



An  
Bord  
Pleanála

## Inspector's Report ABP 305836-19.

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### Development

Demolition of existing two-storey house, construction of two storey over basement house with a courtyard and lower garden at basement level, a rear garden at ground level, a balcony at first floor level, an enlarged vehicular entrance and two on site car spaces. and site works.

### Location

No 69 Waterloo lane, Dublin 4.

### Planning Authority

Dublin City Council

### P. A. Reg. Ref.

3755/19

### Applicant

Robert Booth.

### Type of Application

Permission.

### Decision

Grant Permission.

### Type of Appeal

Third Party

### Appellant

Fraoch Moore and Gavin Nailk and,  
Alix Gardner and John Colcough.

### Date of Site Inspection

22<sup>nd</sup> January, 2020.

### Inspector

Jane Dennehy

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## **2.0 Site Location and Description**

2.1. The application site is located on the northern eastern side Waterloo Lane which, from its junction with Upper Leeson Street runs parallel between Burlington Road and Waterloo Road. The existing dwelling at No 69 Waterloo Lane and the dwellings on the adjoining sites have a shared front building line behind front curtilages on the eastern side of Waterloo Lane. The rear garden boundary is shared with that of the rear garden of No 69 Waterloo Road nineteenth century terraced house with a return incorporating a main dwelling and separate garden level apartment. The existing two storey detached house is of relatively recent construction and has a stated floor area of 105 square metres. The front curtilage which is under hard standing is enclosed on the frontage by stone wall within which there are vehicular and pedestrian entrance doors. Stone walls are located along the side and rear boundaries of the site.

## **3.0 Proposed Development**

3.1. The application lodged with the planning authority indicates proposals for the Demolition of existing two-storey house, construction of two storey over basement house with a courtyard and lower garden at basement level, a rear garden at ground level and a balcony at first floor level, an enlarged vehicular entrance and two on site spaces and at ground level, enlarged vehicular entrance and two car spaces and sit works. The application includes a written statement, flood risk assessment report and engineering report.

## **4.0 Planning Authority Decision**

### **4.1. Decision**

By order dated, 7th October, 2019 the planning authority decided to grant permission for the proposed development. Condition No 3 contains requirements for (a) widening of the entrance driveway to 2.5 to 3.6 metres in width and, (b) for on-site car-parking to be confined to one space. A compliance submission is required. The other conditions are of a standard planning and technical nature.

## 4.2. Planning Authority Reports

### 4.2.1. Planning Reports

4.2.2. The planning officer indicates acceptance of the proposed development, including the glazing, balcony at first floor level subject to minor modifications.

### 4.2.3. Other Technical Reports

The Road and Traffic Planning Division indicated acceptance of the proposals subject to conditions to include reduction from two to one on site car-spaces and modifications to the width of the proposed vehicular entrance to conform with CDP standards.

The Drainage Division indicates acceptance of the proposed development subject to conditions.

## 4.3. Third Party Observations

An Observer submission were lodged by the appellant party which comprises the owners or occupiers of the two dwelling units within No 69 Waterloo Road. The objections are outlined under The Appeal in para 7.1

## 5.0 Planning History

Permission for the existing dwelling on the site would appear to have been granted under P. A. Reg. Ref. 0437/97: The development description according to the planning authority register provides for Permission for "*subdivision of existing listed dwelling to provide garden level apartment unit with separate entrance with alteration to basement window to front, and two storey house over with alterations to rear elevation incorporating patio deck at ground floor level.*"

P. A. Reg. Ref. 4147/17: Permission was granted for alterations and extensions to the return at the three-storey terraced house at No 69 Waterloo Road. (he Appellant party property.) It provides for subdivision of existing house to provide garden level apartment unit with separate entrance with alteration to basement window to front, with a two-storey house overhead with alterations to rear elevation incorporating patio deck at ground floor level.

## 6.0 Policy Context

### 6.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site location is subject to the zoning objective: Z2: *to protect and or improve the amenities of residential conservation areas.*

According to Policy QH23 demolition of habitable housing is to be discouraged. Policies to include those relating to demolition of habitable accommodation and its replacement development are set out in Development Management Standards are in Chapter 16 with guidance and standards for residential quality in section 16.10.2 and criteria for infill developments are set out in section 16.10.10 and for mews dwellings in section 16.10.16

Criteria for basement level development in and in close proximity to Z2 zoned lands are set out in section 16.10.15 according to which it is the policy of the planning authority to discourage significant underground development and excavation work basements and, extensions to existing basement development, adjacent to residential properties in conservation areas and/or included on the record of protected structures. It is stated that significant basement development has been sought in planning applications in recent years and there is concern as to risk of flooding and excessive provision habitable accommodation over one hundred percent in site coverage. Such development in Flood Zone A or B areas is not permissible according to Policy SI13.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

In the appeal received from the Appellants of No 69 Waterloo Road on 4<sup>th</sup> November, 2019, it is submitted that:

- The proposed scale and mass and dominant visual impact of the block form is visually intrusive and incompatible with the built character of the buildings on the lane, especially given the conservation status. It is not accepted that the proposed height and setback of the proposed building would not affect

adjoining properties. The building would 'spring out like a monster.' Adjoining development is misrepresented in the drawings.

- Over half a dozen gardens from adjoining houses will be overlooked from the curtain walls, windows and balconies. The first-floor balconies give uninterrupted views, No 69 is directly to the rear would be worst affected. There is no precedent for the proposed dwelling, and it is inessential. Screening is insufficient but if the balcony is permitted it must be required.
- The solid stone walls on the boundaries with the adjoining properties (No 67 and 71) must be retained with no structural damage and condition survey in advance of development should be required. Overhanging by fixtures and fittings over the boundary is unacceptable to the appellant party.
- Basement level development is unprecedented and there are several watercourses below ground which, along with the water table could be interfered with during works. A survey in advance of development should be required.
- Demolition of the existing dwelling which is of recent construction and good quality is not justified.

## 7.2. Applicant Response

7.2.1. A submission was received from Hughes Planning on behalf of the applicant on 29<sup>th</sup> November, 2019 attached to which is a copy of the observation submitted to the planning authority at application stage and a flood risk assessment report. According to the submission:

- The proposed development is not visually intrusive and has appropriate scale and design it is a replacement which is a distinct improvement on the visual amenities in the streetscape and area. In its high-quality design accords with Policy SC28 of the CDP which promotes high quality architecture and design, the 'Z2' zoning objective and its objectives CHC1 and CHC4 for a positive contribution being required and for protection of the special character and interests of conservation area. (Images are included.) The planning officer

has included positive comments on the contemporary design and compatibility with the surrounding development in his report. (An extract is provided.)

- The ratio of glazing does not give rise to overlooking and there are sufficient separation distances, first floor windows having been confirmed by the planning officer to be between twenty-two and twenty-four metres from the proposed rear balcony at first floor level. Appropriate design mitigation and screening will be provided as confirmed in the planning officer report.
- The separation distances between the balcony and adjoining properties are adequate and exceed the minimum requirement in Section 16.10.2 of the CDP for first floor windows. The existing dwelling has a separation distance of thirty-one metres distance from the opposite dwelling at No 69 Waterloo Road and the proposed dwelling will have a separate distance of twenty-four metres from the rear elevation. The planning officer accepted that overlooking would not occur and the applicant is willing to accept conditions for seeing the balcony.
- There will be no encroachment over the side boundary walls to each side. And no undue impacts on the walls.
- With regard to the underlying watercourse, the flood risk assessment indicates no evidence of historic flooding at the location and the nearest potential source of flooding is the River Dodder located in Flood Zone C. There is no risk of inundation from a 1% AEP or 0.1% AEP flood event.
- With regard to contents that the proposed demolition and replacement is contrary to sustainable development and would cause unnecessary pollution, the submission contains reference to several Policy Objectives of the CDP relevant to sustainable development encouragement and, along with policy objective for the “Z2” zoning and discussion on the city council’s vision for sustainable development in the city especially with regard to creation of sustainable communities and the context of the site location. The CDP policy objective for replacement dwellings under Policy QH23 in which demolition is discouraged unless various environmental criteria are satisfied is also cited and discussed and it is submitted that the rationale for the proposed dwelling is based on energy performance, (refurbishment costs being rejected in

favour of achieving a BER A3 rating,0 the quality of the dwelling's habitable accommodation and design which enhances the streetscape.

### 7.3. **Planning Authority Response**

There is no submission from the planning authority on file.

## 8.0 **Assessment**

8.1. The existing dwelling on the application site is a habitable detached dwelling similar in form and height, although with a different roof profile to the adjoining dwellings all of which are of relatively recent construction and setback behind the front boundary walling onto the lane and as such it is relatively inconspicuous and low in profile in views from the public realm. The original plot of No 69 Waterloo Road was subdivided to provide for the existing dwelling and the original house is subdivided into two dwellings one at garden level and one at upper ground and first floor level. The remaining private rear garden space serving No 69 Waterloo Road serves both these two dwellings and incorporates an outdoor terrace.

8.2. The issues central to the appeal and determination of a decision are considered below are that of:

- Proposed demolition of habitable accommodation,
- Basement level element within proposed development
- Impact on Visual and Residential Amenities
- Other Matters
- Environmental Impact Assessment Screening.
- Appropriate Assessment

### 8.3. **Proposed demolition of habitable dwelling and replacement.**

8.3.1. While it is agreed that the existing dwelling would not have A3 BER rating, it is not accepted that with investment in appropriate upgrades, its energy efficiency would not be significantly enhanced. As such, the case made in the applicant's submission as to the proposed demolition and construction of the proposed replacement



dwelling be a more effective and compatible option with regard to the interests of energy efficiency and sustainable development is not persuasive and it is questionable as to whether in principle, the proposals conform to the policy objective for discouragement of demolition of habitable accommodation as set out in the CDP and in particular Policy objective QH 23. However, it is noted that the proposed dwelling would provide for a dwelling of higher quality and amenity potential for future occupants in addition to being energy efficient at a BER rating of A3 as indicated in the application.

#### **8.4. Excavation and Basement Level Development.**

- 8.4.1. Notwithstanding the submission of the flood risk assessment report with the application, it is difficult to reconcile the proposals for a basement level within the proposed replacement dwelling and the significant excavation and earthworks involved. It would not be supported by the policy objective introduced into the current CDP and set out in section 16.15.10 providing for discouragement of significant underground development and excavation work basements and, extensions to existing basement development, adjacent to residential properties in conservation areas and/or included on the record of protected structures. The site is in close proximity to protected structures and within the former, historic curtilage of the protected structure at No 69 Waterloo Road and, within an area zoned as Z2: Residential conservation area.
- 8.4.2. The extent of works involved also gives rise to some concern also as to the stability of the party boundary walls, for which, it least underpinning is likely to be required and, as to precedent for similar basement development in connection with possible future proposals for demolition and replacement of the existing habitable dwellings on Waterloo Lane.

#### **8.5. Impact on Visual and Residential Amenities.**

- 8.5.1. It is agreed with the appellant that the extent of glazing is considerable and arguably excessive but as indicated in the planning officer report, separation distances from properties to the rear and the front exceed minimum standards. Subject to incorporation of the full height screening of the balcony at the rear, with the 'charred timber fins' indicated in the application, it is considered that the proposal would not

give rise to undue overlooking or perceptions of overlooking of the rear gardens and rear facing glazing of the properties on Waterloo Road, especially No 69. There is at present a degree of reciprocal overlooking between the property and the existing application site property and it is of note that there is an external terrace, being at a low height at the rear of the property at No 69 Waterloo Road. While the application drawings suggest a suitable design for the fins for the purposes of effective screening, it is recommended, if permission is granted, that compliance submission be required and that it should include presentation of a sample to the planning authority for its agreement.

8.5.2. In terms of impact on the visual amenities of development, along Waterloo Lane, there is no doubt that the profile of the proposed development would be contrast with and be more prominent than the existing and adjoining dwellings but, owing to the height and the setback behind the front boundary and the site coverage which is less than half of the site area, there is no objection. The proposal, in this regard would be compatible with the Z2" zoning objective, setting aside the concerns with regard to the proposed excavation and incorporation of a significant basement element within the development.

#### **8.6. Other Matters.**

8.6.1. The requirements of the Roads and Transportation Department for the alterations to the width of the vehicular entrance is noted and supported in that it would accord with the CDP standards and facilitate access and egress to and from the front curtilage. The required reduction from two to one on site car space is also of note although there is some concern as to potential increases in demand for on street parking on the lane being generated. The lane serves both commercial and residential development and some 'pay and display' facilities are available intermittently along the lane, but the width is relatively narrow and there are no pedestrian facilities.

#### **8.7. Environmental Impact Assessment Screening.**

8.7.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental

impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **8.8. Appropriate Assessment**

Having regard to the planning history for the site, the zoning objective, the location of the site which is on serviced land, to the existing development on the site and in the vicinity and, to the nature and scale of the proposed development, no appropriate assessment issues arise, 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.

#### **9.0 Recommendation**

- 9.1. In conclusion, there are concerns with regard to consistency the policy of discouragement of demolition of habitable dwellings in the CDP and as to the option of potential scope for upgrading and refurbishment of the existing dwelling to facilitate achievement of a BER A rating. The principle concern is over the significant basement/below ground element incorporated in the proposed development that involves extensive excavation and earthworks which is in direct conflict with the policies set out in section 16.15.10 of the CDP according to which significant underground development and excavation work basements and, extensions to existing basement development, adjacent to residential properties in conservation areas and/or included on the record of protected structures is discouraged and because of potential precedent for similar development in the area, notwithstanding the identification of the area as being within Flood Zone C. Otherwise, it is accepted that the dwelling design, (above ground level) and form can be accepted without undue adverse impact on residential and visual amenities.
- 9.2. Draft reasons and considerations indicating a decision to refuse permission having regard to the foregoing follow.

## 10.0 Reasons and Considerations

Having regard to the Dublin City Development Plan, 2016-2022 according to which site location comes within an area subject to the zoning objective Z2: *“to protect and or improve the amenities of residential conservation areas”* and is adjacent to the protected structures along Waterloo Road not least No 69 Waterloo Road from the plot of which the site was subdivided, it is considered that the proposed development is in direct conflict with the policies set out in section 16.15.10 of Dublin City Development Plan, 2016-2022 according to which significant underground development and excavation work basements and, extensions to existing basement development, adjacent to residential properties in conservation areas and/or included on the record of protected structures is discouraged and because the proposed basement level development would set undesirable precedent for similar development on conservation areas and close to or at the sites of protected structures. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
23<sup>rd</sup> January, 2020.