



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304697-19

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<b>Development</b>	Demolition of 1 derelict house and 1 vacant commercial unit, and the construction of 2 two-storey dwellings with a covered carport.
<b>Location</b>	3B, Earl Street South, Dublin 8, D08 H2R3.
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	2625/19
<b>Applicant(s)</b>	James O'Reilly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	James O'Reilly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> September 2019
<b>Inspector</b>	Irené McCormack

## 1.0 Site Location and Description

- 1.1.1. The subject site is backland site located to the rear of Meath Street and Wilson's Terrace and fronting Earl Street South, Dublin 8. Meath Street is a busy commercial street within the heart of The Liberties and the surrounding area is characterised by a vibrant mix of uses on the ground floor of the buildings including café/ retail and residential on the upper floors. Earl Street is a radial route, to the east of Meath Street, providing access to surrounding residential estates.
- 1.1.2. There is a derelict house and the remains of a workshop on site. Access to the site via an existing narrow private lane form Earl Street South. The site is a rectangular shape with stated area of 305sq.m. The frontage onto Earl Street measures 2.85m. The site is relatively flat. On-street parking for cars is available on the south side of Earl Street.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
- Demolition of 1 no. derelict house and 1 no vacant commercial unit.
  - Construction of 2 no. two-storey dwellings with a covered carport to provide on-site parking for the residents to the south of the site.
  - Proposed new entrance gates onto Earl Street South and all ancillary works

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to refuse permission for one reason stated below:

Having regard to the location, number and height of the houses proposed on this tight backland site, with windows to the rear overlooking rear properties along Meath Street, the inadequate private open space to serve both these properties, it is considered that the proposed development would constitute overdevelopment of this restricted backland site and would seriously injure the residential amenities of

the future occupants, and properties in the vicinity due to overlooking and overshadowing. The proposed development would therefore be contrary to Development Plan standards in relation to Backland Development and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The Planning Officer's reports notes the zoning provisions and policy objectives of the area and notes the contents of interdepartmental reports. In relation to principle of development the report notes the following:

- The existing house is not habitable with limited natural light due to its orientation.
- The proposed dwellings are two storey and overlook the private open space of adjoining properties.
- The overall design approach is considered unacceptable and the proposal would fall below minimum required private open space standards.
- Details regarding access and egress at Earl Street South required establishing that the development would not impact on the existing park and display parking on the southern side of the laneway.
- It is noted that one house at this location may be permissible subject to a clever design that respects the adjoining properties, however two houses at this location is overdevelopment of this restricted site and would set an undesirable precedent for similar developments in the area

#### 3.2.2. Other Technical Reports

**The Roads & Traffic Planning Division** - Report of 3<sup>rd</sup> May 2019 requested further information be sought in relation to access and egress and Preliminary Construction Management Plan and the impact of the development on paid parking opposite the site.

**Engineering Department – Drainage Division** (report dated 17<sup>th</sup> April 2019) - No objection subject to conditions to include an appropriate Flood Risk Assessment, in

accordance with the OPW Guidelines and the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment, is carried out for the proposed development.

**City Archaeologist** (report dated 15<sup>th</sup> April) - No objection subject to conditions

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

None

## 4.0 Planning History

### Site

None

### Surrounding

ABP300444 (DCC REF2901/17 ) – Permission refused in 2018 for the retention of the external shop front and signage to no. 18 Meath Street & Earl Street south,

## 5.0 Policy Context

### 5.1. Development Plan

The site is zoned Z1 in the Dublin City Development Plan 2016-2022 which seeks “To protect, provide and improve residential amenities”.

#### 5.1.1. Relevant policies and standards of the Dublin City Development Plan 2016-2022 include:

Chapter 5: Quality Housing.

Chapter 15: Strategic Development and Regeneration Areas

**Section 15.1.1.19 SDRA 16 Liberties and Newmarket Square**

Chapter 16: Development Standards: Design, Layout, Mix of Uses and Sustainable Design

- **Section 16.10.2:** Residential Quality Standards, Houses
- **Section 16.10.9:** Corner/Side Garden Sites

The following policies are relevant:

- **Policy 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.
- **Policy QH21:** To ensure that new houses provide for the needs of family accommodation with a satisfactory level of residential amenity, in accordance with the standards for residential accommodation.
- **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.

#### **Section 16.10.8: Backland Development**

Dublin City Council will allow for the provision of comprehensive back land 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 back land 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 back land development will be considered on their own merits.

The site is located within

- 5.1.2. The subject site is in the Thomas Street and Environs Architectural Conservation Area.

Section 11.1.5.4 refers to Architectural Conservation Areas and Conservation Areas

CHC1: To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

CHC4: To protect the special interest and character of all 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.

### **The Liberties Local Area Plan**

The Liberties statutory local area plan was adopted by the City Council in May 2009 and in April 2014 the timescale of the plan was extended until May 2020.

The overall guiding principles/objectives of the LAP include improving the quality of life so that the Liberties area becomes a great place for people to live, work and visit and to promote the principles of good urban design including improving connectivity and enhancing the legibility and permeability of the Liberties in relation to the wider cityscape.

#### **5.2. Natural Heritage Designations**

None

#### **5.3. EIA Screening**

On the issue of Environmental Impact Assessment screening I note that the relevant classes for consideration are class 10(b)(i) "*Construction of more than 500 dwelling units*" and 10(b)(iv) "*Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere*". Having regard to the size of the development site (.0305ha) and scale of the development it is sub threshold and the proposal does not require mandatory Environmental Impact Assessment. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have

significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The applicant has submitted an appeal, the grounds of which is summarised as follows:

- It is set out that the site has been unoccupied for several years and the house uninhabited for over twenty years and the commercial unit unused for over ten years as a result the site has been the subject of recent fly tipping.
- The site has no street frontage with access via a narrow lane.
- The restoration of the dwelling was not considered feasible.
- It is set out that the applicant was not afforded an opportunity to meet with the planning authority to discuss the proposal and the complexities of the site.
- The design rationale for the proposed two dwellings is set out. Site coverage is 50% and access is via an existing access arrangement.
- Reference is made to errors in the planner's report.
- It is set out that it is proposed to use the existing vehicular access and provide 2 car parking spaces and not 4 as referred to in the planning assessment. The use of the access would require the removal of 1 on-street car parking space located opposite the site to allow for safe access and egress. It is also set out that the proposal will work without any vehicular access and as such this is not a reason for refusal.
- It is stated that all windows on the front elevation of the proposed development look into the private open space associated with the proposed development and do not look into the private open space of any adjacent properties. The rear windows on the east elevation look towards the rear elevation of houses on Meath Street and are 14.6m from the rear elevation of

13 Meath Street and 16m from the rear elevation of 14 Meath Street. If required, it is set out that these windows can be omitted or revised.

- The proposal is two-storeys only which limits overshadowing. There is some overshadowing in the afternoon /evening of external areas to the rear of properties on Meath Street but most of these gardens are filled with sheds and relate to commercial ground floor units with residential units on the upper floors.
- It is set out that the proposed private open space is superior to all other residential units in the immediate vicinity inclusive of front and rear garden areas, car port and access laneway. The planning authority's argument that they will not consider garden space to the front of the houses as private open space might be understandable onto a public road but when the courtyard is only shared by two dwellings, it is argued that this is a rather inflexible interpretation.
- Taking account of decision to refuse permission, amendments are proposed as part of the grounds of appeal which include: Omission of the car port and all vehicular access to the site. Revise the design of House 1 from three double bedrooms to two double bedrooms and replace the car port with private open space. Revise the front garden of House 2 to increase the size of the front garden.
- It is set out that the changes can be addressed by condition.
- It is set out that the revised proposal is consistent with relevant policy objectives as set out in the Liberties Local Area Plan which provides for a wide diversity and choice of housing, protects the distinctive heritage of the area and the sustainable and innovative re-use of historic spaces and structures.

## 6.2. Planning Authority Response

None received.



## 7.0 Assessment

7.1.1. In their appeal submission the appellant has provided alternative floor plan drawings to the Board for consideration. The revised proposals seek to address the provision of private open space and concerns associated with vehicular movement and includes:

- The omission of onsite car parking and all vehicular access to the site.
- Revised sketch plan whereby the three double bedrooms are replaced with two double bedrooms for House 1.
- The omission of the carport to provide for increased private open space provision.
- Increase in the size of the front garden of House 2.

A complete set of appropriately scaled drawings did not accompany the revised proposals. Accordingly, the revised proposal cannot be adequately assessed. The assessment below is based on the drawings submitted with the planning application to the planning authority.

7.1.2. I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Principle of Development
- Design, layout and Residential Amenities
- Access and traffic Movement
- Appropriate Assessment

### 7.2. Principle of Development

7.2.1. The proposed development provides for the construction of 2 no. two-storey dwellings on a backland site to the rear of Meath Street, Wilson Terrace and Earl Street South, the Liberties, Dublin 8. Access to the site is from Earl Street South. The provision of residential development on lands zoned Z1 in the Dublin City Development Plan 2016-2022 which seeks "To protect, provide and improve residential amenities" would be consistent with the policies of the Planning Authority as set out in Policy 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.

7.3. Section 16.10.8: Backland Development of the Dublin City Development Plan will allow for the provision of comprehensive back land development where the opportunity exists and where there is not a conflict with the established pattern and character of development in an area or loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening and where the development will not block access or represent piecemeal development and inhibit the development of a larger backland area. The development plan policy, while highlighting the potential adverse impacts related to the development of individual backland sites does not explicitly prohibit such approaches.

7.3.1. The emphasis in the development plan on securing the comprehensive development of backland areas is of limited relevance to this appeal insofar as the subject site appears to be the only site with significant potential for such development.

7.3.2. In principle, therefore, subject to appropriate detailed design, I consider that the principle of the proposed development acceptable within this zoning category, subject to the detailed considerations below.

#### 7.4. **Design, Layout and Impact on Residential Amenities**

7.4.1. The reason for refusal asserts that the development by reason of the number and height of the houses proposed on this tight backland site, with windows to the rear overlooking rear properties along Meath Street, the inadequate provision of private open space, would constitute overdevelopment of this restricted backland site and would seriously injure the residential amenities of the future occupants, and the properties in the vicinity due to overlooking and overshadowing.

7.4.2. The planning authority considers that the proposed development would have an **overbearing** impact. It is noted that the primary views of the development will be from the rear gardens of Meath Street and Earls Street South and from Wilson's Terrace. The design provides for 2 no. two-storey residential units with mono-pitch standing seam roof finished in selected brick and reflecting a L-shape form with small enclosed rear courtyards and landscaped front garden space. Whilst, I consider the contemporary design approach acceptable in principle, in the context of

Thomas Street and Environs Architectural Conservation Area, the overall scale, form and mass of the proposed development, in particular, the extent of wall mass forming the rear elevations at a height of 7.760m in close proximity to the site boundaries of the adjoining properties would represent an overbearing feature when viewed from the rear garden of the adjoining properties and reflects a visually dominant and obtrusive form on the site.

- 7.4.3. The appellant contends that the layout of the scheme is in accordance with the minimum quantum of private open space as per Section 16.10.2 Residential Quality Standards of the Development Plan which sets a standard of between 5 - 8sqm of private open space per bed space in the inner city. **Private open space** is provided in the form of two small rear garden courtyards at approx. 14.216sqm for House 1 which provides for 6 bed spaces and 8.14sqm for House 2 which provides for 4 bed spaces. A shared communal garden area is provided to the front of the houses. The quantum of private open space is not in line with the minimum standards. Furthermore, I consider that the private open space proposed by the appellant to the front of the site, albeit private to the scheme is overlooked by one or the other adjoining unit and provides no qualitative standard of privacy. Accordingly, I am not satisfied that the layout provides for adequate private open space to serve each dwelling in accordance with the provisions of the development plan.
- 7.4.4. The reason for refusal asserts that the proposal will detrimentally impact on the residential amenities of neighbouring properties, as a result of potential overlooking. The 'Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities' and its accompanying 'Urban Design Manual' does not set rigid minimum separation distances but does require that habitable rooms and private amenity space should not be directly excessively overlooked by neighbouring residents. In this regard, I note the windows on the west facing elevation look onto the shared courtyard and do not overlook third party properties. However, the first-floor bedroom windows on the east facing elevation are approx. 4 m from the site boundary and overlook the adjoining rear garden of properties along Meath Street.
- 7.4.5. Analysis on the impacts of the proposed development on **sunlight and daylight** was not submitted with the application. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas note that planning authorities should require that the recommendations of 'Site Layout Planning for Daylight and

Sunlight: A Guide to Good Practice' (Revised 2011) be followed. In my opinion, the proposed development would result in a change in the present baseline situation given the height of the development at 7.7602m and the proximity of the development to the adjacent site boundaries, in particular, the rear gardens of properties fronting Meath Street. In the context of the orientation and surrounding pattern of development, the proposed development would give rise to negative impacts on adjoining properties and associated open space in terms of overshadowing and loss of daylight and sunlight.

- 7.4.6. Overall in terms of residential amenity, I consider that the proposal will result in undue overlooking, loss of privacy and reflect an overbearing impact on the existing development adjoining the site. Furthermore, the layout will not provide for quality and appropriate quantum of private open space for the proposed dwellings. The development should be refused for this reason.

#### **7.5. Access and Traffic Movement**

- 7.5.1. It is proposed to provide two car parking spaces on site and to access the site via the existing 2.85m wide access and lane off Earl Street South. I note that the Roads & Traffic Planning Division report of 3<sup>rd</sup> May 2019 requested further information be sought in relation to access and egress arrangements such that the development will not impact on the existing on-street car parking located on the opposite side of Earl Street South. I note the planning report did not raise this as a reason for refusal.
- 7.5.2. The Development Plan establishes that car parking provision maybe reduced or eliminated in areas that are well served by public transport. This inner-urban site is accessible to public transport including the Luas which is 900m west of the site, and there are numerous shops and services within walking distance. Accordingly, I considered the omission of car parking spaces and associated vehicular access acceptable in this context.

#### **7.6. Other Matters**

- 7.6.1. The appellant states that the planning authority did not facilitate a pre-planning meeting. In this regard, I note the email correspondence from the planning authority to the appellants agent setting out relevant policy objectives and recommending discussion with the Traffic and Transportation Dept. Pre-planning is an information

session on policy objectives, general advice and guidance and not a mechanism for assessing planning applications.

## **7.7. Appropriate Assessment**

- 7.7.1. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission for the proposed development should be refused for the reasons and considerations, as set out below.

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Dublin City Development Plan 2016-2022 and to the design, scale and mass of the proposed development, including the shortfall and substandard provision of private amenity space, it is considered that the proposed development would constitute a substandard form of development, would be seriously injurious to the residential amenities of future occupants of the proposed houses and the established amenities of the adjoining properties, by reason of undue overlooking, loss of privacy and overbearing impact. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Irené McCormack

Planning Inspector

13<sup>th</sup> September 2019