



An
Bord
Pleanála

Inspector's Report

ABP-306922-20

Development

Demolition of the remaining walls of a derelict, terraced house and a rear boundary wall and the construction of a dual fronted, 4 storey, terraced, apartment building consisting of 3 no. apartments and all associated works.

Location

6, Rowserstown Lane, (a.k.a High Rd), Kilmainham, Dublin, D08AA45

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4793/19

Applicant(s)

Aoife Tuomey

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Aoife Tuomey

Observer(s)

Deirdre Costello

William & Margaret Kinsella

Camac Way Management Company

Date of Site Inspection

19 June 2020

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located between Kilmainham Lane and Rowerstown Lane, in the south Dublin inner-suburb of Kilmainham. The site has frontage onto both lanes – Kilmainham Lane is the northern boundary of the roughly square site and the southern boundary faces on to Rowerstown Lane. The topography of the area is such that the site reads as four storey on the southern side facing Rowerstown Lane and two storey on the northern side adjoining Kilmainham Lane.
- 1.1.2. On the southern side Rowerstown Lane is blocked to vehicular traffic and steps up as it rises to the east towards the junction with Kilmainham Lane. To the immediate east of the subject site is the Royal Oak public house which has similar dual frontage onto both roads. On the northern side, from Kilmainham Lane, the site is approx. 4.5m below ground level.
- 1.1.3. To the west of the subject site is a four-storey part residential, part office building. Access to no. 7 appears to be from Rowerstown Lane only. To the south of the subject site, across Rowerstown Lane, is the Camac Way apartment development that steps up Rowerstown Lane, rising in height to four storeys. To the north of the subject site, across Kilmainham Lane is a Garda station and the grounds of Royal Hospital Kilmainham.
- 1.1.4. The subject site comprises the remains of a derelict mid-terrace dwelling.

2.0 Proposed Development

- 2.1.1. On the 20th December 2019, planning permission was sought for the demolition of remnants of a derelict mid-terrace dwelling, and the construction of dual fronted, 4-storey building comprising 3 no. apartments. Details provided in the application form include:
 - Total site area 74sq.m.
 - Proposed new build 202sq.m.
 - Proposed demolition 75sq.m.
 - Proposed plot ratio 2.7 and proposed site coverage 91%.
- 2.1.2. The proposed three apartments are two 1-beds (46sq.m., 59sq.m.) and one 3-bed duplex apartment of 97sq.m.

2.1.3. The application was accompanied by the following:

- Daylight analysis and Overshadowing Report
- AA Screening Assessment
- Site Services & Flood Risk Assessment

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 20th February 2020, the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:

- 1 Having regard to the overall design and layout of the proposed residential use, and its location within a constrained site area, it is considered that the proposed development would provide for a poor standard of residential amenities for proposed occupants of the development, and in particular with regards to Apartment 1, and would be seriously injurious to the residential amenities of the adjoining property due to its overbearing appearance. As a consequence, the proposal would therefore be unacceptable and would set a precedent for other such substandard developments in the area. The proposed development is therefore considered to be contrary to the provisions of the City Development Plan 2016-2022, and to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Engineering Department, **Drainage Division**: No objection subject to standard conditions.

3.2.2. **City Archaeologists Report**: A condition of archaeological monitoring should attach to any grant.

3.2.3. **Transportation Planning**: No objection subject to 4 no. conditions.

3.2.4. **Planning Report**: Notes the previous refusal on the subject site. Refers to the previous planning report and comments within which refer to a dispute about title deeds. States that this has been taken into consideration in the assessment of the subject application. The report details the differences in the previous and the subject application and concludes that the residential amenity of the proposed development is still a concern. Notes in particular the proposed glass block illuminating apartment

1, which provides no means of escape. The report states that the light well in the adjoining site, no. 7 is dark and damp and would be significantly negatively affected by the proposed development. Suggests that a 2m setback would alleviate this concern. Recommends a refusal of permission.

3.3. Prescribed Bodies

3.3.1. None on file.

3.4. Third Party Observations

3.4.1. Objections to the proposed development raise the following issues: landholding dispute on adjoining public house site, impact on residential amenity of roof garden and light of apartment development.

4.0 Planning History

4.1.1. Planning Authority reg. ref. **3542/19**: Planning permission was REFUSED for the demolition of the remaining walls of a derelict, terraced house and a rear boundary wall and the construction of a dual fronted 4 storey, apartment building consisting of 4 no. 1 bedroom apartments. The reason for refusal was as follows:

1. Having regard to the overall design and layout of the proposed residential use, and its location within a constrained site area, it is considered that the proposed development would provide for a poor standard of residential amenities for proposed occupants of the development and be injurious to the amenities of the adjoining property. As a consequence, the proposal would therefore be unacceptable and would set a precedent for other such substandard developments in the area. The proposed development is therefore considered to be contrary to the provisions of the City Development Plan 2016-2022, and to the proper planning and sustainable development of the area.

4.1.2. Planning Authority reg. ref **3810/05**: Planning permission GRANTED for the demolition of a 2 storey terraced house and the construction of a 4 storey terraced building with 4 storeys fronting onto Rowerstown Lane and 2 storeys onto Kilmainham Lane consisting of 2 no. Duplex Apartments - 1 no 3. bed apt area

98sq.m with terrace to rear, accessed from Rowerstown lane and 1 no. 2 bed apt. area 75sq.m with a roof terrace and rooflight with access from Kilmainham lane.

- 4.1.3. **PL29S.108837** (Planning Authority reg. ref. 1382/98): Planning permission granted for 3-storey house with 1.5 storeys facing Kilmainham Lane.

5.0 Policy Context

5.1. Project Ireland 2040: National Planning Framework

- 5.1.1. This national policy seeks to support the future growth and success of Dublin as Irelands leading global city of scale, by better managing Dublin's growth to ensure that more of it can be accommodated within and close to the city. Enabling significant population and jobs growth in the Dublin metropolitan area, together with better management of the trend towards overspill into surrounding counties.
- 5.1.2. The NPF recognises that at a metropolitan scale, this will require focus on a number of large regeneration and redevelopment projects, particularly with regard to underutilised land within the canals and the M50 ring and a more compact urban form, facilitated through well designed higher density development.
- 5.1.3. Of relevance to the subject application are the following:
- **National Policy Objective 2a:** A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs
 - **National Policy Objective 5:** Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.
 - **National Policy Objective 6:** Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.

5.2. Urban Development and Building Heights, Guidelines for Planning Authorities, December 2018

- 5.2.1. Reflecting the National Planning Framework strategic outcomes in relation to compact urban growth, the Government considers that there is significant scope to

accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas.

- 5.2.2. The first of the 10 National Strategic Outcomes in the National Planning Framework that the Government is seeking to secure relates to compact urban growth. Securing compact and sustainable urban growth means focusing on reusing previously developed 'brownfield' land, building up infill sites and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities.
- 5.2.3. While achieving higher density does not automatically and constantly imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable proper consideration of development proposals for increased building height linked to the achievement of a greater density of development.
- 5.2.4. **SPPR1:** In accordance with Government policy to support increased building height in locations with good public transport accessibility, particularly town / city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

5.3. **Dublin City Development Plan 2016-2022**

- 5.3.1. In the plan, the site is zoned '**Z1 Sustainable Residential Neighbourhoods**' which has the stated objective "to protect, provide and improve residential amenities". Within Z1 zones 'Residential' is a permissible use.
- 5.3.2. **Chapter 16** includes the Development Management Standards and has regard to Design, Layout, Mix of Uses and Sustainable Design. **Table 16.1** provides the

Maximum Car Parking Standards for Various Land-Uses and **Table 16.2** the Cycle Parking Standards. Applicable to the proposed development are the following:

- Indicative plot ratio for Z1 zones is 0.5 to 2.0,
- Indicative site coverage for the Z1 zone is 45-60%

5.4. Natural Heritage Designations

5.4.1. The subject site is c.5km from the South Dublin Bay and River Tolka Estuary SPA (004024) and c.6km from the South Dublin Bay SAC (0002100)

5.5. EIA Screening

5.5.1. Having regard to nature and scale of the development, the built-up urban location and brownfield nature of the site 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. A first party appeal against the decision of the Planning Authority to refuse permission has been submitted by the owner / developer of the subject site. the appeal submission includes revised an amended proposal for the subject site and a response to the observations made to the Planning Authority. The grounds of the appeal can be summarised as follows:

- The subject site has been on the derelict sites register since 2014. The applications made are an attempt to restore the site from dereliction.
- The proposed development has been amended to address the Planning Authority's reason for refusal.
- The Planning Authority's assessment that the proposed development provides poor residential amenity is rejected. The proposed development meets the minimum standards for floorspace and ceiling heights. The proposed apartments are own-door with dual or triple aspect private open space. Bicycle parking and bin storage are provided.

- The east façade of the proposed block has been left blank to facilitate development of the adjoining public house site.
- It is submitted that the proposed development provides good residential amenity. Apartment 1 may have less light than apartment 3 but it is nonetheless adequate.
- The Planning Authority's planning report gives the impression that apartment 1 is underground, whereas it is actually on the Rowerstown Lane ground level. That its rear wall is against a landbank is immaterial. Apartment 1 is dual aspect and can draw light from the lightwell on the adjoining site to the west. The living areas of apartment 1 are set back from the street
- Notwithstanding that Rowerstown lane is pedestrian due to its slope, it is wide enough for two cars and therefore should not be described as a narrow lane.
- A generous sized westerly facing window illuminating a bedroom is an acceptable design. A glass block was introduced to address the planners concern. A window has existed on the western boundary for the last 60 no. years. If a window on this elevation of not accepted, the potential to develop the site is severely restricted.
- The owners of the adjoining site at no. 7 have not commented on the proposed development.
- The rear yard of no. 7 is accessible only from the office on the ground floor. It is not a private residential amenity space. The yard is north facing, addresses a steep bank that allows water ingress. It is used as a lightwell for the upper floor apartments. There is little room for improvement.
- The Daylight Analysis and Overshadowing report submitted with the application demonstrates that the proposed development will only slightly affect the lightwell.
- The existing west facing wall of no. 6 that address the rear yard of no. 7 is 3.2m high, with one window. The proposed development involves a west facing wall of 5.9m, stepping back at third and fourth floors to reduce the impact on the adjoining building and lightwell.

- The planners suggestion of a further set back is rejected as it would only create another north-facing lightwell of limited amenity.
- It is submitted that the applicant has an obligation to bring the site out of dereliction but it must be economically viable. The constraints of the site are such that sectant piles and a tanked retaining wall are required to support the landbank and building regulations will necessitate higher cost energy provision. The proposed green roof will provide green space but at a cost. Two apartments would not be economically viable.
- The application granted permission in 2005 was substantially higher than the proposed development but was not considered overbearing or injurious to residential amenity.
- The observations made by the owner of the Royal Oak pub are rejected. The applicants legal advice confirms that she is the sole owner of the entire property.
- In response to the observation made by the Camac Way Management company:
 - The Camac Way apartment block has been designed to avoid overlooking, with high level windows.
 - Stairwell windows on the Camac Way building will not negatively impact the proposed development.
 - The proposed roof garden is set back from the front elevation and above the level of the Camac Way building. The impact on the Camac Way building by the three users of the roof garden will be minimal.
 - No overshadowing of Camac Way will occur. A precedent for development on the lane exists.
 - The proposed development follows the pattern of prevailing heights on Kilmainham and Rowerstown Lanes. The proposed development will not exceed the height of tallest building on the lane. The suggestion that the proposed development be reduced to two storeys is rejected.
 - The Board is requested to accept a variation on the proposed development as follows:

- Duplex apartment relocated to ground and first floor with own door access from Rowerstown Lane.
- Two bedroom apartments moved to second and third floors with access off Kilmainham lane to a common stairwell that also leads to a communal roof garden.
- The proposed duplex apartment no. 1 is two bed, 101sq.m. Two bedrooms are proposed at the Rowerstown side south wall, with access to a 7sq.m. terrace and bicycle store. Bathroom and storage are proposed to the rear along with the stairway to the first floor living space and a further balcony of 7sq.m. A glass-block ope on the western gable illuminates the stairway.
- The proposed one-bedroom apartments (45sq.m.) on the second and third floors are accessed from Kilmainham Lane. Each has bedrooms on the northern elevation on with a corner window facing west and north. South facing living spaces have. balconies facing Rowerstown Lane and access to the 30sq.m. communal roof garden.
- The Board is requested to grant permission.

6.2. Planning Authority Response

6.2.1. None on file.

6.3. Observations

6.3.1. Adrian Muldoon, Property Manager **Camac Way Management Company**:

- Proposed development is substantially below the minimum distance for opposing buildings
- Proposed roof garden would have a significant negative impact
- Proposed development would significantly impact the light available. The applicants sunlight analysis calculation method is not recommended by BRE.
- The scale and mass of the proposed development is overbearing and inappropriate.
- Rowerstown Lane is narrow and will be significantly impacted.

- Proposed development should be reduced to two storey.

6.3.2. William & Margaret Kinsella, **15 Camac Way**:

- Local residents and local area would be poorly served by the proposed development.
- Requests the Board to take consideration of objection made at Planning Authority stage.
- The objection raised issues of access on the narrow lane, impact during construction, safety and structural integrity of surrounding buildings, increase in parking problems and overlooking of their apartment and the subsequent impact on residential amenity and privacy.

6.3.3. Deirdre Costello, **Royal Oak Pub**:

- Subject site was habitable when purchased by the applicant.
- The Observers family made submissions to the Planning Authority regarding the ownership of the yard to the rear of the public house on all applications between 1998 and the current.
- The Observer did not object to the current proposal due to other circumstances. This should not be taken as an acceptance of the proposed development.
- The applicants claim of possession of the yard is rejected. There is no access to the yard from the house. A right-of-way that lead from the street through a passage under no. 7 should not be taken as title. The proposed development is premature pending the resolution of this dispute.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development

- Residential Amenity
- Other

7.2. Principle of the Proposed Development

- 7.2.1. The subject site is zoned Z1, Sustainable Residential Neighbourhood. Residential development is permitted in principle in such areas.
- 7.2.2. The issue of ownership or title of the north-eastern corner of the subject site has been raised by one of the Observers to the Board and is referred to in the Planning Authority's report. I note that both parties refer to legal advice regarding ownership of the subject yard and note that such advice has not been presented to the Board. Disputes over land ownership are not within the remit of the Board. They are civil matters outside the jurisdiction of the planning consent process. Section 34(13) of the Planning and Development Act 2000, as amended provides that "a person shall not be entitled solely by reason of a permission under this section to carry out any development".
- 7.2.3. The applicant has requested by way of the Appeal, that the Board consider an amended development proposal, to address the concerns of the Planning Authority. Given that the Observers and the Planning Authority have had sight of the proposed revisions, it is considered reasonable for the Board to consider the amended design.

7.3. Residential Amenity

- 7.3.1. The key concern of the Planning Authority appears to be the residential amenity available to future residents of the proposed development. Of particular note was the proposal to illuminate the northern bedroom on the ground floor by means of glass block wall. I share that concern and consider the Planning Authority's assessment of that to be a poor solution, to be the correct assessment.
- 7.3.2. I note that the applicants drawing as submitted to the Planning Authority (drawing no. P-2002) shows "existing window" in the western elevation into the lightwell on the adjoining site. This could be misinterpreted however, given that the proposed development seeks to demolish all structures on site. No such window is proposed to illuminate the ground floor bedroom of apartment no. 1. I consider the Planning Authority's assessment that the amenity available to this bedroom to be inadequate to be the correct assessment.

- 7.3.3. The applicant has sought to address this concern by way of a variation. The revised proposal as submitted to the Board with the appeal relocates the proposed duplex apartment to the ground and first floors. Bedroom accommodation is proposed on the southern elevation with access to a terrace of 7sq.m. A stairwell, a storage area of 3.5sq.m. and a bathroom of 7sq.m. are proposed against the northern retaining wall. The only room therefore without a window or opening is the bathroom. The stairwell is to be illuminated by two glass-block opes on the western elevation, receiving light from the office yard on the adjoining site (no. 7 Rowerstown Lane).
- 7.3.4. Drawing no. P-2003-Variation shows the proposed revisions to the second and third floors. Each floor has been redesigned to provide a 45sq.m. one-bedroom apartment, both accessing off Kilmainham lane via a stairway that also leads to the communal roof garden. A double height glass wall / window is proposed along the western elevation, facilitating light from the adjoining site lightwell. The second and third floors are setback from the western boundary by 1.2m. The Planning Authority in their assessment of the original proposal suggested that this could be increased to 2m and that the glazing be obscure. I concur with the suggestion of obscure glazing and should the Board decide to grant permission, this could be achieved by way of condition. I see no need however, to set back the second and thirds floors by an additional 800m. It would be of no appreciable gain to either the subject or the adjoining site. The lightwell serving the adjoining site at no. 7 is north facing, narrow and relatively dark. It provides no residential amenity, only light. The proposed development will not significantly impact that situation.
- 7.3.5. It is considered that the proposed variation has satisfactorily addressed the Planning Authority concerns regarding residential amenity of the future residents of the proposed development.
- 7.3.6. Regarding the concerns of the Observers that the proposed development would affect the residential amenity of the apartments in Camac Way, the dense inner suburban location of the subject site is such that development of the site is to be expected. The elevation of the Camac Way apartment development facing the Rowerstown Lane elevation of the subject site comprises high level windows and stairwell windows. It is considered that no injury to the residential amenity of the adjoining apartment development will occur. Likewise no overlooking will arise from the proposed roof garden.

7.4. Other

- 7.4.1. The inner suburban location of the subject site is such that the lack of car parking provision is acceptable.
- 7.4.2. The scale and design of the proposed block is considered in keeping with the pattern of development in the immediate and wider area. The design mirrors some elements of the adjoining development on Rowerstown Lane whilst clearly retaining a site-specific architectural identity.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, 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

- 8.1.1. It is recommended that permission be granted subject to conditions, for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which permission is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the Board on the 18 th day of March 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be
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	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2	<p>The windows on the western elevation at second and third floor levels, illuminating the proposed stairwell shall be of obscured glazing.</p> <p>Reason: In the interest of protecting the amenity of the adjoining site to the west.</p>
3	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
4	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>

5	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
6	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
7	<p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p> <p>Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interests of orderly development</p>
8	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Classes 1, 3 and 5 of Schedule 2, Part 1 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.</p> <p>Reason: In the interest of orderly development, and to allow the planning authority to assess the impact of any such development on the amenities of the area through the statutory planning process</p>

9	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Gillian Kane
Senior Planning Inspector

29 June 2020