



An  
Bord  
Pleanála

## Inspector's Report ABP 307407-20

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| <b>Development</b>         | Two semi-detached houses, two car spaces, for cycle spaces at rear and conversion of first floor of existing building to two, two apartments with balcony and, retention and refurbishment of shop unit. |
| <b>Location</b>            | No 122 and 122A/124 Emmet Road and site at rear, Inchicore, Dublin 8.  |
| <b>Planning Authority</b>  | Dublin City Council  |
| <b>P. A. Reg. Ref.</b>     | 2269/20  |
| <b>Applicant</b>           | Clinton Mac Donald.  |
| <b>Type of Application</b> | Permission   |
| <b>Decision</b>            | Refuse Permission.   |
| <b>Type of Appeal</b>      | First Party X Refusal  |
| <b>Appellant</b>           | Clinton Mac Donald.  |
| <b>Observer</b>            | Save Emmet Hall Group.<br>Cllr Criona Ni Dhalaigh,<br>Brid Smith TD  |
| <b>Date of Inspection</b>  | 26 <sup>th</sup> September & 2nd November,<br>2020.  |
| <b>Inspector</b>           | Jane Dennehy,  |

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## 1.0 Site Location and Description

- 1.1. The site has a stated area of 673 square metres and is that of two nineteenth century, two storey century buildings No 122 (Emmet Hall) and No 122A (also known as No 124) Emmet Road (R810) close to the junction with Bulfin Road to the west. The ground floors comprise unoccupied retail units; at first floor level, there is an unoccupied residential unit at first floor level, an extension at the rear and there are vacant lands at the rear to which there is no access from the public road.
- 1.2. Walling is located along the western side boundary with detached two storey houses (Nos 52A and 52B) on large plots with frontage onto Bulfin Road, along with a single storey building (De Mazenod Hall), garages and front gardens and hard standing and a small area of private open space. Two storey terraced buildings in retail and residential use which face onto Bulfin Road adjoin the southern boundary and to the east are buildings and hard surfaced space in commercial use.
- 1.3. The buildings subject of the application are included on the National Inventory of Architectural Heritage and rated as being of Local Interest. There is historical association with the labour and independence movements of 1913 and 1916 and plaques were erected on the front facades in recent years.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for:
  - removal of the shopfront at No 122A (124) Emmet Road to form a new vehicular entrance to the back lands.
  - restoration and refurbishment of the buildings to include reconfiguration of the first floor to provide for two apartments with private amenity space at the rear.
  - construction of two, two storey houses on the lands at the rear along with parking, communal and private open space.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 28<sup>th</sup> April, 2020 the planning authority decided to refuse permission based on three reasons which, in brief are that of:

- Substandard attainable residential amenity for the future occupants, having regard to outlook and sunlight and daylight access.
- Inappropriate back land development, contrary to Policy Objective QH8 in the CDP; excessive overlooking of adjoining properties, excessive scale, form and inappropriate design considered out of character with surrounding development and,
- Loss of three on street pay and display parking spaces due to the creation of a new entrance which is contrary to section 16.38.9 and Policy MT14 of the CDP.

### 3.2. Planning Authority Reports

- 3.2.1. The planning officer indicated a recommendation for refusal of permission, based on the reasoning attached to the planning authority's decision having noted variation in finished floor levels affecting sunlight and daylight access, proximity to adjoining properties, mass and scale, potential for overlooking and the necessity to remove three on street pay and display parking spaces to facilitate the opening of an entrance to the rear site lands. He also includes in his report and account of the historical significance of the buildings.
- 3.2.2. The report of the Roads department indicated a recommendation for conditions to be attached if permission is granted. Concern is expressed about loss of on street parking spaces and the precedent this could set having regard to section 1`6. 38.9 of the CDP and impact on Core Bus Corridor 7 route of Bus Connects, (CBC) but there is no objection to the non-provision of on-site parking due the location close to transport and facilities.
- 3.2.3. The report of the Drainage Division indicates no objection subject to conditions.

### 3.3. **Third Party Observations**

- 3.3.1. Two submissions were lodged in which the issues raised related to overdevelopment on the site, impact on the residential amenity by reason of overlooking and overshadowing and parking facilities and traffic in the surrounding area.

## 4.0 **Planning History**

- 4.1.1. **P. A. Reg. Ref. 2954/17 (PL301176):** The planning authority decision to grant permission, for construction of three dwelling units at the rear, demolition of shop unit and creation of a new access and refurbishment of the existing building was overturned following appeal. (By condition attached to the planning authority decision, one of the three dwellings was omitted.)
- 4.1.2. The reasoning for the refusal of permission concerns inappropriate back-land development, design incompatible with surrounding development, overbearing impact, overlooking and excessive scale and form resulting in serious injury to visual and residential amenities of the area, and conflict with the CDP and statutory guidance: *Sustainable Residential Development in Urban Areas*. (DOHLG 2009)

## 5.0 **Policy Context**

### 5.1. **Development Plan.**

The operative development plan is the Dublin City Development Plan, 2017-2022 according to which the site location is within an area subject to the zoning objective, Z3, Neighbourhood Centre, “*To provide for and improve neighbourhood facilities*” according to which Residential development is permissible.

For ‘Z3’ zoned areas, the indicative plot ratio 1.5-2.0 and indicative site coverage is 60%

According to Section 14.8 - Neighbourhood centres may include an element of housing particularly at higher densities and above ground floor. When opportunities arise, accessibility should be enhanced.

Objective QH8 provides for promotion of development of vacant or underutilised infill sites and favourable consideration of higher density subject to design and compatibility with surrounding development and the character of the area.

Development management standards are set out in Chapter 16.

According to section 16.10.17 for older buildings of significance proposed for re-use, photographic survey and architectural appraisal reports should be included with application.

According to Section 16.10.28 proposals for development on back land sites are considered on their own merits in accordance with relevant criteria.

According to section 16.38.9 there is a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas.

Policy MT14 provides for minimisation of removal of on street parking facilities whilst recognising that some loss of spaces is required to facilitate sustainable transport provision, access to new developments or public realm improvement.

The structures are not included on the record of protected structures, including additions subsequent to the adoption of the current development plan. According to the planning officer report the buildings are included on a candidate additions list awaiting assessment. According to section 16.10.17 an inventory and photographic survey should be included with applications for development involving demolition at buildings of historic significance.

The location comes within Area 2 for carparking standards as set out in Table 16.1.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. An appeal was received from O'Daly Architects on behalf of the applicant on 19<sup>th</sup> June, 2020. It is submitted that observations on impacts on residential amenity, parking and traffic, overdevelopment and open space and separation distances are incorrect. It is also claimed, that the reasons for refusal are based on incorrect interpretation and untrue statements. In the submission extracts from the planning

officer report are included along with the applicant's written rebuttal the reasons attached to the planning authority decision to refuse permission and accompanying plans and drawings. An outline follows:

- The houses are generously sized and all the room floor areas (details of which are provided) exceed the minimum standards in '*Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities*' (DEHLG)
- With regard to Reason One, daylight, sunlight, aspects and amenities and storage in the development exceed minimum CDP standards. Daylight and sunlight requirements for House 1, Bedroom 4/Study and, House No 2 Bedroom 3 do exceed minimum standards: Bedroom 4/Study at ground floor level in House 1, should not be counted as a bedroom but it opens to a south facing well-lit courtyard and receives direct sunlight for most of the year as shown in the submitted shadow studies. The window for Bedroom 3 at House No 2 does open, has an outlook to a low parapet wall, faces west and receives sunlight from the south and west for most of the year. There is a central double height void and windows in the first-floor level for House 1 and over the entrance for House 2 which light the internal circulation spaces. The applicant is willing to include rooflights in addition if required.
- With regard Reason Two concerning overlooking, there is no overlooking to the east or the south from the houses. To the east and south the windows and doors only overlook the rear gardens. Windows facing west face towards the blank wall of the De Mazenod Hall. One first floor level window for Bedroom 3 which is 3265 mm from the boundary wall at Nos 52A and 52B Emmet Road the latter of which it overlooks can be omitted, fitted to 1.8 metres with opaque glazing, relocated to the south façade or substituted with rooflights. The north facing windows for the houses face towards the apartment units. The separation distance from the balconies of the apartments for House No 1 is 15.3 metres and 2 8.6 metres for House No 2. Two of the five windows for Bedroom 1 in House No 2 which is dual aspect will be obscure glazed.

- With regard Reason Two concerning Overbearing and ‘Out of Character’ development, the proposed houses are smaller two storey houses than the surrounding houses. They are compatible in roof profile, materials and fenestration and with the level of the boundary wall with the large sites of No 52A and 52B to the west. (The parapet of House No 1, to be finished in brick is 2.125 m above it.) If required, the first floor can be setback southwards to shorten the length along the boundary to reduce the impact on No 52A.)
- Emmet Hall (No 122) is not a protected structure or a proposed protected structure and it does not meet criteria for inclusion although it is of local interest according to the NIAH. The planning officer’s remarks in his report are a misinterpretation of the site history and the conservation officer department does not confirm the planning officer statement that it is an older building of significance as provided for under Section 16.10.17 of the CDP or a candidate addition to the list. The applicant is willing to provide the inventory and photographic survey if it is confirmed that Emmet Hall is an older building of significance, and part demolition is accepted. The change to the elevation for the shopfront would be minimal. An extract from the report of the Inspector on the prior proposal under P. A. Reg. Ref. 2954/17/PL 301175 is included.
- With regard to Reason Three concerning the proposed creation of a vehicular entrance, extracts from the Roads and Transportation Department’s report are provided and it is stated that an entrance was acceptable to the planning authority in relation to the prior proposal in spite of loss of on street parking Policy MT 14 in the CDP recognises that some loss of space is required to facilitate the proposed entrance.. The two spaces to be lost would be replaced by the two spaces within the development.
- The current proposal is for four dwellings and a shop. As it does not involve an entrance to a “single dwelling”, section 16.38.9 of the CDP regarding the presumption against removal of on street pay and display parking which was misinterpreted by the planning authority. Section 16.38 refers to a predisposition to consider residential off-street parking along QBCs and the plans for the CBC (*Core Bus Corridor – Bus Connects*) show a reduction on



parking along Emmet Road adjacent to the site although a final layout has not been decided.

- As the site is back-land as provided for under Section 16.19.8 the development is considered on its own merits so precedent is irrelevant.

## 6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

## 6.3. **Observations**

6.3.1. Three submissions were lodged with the Board and an account of each of the three follows.

### 6.3.2. **Save Emmet Hall Group**

The Group objects outright to the proposed development at Emmet Hall and its curtilage. The decision to refuse permission is supported but the group is concerned that sufficient consideration may not have been given to the outstanding national or indeed international importance of the site, having regard to the 1905-1923 period of social upheavals. The failure to include Emmet Hall on the RPS is a serious omission and there are efforts to have included and it is requested that the historical significance should be taken into account in arriving at a decision. Copies of several of the group's documents and correspondence are included with the submission.

### 6.3.3. **Cllr Criona Ni Dhalaigh,**

Cllr Criona Ni Dhalaigh supports the Save Emmet Hall Group's submission in support of the decision to refuse permission and the concern that sufficient consideration may not have been given to the historic significance of Emmet Hall. She also queries whether the building is on a waiting list for consideration for addition to the RPS and considers that there is a risk that the building would not be saved if permission is granted.

#### 6.3.4. **Brid Smith TD**

Brid Smith TD in her submission indicates support for the objections to the proposed development due to her concerns about the historical significance of Emmet Hall.

### 7.0 **Assessment**

7.1. The current application is in effect a revised proposal having regearred to the refusal of permission following appeal under P. A. Reg. Ref. 2954/17 (PL301176). The issues central to the determination of the decision and considered below are:

- Development in principle
- Scale of Residential Development – Qualitative standards and, impact on residential amenities of adjoining properties

Parking and entrance arrangements,

Heritage Significance and Statutory Protection.

Environmental Impact Assessment Screening.

Appropriate Assessment.

#### 7.2. **Development in Principle**

7.2.1. Residential development is “permissible” within areas subject to the ‘Z3’ zoning objective for Neighbourhood Centre, “*To provide for and improve neighbourhood facilities*” according to the CDP. In principle, development on the lands having regard to Policy QH8 of the CDP is to be supported, subject to appropriate qualitative standards being achieved.

7.2.2. Residential development in conjunction with the proposed refurbishment and potential reoccupation of one retail unit allowing for delivery of local facilities is desirable. The resultant reduced retail element of development on the site limits but does not rule out the potential for effective achievement of the delivery of the ‘Z3’ Neighbourhood Centre zoning objective in the area.

**7.3. Scale of Residential Development – Qualitative standards and, impact on residential amenities of adjoining properties.**

- 7.3.1. The proposed upgrading and refurbishment of the upper floors is to be welcomed as is encouraged having regard to Objective QH 24 and the 'Z3' zoning objective with regard to residential elements within neighbourhood centres in which retention of new upper floor, 'over the shop' residential use is encouraged along with retail use at ground floor level. This contributes to protection and viability of historic buildings as provide for in section 16.10.17 of the CDP and to a neighbourhood centre.
- 7.3.2. However, it should be established that the attainable qualitative standards are sufficient to provide for the amenities of future occupants. While the outlook from the balconies, (the areas of which are confined to 6.3 and seven square metres) is to towards the south, their privacy and perceived privacy and amenities are restricted by the limited separation distances at fifteen and 8.6 metres from the north elevations respectively of the proposed houses which along with the communal carparking space also would dominate the outlook from the apartments.
- 7.3.3. With regard to overbearing impact on the adjoining property at No 52A Emmet Road, there is objection to the mass and profile, having regard to the adjoining wall at the boundary, dwelling and the lower finished floor level within the proposed dwelling. However, the extent of blank elevation above the boundary, given the close proximity of the footprint and rear façade of No 52A and configuration of the private open space, be overbearing in impact on that property. The view of the planning officer is supported in this regard.
- 7.3.4. The first-floor window at House 1 facing west towards No 52A Emmet Road can be fitted and opaque glazed to mitigate overlooking issues and this requirement which can be addressed by condition which is acceptable to the applicant. The west facing first floor windows for House No 2 are, as stated in the planning officer report deficient in separation distance from Non 52B at sixteen metres. The position of Mazenod Hall on the boundary would have a partial screening effect but it is not accepted that this would be sufficient to fully ameliorate overlooking and perceptions of overlooking. Opaque glazing or omission of the windows would diminish the amenity potential of the internal bedroom accommodation, the north facing windows are also unsatisfactory.

- 7.3.5. These north facing windows for House No 2 and, to a lesser extent, House No 1 as pointed out in the planning officer report are deficient in separation distance from the south facing first floor windows and balconies for the of the proposed apartments on the opposite side of the carparking area. This relationship is seriously substandard having regard to the provisions of section 16.10.2 of the CDP and there are no design details for the fenestration that would mitigate the overlooking potential.
- 7.3.6. The applicant's contention that sunlight standards for the north facing room as a bedroom or a study in House No 2 at ground level is irrelevant is questionable. It is considered that the sunlight access and daylight access and the outlook from this window are limited although it is acknowledged that this matter is not assessed in the applicant's submissions.
- 7.3.7. It is agreed with the planning officer that undue overshadowing of adjoining properties would not occur, given the relative levels and the position of the proposed houses to the east of Nos 52A and 52B Emmet Road and to the north of Nos 50-52 Bulfin Road to the south in which the upper floors are in residential and commercial use ground floor windows.
- 7.3.8. Given the lack of separation distance, potential for overlooking and poor amenity potential of the utility, communal parking area between the proposed apartments and the proposed houses.

#### **7.4. Parking and entrance arrangements.**

- 7.4.1. The proposed creation of a vehicular entrance and provision of on-site parking for the residential development at the rear of the existing buildings gives rise to serious concerns due to necessity to remove on street pay and display parking at the frontage on Emmet Road a regional route. (R810). The loss of on street parking spaces benefitting all road users and commercial, retail and institutional development and residential development within the designated neighbourhood centre would be contrary to the CDP policies MT 14 and 16.38.9 as pointed out in the planning officer report and in reasoning for the decision of the planning authority to refuse permission. There is no justification for the removal of the spaces by way of public or community benefit or planning gain in that the reasoning does not involve public realm improvement or a public transportation requirement. The proposed

removal of at least two and possibly three spaces to facilitate the entrance and private off-street parking confined to the proposed private development.

- 7.4.2. The point made in the appeal with that the entrance is not to provide solely for a single dwelling, as referred to in section 16.38.9 of the CDP is not disputed, in that it is intended to provide for a multiple unit development. However, the use of the entrance would create undesirable additional turning movements on and off the carriageway of Emmet Road, an arterial route within the city designated as regional route (R810) potentially obstructing traffic flow. The proposed entrance also has implications with regard to conflict with the possible future introduction of Core Bus Corridor No 7 a high frequency service proposed in 'Bus Connects'. In this regard to concerns of the Transportation Department with it and undesirable precedent are also supported.
- 7.4.3. Although there are two current bus routes, a Red Line LUAS stop circa 700 metres from the site at Goldenbridge, Dublin Bike facilities and Go Car facilities in the vicinity, the absence, within the proposed development of any parking provision for four dwelling units and a retail unit would be unacceptable notwithstanding the acceptability of an entrance confined to cycle and pedestrian access only being acceptable to the Transportation Department. While rejection of a proposed entrance and off street parking has consequential implications with regard to the development potential of the lands at the rear, it would not rule out consideration of extended accommodation to the rear of the existing houses for which a vehicular entrance may not be required.
- 7.4.4. The proposed creation of an entrance and provision for on-site parking on the back-land site adjacent to residential developments with would also lead to potential adverse impact on the amenities of residential properties to the south and west due to noise and light and perceptions of intrusion on privacy.

## **7.5. Heritage Significance and Statutory Protection.**

- 7.5.1. Although there is no reference in the reasons for refusal of permission attached to planning authority decision to the issues of association with the social and historical events of the early twentieth century with regard to the labour and independence movements, the matter is of major importance to the observer parties. They are

concerned that the heritage significance of the building could be disregarded and place it risk in consideration of proposals for development at it or within its curtilage. On the other hand, the applicant claims that no statutory protection provisions are applicable to the building.

7.5.2. It appears that the building may be under consideration for assessment as to its architectural heritage merits with a view to it being proposed as an addition to the record of protected structures. It would not be subject to formal statutory protection unless, further to the planning authority's assessment, it has been formally proposed to the Members, as a "proposed protected structure" for inclusion on the RPS at which stage a public consultation period and formal statutory review period would follow. Further to review of the proposed additions and proposed additions to the RPS which is available on the City Council's website, it can be confirmed that Emmet Hall is not included and therefore is not a proposed protected structure.

7.5.3. However, by virtue of the inclusion on the NIAH where it is rated is being of Local Interest, it should be accepted that it is a historic building, of special interest meriting recording and assessment along with a photographic survey for consideration in connection with planning applications for development. It is therefore considered that application of the provisions of section 16.10.17 of the CDP regarding buildings of historic significance and candidate additions to the RPS in this regard would be appropriate and reasonable.

## **7.6. Environmental Impact Assessment Screening.**

7.6.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **7.7. Appropriate Assessment.**

7.7.1. Having regard to the nature and scale of the proposed development within a serviced urban area and separation 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 the conservation objectives of any European site.

## **8.0 Recommendation**

8.1. In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld. Draft Reasons and Considerations follow:

## **9.0 Reasons and Considerations**

1. It is considered that the proposed development involving the existing buildings and the enclosed back lands at the rear constitutes substandard overdevelopment due to incorporation of a vehicular access through the existing building and centrally located onsite parking within a confined area between the houses and the existing buildings in which the two apartments are to be located and, insufficient separation distances within the site and from the adjoining properties to the west leading to undue overlooking and overbearing impact. As a result the proposed development would result in a substandard level of attainable residential amenity for the future occupants and would seriously injure the residential amenities of adjoining properties. The proposed development would therefore be contrary to the policies and objectives of the Dublin City Development Plan 2016-2022, in particular policy QH 8 and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the Dublin City Development Plan, 2016-2022, it is considered that the creation of the proposed vehicular entrance to facilitate the development which would necessitate the removal of up to three on street public pay and display parking spaces which benefit all road users within an area subject to the zoning objective 'Z3', Neighbourhood Centre would be contrary to Policy MT14 which seeks to minimise the loss of on street parking facilities whilst recognising that some loss of spaces is required to facilitate sustainable transport provision, access to new developments or public realm

improvement. The proposed development would be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
3<sup>rd</sup> November, 2020.