



An
Bord
Pleanála

Inspector's Report

ABP-306316-20

Development	Construction of two-storey mews house and one first floor terrace,
Location	Site to rear of 176, Botanic Road, Glasnevin, Dublin 9, (176A)
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2642/19
Applicant(s)	Hugh and Saskia McDonnell.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Bernie Connolly Elizabeth Henry & Brian Kelley OPW Yvonne & Noel Scallon.
Observer(s)	None.
Date of Site Inspection	13 th March 2020

Inspector

Sarah Lynch

1.0 Site Location and Description

1.1. The site relates to an end-of-terrace two-storey over basement double fronted Victorian house on the west side of Botanic Road just south of the Botanic Gardens. A short cul-de sac bounds the site to the north and this is the entrance road to a car park for the Botanic Gardens to the north and west. There is a gate from the site onto this cul de sac. The site is part of the original deeper plot for no. 176 but has been separated from no. 176 for a significant period.

1.2. The site is enclosed by stone walls and block wall which divides the original site.

2.0 Proposed Development

2.1. It is proposed to construct a two storey mews dwelling with a first floor terrace.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council determined to Grant permission for the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planners report is consistent with the decision of the planning authority.
- Further information was requested in relation to the following:
 - Submission of a Conservation Impact Assessment.
 - Details of building materials
 - Details of options to reduce overlooking from first floor terrace.

3.2.2. Other Technical Reports

- Drainage Division – no objections
- Traffic Division – no objections
- Archaeology – standard conditions to be imposed.

3.3. Prescribed Bodies

TII- Section 49 Supplementary Contributions apply – Luas Cross City.

3.4. Third Party Observations

6 submissions were received, the issues raised are outlined within the grounds of appeal.

4.0 Planning History

There is no recently recorded history for this site.

Adjacent site 176 Botanic Road

- ABP.303946 Permission was granted for a single storey extension.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

The site is located in an area zoned Z2 which seeks to protect and/or improve the amenities of residential conservation areas.

- QH8 – Promote development of vacant sites
- QH22 – New houses to be in keeping with character of existing.
- Section 16.6 – Site Coverage
- Section 16.10.8 Backland Development.
- Section 16.10.10 Infill Housing
- Section 16.10.16 Mews Dwellings

National Planning Framework Project Ireland 2040

- Section 2.2 - Compact Growth
- NSO 1 – Compact growth

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2018.

- Appendix 1 – Required minimum floor areas and standards

Quality Housing for Sustainable Communities 2007

- Section 5 – Dwelling design

5.2. Natural Heritage Designations

None

5.3. EIA Screening

- 5.4. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

Four third party appeals have been submitted and can be summarised as follows:

OPW –

- Access and parking are vital to the success of the management plan for the institution. Access has been widened which required the demolition of 28A Botanic Road,
- Annual visitors exceed 500,000 per year and up to 3,000 daily during peak season, by car and coach.
- The proposed development will create a traffic hazard
 - No pedestrian footpath
 - Inadequate sight visibility for ingress and egress of development.

- Requirement for resident to reverse into site will cause disruption at entrance to NBG.
- Restriction of roadway width will cause hazard to large vehicles.
- No construction management plan.
- Previous lawsuit over a pedestrian injuring themselves on the roadway hence no pedestrian access signs on road.
- Collision risk with cars exiting from the NBG.
- Entrance to dwelling is adjacent to a blind bend.
- Works will be required on lands within the ownership of the OPW. No permission will be granted for these works to be carried out.

Elizabeth Henry & Brian Kelley

- No justification for the proposed development.
- The development is ruining the entrance to the NBG.
- No need for a building at this location.
- Applicant is not living in the building.
- Building has been updated to student accommodation.
- Overbearing, overshadows neighbouring garden.
- Loss of privacy, overlooking, noise disturbance.
- Impact to existing terrace has not be considered.
- Materials proposed are out of keeping with existing development.
- Proposed terrace overlooks all of the neighbouring gardens.
- Building is too close to boundary wall.
- Existing double width gate has no permission.
- Site hasn't been used for 40 years, right of way over 8 foot of the road is extinguished.
- OPW have not given permission for development to access road.

- Creation of a traffic hazard.
- Impact on value of neighbouring property.

Bernie Connolly

This appellant is a resident of no. 172 Botanic Road and has raised the following issues:

- Proposed development would result in the removal of a right of way.
- Reinstatement of lane should occur.
- The sewer system is a joint system and the appellant is refusing to permit the proposed development to connect to this system.
- Overlooking

Yvonne & Noel Scallon

These appellants are residents of 174 Botanic Road and have raised the following issues:

- The first floor terrace will result in overlooking to rear gardens
- An internal terrace would be appropriate.
- The proposed terrace would set an undesirable precedent within the neighbourhood.

All of the above are residents of Botanic Road and have raised the following issues:

- All of the above have the right of access to the rear of their properties along Botanic Road and object to the use of this access to facilitate the proposed development.
- Use of back lane right of way is not extinguished.

6.2. Applicant Response

The applicants have responded to the grounds of appeal submitted by the OPW as follows:

- The OPW should avail of one or more of its other vehicular entrance into the site.

- The applicant may run services along the part of the road over which they have a right of way to the Botanic Road.
- The OPW only seek to frustrate the process.

The applicant has also responded to the appeals made by Yvonne & Noel Scallon and Elizabeth Henry and Brian Kelley, and Bernie Conolly as follows:

- Overlooking from terrace was addressed by the use of a privacy screen
- Building is located to the north of existing garden, overshadowing does not arise.
- Property disputes are not a matter for the Board.
- The applicant has sufficient legal interest to carry out development.
- Right of way is blocked by wall constructed by OPW in Botanical Gardens site.
- A pedestrian entrance would allow access to rear gardens.
- There is no entitlement to a view.
- Proposed first floor element of development is located c. 4.8 metres from boundary.
- There are no windows facing the appellants property.
- Development is consistent with DCC policies.
- The rationale for materials and design is within the visual impact assessment.
- The applicant has not updated purpose of the building for student accommodation.

6.3. Planning Authority Response

- None

6.4. Observations

- None

7.0 Assessment

7.1. The proposed development is located within an area subject to the Z2 zoning objective which seeks to protect and/or improve the amenities of residential conservation areas. The principle of residential development is accepted within this zoning objective subject to compliance with the Dublin County Development Plan 2016-2022 and relevant Section 28 guidelines. This is a third party appeal against the planning authority's decision to grant retention permission for a two storey mews dwelling to the rear of no. 176 Botanic Road. The issues for consideration before the Board are as follows:

- Access
- Impact on visual and residential amenities of the area.
- Appropriate Assessment
- Other Matters

Access

7.2. It is contended by a number of appellants that the proposed development will give rise to a traffic hazard within the lane from which the proposed development is to be accessed. It is proposed to provide one car parking space within the site and also provide pedestrian access from the adjacent lane. The OPW in particular have raised concerns, stating that up to 3,000 visitors attend the National Botanical Gardens at weekends during the summer and that the attraction has been subjected to legal proceedings in the past when a pedestrian accessing the site from the lane in question was injured.

7.3. I note that Section 16.10.16 of the Dublin City Development Plan 2016-2022, which refers to Mews development, states that all mews lanes will be considered to be shared surfaces, and footpaths need not necessarily be provided. However, the existing lane facilitates at this site provide access to a significant heritage site and will provide access to only one mews dwelling. I consider that Section 16.10.16 refers to Mews lanes to the rear of a number of dwellings in a residential context and not where the lane services as an access to a commercial facility such as that of the appeal site.

- 7.4. Future residents of the development would be required to walk on the vehicle carriageway conflicting with, at times, significantly high volumes of cars and coaches. Given the nature of the use accessed via this lane and the high volumes of traffic passing over it, I consider the use of this lane as a shared surface to be unacceptable.
- 7.5. Not only would the introduction of pedestrians to this lane pose a risk to road safety but the proposed vehicle manoeuvring required to enter and exit the appeal site in such close proximity to the entrance of the Botanical Gardens would also give rise to an unacceptable traffic hazard which could give rise to congestion at the entrance to the NBG and consequent queuing on Botanic Road.
- 7.6. Given the high volumes of traffic using this access and having regard to the foregoing I consider that the proposed access arrangements would endanger public safety by reason of a traffic hazard as a such consider that the proposed development should be refused on this basis.

Impact on Visual and Residential Amenities

- 7.7. It is contended by a number of appellants that the proposed development would give rise to overlooking and overshadowing.
- 7.8. Windows overlooking the rear gardens along Botanic Road face onto the proposed terrace which is enclosed by a wall and privacy screen, thus preventing any overlooking to neighbouring gardens. No windows are proposed within the eastern elevation overlooking no. 176 Botanic Road, therefore, whilst I note the concerns of the appellants, I consider, based on the layout and drawings submitted that overlooking will not arise.
- 7.9. I further note that concerns have been raised in relation to overshadowing. The proposed development is located north / north east of the existing gardens along Botanic Gardens, given the orientation and height of the building I do not consider that overshadowing of neighbouring gardens or properties will arise.
- 7.10. It is stated within the grounds of appeal that the proposed development by virtue of the proposed design and materials is not in keeping with the character of the area. Further information was requested by the Council seeking justification for the proposed design and materials to be used. The applicant submitted a landscape and visual impact assessment whereby the visual effects were assessed from a number of

viewpoints within the vicinity. It was concluded within this assessment that the proposed development due to its modest scale and exceptional design would make a positive contribution to the surrounding landscape.

- 7.11. I note that section 16.10.16 of the Dublin City Development Plan advocates the use of modern high quality materials such as those proposed for mews developments and I consider the contrasting materials to those of the existing buildings in the vicinity to be acceptable in this instance. I therefore consider that the proposed development will not give rise to any negative visual impacts to either the terrace of dwellings along Botanic Road or to the surrounding area.

Appropriate Assessment

- 7.12. 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.

Other Matters

- 7.13. A number of issues pertaining to rights of way and access to service connections have been raised by the appellants. These are largely a legal matters and are not ones that the Board can finally determine. Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development cannot be implemented for legal reasons.

Conclusion

- 7.14. In conclusion I consider that the proposed development will result in a substandard form of development by virtue of the inadequate width of the access lane to cater for cars and pedestrians in a safe and orderly manner. The proposed development would therefore result in a traffic hazard and is considered unacceptable on this basis.

8.0 Recommendation

- 8.1. I recommend that permission is refused for the following reason:

9.0 Reasons and Considerations

1. The proposal provides for a mews development which is accessed via a road in which there is no footpath or verge and which is solely used as the main vehicular entrance to the car park of the National Botanic Gardens. The proposed development by virtue of both the lack of turning space within the site for vehicles and lack of segregated pedestrian access would endanger public safety by reason of a traffic hazard and would be contrary to the provision of the Dublin City Development Plan in this regard and as such would be contrary to the proper planning and sustainable development of the area.

Sarah Lynch

Planning Inspector

14th March 2020