



An
Bord
Pleanála

Inspector's Report ABP307160-20

Development	Demolition of existing single storey cottage and the construction of a new split-level part 2 storey residential unit on site.
Location	21A Leeson Park, Dublin 6.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2185/20.
Applicant	Fort Dock 7 Limited.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party -v- Refusal.
Appellant	Fort Dock 7 Limited.
Observers	Richard Lacey
Date of Site Inspection	22 nd June, 2020.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority's Decision	5
4.1. Decision	5
4.2. Documentation Accompanying Application	5
4.3. Planning Authority's Assessment	5
4.4. Observations Received by the Planning Authority	6
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	6
7.0 Appeal Responses.....	9
8.0 Observations	9
9.0 Natural Heritage Designations	9
10.0 Development Plan Provision	9
11.0 EIA Screening Determination	10
12.0 Planning Assessment.....	11
13.0 Conclusions and Recommendation.....	15
14.0 EIA Screening Determination	Error! Bookmark not defined.
15.0 Appropriate Assessment	15
16.0 Decision	15
17.0 Reasons and Considerations	15
18.0 Conditions	16

1.0 Introduction

ABP307160-20 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for the demolition of an existing single storey dwellinghouse structure and the construction of a new split level two storey dwelling including a new semi-basement floor level, ground floor level and upper ground floor level and the construction of a new external terrace together with associated works. Dublin City Council issued notification to refuse planning permission for a single reason on the basis that the proposed development would result in an overbearing structure which would have a negative impact on daylight and sunlight on adjoining properties thereby impacting on residential amenity and depreciating the value of the property. The subject site is located to the rear of Leeson Park in the inner suburban area of Ranelagh.

2.0 Site Location and Description

- 2.1. No. 21A Leeson Park is located on a laneway which runs between two dwellinghouses (Nos. 21 and 22 Leeson Park) in the inner suburban area of Ranelagh approximately 2.5 kilometres south of Dublin City Centre. The laneway on which the site is situate is approximately 60 metres long and approximately 4.8 metres in width. It currently serves 2 no. two storey mews type dwellings to the immediate north of the subject site and to the rear of the three storey dwellinghouses facing onto the west side of Leeson Park (Nos. 22 and 23). The subject site is located contiguous to the southern gable of No. 22B one of the two mews dwellings to the rear.
- 2.2. At the time of site inspection, the access gate leading to the site was closed and the site could only be viewed from afar (see photographs attached). However, my inspection was assisted with the aid of google maps.
- 2.3. The site currently accommodates a derelict two roomed roofless stone structure with chimney which appears to have formerly been a 19th century artisan type cottage. The remnants of the building on site are in relatively poor condition. A greenhouse is located in the rear garden of No. 22 Leeson Park is located adjacent to the eastern

gable of the derelict stone cottage occupying the site. The site corresponds with the footprint of the cottage. The site does not incorporate any private garden area. The site has a stated area of 46 square metres.

3.0 Proposed Development

3.1. Planning permission is sought for the following:

- It is proposed to demolish the existing cottage on site and to rebuild the front wall of the existing cottage in the style of the existing façade.
- It is proposed to provide a split level living / dining area. The living area in the eastern portion of the building is to be located at ground floor level where the western part of the dwelling is to be stepped down a metre below existing ground levels in order to accommodate a kitchen, dining and bathroom area as well as a utility room and bicycle storage.
- The western portion of the building is also to incorporate a first floor bedroom and external private terraced area/winter garden above the lower ground floor area.
- The total area of the living accommodation proposed is 52 square metres.
- The façade of the front elevation of the building is to incorporate reconstituted stone from the existing structure. A more contemporary design is incorporated at first floor level with a flat roof comprising of metal parapet capping and metal cladding panels. A sedum roof is also proposed. Extensive double glazed windows are also proposed along the southern elevation at first floor level. A perforated metal screen is to run around the external terraced area/winter garden.
- The dwelling is to connect to the existing public water and foul water infrastructure.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Dublin City Council issued notification to refuse planning permission which is set out in full below.

Having regard to the Z2 zoning objective, as set out in the Dublin City Development Plan 2016 – 2022, it is considered that the proposed development would appear overbearing, would have a negative impact on the daylight and sunlight available to adjoining property, and would therefore have a negative impact on the residential amenity of adjoining property. The proposed development would therefore depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

4.2. Documentation Accompanying Application

- 4.2.1. The application was accompanied by an Engineering Drainage Report which provides details of the foul water drainage, surface water drainage and water connection.

4.3. Planning Authority's Assessment

- 4.3.1. A report from the Engineering Department Drainage Division stated that there was no objection to development subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works.
- 4.3.2. The planner's report notes that planning meetings via email took place in November, 2019. The issues raised include the existing use and the provision of private open space to serve the development. Reference is made to the various policies and provisions contained in the development plan as they relate to the subject site. The proposed development is described, and it is noted that there are third party concerns in relation to the proposed development (see section below). The proposed raised flat roof structure has an overall height of 4.4 metres while the original structure is c.3.5 metres high. There are serious concerns that the raised roof structure will unduly overshadow the adjoining property. Furthermore, it is

considered that the increase in height would appear to be overbearing in relation to the adjoining property. On this basis it is recommended that planning permission be refused. In its decision dated 24th March, 2020 planning permission was refused for the single reason set out above.

4.4. Observations Received by the Planning Authority

An observation was received from the occupants of No. 22B Leeson Park, the dwellinghouse to the immediate north of the subject site. This observation states that as neighbours the observers warmly welcome the renovation of the neglected site. However, there are concerns that the increase in height would seriously impinge on the quality of daylight and sunlight due to overshadowing from the south. The observers have recently enlarged the windows in order to improve the poor light quality. Concerns are also expressed that the works to be undertaken contiguous to the observer's property could weaken the integrity of the external walls.

5.0 Planning History

There appears to be no relevant planning history pertaining to the subject site.

6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council was the subject of a first party appeal on behalf of the applicant by Douglas Wallace Consultants Limited.
- 6.2. The grounds of appeal set out the background to the current application and note that the original structure was built in the mid-19th century and was in residential occupation up until the 1980s. It is noted that the building is not a protected structure and is contemporaneous to the two adjacent mews dwellings to the north. With regard to the nature of the application, it is stated that the proposed intervention is limited in order to create a small cottage structure to adapt to meet modern standards in line with contemporary standards and guidance. The proposal will allow for much needed residential accommodation in a desirable central location within the city.

- 6.3. The Planning Authority's reason for refusal makes reference to the alleged overbearing impact arising from the proposal. The Board are requested to note that there is already a dwelling structure on site which has been in existence since the mid-19th century. It is noted that the existing structure incorporates a chimney which is 6.3 metres high. It is suggested that with the reconstruction of the existing building on site, a similar roof height of c.4.4 metres would result. It is also pointed out that there is a large amount of overgrowing vegetation within the existing footprint of the building which is in excess of 4.4 metres high. The overall design rationale seeks to incorporate a substantial reduction in mass and height in the northern part of the building in order to minimise the impact on adjoining property.
- 6.4. It is argued that the lower massing of the dwelling together with the clearing of existing vegetation within the site will actually result in an increase in the level of daylight and sunlight for the two first floor windows located on the southern gable of No. 22B.
- 6.5. The proposal has been designed and adapted to meet modern spatial standards set out in the Dublin City Development Plan and Quality Housing for Sustainable Communities – issued by the Department of the Environment, Community and Local Government.
- 6.6. The split-level design solution reduces the overall height and keeps the building within the parameters of the ridge height associated with the original cottage on site. The squaring out of the roof at 4.4 metres in height creates an acceptable massing and maximises the potential use of the upper ground floor on such a small and narrow plot.
- 6.7. The second part of the reason suggests that the proposal will result in a diminution of daylight and sunlight which would negatively impact on the residential amenity of the area.
- 6.8. It is noted that daylight and sunlight analysis was not submitted with the original application. However, an analysis has been submitted with the appeal. It was not considered to be a significant or material issue when submitting the original application. Nor was it evident from the planner's report as to specifically how the proposal adversely impacts on daylight and sunlight.

- 6.9. The appeal submits a comprehensive daylight and sunlight assessment prepared by Digital Dimensions in accordance with BRE Guidelines. It concludes that there is in fact no diminution of available sunlight or daylight to the adjacent properties external or internal spaces. The analysis indicates that the average daylight factor for the ground living/kitchen and dining area at No. 22B is not adversely affected in any way by the proposed development. Furthermore, there is no impact whatsoever on the available internal daylight levels due to the development for the bedrooms at first floor level.
- 6.10. It is also noted that under the existing and proposed scenarios, all windows at No. 22B will have a vertical sky component at each of the windows well in excess of the required 27 degrees. In fact, it is noted that some of the windows at No. 22B will actually receive increased light levels due to the proposed development.
- 6.11. In terms of sunlight it is noted that the external space at No. 22 is used in large part as a vehicular car parking area. Notwithstanding this, the analysis undertaken and attached to the grounds of appeal, demonstrates that the proposed development will have no adverse impact on adjacent spaces. BRE Guidance indicates that for an amenity area to have good quality sunlight throughout the year 50% of the area should receive in excess of two hours of sunlight on 21st March. It is noted that both in the existing and proposed scenario 93% of the area to the front of No. 22B will receive in excess of 2 hours sunlight on 21st March. Thus, the proposed development will not result in any material reduction in available sunlight levels through the adjacent external parking/private amenity area. Thus, based on objective scientific analysis, the proposal will not result in any negative impact on daylight or sunlight levels associated with the adjoining property.
- 6.12. In conclusion, it is argued that the Planning Authority has missed an opportunity to bring back the use of the dwelling which has been in a state of repair of for decades and that the reason for refusal in this instance is not substantiated. The appeal was accompanied by:
- a detailed daylight and sunlight assessment.
 - Details of the email in respect of the pre-application consultation which took place on 26th November, 2019 and

- Existing and proposed model studies depicting the proposed development in the context of surrounding development.

7.0 Appeal Responses

Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Observations

- 8.1. One observation was received from the residents of No. 22B Leeson Park, immediate neighbours of the subject site. Its states that the observers are very pleased with the succinct reason given for the planning authority's refusal of permission and the fact that the local authority planner took the concerns of the observers on board when issuing the decision. It is perplexing how this decision can be challenged having regard to the comprehensive assessment undertaken by the planning authority. It is reiterated that the proposal will have an adverse impact on the observers quality of life and for this reason the Board are asked to uphold the decision of Dublin City Council. The original letter of object to the planning authority was included with the observation.

9.0 Natural Heritage Designations

- 9.1. The nearest Natura 2000 sites are located in Dublin Bay 3 kilometres to the east. They are South Dublin Bay SAC (Site Code: 0002100) and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024).

10.0 Development Plan Provision

- 10.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The subject site is located in an area governed by the land use zoning objective Z2 "to protect and/or improve the amenities of Residential Conservation Areas".
- 10.2. Chapter 11 of the development plan specifically relates to the built environment. Section 11.1.5.4 states that Dublin City Council will seek to ensure that development proposals within Architectural Conservation Areas and Conservation Areas

complement the character of the area including the setting of any protected structures and comply with development standards. The Board will note that the houses to the east of the subject site fronting onto Leeson Park are protected structures. The mews dwellings to the north are not.

- 10.3. In relation to housing generally, Policy QH7 seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.
- 10.4. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.
- 10.5. Section 16.10.10 relates to infill housing. It seeks to make the most sustainable use of land and existing urban infrastructure. The Planning Authority will allow for the development on infill housing on appropriate sites. In general, infill housing should comply with all relevant development plan standards for residential development: however, in certain limited circumstances, the Planning Authority may relax normal planning standards in the interests of ensuring that vacant, derelict and underutilised land in the inner and outer city is developed.
- 10.6. Infill housing should:
 - Have regard to the existing character of the street by paying attention to the established building line, proportion, height, parapet levels and materials of surrounding buildings.
 - Comply with the appropriate minimum habitable room standards.
 - Have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard.

11.0 EIAR Screening Determination

Having regard to the nature of development comprising of a single dwelling in an urban area it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

12.0 Planning Assessment

I have read the entire contents of the file, visited the site in question, have had particular regard to the Planning Authority's reasons for refusal and the grounds of appeal rebutting this reason. I have also visited the subject site¹ and its surroundings. I consider the pertinent issues in detailing with the current application and appeal are as follows:

- Principle of Development
- Impact on Residential Amenities

12.1. Principle of Development

12.1.1. The subject site is governed by the zoning objective Z2 "to protect and/or improve the amenities of Residential Conservation Areas". Residential development is permitted in principle under this land use zoning objective. There are numerous policy statements in the development plan in particular Policy QH7 which seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy and QH8 which is particularly relevant as it seeks to promote the sustainable development of vacant and underutilised infill sites and to favourably consider higher density proposals in respect of residential development. Both these policies incorporate the proviso for the need for high standards of urban design while respecting the design of surrounding development.

12.1.2. It is apparent therefore that subject to qualitative safeguards, the development plan through the land use zoning objective and through various policy statements, would support the current development which seeks to utilise a vacant infill site within the urban area. Similar policy statements are contained in a number of strategic national policy documents including 'Rebuilding Ireland – An Action Plan for Housing and Homelessness' which generally seeks to provide more housing within the State and also the National Planning Framework, which like a city development plan, seeks to promote more compact development within the existing urban footprint of our towns and cities and to provide more residential development on infill/brownfield sites in

¹ Although as already mentioned I did not obtain full access to the site.

closer proximity to centres of employment and existing services. The proposed development would set very comfortably within these strategic objectives.

12.1.3. Therefore, subject to qualitative safeguards I consider the principle of residential development on the subject site to be acceptable. I note that the Planning Authority did not raise any concerns in relation to design/visual amenity traffic and overlooking etc. Having inspected the site and having inspected the drawings, I consider that the Board can restrict its deliberations to the two issues in respect of residential amenity raised by the Planning Authority namely (a) the perceived overbearing impact which would result from the proposed development, (b) the impact of the proposed development in terms of increasing overshadowing and potential impact on daylight in respect of the dwelling to the immediate north No. 22B Leeson Park. These issues will be assessed below.

12.2. **Impact on Residential Amenities**

12.2.1. Overbearing Impact

The applicant in this instance proposes to drop the floor levels within the building to over a metre below the ground level surrounding the site. This assists in reducing the overall maximum height of the building to 4.4 metres. Such a height would be typical of a modest single storey dwelling. The gable ends of the existing structure on site rise to a height of c.3.8 metres. The incorporation of an additional 0.6 metres into the overall height as proposed under the current application in my view would not result in any significant or profound impacts in terms of being overbearing over and above that associated with utilising the ridgeline of the existing cottage structure on site.

The Board will also note that the adjoining building to the north rises to a height of 7 metres, over 2.5 metres above the height of the proposed structure. It cannot be reasonably argued in my opinion that a structure which is 4.4 metres in height would have an overbearing impact in the context of a contiguous structure which is 7 metres in height. The proposal while incorporating a second storey is in my opinion subservient in terms of height and scale to the adjoining building to the north and therefore would not have an inappropriate impact in terms of being overbearing on the adjoining structure. Furthermore, I consider that there is sufficient separation distance between the proposed buildings and other structures in the vicinity to

ensure that the proposal would not have an overbearing impact on any other buildings in the vicinity.

Finally, in relation to this matter it is noted the configuration of buildings on and surrounding the subject site. It is reasonable in an urban area with a tight urban grain on a mews-type laneway, that any development on the subject site will have some impact on the contiguous dwellings to the north. However, in this instance I consider that the applicant has taken appropriate design mitigation measures to ensure that any impact arising from the development of the subject site would not have a significant or material amenity impact on adjoining structures in terms of being overbearing.

12.2.2. Daylight and Sunlight Considerations

The Planning Authority's sole reason for refusal states that the proposed development would have a negative impact on the daylight and sunlight available to the adjoining property. I would agree with the appellant in the grounds of appeal that the basis on which these conclusions are arrived at are not articulated in the report prepared on behalf of the Planning Authority. As stated above, the subject site is located to the south and contiguous to No. 22B Leeson Park. The applicant in the grounds of appeal has submitted a detailed technical report in relation to daylight and sunlight prepared by Digital Dimensions. In terms of its assessment in respect of daylight penetration to the adjoining building, the proposal is assessed in terms of its impact on the vertical sky component and the average daylight factor.

Details of the vertical sky component in Table 3.2 indicates that in the case of the windows serving the kitchen and living room to the front of the dwelling, there is a slight reduction in the vertical sky component with the kitchen windows at ground floor level (Window W01 and W02) being most affected. However, in all cases with the proposed development in place the vertical sky component on all windows along the western elevation would exceed the 27% criteria set out in the BRE Guidelines which allows a window to receive ample daylight. The report notes that no window would have a reduction of VSC to below 0.8 times its former value and all windows would comply with the BRE Guidelines.

With regard to the average daylight factor, this criteria only relates to habitable rooms. BS8206-2 sets out minimum values for average daylight factor (ADF) of

- 2% for kitchens and living rooms which include a kitchen
- 1.5% for living room and
- 1% for bedrooms.

The average daylight factor was calculated for the existing development and proposed development and the assessment indicates that there is no reduction in the average daylight factor received in any of the rooms at ground floor or first floor level.

Based on the detailed assessment submitted with the grounds of appeal I can only conclude that the proposed development will have a minimal impact on daylight levels received internally at No. 22B Leeson Park and that any reduction in daylight will still result in No. 22B meeting the standards set out in the BRE Guidelines in relation to daylight penetration.

With regard to sunlight and overshadowing, the applicant again relies on the technical report submitted by Digital Dimensions which includes as Appendix A shadow casting diagrams for the vernal equinox, midsummers day and mid-winter. As the proposed development is located to the immediate south of No. 22B, there will inevitably be some increase in overshadowing resulting from the squaring out of the building together with the slight increase in height. However, the shadow casting diagrams indicate that the impact will be relatively modest and will generally be restricted to the morning time.

The amenity space at the front of No. 22B is the only amenity space available to the adjoining dwelling and currently comprises of a gravel area surrounding by perimeter planting. The extent to which the proposal will impact on sunlight penetration is indicated in Figure 5 (page 7) of the report prepared by Digital Dimensions. It clearly indicates that there will be no noticeable loss of sunlight to surrounding properties arising from the proposed development. The impact therefore in my view is deemed to be acceptable.

Finally, in relation to this matter I would reiterate that the subject site is located within an urban area along a laneway where buildings are located in close proximity to each other. Any redevelopment of the subject site should be seen as a planning gain in bringing the ruinous structure on site back into residential use in accordance with the policies set out in the development plan and national guidelines. Any slight

diminution in daylight or overshadowing experienced by other buildings in the vicinity would be an inevitable consequence of redeveloping the subject site at a slightly higher density. However, in this instance I consider the impact to be imperceptible and therefore acceptable in my view.

13.0 Conclusions and Recommendation

Arising from my assessment above therefore I consider that An Bord Pleanála should overturn the decision of the planning authority and grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity 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.

15.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

16.0 Reasons and Considerations

Having regard to Z2 residential zoning objective relating to the site it is considered that subject to conditions set out below the proposed development would not seriously injure the residential amenities of surrounding residences and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

17.0 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. Details of the materials, colours and textures of all external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. 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.

Reason: In the interest of public health.

4. The applicant or developer shall enter into a water and/or wastewater connection agreement with Irish Water prior to commencement of development.

Reason: In the interest of orderly development.

5. Site development works and construction works shall be carried out in a manner to ensure that the adjoining streets 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 road, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadway is kept in a clean and safe condition during construction works in the interest of orderly development.

6. Prior to the commencement of development and the employment of a contractor, a construction management plan shall be submitted to the planning authority for written agreement. The plan shall provide details of intended construction practice for the development including traffic management, noise management and off-site disposal of construction and demolition waste.

Reason: In the interest of orderly development.

7. All costs incurred by the planning authority including any repairs to the public road and services necessary as a result of the development shall be at the expense of the developer.

Reason: In the interest of the proper planning and sustainable development of the area.

8. Site development and building works shall be carried out only between the hours of 0800 to 1800 hours Monday to Friday inclusive and between 0800 hours and 1400 hours on Saturday and not at all on Sundays or public holidays. Deviations from these times will be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

10. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Paul Caprani,
Senior Planning Inspector.

6th July, 2020.