



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306249-19

#### Development

RETENTION & PERMISSION:

retention of minor departures from approved plans at dwelling (DCC Plan Ref: 2960/16, An Bord Pleanála Ref: PL29S.246883) and for completion of brick finish to west elevation,

#### Location

16, Cullenswood Park, Ranelagh Village, Dublin 6

#### Planning Authority

Dublin City Council South

#### Planning Authority Reg. Ref.

4138/19

#### Applicant(s)

John McCarthy.

#### Type of Application

Permission.

#### Planning Authority Decision

Grant Permission with conditions

#### Type of Appeal

Third Party

#### Appellant(s)

Highgate Properties Limited.

#### Observer(s)

None.

#### Date of Site Inspection

9<sup>th</sup> March 2020.

#### Inspector

Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site comprises a two-storey detached dwelling (59.5sq.m Gross internal floor area) located at Cullenswood Park in Ranelagh, Dublin 6. Cullenswood Park is a residential road running northward from Ranelagh Village Road. The appeal dwelling occupies a narrow triangular plot with c21m frontage to the west side of Cullenswood Park extending to maximum width of 6.5m at its northern boundary and tapering to 0.4m at its southern end and has 22.7m western boundary.
- 1.2. The site lies to the east of another recent infill 1-3 Cullenswood Place which comprises of three no three-storey flat roofed stepped structures. The appeal dwelling is a two-storey structure with a flat roof consistent with the adjacent dwellings in terms of finish. The rear/western wall of No 16 lies on the boundary with units 2 and 3 Cullenswood Place. This elevation is currently unfinished.

## 2.0 Proposed Development

- 2.1. The development is described as follows:

“Retention of minor departures from approved plans at dwelling (DCC Plan Ref 2690/16 An Bord Pleanála ref: PL29S246883 and for completion of brick finish to west elevation, at the 2 storey, one bedroomed, detached dwelling. Modifications include minor increase to height and length, minor re-positioning of dwelling westward, minor revisions to floor plans, fenestration, garden boundaries and brick finish.”

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1 By order dated 25<sup>th</sup> November 2019 Dublin City Council issued notification of its decision to grant retention permission subject to 5 largely standard conditions.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Reports

3.2.1.1 Planner's report considers the development acceptable and recommends permission subject to conditions.

### 3.2.2. Other Technical Reports

3.2.2.1 Engineering Department Drainage Division report indicates no objection subject to compliance with Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

### 3.3. Prescribed Bodies

3.3.1 No submissions

### 3.4. Third Party Observations

3.4.1 Submissions on behalf of Highgate Properties Limited including submissions by McDermott Creed & Martyn Solicitors, MKO Planning and Environment Consultants and BPG3 object to the proposed development raising the matters also subsequently raised in the appeal.

## 4.0 Planning History

4.1 There is an extensive planning history on the site which includes the following

- **ABP-303200-18** Referral on the question of whether the as constructed structure at 16 Cullenswood, Dublin (Plan Ref 2690/16) is or is not development or is or is not exempted development. The Board concluded that

(a) the construction of the dwelling, being the structure referred to in this case, involved the carrying out of works, and is, therefore, development, as defined,

(b) the development that has been carried out differs from that for which planning permission was granted under register reference number 2690/16 (An Bord Pleanála appeal reference number PL 29S.246883), notwithstanding the fact that the dimensions shown on the drawings as submitted with that application for permission were denoted to be approximate, and the Board is satisfied that these differences from that approved have material impacts on the residential amenities of adjacent properties, and the deviations from the permitted development are, when taken

cumulatively, significant and material, and are not immaterial or de minimis, and are not, therefore, within the scope of the development that was approved under planning permission register reference number 2690/16 (An Bord Pleanála appeal reference number PL 29S.246883), and

(c) there are no exemptions, in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such material deviations would be exempted development:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the “as-constructed structure, incorporating an increase in height and an increase in length over that permitted under Dublin City Council register reference number 2690/16 (An Bord Pleanála appeal reference number PL 29S.246883) at 16 Cullenswood Park, Ranelagh, Dublin is development and is not exempted development.

I note that this decision is subject to ongoing judicial review (JR Case 2019-2559)

- **ABP-300772-18.** Following issue of enforcement notice by Dublin City Council a reference was made on behalf of the owner. On the question as to whether the minor increase in parapet height of a two-storey dwelling, as constructed over that permitted under An Bord Pleanála reference number PL29S.246883 at 16 Cullenswood Park, Ranelagh, Dublin is or is not development or is or is not exempted development:

An Bord Pleanála concluded that –

“(a) The construction of the dwelling involved works and is, therefore, development,  
(b) the drawings submitted in respect of planning permission granted under An Bord Pleanála reference number PL29S246883 did not give specific dimensions but allowed for variation through the use of approximate dimensions, and  
(c) the deviation in this instance between what has been constructed and the approximate figure dimensions is minor in the context of the development, does not have any material impacts on adjoining property and is, therefore, de minimus, and is exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the minor increase in parapet height of a two-storey dwelling, as constructed over that permitted under An Bord

Pleanála reference number PL 29S.246883 at 16 Cullenswood Park, Ranelagh, Dublin, is development and is exempted development.”

▪ **PL29S246883. 2690/16**

Following first party appeal of decision of Dublin City Council to refuse permission the Board decided to grant permission for demolition of single storey detached garage and construction of two storey one-bedroomed detached dwelling, subject to conditions. I note that the Board’s Inspector had recommended refusal on grounds of inadequate private amenity space and negative impact on adjacent residential units.

## 5.0 Policy Context

### 5.1. Development Plan

The Dublin City Development Plan 2016-2022 refers.

### 5.2. Natural Heritage Designations

None

### 5.3. EIA Screening

Having regard to the limited nature of the proposed development and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal is submitted by MKO Planning and Environmental Consultants, and includes a number of enclosures. Grounds of appeal are summarised as follows:

- Note Judicial review proceedings with respect to Section 5 referral PL29S300722 are being progressed in parallel to the planning process.

- Applications and processes have been characterised by inaccuracy and misrepresentation.
- Regarding mitigation it is notable that the first party has confirmed that the structure is both +735mm longer and +535mm higher than that approved under the original planning grant. Significantly in the present application for retention offers to mitigate this fact by reduction in the height of the structure.
- Note that this is the first occasion during the protracted planning process around the unauthorised structure that the applicant has made any positive move to address the amendment of the structure. The mitigation measures are limited in their extent as they do not address the +735mm additional length of the structure on the boundary wall with 1-3 Cullenswood Park and only partly addresses the additional height of +535mm by proposing to reduce the height on the boundary wall by 300mm. Welcome the proposal to bring some resolution to the case.
- Grounds of appeal wishes to highlight to the Board that the Planning Authority's assessment of the application gives no consideration to the mitigation measures proposed by the applicant.
- It is respectfully submitted that the Board consider the proposal de novo and refuse on the basis that development has a material negative impact on the adjoining properties.
- In the event that the Board is minded to endorse the decision to grant due consideration to the proposed mitigation as set out in Section 7.0 of Liam Tobin report accompanying the application.
- Request the Board to consider conditioning the full additional +535mm height of the boundary wall as constructed.
- Regarding the first party contention that additional impacts are immaterial this relies on the assumption that it is valid to apply the BRE 0.8 times allowance to the proposed retention permission. BP3 respectfully submit that this is inappropriate.
- Regarding compliance with the development plan. Section 16.2.2.2. Infill Development, it is submitted that the proposed application seeks to approve retrospectively a series of amendments which cumulatively undermine Plan Ref

2690/16 PL29S246883 an application itself refused by the City Council but ultimately granted by An Bord Pleanála against the recommendation of the reporting inspector.

- Dispute the findings of the Planning Authority that the unauthorised bulk which has been added to this dwelling does not compound any overshadowing, enclosure or overbearing impacts to a level which detrimentally impacts the amenity of adjoining neighbouring properties.
- The development is contrary to the Dublin City Development Plan 2016-2022 specifically the provision set out in 16.2.2.2 Infill and 16.10.12 Extensions which aim to protect the residential amenities of adjoining properties in terms of access to daylight and sunlight.

## 6.2. Applicant Response

6.2.1 The response of by Liam Tobin, Planning and Development Consultant, on behalf of the first party, which also includes a number of enclosures and I have summarised the main arguments pertinent to the case as follows:

- Due to unexpected contingencies that arose during construction, No 16 was constructed with a minor excess of height and length over those permitted.
- Application details demonstrate that the necessary departures from the approved plans are minor in nature and do not have a materially adverse impact on no's 2 and 3 Cullenswood Place, or any adjacent or adjoining property such that would warrant a refusal of permission.
- The first and third party have at all times differed in their interpretation of the "as consented" height and length of 16 Cullenswood Park. The scope of the increases assessable are max 0.535m in height and max 0.735m in length.
- Section 5 referral did not determine that the works were having a materially damaging impact to such extent that permission should be refused. The determination of the Board in the referral does not in any way prejudice the application for retention.
- Board's determination on the Section 5 referral is subject to ongoing judicial review (JR Case 2019-2559)

- Regarding compliance with 16.2.2.2 of the Development Plan Infill Development and Section 16.10.12 Extensions and Alterations to dwellings this is irrelevant as the principle of infill residence has been granted. The application invites consideration of the minor departures from approved plans only and completion of elements of detail.
- As regards evidence on sunlight and daylight there is no basis to support a case that there is a material negative impact on the light amenities of 2 & 3 Cullenswood Place arising from the minor increases in height and length. The impact is certainly not a magnitude that would warrant a refusal of this retention permission.
- As regards suggestion that the Board condition a reduction of 535mm in height any reduction in height beyond 300mm would not be possible without reducing the internal ceiling height below the minimum height required by Part F of the building Regulations. Notable the MKO have not requested the Board to reduce the length of the dwelling.
- While it is possible to carry out the action of repositioning insulation from its present location above the joists to between the joists (in order to reduce the external height by up to 150mm), this process is not best construction practice as confirmed by Garlands Engineers. Appendix 7.

### 6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

## 7.0 Assessment

- 7.1. I note that the application and appeal submissions include a raft of documents setting out respective perspectives in the case and detailing the first and third party's summation of the protracted history of development on the site. Extensive reference is also made to previous planning decisions in respect of the site by both the planning authority and the Board. I note that the most recent decision by the Board in respect of Section 5 referral ABP303200-18 is subject to ongoing judicial review by the first party. (High Court Case 2018/852JR). The focus for the current appeal case however is restricted to the question of acceptability of the development proposed for retention and completion. This to be considered in the context of the relevant policies



of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

- 7.2. The proposal seeks permission for retention of departures from approved plans and for completion of brick finish to the western elevation. The modifications include increases in height and length and repositioning of dwelling westward, revisions to floor plans fenestration garden boundaries and brick.
- 7.3. On the issue of the elements for retention including increased height (maximum increase is interpreted as +.535m over that permitted under planning reference PL29S246883), increased length (maximum interpreted +.735m of internal western gable wall) and repositioning of the dwelling westward .325mm as well as internal layout changes and amendments to pattern of fenestration, having considered the detail of the amendments as set out and having assessed the effect, as addressed within the detailed submissions with regard to sunlight and daylight and visual effect, I have concluded that the impact on same on visual and residential amenity is not such as to warrant a refusal. As regards the possible mitigation outlined by the first party which would involve reduction in height by circa 300mm by way of removal of parapet upstand on the eastern side, I note that as outlined by the first party in response to the appeal this is not best construction practice and on balance is in my view not warranted.
- 7.4 As regards boundary treatment to open spaces the applicant proposes that cedar wood fencing in place of the approved brick faced walls would be more appropriate in the interest of the amenity of the spaces. Application also seeks retention of the Marziale Buff brick in lieu of the Dutch Masters FB GD and permission for completion of the brick facing on the west wall with parapet coping. I consider the proposal to be in keeping with the pattern of development in the vicinity and appropriate in terms of presentation to the streetscape.

7.5 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, and proximity to the nearest European Site, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## 8.0 Recommendation

8.1. Having regard to the foregoing I recommend that permission be granted based on the following reasons and considerations and subject to conditions.

## 9.0 Reasons and Considerations

Having regard to the scale and nature of the development proposed for retention and completion and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the provisions of the Dublin City Development Plan 2016-2021. The development proposed for retention and completion would, therefore, be in accordance with the proper planning and sustainable development of the area.

### Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

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Bríd Maxwell  
Planning Inspector

12<sup>th</sup> March 2020