



An  
Bord  
Pleanála

## Inspector's Report ABP-305427-19

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<b>Development</b>	Permission at a protected structure for subdivision of existing site together with new road and pedestrian entrances to provide a site for a future proposed dwelling.
<b>Location</b>	138 Rock Road, Booterstown, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D19A/0442
<b>Applicant(s)</b>	Joan Kavanagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Joe Wiley
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	20 <sup>th</sup> November, 2019
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located at 'St. Michaels', No. 138 Rock Road, Booterstown, Co. Dublin, approximately 200m southwest of Booterstown Train Station, where it occupies a position to the immediate west of the R118 Regional Road. The immediate site surrounds are characterised by a variety of house types with several notable detached properties of built heritage interest on generous plots contributing to the wider streetscape.
- 1.2. The site itself has a stated site area of 0.22 hectares and is presently occupied by a substantial two-storey, three-bay detached dwelling house (that has been extended to the side and rear) set within mature landscaped gardens, which has been designated as a protected structure. The property is orientated to face onto Rock Road with views east / northeast over Booterstown Marsh / Dublin Bay. It is accessed via an existing (left-turn only) entrance arrangement onto the regional road (although a secondary access is available via a private mews lane to the rear of the site which extends from Grotto Lane). The neighbouring properties to the immediate southeast and northwest are similarly occupied by large dwelling houses with the latter having also been listed as a protected structure. To the southwest the site adjoins a private laneway / access whilst the public road bounding the property to the northeast includes for roadside parking and comprises a dual-carriageway with dedicated bus lanes, cycle paths and footpaths.

## 2.0 Proposed Development

- 2.1. The proposed development involves the subdivision of the curtilage of an existing dwelling house (a protected structure) together with the provision of new vehicular and pedestrian entrances onto the R118 (Rock Road) Regional Road in order to facilitate the future construction of an additional dwelling.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 19<sup>th</sup> August, 2019 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 9 No. conditions. These conditions are generally of a standardised format and relate to issues including the strengthening of the public footpath, surface water drainage, and construction management, however, the following conditions are of note:

Condition No. 2 – Requires the submission of revised drawings, for the written agreement of the Planning Authority, prior to the commencement of development, modifying the proposed vehicular entrance to provide for a set-back, ‘bell-mouth’ design with gates that open inwards only.

Condition No. 3 – Clarifies that the grant of permission relates solely to the proposed site subdivision and the new vehicular & pedestrian entrances.

Condition No. 4 - Requires the applicant to make arrangements with the ‘Parking Control Section’ of the Local Authority, prior to the commencement of development, for the suspension of the ‘Pay and Display’ parking bay (or part thereof) on the Rock Road as a result of the proposed development.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports:*

Details the site context, planning history, and the applicable policy considerations before stating that the proposed development is acceptable and will not give rise to any significant negative impact (notwithstanding the concerns expressed by the Conservation Officer). The report proceeds to note the limited nature of the works proposed and asserts that any future planning application for the construction of a dwelling house on site would be assessed on its merits having regard to the specifics of the site context, including its impact on built heritage considerations i.e. protected

structures. The report thus concludes by recommending a grant of permission, subject to conditions.

### 3.2.2. *Other Technical Reports:*

*A/Conservation Officer (Architect's Dept.):* States that there is a lack of information with the application given the designation of the property as a protected structure and that the proposal to subdivide the site in order to provide a new dwelling house is premature by reference to the need to consider whether any such future construction in the garden of a protected structure would be permissible. It is further noted that the adjacent property to the immediate north has also been designated as a protected structure and thus concerns arise as to how a new dwelling house could be constructed in the location proposed without unduly impacting on the setting and amenity of both protected structures. This report concludes by recommending that permission be refused on the basis that the proposed development will impact on the curtilage and setting of a protected structure and is therefore contrary to Policy AR1 of the Development Plan.

*Drainage Planning (Municipal Services Dept.):* No objection, subject to conditions.

*Transportation Planning:* No objection, subject to conditions.

### 3.3. **Prescribed Bodies**

- 3.3.1. *National Transport Authority:* States that the application has been reviewed in the context of the 'BusConnects' project and that a proposal for the Blackrock to Merrion Core Bus Corridor (CBC) was issued for public consultation in late 2018. This CBC is proposed to run along the Rock Road adjacent to the subject site and a review of submissions received during an initial public consultation phase is presently underway which will further inform the design of the route. An initial design proposal for the CBC indicates that land take may be required from the subject site, however, the precise extent of any such land take is yet to be determined and will depend on the current design process in addition to the completion of topographical surveys and other work.

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

- 3.4.1. A single submission was received from the appellant, the general contents of which are reiterated in the grounds of appeal.

## 4.0 Planning History

### 4.1. *On Site:*

PA Ref. No. D99A/0526. Granted permission for a new vehicular access from Rock Road, a single storey kitchen extension and conservatory to rear, and a single storey boiler / storey room in the courtyard to the side of the house.

### 4.2. *On Adjacent Sites:*

PA Ref. No. D05A/0125 / ABP Ref. No. PL06D.213208. Was refused on appeal on 22<sup>nd</sup> November, 2005 refusing Clare Griffin permission for the construction of a residential mews house comprising three storeys with top storey enclosed within pitched roof with dormer windows, at rear of 136 Rock Road and fronting onto Grotto Place, Booterstown, Co. Dublin.

- Having regard to its excessive height, scale, design and excessive set back, it is considered that the proposed development would constitute an incongruous development out of character with the established settlement pattern on this mews lane. The proposed development would, therefore, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D07A/0554 / ABP Ref. No. PL06D.225997. Was determined on appeal on 8<sup>th</sup> May, 2008 whereby a split decision was issued to Claire Griffin as follows:

- To **GRANT** permission for the demolition of existing garage to the rear, the construction of a two-storey three bedroom mews with three number velux roof lights fronting onto Grotto Place and new vehicular access to the rear off Grotto Place.
- To **REFUSE** permission for the new vehicular access to the front onto Rock Road:
  - Having regard to the location of the proposed development, with access from the busy Rock Road and to the availability of parking to the rear, it is considered that the additional traffic turning movements generated by the proposed new vehicular access to Rock Road would result in traffic hazard. The proposed development would, therefore, be

contrary to the proper planning and sustainable development of the area.

## 5.0 Policy and Context

### 5.1. National and Regional Policy

5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' note that, in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development, potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

5.1.2. The '*Architectural Heritage Protection, Guidelines for Planning Authorities, 2004*' provide detailed guidance in respect of the provisions and operation of Part IV of the Planning and Development Act, 2000, as amended, regarding architectural heritage, including protected structures and Architectural Conservation Areas. They detail the principles of conservation and advise on issues to be considered when assessing applications for development which may affect architectural conservation areas and protected structures.

### 5.2. Development Plan

#### 5.2.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

##### *Land Use Zoning:*

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'.

*Other Relevant Sections / Policies:*

*Chapter 2: Sustainable Communities Strategy:*

*Policy ST25: Roads:*

It is Council policy, in conjunction and co-operation with other transport bodies and authorities such as the TII and the NTA, to secure improvements to the County road network – including improved pedestrian and cycle facilities.

*Table 2.2.6: Long Term Road Objectives:*

- Dublin Eastern Bypass (as identified in the Dublin Eastern Bypass Corridor Protection Study, TII 2011)

The proposed development site is located within the ‘Strategic Road Reservation’ (shown in the Dublin Eastern Bypass Corridor Protection Study, 2011) for the ‘Twin Bored Tunnel Corridor’.

*Chapter 4: Green County Strategy:*

*Section 4.1.2: Landscape:*

*Policy LHB6: Views and Prospects:*

It is Council policy to protect and encourage the enjoyment of views and prospects of special amenity value or special interests.

The views eastwards from Rock Road are listed for preservation.

*Chapter 6: Built Heritage Strategy:*

*Section 6.1.3: Architectural Heritage:*

*Policy AR1: Record of Protected Structures:*

It is Council policy to:

- i. Include those structures that are considered in the opinion of the Planning Authority to be of special architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest in the Record of Protected Structures (RPS).
- ii. Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

- iii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of the Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011).
- iv. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.

*Policy AR2: Protected Structures Applications and Documentation:*

It is Council policy to require all planning applications relating to Protected Structures to contain the appropriate level of documentation in accordance with Article 23 (2) Planning Regulations and Chapter 6 and Appendix B of the Architectural Heritage Protection Guidelines for Planning Authorities, or any variation thereof.

The property known as 'Saint Michael's', No. 138 Rock Road, Blackrock, Co. Dublin, has been designated as a protected structure by reason of its inclusion in the Record of Protected Structures contained in Appendix 4 of the County Development Plan (RPS No. 11).

*Chapter 8: Principles of Development:*

*Section 8.2.3: Residential Development:*

*Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas:*

*(v) Corner/Side Garden Sites:*

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing built up areas. In these cases the Planning Authority will have regard to the following parameters (Refer also to Section 8.2.3.4(vii)):

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Accommodation standards for occupiers.
- Development Plan standards for existing and proposed dwellings.



- Building lines followed where appropriate.
- Car parking for existing and proposed dwellings.
- Side/gable and rear access/maintenance space.
- Private open space for existing and proposed dwellings.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.

It is also recognised that these sites may offer the potential for the development of elderly persons accommodation of more than one unit. This would allow the elderly to remain in their community in secure and safe accommodation. At the discretion of the Planning Authority there may be some relaxation in private open space and car parking standards for this type of proposal.

*(vii) Infill:*

New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th Century suburban 'Garden City' planned settings and estates that do not otherwise benefit from Architectural Conservation Area status or similar. (Refer also

to Section 8.2.3.4 (v) corner/side garden sites for development parameters, Policy AR5, Section 6.1.3.5 and Policy AR8, Section 6.1.3.8).

Section 8.2.3.5: *Residential Development – General Requirements*

Section 8.2.4.9: *Vehicular Entrances and Hardstanding Areas*

Section 8.2.11: *Archaeological and Architectural Heritage*

### **5.3. Natural Heritage Designations**

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Special Protection Area (Site Code: 004024), approximately 30m northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 190m northeast of the site.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

- The decision of the Planning Authority is flawed on the basis that the assessment of the application by the case planner failed to take into consideration the valid observation / submission lodged by the appellant pursuant to Article 29 of the Planning and Development Regulations, 2001, as amended. Accordingly, the appellant finds himself at a significant and serious

disadvantage as those planning arguments pertaining to the validity of the application and his concerns with respect to the impact of the development on his property were not given due consideration by the Planning Authority.

- In reference to the foregoing, the Board is requested to consider the contents of the appellant's original objection to the proposed development, including the concerns raised as regards the validity of the application.
- The planning application is invalid as the lodged plans and particulars fail to comply with certain mandatory requirements of Articles 18, 19 & 23 of the Planning and Development Regulations, 2001, as amended.
- The subject proposal effectively amounts to an application for outline permission for a dwelling house within the curtilage of a protected structure which is expressly prohibited by reference to Section 36 of the Planning and Development Act, 2000, as amended (*N.B.* By way of clarity, the Board is referred to Article 21(b) of the Regulations which states that an outline application may not be made for permission for development which would consist of or comprise the carrying out of works to a protected structure).
- Having regard to the decision of the Planning Authority to invalid an earlier application for outline permission on site (PA Ref. No. D18A/1185) on the basis that it failed to comply with the requirements of Article 23(2) of the Regulations (which requires a planning application for development consisting of or comprising the carrying out of works to a protected structure to be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure), and noting that the subject application includes for substantially the same information regarding the impact of the development on the character of the protected structure, it is considered that the Planning Authority should have declared the current application invalid by way of non-compliance with Article 23(2).
- The decision to grant permission is based on an incomplete assessment of the application arising from a paucity of detail and information in the submitted particulars, with particular reference to the lack of a conservation report as regards the potential impact on the protected structure.

- The case planner has failed to provide an adequate explanation for setting aside the recommendation of the Conservation Officer that permission be refused.
- The report of the Conservation Officer refers to the *'lack of information provided with the application'* and advises that *'the application is premature with the assumption that a new dwelling would be permissible in the future in what is effectively the garden of a protected structure'*. It further states that:

*'This is not a development site but is the side garden of a protected structure with another protected structure ('Glena', 140 Rock Road) on the adjoining site to the north. It would be difficult to see how a new dwelling could be constructed without unduly impacting on the setting and amenity of both protected structures'*.

It was subsequently recommended that permission be refused as the proposal would impact on the curtilage and setting of a protected structure and thus would be contrary to Policy AR1: *'Record of Protected Structures'* of the Development Plan.

The appellant concurs with the foregoing conclusions and recommendations of the Conservation Officer.

- The determination by the case planner that the subdivision of land associated with a protected structure to create a new 'development site' could be assessed separately from any future construction of a dwelling house on that site is flawed. It would be an artificial construct to assess the proposal by way of such a 'two-staged' approach.
- It is not accepted that a dwelling house can be constructed on site without adversely impacting on the protected structures at Nos. 138 & 140 Rock Road.
- The proposed subdivision of the curtilage of No. 138 Rock Road to create a 'development site' cannot be considered in isolation from the future proposal to construct a dwelling house on that site.
- The subject proposal aims to establish 'permission in principle' so that any subsequent application will be limited to evaluating matters of detail after the

substantial planning question has been settled. Such an approach is not acceptable where the construction of a house on the newly created site could unduly impact on the setting and amenity of two protected structures.

- An application to subdivide the curtilage of the subject site can only be properly assessed when full details of the proposal are provided. In the absence of any information as regards the potential impact of such a subdivision on the protected structures, the assessment of such a proposal would be both artificial and premature.
- The reasoning for the dismissal of the Conservation Officer's concerns on the basis that the property in question comprises a 'large site' is not robust and is of little comfort to the appellant whose home would be disproportionately impacted by the developer's proposals.
- The planning assessment has not given appropriate weight to the report of the Conservation Officer or to the designation of the properties in question as protected structures.
- Both 138 & 140 Rock Road are of architectural significance and comprise large detached houses on generous plots. The proposal to locate a new house of an unspecified design in a garden area between Nos. 138 & 140 Rock Road would have a serious adverse impact on the character of both protected structures and the visual amenity of the streetscape.
- The subject application is not for outline permission and should not be granted without an assessment of key details associated with the proposed future provision of the dwelling house e.g. the provision of car parking and suitable turning arrangements could potentially have a bearing on the siting of the proposed dwelling house on site.

## 6.2. Applicant Response

- The appellant's attempt to equate an earlier invalidated application for 'outline permission' (PA Ref. No. D18A/1185) with the subject application for 'permission' is rejected in its entirety. The two applications are for entirely different types of planning permission with the status, definition and regulatory

effect of each set out in the Planning and Development Act, 2000, as amended.

- The assertion that the subject application '*contains substantially the same information and details regarding the impact of the development*' as the invalidated application for outline permission (PA Ref. No. D18A/1185) has no merit. The invalidated application sought outline permission for '*a three-storey infill dwelling*' whereas the subject proposal is limited to the '*subdivision of existing site together with new road and pedestrian entrance*'. Furthermore, the suggestion that the potential impact of each of the foregoing proposals would be comparable is rejected. On the contrary, the proposed subdivision of the site and the provision of the new entrances would likely have a low to negligible impact given the limited size, scale and massing of the works involved.
- The attempt to equate the subject application with PA Ref. No. D18A/1185 is flawed as an invalid planning application has no legal status given that no decision was made on same and the application itself was returned to the applicant.
- There is no legal provision in the Planning and Development Act, 2000, as amended, by which a planning application can be retrospectively invalidated once the decision-making process has been concluded. In this context, it is submitted that the subject application was found to be valid by the competent authority and was validated accordingly.
- The Board has no jurisdiction as regards reviewing the process followed by the Council.
- The reference by the Conservation Officer to the application being '*premature*' is misguided. The applicant was within their rights to lodge a legal and valid planning application for works which constitute development and require planning permission under the Act. The issue of prematurity in land use or zoning terms does not arise.
- With regard to the Conservation Officer's comments pertaining to the potential impact attributable to the construction of a new dwelling house, no such development forms part of the application under consideration. The

Conservation Officer has sought to make recommendations on a built form (i.e. a dwelling) that does not form part of the subject application and thus their comments are not of relevance.

- Given that permission has not been sought for the construction of a dwelling house, the Conservation Officer cannot form a view as to the potential future impact of such a structure. Neither the Council nor its officials can adopt a pre-conceived position pending the lodgement of a future planning application.
- The land use zoning provisions of the Development Plan indicate what uses may or may not be appropriate on any given site. In this respect, the subject proposal accords with the applicable land use zoning whilst any future use on site will be considered on its merits having regard to the land use zoning.
- The case planner, as the only official delegated to make a recommendation to the Council Executive, assessed the subject application with the full knowledge of the report of the Conservation Officer. Moreover, the case planner correctly considered the works that were the subject of the application and recommended a grant of permission on foot of same.
- The subject application is limited to those works comprising the '*subdivision of existing site together with new road and pedestrian entrance*'. Any future application on site will be assessed on its own merits having regard to the site context and its location proximate to two protected structures. The planning policy context remains unchanged and all relevant considerations will continue to apply in the assessment of any future application on site.
- From a legal perspective, there is no 'two-staged' planning application context in this instance. The subject proposal and any future application will be assessed independent of one another and on their own merits.
- The appellant has raised concerns as regards the potential impact of a new dwelling house on Nos. 138 & 140 Rock Road which is not the subject matter of the planning application.
- It is acknowledged that the impact of a new dwelling house on Nos. 138 & 140 Rock Road can only be assessed when a planning application containing the

relevant details is made for same. However, the principle of siting future residential development within the curtilage of a protected structure can be considered under certain circumstances and there are many examples of such development making a positive contribution to the built quality of an area.

- The position of the Planning Authority that *'any future planning application for a house on the subject site, would be dealt with separately, and on its own merit'* is consistent with that of the applicant.
- The appellant will be entitled to make observations / submissions on any future planning application on site without prejudice to the decision-making process.
- In response to the contention that the subject proposal effectively amounts to a grant of 'outline permission', the factual position is that full planning permission was applied for and subsequently granted.

### 6.3. Planning Authority Response

- It is acknowledged and regretted that due to an oversight the appellant's third-party submission was not considered in the Planning Authority's assessment of the application, however, the following responses should be noted:
  - It is considered that the description of the proposed development in the public notices is acceptable. The main intent was to subdivide the site from the parent dwelling and the manner of this subdivision (through the construction of a granite wall as shown on the submitted drawings but not included in the public notices) was not deemed vital to the description in this instance.
  - With respect to the vehicular access arrangements and the appellant's concerns regarding same, the Transportation Planning Section indicated that it had no objection to the proposed development, subject to conditions.
  - Regard was had to Section 8.2.4.9: *'Vehicular Entrances and Hardstanding Areas'* of the Development Plan in the assessment of the



application, including the need to be cognisant of built heritage considerations. Conditions were thus imposed requiring a re-design of the proposed entrance. The generally non-descript finishes of the existing front boundary wall were also noted.

- Notwithstanding the report of the Conservation Officer, the case planner made it clear that only the scope and principle of the proposal as submitted was being examined i.e. the subdivision of the site and the provision of the new entrances, and that more substantial proposals, if any, would be dealt with when received.
- The report of the case planner specifically states that any future planning application will be assessed on its own merits and also notes the visual prominence of the site, the context of the streetscape / receiving environment, and the limitations of the proposal etc.

Therefore, it is considered that all aspects of the appellant's initial submission were addressed.

- With regard to PA Ref. No. D18A/1185, that application was invalidated on the basis that it sought outline permission for works involving a protected structure whilst there was also a lack of detail as regards the protected structure and deficiencies in the site notice.
- The application invalidated under PA Ref. No. D18A/1185 is substantially different to the subject proposal as that application included for a three-storey infill dwelling, parking and ancillary works, and in many respects would have required more comprehensive details. Therefore, the subject application was not similarly invalidated.
- The report of the Conservation Officer was considered and an explanation for the approach taken is detailed in the planning report.
- Of the two references made in the planning report to a 'large site', one related to the prominence of the houses on the streetscape whilst the other referred to the limited scope of the application.
- The subject application is limited to the subdivision of a relatively large site and the provision of new entrances and, therefore, it was assessed within this

context. Any future development proposal will be assessed on its merits having regard to the context prevailing at the time.

- It is not considered that the proposal would have a significant negative impact on the protected structure, its surroundings, or the wider streetscape.
- All of the relevant issues raised in the initial third-party submission and the grounds of appeal have been addressed, including the assessment of the relatively limited nature of the proposal.
- The limited extent of the changes proposed were deemed acceptable having regard to the provisions of the Development Plan.

#### 6.4. **Observations**

None.

#### 6.5. **Further Responses**

##### 6.5.1. *Response of the Applicant to the Circulation of the Planning Authority's Submission:*

- The Planning Authority has apologised for its failure to consider the appellant's initial observation.
- The Council has provided a detailed breakdown of its position as regards the contents of the appellant's initial observation and has also confirmed that the contents of same did not affect its consideration of the limited extent of the proposed development or its acceptability from a planning perspective.
- The description of a proposed development as set out in the public notices is not intended to be not exhaustive as its legal status is supplemented by the contents of the application form in addition to the submitted plans and particulars.
- The boundary wall was clearly indicated on the submitted drawings with the site layout plan showing a granite wall. It is also common practice for the finish of boundary walls to be addressed as a condition of any grant of permission (i.e. Condition No. 8).

- Condition Nos. 2, 5 & 6 of the notification of the decision to grant permission adequately address the pedestrian and vehicular access arrangements to the site.
- Vehicular access and sightlines were addressed through normal development management controls.
- The Planning Authority has confirmed that the Conservation Officer was seeking to make a recommendation on a built form (i.e. a dwelling house) that did not form part of the application under consideration.
- Condition No. 3 clarifies that the grant of permission relates solely to the proposed site subdivision and the associated entrances.
- The position of the Planning Authority supports that of the applicant that the subject proposal cannot be compared to the previous application for outline permission that was invalidated under PA Ref. No. D18A/1185. The two applications are for completely different types of planning permission as defined under the Act.
- The subject application does not include for the construction of a dwelling house and thus no view can be taken by the Conservation Officer as regards the potential future impact of any such structure.
- The case planner, as the only official delegated to make a recommendation to the Chief Executive, assessed the subject application in the full knowledge of the comments of the Conservation Officer.
- The Planning Authority has provided a robust breakdown of its assessment of the application (including consideration of the third-party submission and the report of the Conservation Officer).
- Having regard to the merits of the application and the limited size and scale of the development proposed, the decision of the Planning Authority to grant permission is robust in that it has taken account of all relevant planning matters.
- The applicant and owners of 'St. Michaels' have expended substantial monies in the renovation, refurbishment and maintenance of the existing protected structure on site. Their interest and concern also extends to neighbouring

properties which, in some cases, are showing signs of dilapidation and a need for refurbishment.

6.5.2. *Response of the Appellant to the Circulation of the Planning Authority's Submission:*

- Whilst the Planning Authority has acknowledged that the appellant's submission was not considered in its assessment of the application, such an omission remains highly unsatisfactory.
- The application is invalid due to the inadequate description of the '*nature and extent of the proposed development*' in the public notices and the absence of rudimentary information relevant to a development that would significantly reduce the curtilage of a protected structure.
- It is reiterated that the subject application fails to comply with the requirements of Articles 23(1) & 23(2) of the Planning and Development Regulations, 2001, as amended.
- The case planner has not provided a reasoned explanation for rejecting the recommendations / advice of the Conservation Officer.
- The subject application contains none of the basic information ordinarily required when seeking permission for a new vehicular access and the inclusion of Condition No. 2 serves to demonstrate the paucity of the details submitted.
- The subdivision of the site cannot be divorced from the assessment of the construction of a new dwelling house within the curtilage of a protected structure.
- The appellant is frustrated that the Planning Authority has facilitated the splitting of a proposal to develop a dwelling house within the curtilage of No. 138 Rock Road by deciding to grant permission for the subject application in the absence of any meaningful details and by providing for the lodgement of a subsequent application for the development of the house on the subdivided site that will be limited to the consideration of matters of detail given that the issue of principle will have already been determined. Article 21(b) of the Planning and Development Regulations, 2001 as amended, precludes applications for outline permission with respect to protected structures,

however, if permission is granted to subdivide the subject site, it will be regarded for all intents and purposes as a grant of outline permission.

- The plans and particulars lodged with the subject proposal are indistinguishable from those that would be expected to accompany an application for outline permission.
- It is reiterated that no information has been provided as per Article 23(2) of the Regulations that would enable an assessment of the impact of the proposed development on the character of the protected structures both on site and within the adjacent property. In the absence of this key information, the Council's decision has not been made with due regard to the proper planning and sustainable development of the area.
- The subject application is not substantially different to that previously invalidated under PA Ref. No. D18A/1185 and in this regard it should also have been declared invalid by reference to the failure to comply with Article 23(2) of the Regulations.
- Permission should not be granted for the subdivision of the curtilage of a protected structure on the basis of the insufficient information lodged and in the absence of any proposal for the house itself.
- The assessment by the Planning Authority fails to have any regard to the clearly negative implications arising from the future development of a dwelling house on this site (including the impact of any such development on protected structures, the streetscape, and other built heritage considerations).

## 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Impact on built heritage considerations
- Impact on residential amenity

- Traffic implications
- Procedural issues
- Appropriate assessment

These are assessed as follows:

## 7.2. The Principle of the Proposed Development:

- 7.2.1. The proposed development involves the subdivision of the curtilage of an existing property (a protected structure) together with the provision of new vehicular and pedestrian entrances onto the R118 (Rock Road) Regional Road in order to accommodate the future provision of an additional dwelling house (subject to planning). In this respect, it is of particular relevance to note that the subject application does not include for the construction of the new dwelling house itself.
- 7.2.2. At the outset, it is of relevance to note that the subject site is zoned as 'A' with the stated land use zoning objective *'To protect and-or improve residential amenity'* whilst the surrounding area is primarily residential with the prevailing pattern of development in the immediate vicinity of the application site characterised by a variety of house types with several notable detached properties of built heritage interest on generous plots contributing to the wider streetscape. In this respect I would suggest that the proposal to subdivide the application site in order to accommodate the provision of an additional dwelling would generally be considered acceptable in principle on the basis that it involves the creation of a potential infill site within an established residential area where public services are available. The development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Indeed, the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

- 7.2.3. However, whilst I am generally amenable to the wider principle of the proposed development, it is clear that the specifics of the site context give rise to complicating considerations which could potentially undermine the overall suitability of the site for the development proposed. In this regard, I would advise the Board that both the subject site and the neighbouring property to the immediate north / northwest have been designated as protected structures by reason of their inclusion in the Record of Protected Structures set out in Appendix 4 of the County Development Plan.
- 7.2.4. Given the absence of any details pertinent to the final design of the dwelling house which it is anticipated will be constructed on site (subject to a separate planning application), I am inclined to concur with the appellant that it is not possible to fully assess the impact, if any, of either the subject proposal or the development ultimately planned on site on the character and setting of the aforementioned protected structures (or indeed the wider streetscape). Whilst I would acknowledge the limited scope of the development as proposed i.e. the subdivision of the existing site and the provision of new pedestrian and vehicular entrances, and that full planning permission has been sought for those works in accordance with the legislation, I am cognisant of the parallels that may be drawn between the subject proposal and an application for outline permission in that both scenarios essentially serve to establish the acceptability in principle of development on site with the detailed design of the final construction to be resolved at a later date by way of a separate planning application. The appellant has sought to emphasise the restrictions on outline applications set out in Article 21(b) of the Planning and Development Regulations, 2001, as amended, which states that an outline application may not be made for permission for development which would consist of or comprise the carrying out of works to a protected structure, and has asserted that a direct comparison can be made between the rationale for the foregoing provision and the nature of the subject application.
- 7.2.5. In my opinion, whilst I am satisfied that the principle of the development proposed is likely acceptable, there is a clear need for more detailed proposals pertinent to the final construction ultimately planned on site in order to allow for a full and comprehensive assessment of the impact of same on the character and setting of the protected structures. The plans and particulars submitted with the subject application are limited in their scope and do not give any semblance of the

contextual relationship of the additional dwelling house planned on site. In the absence of any coherent details as regards the overall design, scale, height and building line etc. of the new dwelling which will be facilitated by the subject application, in addition to its proximity to protected structures, in my opinion, it is not possible on the basis of the submissions made in relation to the subject application to conclude that the proposed development would not materially or adversely affect the character or setting of the protected structures both on site and within the neighbouring property to the immediate north / northwest.

7.2.6. Therefore, having considered the available information, including the site context and land use zoning, whilst the overall principle of the proposed development is generally acceptable, I am not satisfied that sufficient information has been provided with the application to definitively establish that the development proposed would not adversely impact on built heritage considerations i.e. the character and setting of the protected structures.

### **7.3. Impact on Built Heritage Considerations:**

7.3.1. Notwithstanding the limited scope of the development proposed, given the designation of both the subject site and the neighbouring property as protected structures, and in the absence of more detailed and coherent proposals pertinent to the final construction planned on site, for the reasons previously outlined, I am not satisfied that the proposed development would not materially or adversely affect the character or setting of the protected structures in question. In particular, I would have serious concerns that any development within the side garden area of the subject site could potentially give rise to an overcrowded and disorderly appearance which would have a seriously negative impact on the visual amenity and setting of the protected structures and the wider streetscape.

### **7.4. Impact on Residential Amenity:**

7.4.1. Given the specifics of the site context, including its relationship with neighbouring residential development, cognisance must be taken of the need to protect the residential amenities of both existing properties and those of any dwelling house planned on site. In this regard, the lack of a detailed design for the new dwelling which will be facilitated by the subject application (in terms of scale, height, positioning, internal room configuration, and proximity to neighbouring development



etc.) does not allow for a detailed examination of the potential for adverse impacts to arise such as by way of overlooking or overshadowing. Therefore, in the absence of further information, I am not satisfied that the proposed development would not be seriously injurious to the residential amenity of neighbouring housing.

#### **7.5. Traffic Implications:**

- 7.5.1. The proposed development includes for the opening of a new vehicular access point that is intended to serve an additional dwelling house planned on site (subject to planning permission) onto the R118 Regional Road which comprises a heavily trafficked dual-carriageway with integrated bus lanes and dedicated cycle-paths. In this regard, I note that the Board previously refused permission under ABP Ref. No. PL06D.225997 for a new vehicular access from No. 136 Rock Road onto the main carriageway given the potential availability of an alternative access point via Grotto Place. Whilst I would acknowledge that the subject site does not extend as far as the laneway to the rear of the site (onto Grotto Place), it may be appropriate to consider such an option.
- 7.5.2. Notwithstanding the foregoing, any traffic accessing / egressing the subject site will only be able to do so by way of a left-turn, although it would be of considerable importance to ensure adequate provision is made for dedicated on-site turning facilities in order to prohibit any reserving manoeuvres onto the busy roadway. On the assumption that traffic will only be able to enter / exit the site in a forward movement, the sightlines on exiting the property would appear to be adequate.
- 7.5.3. However, I would draw the Board's attention to the submission received from the National Transport Authority wherein it is stated that the Blackrock to Merrion Core Bus Corridor (which forms part of the 'BusConnects' project) is proposed to run alongside Rock Road and that an initial design proposal suggests that a landtake may be required from the subject site (although the exact extent of any such landtake is yet to be determined). In this respect, I would have reservations that the vehicular entrance as proposed (and the associated provision of on-site turning areas etc.) could potentially impinge on the final design of the CBC.

#### **7.6. Procedural Issues:**

- 7.6.1. In relation to the suggestion that the description of the proposed development as set out in the public notices is deficient on the basis that it makes no reference to the

proposal to erect a dividing boundary wall, it is my opinion that procedural matters, such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application. Notwithstanding the foregoing, I would advise the Board that Article 18(1)(d) of the Planning and Development Regulations, 2001, as amended, requires a newspaper notice to provide '*a brief description of the nature and extent of the development*' and whilst I would acknowledge that the description of the subject proposal makes no specific reference to the proposed granite boundary wall, I do not propose to comment further on this matter other than to state that the Planning Authority's actions have not infringed the appellants' right to lodge an appeal.

7.6.2. With regard to the adequacy of the submitted plans and particulars, given the limited nature of the works proposed, it would appear that the Planning Authority was satisfied that the application accorded with the requirements of the Regulations. In this regard, I do not intend to comment further, although I would reiterate my earlier position that it is not possible on the basis of the information available to conclude that the proposed development would not materially or adversely affect the character or setting of the protected structures.

#### **7.7. Appropriate Assessment:**

7.7.1. Having regard to the minor nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

## 9.0 Reasons and Considerations

1. Having regard to the location of the proposed development within the curtilage and to the side of a protected structure, and its proximity to a neighbouring protected structure, the Board is not satisfied, on the basis of the submissions made in relation to the application for planning permission and the appeal, that the proposed development would not materially or adversely affect the character or setting of the protected structures. The proposed development would, therefore, seriously injure the amenities of the protected structures and would be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

2<sup>nd</sup> December, 2019