions for that development in the early 1970s. While conflict with the terms of that permission is a valid reason refusal of permission, the planning authority or the Board is not precluded from permitting development on the site.
- 7.2.2. The case is made by the appellants and objectors that the loss of amenity space is not reasonable in view of the conflict with the original permission and loss of amenities for residents. The planning authority acknowledges the loss of space as intended and requested further justification from the applicant.
- 7.2.3. The applicant has explained how the estate is well served by the playground facilities in addition to the extensive open space in Griffith Park and accordingly provides for all age groups. It is explained how the site has never been developed as an active playground and that the children are more drawn to play on the road rather than the tarmacked space. This would appear to be due to the space in the turning area and natural surveillance afforded by the layout.

- 7.2.4. I note the site is overgrown with graffiti but I accept that neglect of the space should not be the basis for permitting for development and allowing the developer to further profit from site intended to serve the wider housing development. The issue is whether or not the development of the house on the site would result in a significant loss of amenity as intended.
- 7.2.5. The site is quite small and while a landscaped scheme would certainly enhance the immediate environs I do not consider the loss of such or the potential for such space would be a significant loss. I say this having regard to the very close proximity of the park and range of facilities therein. I consider the closing of the streetscape in the manner proposed would also visually complete the streetscape in a compatible manner while providing an additional house. I further note in this regard the strong support for enhancing the streetscape at this location. Accordingly I consider the principle of developing this site to be generally acceptable subject to design detail and standards and its impact on adjacent properties.

7.3. Impact on Botanic Avenue

- 7.3.1. The proposed dwelling is formed by two staggered blocks; one beside no.22 Botanic Park has a ridge height of 7.867m whereas the eastern block nearest Botanic Avenue steps down to 7.57m with eaves at around 5.5m in height. This block will be at its nearest at a distance of 1.2m from the boundary which is to the rear of no.146 at a point where there is a shed. The nearest gable wall is at oblique angles with a set back of up to 8m .
- 7.3.2. The set back from no.148 is similarly staggered with the 5.5m eaves height which extends 7.6m in width and is set back at an angle with a distance of about 2 to 5m in range while the slightly higher but narrower block is set back in the order of 7-10m from the boundary. The layout is such that house is only partially directly to the rear of the wider properties at numbers 148 and 146. As illustrated in the shadow analysis images submitted in further information, the increase in overshadowing of the garden areas beyond that already cast by existing structures including walls and sheds will be marginal. The separation distance from the rear façade will ensure virtually no significant loss of light into habitable accommodation.
- 7.3.3. With respect to overlooking, the proposed windows in the rear elevation at a distance of over 10m from the boundary will not give rise to overlooking. The proposed master

bedroom box bay window provides for limited overlooking. This window is angled to the vehicular entrance, and while it is orientated away from the rear façade it will provide limited views into the end of the garden. A shifting southward would further reduce overlooking of this part of the garden. The northern side light should also be obscured.

- 7.3.4. As compared to the prevailing ridge height of almost 7m, the proposed development, by reason of height, scale and layout will not unduly intrude on the streetscape as viewed from Botanic Avenue. The architectural character and setting will be maintained.

7.4. Impact on no.22

- 7.4.1. The proposed dwelling is respectful of the building line set by no.22 and is stepped back from the new party boundary. Due to this layout and form, together with orientation, the proposed development will not result in any significant overshadowing or overlooking.

7.5. Other Matters

- 7.5.1. By reference to the development standards for infill housing and new development, the proposed development will provide an adequate standard of accommodation and private amenity space without unduly compromising the amenities of neighbouring properties. Furthermore I am satisfied that on balance the proposed development and tailored design will enhance the streetscape and visual amenities of the area.
- 7.5.2. In view of the loss of public open space and its justification by virtue of provision of facilities in the intervening years in Griffith Park, I consider a special contribution is warranted and entirely reasonable. I do not strictly consider the attachment of such a condition to be a new issue as to warrant further consultation as this loss of space is the basis of the grounds of appeal.

7.6. Appropriate Assessment

- 7.6.1. The appeal site is not located within or in the immediate vicinity of any designated sites. The closest site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), located 3km downstream of the River Tolka which is located in Griffith Park on the north side of Botanic Avenue and is about 120m from the site.

- 7.6.2. Having regard to the nature and relatively small scale of the proposed development, the location of the site within a serviced urban area, and the distance from the nearest European sites, I consider that no Appropriate Assessment issues arise, and that the proposed development would not be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. Having considered all the submission on file, the planning authority and my site inspection, I recommend that the decision of the planning authority be upheld, and that permission be granted for the proposed development based on the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016-2022 and the zoning for residential purposes, to the location of the site in an established residential area and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 proposed development shall be amended as follows:
 - (a) The first floor bay window shall be shifted southwards by 800mm in the gabled elevation and shall incorporate opaque glazing in the northern side light.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To minimise potential of overlooking of 146 Botanic Avenue and protect residential amenities.

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. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

5. The footpath shall be dishd at the proposed entrance in accordance with the requirements of the planning authority. Details of any other alterations to the footpath shall also be in accordance with the requirements of the planning authority and all such works shall be carried out at the expense of the developer. These details together with details of the car parking, landscaping, boundary treatment and materials, repositioning of utilities/street lighting shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of safety and visual amenity

6. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

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. 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. 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 the Board to determine the proper application of the terms of the Scheme.

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

9. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of public open space works in the area

(Griffith Park). The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Suzanne Kehely
Senior Planning Inspector

8th October 2019