



An
Bord
Pleanála

Inspector's Report

ABP-306813-20

Development	Construction of 2 new houses
Location	Off Orwell Road and to the rear of, No. 8 Orwell Gardens, Churchtown, Dublin 14.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D19A/0954
Applicant(s)	Peter Brennan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Peter Brennan
Observer(s)	None
Date of Site Inspection	28 th May 2020
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.0668 ha is located within the rear garden of No 8 Orwell Gardens on the north side of Orwell Road, opposite the former Mount Carmel Hospital campus in Churchtown, Dublin 14. The site is bounded to the east by No 9 Orwell Gardens, to the west / north by No 1 and 2 Orwell Gardens. The site addresses Orwell Road directly along its southern site boundary and is located on a significantly lower level than Orwell Road. The immediate area of Orwell Gardens is characterised by two-storey terraced residential houses on narrow plots. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission is sought for a 2 new 4-bedroom detached houses, single storey to front (Orwell Road) and 3 storeys to rear (Orwell Gardens) (floor area of each house 134 sqm). The houses will contain entrance, living, dining, kitchen and toilet; 2 bedrooms and bathroom at single storey entrance level off Orwell Road and; 2 bedrooms and bathroom at lower middle level with stairs and access to garden at lower garden level; 1 new shared vehicular entrance and shared parking off Orwell Road, new drainage works, landscaping and ancillary works all to the rear of No 8 Orwell Gardens.
- 2.2. The application was accompanied by a Flood Risk Assessment and a Part V Certificate of Exemption.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. DLRCC issued a notification of decision to **refuse** permission for the following reason:
- 1) *The proposed development having regard to its height, mass, layout and design would appear overbearing and oppressive when viewed from neighbouring properties and would result in significant overlooking and perceived overlooking; materially contravening Section 8.2.3.4 of the Dún Laoghaire Rathdown County*

Development Plan 2016 – 2022 and the area’s zoning objective which is ‘to protect and /or improve residential amenity’. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Case Planner** in their report considered the principle, compliance with development standards (internal areas, private amenity space, separation distances), residential amenity, visual impact, access, parking and transport and drainage. The Planner concluded that *the proposed development by reason of its mass, height and limited separation distances would be overbearing and constitute over development of the site.* It was further stated that *the scheme is heavily reliant on mitigation measures, which reflects the restricted nature of the site* and that it was considered that *the proposed development would unduly impact on the residential amenity of the adjoining properties and was therefore not in accordance with the zoning objective A for the site, which seeks “to protect and / or improve residential amenity”.* The Planner recommended that permission be refused. The notification of decision to refuse permission issued by DLRCC reflects this recommendation.

3.2.3. Other Technical Reports

- **Transportation Planning** – Requested further information in relation to revised footpath, access and parking details. Subject to the foregoing being satisfactory there is no objection to the proposed development subject to conditions relating to compliance with SuDS and road construction works.
- **Drainage Planning** – Stated that the flood risk mitigation measures proposed by the applicant in their Site Specific Flood Risk Assessment are unacceptable. Requested the resubmission of the SSFRA because the predicted flood depths must include detailed flood modelling. Also stated that if the detailed modelling confirms the extent and depths of the predicted flooding a recommendation of refusal will result.

3.3. Prescribed Bodies

- **Irish Water** – No objection.

3.4. Third Party Observations

- 3.4.1. There are six observations recorded on the planning file from (1) Dr Louise Scally, No 9 Orwell Gardens, (2) Gary Lawson, No 7 Orwell Gardens, (3) Martin Rogan, No 4 Orwell Gardens, (4) Margaret Lane, No 2 Orwell Gardens, (5) Eamonn J & Patricia Dowling, 1 Orwell Gardens, (6) Helen Bates & Padraic Ryan, No 6 Orwell Gardens and (7) R Collins Hughes, No 7 Orwell Gardens.
- 3.4.2. The issues raised relate to building design and external finish, landscaping, loss of amenity value, overlooking, loss of privacy, outlook and sunlight, traffic hazard, road safety, sightlines, impact on residential amenities, overdevelopment, excessive height and massing, security, lighting, limited outdoor garden space, flooding, sewerage / waste water disposal, landscaping and screening, devaluation of adjacent and overlooked properties, contravention of the Councils Development Plan standards for open space and separation distances and inaccurate drawings.

4.0 Planning History

- 4.1. There was a previous planning application on this site that was withdrawn:
- **D18A/0383** – Application for 2 no new 4 bedroom detached 3 storey houses (floor area of each house 191sqm, total area for 2 houses 382sqm), the houses contained 2 bedrooms, den and toilet at second floor (entrance) level, 2 bedrooms and 2 bathrooms at first floor level and living/kitchen/dining/utility and toilet at ground floor (garden) level, 2 new vehicular entrances off Orwell Road, new drainage works, landscaping and ancillary works all to the rear.
- 4.2. There was a previous planning application on the adjoining property as follows:
- **D04A/0800** - Permission refused at No. 9 Orwell Gardens for the construction of a single storey dwelling with attic rooms, over basement, with new entrance onto Orwell Road and associated site development works all on site to rear. The reason for refusal stated:

The vehicular access/egress for the proposed development is located at a sharp bend along Orwell Road. The proposed development would endanger public safety by reason of traffic hazard.

4.3. There are two appeals of note immediately to the east of the appeal site that may be summarised as follows:

- **ABP-302017-18 (D18A/0368)** – DLRCC granted permission for a new vehicular entrance with pavement dish off Orwell Road to the rear of No 12 Orwell Gardens. Following a third party appeal the Board refused permission for the following reason:

1. *Having regard to the vehicular access and parking to the front of the site, it is considered that the provision of an additional access at the rear of the site onto Orwell Road is unnecessary. Furthermore, it has not been demonstrated that the sightlines from the proposed entrance can be achieved without requiring the setting back of property boundaries outside the control of the applicant, as the submitted documentation in this regard does not comply with applicable standards. The proposed development would, therefore, endanger public safety by reason of traffic hazard.*

- **ABP-300347-18 (D17A/0812)** – DLRCC granted permission for the demolition of dwelling and construction of 3 no. detached, 3-bedroom split level dwellings with 3 levels of accommodation and 3 no vehicular entrances from Orwell Road at 157 Orwell Road. Following a third party appeal the Board granted permission subject to conditions.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016-2022**. The site is zoned **Objective A** where the objective is *to protect and/or improve residential amenity*. Land uses that are considered to be “permitted in principle” in Zone A include the following:

“Assisted Living Accommodation, Open Space, Public Services, Residential, Residential Institution, Travellers Accommodation”

5.1.2. **Policy RES 3** – It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).
- ‘Urban Design Manual – A Best Practice Guide’ (DoEHLG 2009).
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).
- ‘National Climate Change Adaptation Framework – Building Resilience to Climate Change’ (DoECLG, 2013).

5.1.3. **Policy RES4** – It is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

5.1.4. Section 8.2.3.4 deals with **Additional Accommodation in Existing Built-up Areas** as follows:

5.1.5. **(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.

5.1.6. (vi) Backland Development

Backland residential development usually involves the establishment of a new single dwelling, and a building line to the rear of an existing line of houses. Residential development within the boundary of larger detached houses does not constitute backland development and will not be assessed as such. Where the Planning Authority accepts the general principle of backland residential development to the rear of smaller, more confined sites within the existing built up area, the following standards will apply:

- *Generally be single storey in height to avoid overlooking.*
- *Adequate vehicular access of a lane width of 3.7m must be provided to the proposed dwelling (3.1m at pinch points) to allow easy passage of large vehicles such as fire tenders or refuse collection vehicles.*
- *A wider entrance may be required to a backland development to or from a narrow laneway.*

- *Existing dwelling and proposed dwellings shall have minimum individual private open spaces of 48 sq.m. each - exclusive of parking - for one/two bedroom units or 60 sq.m. plus for three/four or more bedroom units.*
- *Proposed single storey backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.*
- *Proposed two storey backland dwellings shall be located not less than 22 metres from the rear façade of the existing dwelling where windows of habitable first floor rooms directly face each other. Proposed two-storey backland dwellings should have a minimum rear garden depth for the proposed dwelling of 11 metres.*

Where there is potential to provide backland development at more than one site/property in a particular area, the Planning Authority will seek to encourage the amalgamation of adjoining sites/properties in order to provide for a more comprehensive backland development. Piecemeal backland development with multiple vehicular access points will not be encouraged.

5.1.7. (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).

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. It is noted that the South Dublin Bay SAC is c4.2km from the appeal site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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 first party appeal against the decision to refuse permission has been prepared and submitted by Hughes Planning & Development Consultants on behalf of the applicant and may be summarised as follows:
- 6.1.2. Revised architectural drawings have been prepared to illustrate the compliance of the proposed development with all relevant standards.
- The ground (lower bedroom) floor plan has been revised so as to provide each dwelling with an aggregate living area of 40sqm contained within the kitchen / living / dining room.
 - This revision has been accommodated by recessing of the houses from Orwell Road and increasing the floor area of each unit from 134sqm and 146sqm.
 - Each unit has been revised to provide 15.1 sqm of storage space and is wholly compliant with the applicable requirement for four bedroomed dwellings.
 - Due to the poor aspect of bedroom 3 an additional window has been added and are designed to prevent the existing neighbouring houses from being overlooked.
- 6.1.3. The proposed development provides an appropriate response to the use of a garden site which is of sufficient size to accommodate 2 no residential dwellings
- It is considered prudent to note and respond to the relevant commentary contained in Subsections (v) Corner / Side Garden Site and (vi) Backland Development of Section 8.2.3.4 “Additional Accommodation in Existing Built-Up Areas” of the DLRCC Development Plan as follows:
- 6.1.4. **Corner/Side Garden Sites**

- The proposed units respond appropriately to the irregular orientation and topography of the site to present a site-specific response to this natural restriction.
- With regards to the relationship with the existing dwelling within the site, it is submitted that the size of the application site is sufficient for the proposal to form its own unique identity as a contemporary infill development.
- The proposed residential development will have no undue impacts, either by way of overlooking, overbearing or overshadowing impacts, on the residential amenity of neighbouring dwellings.
- The proposed dwellings are appropriately designed to provide a high standard of accommodation for their future occupants.
- Further to the internal layout to the proposed dwellings, the houses would each be served by 2 no vehicular parking spaces and an area of private amenity space within their respective front gardens off Orwell Road.
- The internal floor plans of the proposed dwellings have been sufficiently revised so as to be compliant with all relevant standards of the CDP.
- The proposed infill dwellings respond to existing building lines within the immediate area so as not appear visually incongruous within the immediate streetscape.
- The proposed infill dwellings will each be served by 2 no vehicular parking spaces in accordance with the provision of the CDP.
- The proposed dwellings will only be accessible via Orwell Road.
- The existing dwelling will retain 65sqm of private amenity space behind its rear building line, whilst the proposed dwellings will each be served by 122 – 131 sqm of private amenity space.
- The proposed dwellings are of contemporary style and design and will provide visual interest on Orwell Road and will also contribute to passive surveillance.
- The highly contemporary nature of the development, both with regards to architectural and innovative design, is considered appropriate in achieving the increased efficiency of an unduly large garden site.
- The proposed development seeks to maximise the retention of the existing boundary wall between the site and Orwell Road.

- The proposed dwellings are appropriately designed so as to contribute to the passive surveillance of the public realm along Orwell Road without having any undue impact on existing properties within Orwell Gardens.
- On the basis of the above it is considered that the proposed development is largely compliant with the provisions of Section 8.2.3.4 of the CDP in respect of corner sites.

6.1.5. **Backland Development**

- The 2 no proposed dwellings are both of two storey height. The design team for the subject proposal has duly considered the topography of the subject site to provide a unique contemporary development which allows for the efficient use of the subject landholding.
- The 2 no proposed dwellings will be accessed via a new shared entrance off Orwell road. The width of the entrance is 5m which, whilst in excess of the 4m maximum width for vehicular entrances as per the CDP is considered appropriate to maintain the intended visual aesthetic of the proposed development.
- The 2 no proposed dwellings will be situated in excess of 12.8m from the rear façade of the existing dwelling at No 8 Orwell Gardens. Whilst the separation distance is below the 22m sought under the CDP it is noted that no windows of habitable rooms directly face each other and that fenestration detailing on the northern elevations of the proposed dwellings has been minimised.
- With regards to garden depth it is noted that the proposed dwellings have rear garden depths of between 8 – 9.1m. Whilst this garden depth is below the 11m it is noted that each of the proposed dwellings are to be served by a private amenity space in excess of the required standards.
- Each dwelling is required to provide 60sqm of private amenity space with House A providing 122sqm (203%) and House B providing 131 sqm (218%) of private amenity space.

6.1.6. The proposed development will have no undue impact on the residential amenity of adjoining properties. No request was made to alter the form, massing and design of the proposed dwellings or the mitigation measures employed to prevent overlooking.

- **Overlooking** – The proposal has been designed to ensure that there will be no loss of privacy to neighbouring residential properties. Windows situated on the

rear (northern) elevation utilised frosted glass panels so as to avoid overlooking neighbouring dwellings and private amenity spaces. Timber sections pop out of the dwelling with specifically angled views that draw in light to the bedrooms whilst preventing views towards sensitive adjoining residential uses.

- **Overbearing** – The proposed development has been suitably designed and scaled through recognition of the separation distances, to avoid appearing visually obtrusive or overbearing.
- **Overshadowing** – The proposed dwellings are situated within the centre of the subject site and are appropriately separated from adjoining site boundaries so as to mitigate against any potential overshadowing impacts.

6.1.7. The proposal ensures the increased efficiency of serviced land within urban Dublin in accordance with Project Ireland 2040

- The site is located in a mature residential area which is in proximate distance of all facilities necessary to provide a high standard of residential accommodation including recreational, educational and transport services.
- It is considered that the proposed development is in accordance with the provisions of the Project Ireland 2040 National Planning Framework which seeks more balanced and concentrated growth within the developed urban areas of the of the five major cities with Ireland.
- The existing rear garden space as currently used, is considered to be significantly underutilised in the context of the potential of the site to accommodate additional residential units.
- The proposed infill development whilst contributing 2 no additional houses to the national housing stock, is considered to reflect the type of compact sustainable development which is sought throughout National Policy in regards to the appropriate development of under-utilised sites.

6.1.8. A precedent for similar development has been identified within the immediate area

- Reference is made to Reg Ref D17A/0812.

6.1.9. Conclusion

- The development is compliant with the various quantitative and qualitative standards of DLRCC

- The proposed development is zoned Objective “A” with residential dwellings being permitted in principle.
- It is considered that the proposed infill development has been designed to the highest standard and has considered the residential amenity of adjoining properties within Orwell Gardens to minimise any potential negative impacts of development at this site.
- The proposed development represents a high quality and modest addition to the immediate area which will provide a high standard of accommodation for future occupants.

6.1.10. The appeal was accompanied by a Design Statement together with revised floor plans and elevations.

6.2. Planning Authority Response

6.2.1. DLRCC submitted the following comments:

- **Surface Water Drainage** – The first party appeal submission has not addressed the significant further information required from Municipal Services, which relates to flooding.
- **Transportation** – The applicant shows a step in the public footpath and this is a hazard to pedestrians. The applicant shows an entrance greater than the CPD recommended width of 4.0m. This section of road has increased width and a tendency for higher speeds, and on this bend it is considered the location of egress is a hazard.
- **Planning** – The Planning Authority have noted the revised drawings and their decision still stands.

6.3. Observations

6.3.1. There are 5 no observations recorded on the appeal file from (1) Eamonn J & Patricia Dowling, No 1 Orwell Gardens, (2) Rosemary Collins – Hughes, No 3 Orwell Gardens, (3) Margaret Lane, No 2 Orwell Gardens, (4) Louise Scally, No 9 Orwell Gardens and (5) Gary Lawson, No 7 Orwell Gardens.

6.3.2. The issues raised relate to impact on adjoining residential amenity, contravention of the Councils Development Plan standards (private open space and separation distances), precedents, traffic hazard and road safety, depreciation in property values, building design, excessive height, massing and bulk, overlooking, construction phase impact, flood risk and overshadowing from landscaping / screening.

6.4. **Further Responses**

6.4.1. There is no further response recorded on the appeal file.

7.0 **Assessment**

7.1. This assessment is based on the plans and particulars submitted to DLRCC on the 9th December 2019 as amended by plans and particulars submitted with the appeal to An Bord Pleanála on the 4th March 2020.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Residential Amenity
- Visual Amenity
- Depreciation of Property Values
- Material Contravention
- Appropriate Assessment.
- Other Issues

7.3. **Principle**

7.3.1. Under the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 the site is wholly contained within an area zoned Objective A where residential developments are considered a permissible use. Accordingly, the principle of the

proposed development is acceptable at this location subject to subject to compliance, with the relevant policies, standards and requirements set out in plan.

7.4. Residential Amenity

- 7.4.1. DLRCC in their reason for refusal state that by reason of the schemes height, mass, layout and design would result in overlooking and perceived overlooking that would seriously injure the amenities of property in the vicinity and would materially contravene Section 8.2.3.4 of the Dún Laoghaire Rathdown County Development Plan 2016 – 2022. The matter of material contravention is dealt with separately below.
- 7.4.2. As documented the development comprises two four bedroomed houses with a shared driveway accessed off Orwell Road with parking to the front. In responding to the topography of the site the development is to be constructed on a concrete platform built on columns and platforms with the living space is at road level with two bedrooms on a raised area to the rear and two further bedrooms located at a lower level to the rear. Access to the garden area is by means of an internal staircase or an external staircase located between the two houses. The scheme will read as single storey when viewed from Orwell Road and a two storey over garden level when viewed from Orwell Gardens.
- 7.4.3. The subject site is considered to be representative of both a corner and a backland site given its formation through the subdivision of an existing site, its irregular location behind existing properties within the Orwell Gardens residential scheme and the potential to provide access via Orwell Road which, whilst running along the southern site boundary, is not currently directly accessible via the site for reasons of site topography. To this end I refer to Section 8.2.3.4 of the current Development Plan that deals with Additional Accommodation in Existing Built-up Areas and in particular Section (v) Corner/Side Garden Sites, Section (vi) Backland Development and Section (vii) Infill therein and as outlined in full in Section 5.1 above.
- 7.4.4. As stated, the central issue in the reason for refusal is the impact to adjoining residential properties by reason of separation distances and overlooking, primarily of No 1 and No 9 Orwell Gardens from the kitchen / living / dining area of both the houses. Overlooking from the northern elevation has been mitigated through the use of angled windows and opaque glass. While there is no doubt that this is a unique site and that

the applicant has endeavoured to overcome many of the sites constraints through careful design and fenestration it remains that given the schemes proximity to existing properties the scheme currently presented would have a negative impact on adjoining residential properties by reason of overlooking and perceived overlooking. These are not matters that can be overcome by way of condition. Refusal is therefore recommended.

- 7.4.5. Further, I share the concerns raised by the Case Planner that based on the information available with the application, it cannot be concluded with certainty that there would be no loss of sunlight, daylight or overshadowing to adjoining residential properties. Given the substantive reason for refusal outlined above I do not consider it necessary to refuse permission on these grounds save to say that any future application at this location should consider this matter accordingly.
- 7.4.6. With regard to impact from the shared access bridge I consider any use of this driveway to be transient and that there would be no significant negative impact to adjoining properties as a result.
- 7.4.7. As noted by the Case Planner there are no eastern elevations of House A or western elevations of House B and therefore the height of these windows cannot be determined. This matter was not addressed in the appeal response. While I consider the negative impact from these windows (bedroom and WC) in terms of overlooking of adjoining properties to be limited given their use and location it is recommended that any future application should include these elevational drawings.
- 7.4.8. It is also noted that the Case Planner correctly identified some shortcomings in the quantitative standards of the proposed scheme. To this end I note the revised plans submitted with the appeal and I am satisfied that the scheme as amended generally meets the quantitative requirements for this residential scheme in terms of habitable room sizes, storage space and private open space. However it is noted that in order to provide each dwelling with an aggregate living area of 40sqm within the kitchen / living / dining area the houses have been recessed by 810mm from Orwell Road and the floor area for each unit increased from 134sqm to 146sqm. I am concerned that the amendment to the overall floor area may be material to the scheme and may warrant the submission of revised public notices. Therefore, should the Board be minded to grant permission for the amended scheme it may wish to seek the

submission of revised public notices outlining the proposed changes to the development.

7.5. Visual Amenity

- 7.5.1. DLRCC in their reason for refusal state that the proposed development having regard to its height, mass, layout and design would appear overbearing and oppressive when viewed from neighbouring properties.
- 7.5.2. The overall design is contemporary in style and design. It is evident that the scheme has been well considered in developing a scheme that allows for the efficient use of this serviced site. I am satisfied that the development has been suitably designed and scaled to avoid appearing visually obtrusive or overbearing to neighbouring properties. Overall, I consider the design response to be acceptable at this location.

7.6. Traffic Safety

- 7.6.1. Access to the site is off Orwell Road by way of a link bridge to the development. The 2 no proposed dwellings will be accessed via a new shared entrance of 5m width. The DLRCC Transportation Planning Section requested further information in relation to revised footpath, access and parking details. While I am satisfied that many of the issues raised can be dealt with by way of condition I consider the pertinent issue in terms of traffic safety is the width of the access and access / egress safety.
- 7.6.2. With regard to access width I refer to Section 8.2.4.9 of the Development Plan where it states that the width of the vehicular access for two residential dwelling shall be a maximum of 4.0m. While I note the applicant's position that a 5m width is considered appropriate to maintain the intended visual aesthetic of the proposed development I do not consider this a valid planning reason to permit a 5m width in this instance. Accordingly, it is recommended that should the Board be minded to grant permission that a condition be attached requiring that revised plans be submitted for agreement reducing the shared access to 4.0m.
- 7.6.3. With regard to access / egress I note that the speed limit on Orwell Road is 50km/h. Further, as observed on day of site inspection this section of road has increased width and a tendency for higher speeds. However I am satisfied that given the location of the appeal site together with the layout of the proposed scheme (shared entrance) that

the vehicular movements generated by the scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. Overall, I consider the proposal to be acceptable and I am satisfied that the proposed development and in particular access / egress from the site will not result in the creation of a traffic hazard.

7.7. Flooding

7.7.1. The site is approx. 100m from the River Dodder and is located within a Flood Zone B in the County Development Plan Zoning Maps. Residential development is classified as highly vulnerable to flooding. The living space for the two houses is some 3.9m above the existing garden level and 1.9m above the anticipated 0.1% flood levels for the garden. In line with the requirements of the Development Plan the application was accompanied by a Flood Risk Assessment that concluded the following:

- The site is not part of the flood path but is a gathering point for bank overflow from the Dodder. Although it is considered that the CFRAM prediction at Orwell Gardens may present a conservatively high estimate of flood extent and depth it is not feasible to undertake the necessary complex modelling, which would be required to confirm or contradict these predictions as part of this FRA for the proposed development.
- CFRAM studies predict an estimated 0.1% flood level of approximately 31.5 mOD at the site. Consequently, measures have been put in place to mitigate against the CFRAM predicted risk of fluvial flooding by providing minimum finished floor levels of 32.0 mOD. The proposed development allows for a freeboard of 500mm above this critical drainage network
- Compensatory flood storage is to be provided, by excavation of approximately 0.15m at garden level, to take account of any hypothetical reduction in flood ponding volume due to the construction of columns, stairs etc
- The proposed construction works would not have a negative flooding impact on any other properties

7.7.2. However, the DLRCC Drainage Planning Section having considered the scheme stated that the flood risk mitigation measures proposed are unacceptable. The

resubmission of the SSFRA was recommended because the predicted flood depths must include detailed flood modelling. The report concluded that if the detailed modelling confirms the extent and depths of the predicted flooding a recommendation of refusal will result.

- 7.7.3. To this end I refer to Appendix 13 of the Development Plan where it states the following:

For Class 2 development, construction of new buildings on what would otherwise be greenfield or undeveloped land, has generally been found to generate an un-justifiable level of risk, either through introducing additional people into the floodplain, blocking surface water and overland flow paths or requiring works which are likely to have a negative impact on flood risk elsewhere. For this reason, new standalone development is not permitted within Flood Zone A or B of highly vulnerable uses or in Flood Zone A for less vulnerable uses”.

- 7.7.4. As documented the Planning Authority issued a refusal of permission without seeking further information. The first party appeal submission has not addressed the significant further information required from Drainage Planning. I agree with the Planning Authority that there is no certainty as to whether the flooding issues can or cannot be resolved in the absence of a response to the issues raised. These matters cannot be resolved by way of condition. Refusal is recommended.

7.8. Depreciation of Property Values

- 7.8.1. DLRCC in their reason for refusal state that the proposed development would depreciate the value of property in the vicinity. The scheme before the Board is for a residential development within a serviced urban area where such developments are considered a permissible use and where it is reasonable to expect developments of this kind would normally be located. While there are topographical difficulties with the site, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity. Accordingly, I am satisfied that this matter is not material to the consideration of this appeal

7.9. Material Contravention

- 7.9.1. DLRCC in their reason for refusal state that the scheme would materially contravene Section 8.2.3.4 of the Dún Laoghaire Rathdown County Development Plan 2016 – 2022 and the area's zoning objective which is 'to protect and /or improve residential amenity'.
- 7.9.2. I have considered the relevant parts of Section 8.2.3.4 in the foregoing assessment and I consider that the scheme generally satisfies the relevant requirements of the Development Plan and would not be overbearing or oppressive when viewed from neighbouring properties. However, as documented above the scheme as proposed would result in significant overlooking and perceived overlooking of adjoining properties. While I do not consider that this would constitute a material contravention of the Development Plan it remains that there are issues with overlooking and refusal is recommended.

7.10. Appropriate Assessment

- 7.10.1. Having regard to the nature and scale of the development and its distance to the nearest 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.

7.11. Other Issues

- 7.11.1. **Development Contributions** – Dun-laoghaire Rathdown County Council has adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th December 2015. The proposed development does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.0 Recommendation

8.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **REFUSED** for the following reasons and considerations.

9.0 Reasons and Considerations

- 1) The proposed development, because of its location, topography and proximity to adjoining residential properties would seriously injure the amenities of property in the vicinity by reason of overlooking and accordingly would be contrary to the proper planning and sustainable development of the area
- 2) The proposed development is in an area which is deemed to be at risk of flooding, by reference to the current Development Plan for the area and the documentation on file. Having regard to the provisions of the Development Plan in relation to development proposals in areas at risk of flooding, it is considered that, in the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk. the proposed development would be contrary to the proper planning and sustainable development of the area.

Mary Crowley

Senior Planning Inspector

9th September 2020