



An
Bord
Pleanála

Inspector's Report ABP307613-20

Development	Development of a two-storey dwelling within a side garden of an existing dwelling.
Location	No. 4 Oak Park, Santry, Dublin 9, D09W884.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2432/20.
Applicant	Mark Taylor.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party -v- Refusal.
Appellant	Mark Taylor.
Observers	None.
Date of Site Inspection	24 th August, 2020.
Inspector	Paul Caprani.

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1.0 Introduction

ABP307613-20 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for the construction of a new two-storey three-bedroomed dwellinghouse in the side garden of an existing dwelling in the suburban area of Santry, Dublin 9. Dublin City Council refused permission on the basis that the proposed development constitutes overdevelopment of a restricted site within adequate levels of private open space and would thus establish an undesirable precedent for similar development in the vicinity.

2.0 Site Location and Description

- 2.1. The appeal site is located in a small residential cul-de-sac, Oak Park Grove which is located off Oak Park Avenue a relatively large suburban residential estate comprising of two-storey semi-detached and terraced dwellings dating from circa late 1960s/1970s. The estate is located to the immediate west of the M1 motorway and links with Coolock Lane to the north which provides an interchange with the M1 motorway to the north-east of the site. Oak Park Grove comprises of approximately 12 dwellings set around a small cul-de-sac. No. 4 is located on the northern side of the cul-de-sac and is an end of terrace dwelling with a generous side garden incorporating a maximum width of 10 metres. The side garden is currently used as private amenity space. A c.1.8-metre-high pebble dash wall separates the front of the side garden from the rear of the side garden. C. 2-metre-high concrete block walls form the boundary between the subject site and the rear gardens of Nos. 29 and 30 Oak Park Avenue further north. A large shed is located to the rear of No. 30 Oak Park Avenue contiguous to the northern boundary of the subject site. A small shed/boiler house is located within the rear garden of No. 4 adjacent to the common boundary with No. 3 to the east. A small area of incidental open space is located within the cul-de-sac area to the immediate south-west of the subject site.

3.0 Proposed Development

- 3.1. Planning permission is sought for the construction of a new two-storey end of terrace dwellinghouse which is to adjoin at No. 4. The dwelling is to accommodate living accommodation together with a utility, toilet and hallway at ground floor level and three bedrooms and a bathroom at first floor level. The proposal is to match the ridge height of the existing house at No. 4 and is to incorporate a hipped gable ended roof. The proposal is to incorporate similar external finishes to the existing houses. The proposed house on site has a gross floor area of 104.6 square metres and is slightly larger than the existing house at no 4. It is proposed to subdivide the front and rear garden to provide separate gardens for both dwellings. The private open space surrounding the site amounts to approximately 57 square metres. The open space is located to the front of the house, to the side of the house and to the rear of the house. A side passage approximately 2.5 metres wide is located between the western gable of the proposed dwelling and the western boundary of the site. The rear garden ranges in depth from 7 to 2.5 metres.

4.0 Planning Authority's Decision

4.1. Decision

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

The proposed development, due to its scale and extent, would have an adequate quantum of private open space and would have an unacceptable level of residential amenity as a result. The proposed development, therefore, constitutes overdevelopment of a restricted site and would, in itself and by the precedent established for similar substandard development in the vicinity, cause serious injury to the residential amenities of the area. The proposed development is therefore contrary to the policies and objectives in the current Dublin City Development Plan, in particular Section 16.10.2 Residential Quality Standards – Houses, and the proper planning and sustainable development of the area.

4.2. Planning Authority's Assessment

- 4.2.1. The application was lodged on 6th March, 2020.
- 4.2.2. A covering letter submitted with the application notes that a previous application for permission to build a larger two-storey detached house on the subject site was refused (under Reg. Ref. 3927/19).
- 4.2.3. Following this, a pre-planning submission was made for a smaller two-storey detached dwelling. On foot of correspondence with Dublin City Council, it was suggested that a two-storey end of terrace house be considered. It is on this basis that the current application was submitted.
- 4.2.4. A report from the Transportation Planning Division notes that sightlines from the subject site are acceptable and the Division has no objections to the proposed development subject to four standard conditions.
- 4.2.5. A report from the Engineering Department Drainage Division states that there is no objection to the proposed development subject to a number of standard conditions.
- 4.2.6. The planner's report states that the dwelling has a sizeable side garden and also notes that planning permission was previously refused for a detached dwelling on the subject site. The assessment notes that architecturally, the house proposes a hip ended roof which would be a departure from the common gable end in the cul-de-sac and would be wider than the existing houses. It is noted while 57.3 square metres of private open space would be provided however this includes the side garden which is c.2.3 metres wide and flanked by a boundary wall which would provide low amenity value. It is noted that adequate private open space would appear to be retained for the existing dwelling.
- 4.2.7. On the basis of the open space provision it is considered that the site is not of a sufficient size to accommodate a dwelling and the proposal would be considered an overdevelopment of the subdivided site. While there may be the potential for some form of dwelling on site, any such dwelling should have a more modest floor area and reduced footprint. It is considered that the dwelling offers poor level of amenity space and would have "an overlooking impact". However, it is not considered that the dwelling would not overbear or unduly overshadow adjacent dwellings. The proposed boundary walls separating the existing and proposed houses are

reasonable. The rear boundary wall at 2.225 metres would appear to be excessive and would further enclose the substandard rear garden. It is noted that the proposed vehicular entrance would require the removal of an existing mature tree outside the property which is unacceptable to the Planning Authority. The parking provision is considered adequate and should not be increased.

- 4.2.8. On this basis it is considered that the proposed development is unacceptable with regard to the scale and appearance together with the inadequate provision of appropriate and usable private open space and overlooking. Hence the proposal is not consistent with the development plan policy and it is recommended that planning permission be refused for the single reason set out.

5.0 Planning History

- 5.1. Details of one file is attached – Reg Ref 3927/19 where planning permission was refused for a larger detached dwelling on the subject site for two reasons that the proposal is of inappropriate scale and massing which would result in overshadowing of adjoining private open space and would be visually obtrusive and have an overbearing impact on adjoining properties. A second reason for refusal argued that the proposal would have inadequate open space and this would contravene Section 16.10.2 which relates to residential quality standards.

6.0 Grounds of Appeal

- 6.1. The decision was the subject of a first party appeal on behalf of the applicant by Gerry Hannigan, Architect.
- 6.2. The grounds of appeal states that the applicant who is getting married this year wished to build a new house as a family home and principle private residence in the site of the side garden of his parent's house having recently acquired the site from his parents. The background to the current proposal including the planning history with the site is set out in the grounds of appeal.
- 6.3. It would appear from the planning officer's report that pre-planning consultations conducted by email and phone with another planner in Dublin City Council were not taken into account when considering the planning application. It is clear from the pre-

application consultations that Dublin City Council looked upon the application favourably notwithstanding the ultimate decision made in respect of the application.

- 6.4. The private open space provided by way of a rear and side garden has an area of 57.3 square metres which is in excess of the minimum standard set out in the development plan (10 metres per bedspace). It appears that the planner's report rules out the side garden as part of the private open space which is contrary to the development plan. It is submitted that the rear and side garden provide sufficient private open space for the proposed dwelling and provides good amenity value.
- 6.5. Two similar houses built at No. 16 and 17 Oak Park Avenue were granted planning permission with rear and side gardens. These dwellings were granted in 2007 and 2009 respectively. Reference is made to another development as Hollybrook Grove, Clontarf which was granted on appeal Reg. Ref. PL29N.233175. In the case of this latter application a very small rear garden was provided. It is unreasonable to count only the rear garden as private open space and discount the side garden in the case of the current house under consideration.
- 6.6. With regard to other considerations the appeal notes the following:
 - The side boundary wall between the existing and proposed house is shown at a height of 2.225 metres in height. This is the same as the existing wall to the side along the western boundary of the site. However, the applicant will be happy to build a new boundary wall at a lower height if deemed necessary.
 - With regard to the removal of the existing tree, at the proposed entrance of the site, it is noted that the Parks Department have not submitted a report in this instance. However, the applicant will be willing to make arrangements with the Park and Landscape Services Department for the planting or replacement of a tree in an alternative location along the footpath as well as paying the cost for all such works. This has been facilitated in other such development. Reference is made to a case at St. Declan's Road, Marino, Dublin 3.
 - Finally, it is noted that neither the Transportation Planning Division nor the Drainage Division had any concerns in respect of the proposed development.

7.0 Appeal Responses

The Planning Authority has not submitted a response to the grounds of appeal.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The lands on which the proposed dwelling is to be located are governed by the zoning objective Z1 – ‘*to protect, provide and improve residential amenities.*’ Residential development is permitted in principle under this zoning objective. Section 16.10.9 sets out Dublin City Council’s policy in relation to developing corner/side garden sites. It states that the development of a dwelling or dwellings in the side garden of an existing house is a means of making the most efficient use of serviced residential lands. Such developments when undertaken on suitable sites to a high standard can constitute valuable additions to the residential building stock in the area and will generally be allowed for by the Planning Authority on suitably large sites. However, some corner/side gardens are restricted to the extent that they would be more suitable for extending an existing home into a larger family home rather than to create a poor quality independent dwelling which may also compromise the quality of the existing house.
- 8.2. The Planning Authority will have regard to the following criteria in assessing proposals for the development of corner/side garden sites.
- The character of the street.
 - Compatibility of design and scale with adjoining dwellings, paying attention to the established building, proportion, heights, parapet levels and materials of the adjoining buildings.
 - Impact on residential amenities of adjoining sites.
 - Open space standards and refuse standards for both existing and proposed development.
 - The provision of appropriate car parking facilities, and a safe means of access and egress from the site.

- The provision of landscaping and boundary treatments which are in keeping with other properties in the area.
- The maintenance of front and side building lines where appropriate.

8.3. Section 16.10.2 of the development plan sets out residential quality standards for houses. In terms of private open space, it is noted that privacy is an important element of residential amenity and contributes to the sense of security. Private open space for houses is usually provided by way of private gardens to the rear or side of a house. A minimum standard of 10 square metres of private open space per bedspace will normally be applied. A single bedroom represents one space and a double bedroom represents two spaces. Generally, up to 60 to 70 square metres of rear garden is considered sufficient for houses in the city.

9.0 EIA Screening Determination

Having regard to the nature of the 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.

10.0 Planning Assessment

I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the issues raised in the Planning Authority's reason for refusal and the grounds of appeal rebutting this reason.

I note that the planner's report also made reference to the issue of overlooking and the removal of a mature tree as concerns in its assessment of the application and for this reason these issues will also be dealt with in the assessment below. The proposal will be evaluated under the following headings:

- Principle of Development of the Subject Site
- Open Space Provision
- Potential for Overlooking
- Removal of Mature Tree

10.1. Principle of Development of the Subject Site

- 10.1.1. The subject site is zoned for residential development and the principle of providing a dwellinghouse on the subject site is therefore acceptable subject to qualitative safeguards. The development plan also notes that the provision of an additional housing on corner/side garden sites when undertaken on suitable sites can constitute valuable additions to the residential building stock of an area as a means of making the most efficient use of serviced lands.
- 10.1.2. The development plan notes that such development will generally be allowed by the Planning Authority on suitably larger sites. I would also refer the Board to the wider strategic objectives contained in more recently published plans and guidelines not least of which is the National Planning Framework. A major pillar of this plan in relation to land use planning is to provide for more compact development within existing urban areas by utilising existing services and facilitating better use of public transport, cycling and walking and reducing the propensity for urban sprawl beyond the confines of the built up area. The Rebuilding Ireland Strategic Plan adopted by the government in 2016 also relies heavily on the private sector to provide additional housing stock to cater for housing demand in existing urban areas. On this basis I would consider the principle of the development to be acceptable on site subject to appropriate safeguards.
- 10.1.3. Finally, in relation to this matter I would refer the Board to the fact that the Planning Authority have acknowledged that an additional house in the side garden may be acceptable in principle subject to complying with private open space standards and perhaps incorporating a smaller footprint so as to minimise potential adverse impacts on surrounding residential amenity.

10.2. Open Space Provision

- 10.2.1. The development plan notes that private open space in the case of houses is usually provided by way of private gardens to the rear or side of a house. A minimum standard of 10 square metres of private open space per bedspace will normally be applied. The house proposed comprises of a three bedroomed unit with two double spaces and a single bedspace, therefore a minimum requirement of 50 square metres to the rear of the front building line would be required. The applicant has indicated that a total of 57.3 square metres is provided to the rear of the front

building line in the form of a side garden and the rear garden. I can confirm having assessed the drawings submitted that a rear garden of approximately 35 square metres and a side garden of approximately 25 square metres is provided as part of the proposed development. The Planning Authority have concerns that the side garden offers very little amenity value due to the high wall and relative narrowness of the side garden. I do not consider this to be the case. The side garden is approximately 10 metres in length and 2.5 metres in width and is west facing and therefore will be afforded good sunlight particularly in the evening times. I consider that the orientation and dimensions of the space will result in the side garden providing an adequate form of secluded private amenity open space which would be supplemented by the larger area of open space to the rear (35 square metres) and this will also be augmented by additional open space to the front which amounts to c.60 square metres.

- 10.2.2. I am also satisfied that the residual open space afforded to the existing dwelling on site is sufficient, which amounts to approximately 50 square metres to the rear and 45 square metres to the front of the dwelling. I also note that the Planning Authority is generally satisfied with the residual open space afforded to No. 4 in the planning report.
- 10.2.3. I therefore consider that the amount of private open space to the rear and side of the proposed dwellinghouse is deemed to be sufficient in terms of meeting the minimum requirements set out in the development plan and also providing an adequate area in terms of private amenity.
- 10.2.4. In terms of overdevelopment of the subject site it is clear from the planning application form that the total gross area of both dwellinghouses amounts to 186.6 square metres within a total site area of 338 square metres. This results in a plot ratio of 0.55 and a site coverage of 27%. This is lower than the indicative plot ratios permitted in the development plan for lands governed by the Z1 zoning objective where an indicative plot ratio of 0.5 to 2.0 is permitted in the outer city and a site coverage of 45 to 60% is permitted also. The proposed plot ratio and proposed site coverage for the subject site (excluding the existing dwelling on site) is broadly similar at 0.53 and 33.5% respectively. On this basis therefore it cannot be reasonably argued that the proposal represents an overdevelopment of the site.

10.2.5. Furthermore, the proposed dwelling is of a similar size and height to the existing dwellinghouses on Oak Park Grove and incorporates similar external finishes to the existing houses. The planner's report expressed some concerns in relation to the hipped roof profile which is not reflective of the prevailing character of dwellings along the road. I am satisfied that the roof profile as proposed would not impact on the visual amenities of the area to any material extent. However, if the Board come to a different conclusion, I consider that this issue could be adequately dealt with by way of condition.

10.2.6. I would conclude therefore that the proposed open space provision associated with the dwellinghouse is adequate and in accordance with minimal development plan standards. The proposal would also constitute a valuable addition to the residential building stock maximising the most efficient use of serviced residential lands and contributing to more compact development in urban areas. In this regard the provision of a house on the subject site would contribute to wider strategic land use goals in urban areas.

10.3. **Potential for Overlooking**

10.3.1. While not explicitly referred to in the reason for refusal, the planner's report concluded that the proposed development was unacceptable due to the fact that it would give rise to overlooking. The rear of the proposed dwellinghouse would directly face the rear of No. 30 Oak Park Avenue. The separation distances between both dwellings is 23.6 metres which is in excess of the stipulated 22 metres separation distance set out in the development plan. The proposal therefore will not give rise to any undue overlooking of the dwelling to the immediate north. With regard to the overlooking of the adjoining garden it is apparent from the drawings submitted and the aerial photographs on Google Maps that the rear of No. 30 Oak Park Avenue is extensively covered by a rear garden shed/sheds which would also reduce the potential for overlooking. The nearest dwellinghouse to the south-west is No. 19 Burnside which is approximately 11 metres to the south-west. The only window proposed at first floor level on the gable end of the proposed dwellinghouse serves a landing area associated with the stairwell. No windows serving habitable rooms are located on this gable. The windows serving Bedrooms Nos. 1 and 3 to the front of the house at first floor level will only offer oblique views into the side and rear garden of No. 19 Burnside. It is inevitable consequence of building additional

dwellinghouses within urban and suburban areas that some increased levels of overlooking would occur. However, any increased incidents of overlooking in the case of the current application before the Board is in my view acceptable.

10.4. Removal of Mature Tree

10.4.1. The proposed new driveway serving the dwellinghouse which is the subject of the current application and appeal will necessitate the removal of an existing semi-mature tree on the greenacre adjacent to the footpath to the front of the dwellinghouse. The planning report considers the removal of this tree to be unacceptable. However, it would appear reasonable in my opinion that the removal of any such tree must be balanced against the benefits involved in contributing to the increased housing stock in urban areas that can avail of existing services. As suggested in the grounds of appeal, there is ample scope to provide a replacement tree as a compensatory measure within the cul-de-sac. I note that there is a small green area adjacent to the footpath between Nos. 3 and 4 which could accommodate a new tree. The removal of the semi-mature tree to the front of No. 4 therefore does not constitute reasonable grounds to refuse planning permission for the proposed dwellinghouse.

11.0 Conclusions and Recommendation

Arising from my assessment above therefore I consider that the decision of the Planning Authority should be overturned in this instance and planning permission should be granted for the proposed dwellinghouse on the basis that sufficient private open space has been provided in accordance with the minimum requirements of the development plan and would be acceptable in terms of private residential amenity. I am also satisfied that the provision of a dwellinghouse at this location would not seriously injure the residential amenities of adjoining dwellings through overlooking to any significant or material extent.

12.0 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.

13.0 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.

14.0 Reasons and Considerations

Having regard to the Z1 zoning objectives pertaining to the site, the Board considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the residential amenities of the area or property in the vicinity, would provide adequate levels of private open space and would generally be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

15.0 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 the 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. The external finishes to the proposed dwelling, including colours, materials and textures shall be agreed with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements including the attenuation of surface water shall be agreed in writing with the planning authority prior to the commencement of development.

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 the commencement of development.

Reason: In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 7 a.m. to 6 p.m. Monday to Friday, between 8 a.m. and 2 p.m. on Saturday and not at all on Sundays and public holidays. Deviations from these times will only 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.

6. The site shall be landscaped, using only indigenous deciduous trees and hedging species and shall be agreed in writing with the planning authority prior to the commencement of development. The landscaping shall include the planting of semi-mature trees to compensate for the tree to be removed to provide access to the dwellinghouse. Details of the species, size and location of the tree to be provided as compensation shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In order to screen the development and assimilate it into the surrounding landscape and in the interest of visual amenity.

7. 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.

21st September, 2020.