



An  
Bord  
Pleanála

## Inspector's Report ABP307837-20

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| <b>Development</b>                  | Construction of a new 2-storey, two-bedroom residential mews dwelling. |
| <b>Location</b>                     | To the rear of 25 Belgrove Road, Clontarf, Dublin 3.                   |
| <b>Planning Authority</b>           | Dublin City Council.   |
| <b>Planning Authority Reg. Ref.</b> | 2769/20.   |
| <b>Applicants</b>                   | Michael Clinton.   |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Refuse.  |
| <b>Type of Appeal</b>               | First Party -v- Refusal.   |
| <b>Appellants</b>                   | Michael Clinton.   |
| <b>Observers</b>                    | None.  |
| <b>Date of Site Inspection</b>      | 23 <sup>rd</sup> November, 2020.                                       |
| <b>Inspector</b>                    | Paul Caprani.  |

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## 1.0 Introduction

ABP307837-20 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for the construction of a two-storey two-bedroom flat roof mews dwelling to the rear of No. 23 Belgrove Road, Clontarf, Dublin 3. Permission was refused for a single reason relating to substandard access arrangements and lack of legal entitlement to use access.

## 2.0 Site Location and Description

Belgrove Road is located in the eastern environs of Clontarf Village and runs in a north-south direction linking Kincora Road to the north with Clontarf Road and Dublin Bay to the south. The houses fronting onto Belgrove Road comprise of a row of terraced red brick Edwardian-style houses. No. 25 is located in the middle of a terrace of dwellings on the east side of the road and backs onto a laneway running to the rear which connects both to Belgrove Road to the south of the site and also to Vernon Avenue further east just north of Clontarf Village. All dwellings fronting onto Belgrove Road incorporate narrow but long back gardens. The gardens are in excess of 40 metres in length and approximately 7 metres in width. A number of sheds and garages are located in the rear gardens of the dwellings fronting onto Belgrove Road. These structures are mainly single storey and directly face onto the laneway. Lands to the rear of Belgrove Road, adjacent to the mews lane have recently been developed as a small residential infill development comprising of approximately 17 houses with access onto Vernon Avenue. This development is known as Vernon Mews or Vernon Square Development. This infill development which is nearing completion with some of the houses are already occupied. Vernon Mews comprises of 5 Blocks of two-storey terraced structures (see photographs attached).

The rear garden of No. 25 currently comprises of private amenity rear garden with a lock-up garage with a garage door facing directly onto the mews laneway.

### **3.0 Proposed Development**

Planning permission is sought for the construction of a new flat roof contemporary style two-storey mews dwelling facing directly onto the rear laneway. The new structure is approximately 16 metres in length and its footprint extends to the entire width of the rear portion of the site. At ground floor level it is proposed to provide a kitchen, dining and living room area together with an entrance hallway and toilet and covered carport for one vehicle. Two bedrooms including a master bedroom with en-suite and a study area is proposed at first floor level. The building incorporates a flat roof and rises to a maximum height of 6.5 metres. The building is to incorporate a coloured render finish, with timber cladding and box-shaped metal cladding on the upper floor. Architectural the elevation treatments is similar but not identical to the mews development granted by the Board on the adjoining site under APB 307612 (see planning history below). All fenestration is to be restricted to the front and rear elevation (east and west elevation). A private open space area (60 square metres) is to be provided to the rear of the dwelling. The separation distance between the proposed mews and the main two-storey elevation is approximately 23 metres. The mews is to incorporate a 1.2m set back from the front boundary.

### **4.0 Planning Authority's Decision**

#### **4.1. Decision**

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

1. *The laneway network from which the proposed mews development would gain access is currently substandard and the applicant has not demonstrated legal entitlement to access the application site through adjacent private development. It is considered that the development, pending right of access onto the public road network, would be premature and therefore by itself and by a precedent it would set, would be contrary to the proper planning and sustainable development of the area, and would endanger public safety by reason of a traffic hazard.*

#### 4.2. **Documentation submitted with the Planning Application**

- 4.2.1. A covering letter was submitted by Tyler/Owens Architects. The covering letter states that the application has been designed to take into account the criteria raised in the grant of planning permission for a similar development in the vicinity of No. 17 Belgrove Road (see planning history below). While it is noted that this planning permission was refused on grounds of prematurity it is stated that this development is now complete and there is no barrier to accessing the rear lane from Vernon Avenue. The applicant in this instance wishes to develop the mews in order to trade down and move out of the red brick house at no. 25. The fenestration arrangements have also been designed so as to mitigate against any potential overlooking.

#### 4.3. **Planning Authority Assessment**

- 4.3.1. A report from the **Engineering Department Drainage Division** stated that there is no objection subject to standard conditions.

A report from the **Transportation Planning Division** notes that the existing laneway directly abutting the site has been upgraded and widened under a neighbouring planning application (Reg. Ref. 2401/13 and Reg. Ref. 3600/17) (see planning history below). It is noted that currently the laneway currently provides off street car parking to serve the properties that back onto the laneway. It is noted that part of the laneway adjacent to the application site has been taken in charge by Dublin City Council. However, the access to this laneway from both Belgrove Road and Vernon

Avenue has been closed and gates erected on both with access to local residents only. It is noted that the infill housing development is located on third party lands and the applicant has not demonstrated a right of way over these lands to access the proposal. It is also stated that the laneway serving the development is below the minimum carriageway width of 4.8 metres (5.5 where no verges or footpaths are provided). While it is acknowledged that the applicant is proposing a setback along the front boundary with the laneway there remains a serious concern that the laneway from Belgrove Road and Vernon Avenue remain below the standard and would need to be widened to development plan standard to accommodate the mews development. It is considered that the proposed development, pending improvement in the access, would therefore endanger public safety by reason of a traffic hazard. In addition the applicant has failed to provide legal entitlement over the adjacent private development to access the site. It is on this basis that it is recommended that planning permission be refused.

The **Planner's Report** set out details of the proposal and also sets out in detail the planning history associated with sites in the vicinity. It generally considers the overall design and integration to be on the whole acceptable. The report further notes that the layout of the dwelling more than adequately meets the DECLG's Guidelines for Quality Housing for Sustainable Communities. In terms of overshadowing no major impact is anticipated. While it is considered that the development will cast a shadow particularly to the north and east however, a precedent has been set for the grant of planning permission at No. 17 Belgrove Road. In term of overlooking it is stated that some overlooking is likely to arise from the first floor bedroom facing eastwards into the rear gardens of Block B of Vernon Mews. It is stated that some obviation will be required to address this. In terms of private open space, it is noted that no external storage space is shown for the parent site or the proposed rear garden, this will diminish the quantum and usability of private open space provided. The comments of the Transportation Planning Department are noted, and it is on the basis of these comments that planning permission was refused.

## 5.0 Planning History

There is no planning history associated with the subject site. Details of relevant planning history for the surrounding area are set out below.

**ABP 307612** - under this application which relates to the site to the immediate south, planning permission was sought for similar type mews development which was designed by the same architect as the current application before the Board. It was refused planning permission by Dublin City Council for a similar reason to that cited in the current decision by Dublin City Council. The Board in its decision of October 2020 overturned the decision of Dublin City Council and granted planning permission subject to 12 conditions. One of the conditions required that the proposed mews dwelling shall not be occupied until the works permitted to the laneway under PL29 N 242 866 are completed.

**ABP301905-18** – under this application planning permission was sought for a similar type mews development three doors south of the subject site at No. 17 Belgrove Road. Dublin City Council issued notification to refuse planning permission for the proposed development for a similar reason to that in the current appeal. The Board however overturned the decision of the Planning Authority and granted planning permission for the proposed development subject to 11 conditions in November 2018. Condition No. 3 required that the proposed dwelling shall not be occupied until the works permitted to the laneway under PL29N.242866 are completed.

**PL29N.242866** (Reg. Ref. 2401/13) – Permission was granted for the demolition of building and the construction of 17 dwellings and associated site works between No. 28 and 34 Vernon Avenue and the rear of 34 to 50 Vernon Avenue and the rear of 15 – 43 Belgrove Road together with a new access from Vernon Avenue. This development to the immediate east of the subject site is nearing completion.

Under **PL29N.248552** (Reg. Ref. 2378/17) and APB 305178-19 (Reg. Ref. 2528-19) An Bord Pleanála upheld the decision of the planning authority and

refused planning permission for a mews development a site at the northern of the laneway at No. 45 Belgrove Road. The reasons for refusal in the case of both appeals related to the scale and proximity of the mews development to the boundaries of adjoining sites and a second reason related to the laneway network being substandard to serve the development which would result in a traffic hazard.

## **6.0 Grounds of Appeal**

The decision of Dublin City Council to issue notification to refuse planning permission was the subject of a first party appeal on behalf of the applicant by Tyler/Owens Architects.

It is therefore considered that the issue of access is not now an issue. It is argued that the grant of planning permission on appeal for the mews development at 17 Belgrove Road confirms that the road is safe for vehicular use. The applicants have a legal right to access the rear laneway which is gated and all residents backing onto the laneway have legal access.

Included in the appeal is an Engineering Traffic Report setting out measures which could improve and ensure safe use of the laneway. The proposal represents a great opportunity to increase the housing stock in a desirable location with minimal impact to the surroundings. It is argued that this is not a backland laneway having regard to the recent construction of a infill residential development at Vernon Mews.

The applicant will ensure that all three developments will be carried out in coherently to ensure that improvements to the lane will be carried out in a coherent manner.

A separate engineering report was attached to the grounds of appeal. It states that the additional traffic generated by the development would be negligible and therefore will not have an impact on safety. The report also



sets out a number of additional measures to be implemented along the laneway including the introduction road markings segregating pedestrian areas, additional signage and other physical improvements to ensure greater levels of traffic safety.

## 7.0 Appeal Responses

No response was received on behalf of Dublin City Council.

## 8.0 Development Plan Provision

### *Dublin City Development Plan 2016 – 2022*

The subject site is governed by the zoning objective Z1 the objective of which is “to protect, provide and improve residential amenities”. Chapter 5 of the development plan relates to housing. Policy QH1 seeks to have regard to national guidelines in relation to residential development.

Policy QH8 seeks to promote the sustainable development and 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.

Policy QH21 seeks to ensure that new houses provide for the needs of family accommodation with a satisfactory level of residential amenity in accordance with the standards set out for residential development.

Policy QH22 seeks to ensure that new housing developments close to existing houses has regard to the character and scale of existing houses unless there are strong design reasons for doing otherwise.

Indicative plot ratios for the Z1 zoning objective range from 0.5 to 2.0. Indicative site coverage for the Z1 zoning objective ranges from 45 to 60%.

Section 16.10.16 relates to mews developments.

(a) Dublin City Council will actively encourage schemes which provide a unified approach to the development of residential mews lanes and where consensus between all property owners has been agreed. This unified approach framework is the preferred alternative to individual development proposals.

(b) Development will generally be confined to two-storey buildings. In certain circumstances, three storey mews developments incorporating apartments will be acceptable,

- where the proposed mews building is subordinate in height and scale to the main building,
- where there is sufficient depth between the main building and the proposed mews building to ensure privacy,
- where an acceptable level of open space is provided
- where the laneway is suitable for the resulting traffic conditions
- and where the apartment units are of sufficient size to provide for a high-quality residential environment.

This is in line with national policy to promote increased residential densities in proximity to the city centre.

(c) Mews buildings may be permitted in the form of a terraces, but flat blocks are not generally considered suitable in mews laneways locations.

(d) New buildings should complement the character of both the mews lane and the main building with regard to scale, massing, height, building depth, roof treatment and materials. The design of such proposals should represent an innovative architectural response to the site and should be informed by established buildings lines and plot width. Depending on the context of the location, mews buildings may be required to incorporate gable ended pitched roofs.

(e) The amalgamation or subdivision of plots and mews lanes will generally not be encouraged. The provision of rear access to the main frontage premises shall be sought where possible.

- (f) All parking provision and mews lanes will be in off-street garages, forecourts or courtyards. One off-street car space should be provided for each mews building subject to conservation and access criteria.
- (g) New mews development should not inhibit vehicular access to car parking spaces at the rear for the benefit of the main frontage premises, where this space exists at present. The provision will not apply where the objective to eliminate existing unauthorised and excessive off-street car parking is being sought.
- (h) Potential mews laneways must have a minimum carriageway of 4.8 metres in width (5.5 metres where no verges or footpaths are provided). All mews lanes will be considered to be shared surfaces, and footpaths need not necessarily be provided.
- (i) Private open space shall be provided to the rear of the mews building and shall be landscaped so as to provide for quality residential environment. The depth of this open space for the full width of the site will generally be less than 7.5 metres unless it can be demonstrably impractical to achieve and shall not be obstructed by off-street parking. Where the 7.5 metre standard is provided, the 10 square metre of private open space for bedspace may be relaxed.
- (j) If the main house is in multiple occupancy, the amount of private open space remaining after the subdivision of the garden for mews development shall meet both the private open space requirements for multiple dwellings and for mews developments.
- (k) The distance between the opposing windows and mews dwellings and the main houses shall generally be a minimum of 22 metres. This requirement may be relaxed due to site constraints. In such cases innovative and high-quality design will be required to ensure privacy and to provide adequate setting, including amenity space, for both the main building and the mews dwelling.

### 8.1. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

## 8.2. **EIAR Screening**

Having regard to the modest nature and scale of the proposed development and its location within a serviced urban removed from any sensitive locations or features 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 and a screening determination is not required.

## 9.0 **Planning Assessment**

I have read the entire contents of the file, visited the subject site and its surroundings, have had particular regard to the Planning Authority's reason for refusal, the grounds of appeal and the planning history relating to the wider area. While the Planning Authority issued notification to refuse permission for a single reason, I also note that the issue of overlooking important consideration in the planning assessment. For this reason, I would recommend that the Board in adjudicating on the current application have regard to:

- Principle of Development
- Access Arrangements
- Overlooking and Amenity Issues

These are dealt with under separate headings below.

### 9.1. **Principle of Development**

The need for more compact development within existing urban areas where new development can take advantage of existing infrastructure, services and public transport operations and can locate people closer to centre of employment and can encourage greater use of more sustainable transportation modes such as cycling and walking. As pointed out in the grounds of appeal the proposal represents a great opportunity to increase the housing stock in a desirable location. The proposal also fully accords with policy QH8 which seeks to promote the sustainable development

and 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. The contemporary design in my view is appropriate as it does not impact on the character of the existing houses on Belgrove Road and sits comfortably with the new infill development a Vernon Mews/Square.

## 9.2. Access Arrangements

With regard to access arrangements, the Planning Authority determined that the access serving the mews development was substandard. I estimate the current access onto Belgrove Road along the southern boundary of No. 15 Belgrove Road, to the south of the site to be in the order of 4 to 5 metres in width. I note that inspector's report in respect of ABP301905-18 referenced this section of the laneway to be 4.9 metres in width. The section of laneway running northwards to the rear of the dwellings including the subject site has a mews lane in excess of 4.5 metres in width outside the subject site I estimate it to be c.4.9 m in width. With the completion of the adjoining development the laneway to the rear now accommodates a footpath along its eastern side. Along its alignment, the width of the laneway, if at all, is only marginally below the specified width of 4.8 m set out in the development plan. Furthermore, the applicant in designing the mews development has set back the boundary of the dwelling by 1.8m. If this is replicated with the development of other sites along the laneway the laneway will be substantially wider. It is noted that a similar set back is stipulated in the grant of planning permission on the adjoining site granted by the Board under Reg. Ref. 307612. This will enable vehicles to manoeuvre in and out of the carport/ garage with greater ease.

DMURS recommends carriageway widths between 5 and 5.5 metres on local streets which can be reduced down to 4.8 metres where shared surfaces are proposed.

The laneway now has a segregated pedestrian and vehicular carriageway and therefore is in my view of sufficient width to accommodate a mews dwelling. It appears that the Board reached a similar conclusion in respect of ABP 301905 and ABP 307612 where it overturned the decision of Dublin City Council and granted

planning permission for a mews development similar to that currently before the Board. It is my opinion that the exact same circumstances arise in the case of the current application and therefore a relevant precedent which would justify a grant of planning permission has been demonstrated in this instance.

The Planning Authority's reasons for refusal also stated that the proposed development would be premature pending a right of access onto the public road network, presumably through the adjoining development to the east (Vernon Mews development).

In relation to this matter I would firstly state that an alternative access is available to serve the mews dwelling onto Belgrove Road, via the mews laneway and this alternative access is in my view of sufficient width to cater for the proposed development. It appears that vehicular access to the garages to the rear facing the lane is catered for. While access to the laneway is gated residents of Belgrove Road can open the gate via an access code.

Furthermore while the applicant may not have been able to demonstrate legal entitlement to use the new road which appears to be under the ownership of the developer, this in itself in my view should not preclude a grant of planning permission. In support of this assertion I would refer the Board to the Development Management Guidelines for Planning Authorities (June 2007) and in particular Section 5.13 which relates to title to land. The guidelines note "*the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land*". These are ultimately matters for resolution in the Courts. In this regard it should be noted that as Section 34(13) of the Planning Acts states, "*a person is not entitled solely by reason of a permission to carry out any development*". The Board in this instance therefore would not be precluded in my view from granting planning permission for the proposed development subject to any matters relating to legal disputes, rights of way over lands to be settled between the parties concerned where this scenario arises.

Arising from my assessment above therefore and having particular regard to the precedents set by the Board's previous permissions under Reg. Ref. ABP301905-

18, and 307612-20 I consider that the subject site is sufficiently well served in terms of access to allow a grant of planning permission in this instance.

### 9.3. **Overlooking and Amenity Issues**

Although not specifically referred to in the reasons for refusal, it is clear from the Planning Authority's report that some concern was expressed that the fenestration arrangements at first floor level could give rise to significant levels of overlooking. The proposed mews dwelling constitutes an infill development within a suburban area. The applicant has maintained the requisite separation distances for suburban type development between the proposed mews dwelling and the existing dwelling at No. 25. Facing onto Belgrove Road. A separation distance in excess of 22 metres has been maintained between opposing first floor windows between the buildings in question. The separation distance between ground floor windows is also more than the required 11 metres. With regard to potential overlooking from the first floor window on the front elevation, it is acknowledged that the window serving the bedroom to the front of the mews will overlook the rear gardens to the recently constructed dwellings to the east. It is an inevitable consequence that some overlooking into adjoining gardens will take place where infill development of this nature is proposed. It should also be noted that this is currently the case with the rear gardens associated with existing dwellings facing onto Belgrove Road whereby views into adjoining rear gardens are available by virtue of the fact that fenestration arrangements on rear elevation of these dwellings offer oblique views of adjoining rear gardens which give rise to some level of overlooking. It is noted but the planning authority did not refer to the issue of overlooking in its reason for refusal. The planners report notes that "some obviating treatment will be required", to address the issue of overlooking. If the Board are minded to grant planning permission in this instance, it may consider requiring incorporation of timber fins on the bedroom window in order to reduce the potential for overlooking in rear gardens of dwellings to the east (and vice-versa). The fenestration arrangements in my opinion would not constitute reasonable grounds for refusal

having regard to the precedents set by the grant of planning permission for other mews developments along the laneway and the requirement to develop appropriate urban sites at more sustainable densities in accordance with national and local policy.

#### **9.4. 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.

#### **10.0 Conclusions and Recommendation**

Arising from my assessment above, I consider that the Board should overturn the decision of the Planning Authority and grant planning permission for the proposed development based on the reasons and considerations set out below.

#### **11.0 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.

#### **12.0 Reasons and Considerations**

Having regard to the Z1 residential objective contained in the Dublin City Development Plan 2016 – 2022, the existing pattern of development in the area, the nature, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 13.0 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 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 agreed particulars.

**Reason:** In the interest of clarity.

2. Details of the materials, colours and textures of all the 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. The first floor bedroom window on the eastern elevation of the proposed mews shall incorporate timber fins/louvres details of which shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of residential amenity and to prevent overlooking of adjoining gardens.

4. The proposed dwelling shall not be occupied until the works permitted to the laneway under An Bord Pleanála appeal reference number PL29N.242866 (planning register reference number 2401/13) are completed.

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

5. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

6. 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.

7. Water supply and drainage arrangements, including the attenuation and 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.

8. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.

**Reason:** In the interest of orderly development.

9. Prior to commencement of development, proposals for a name, numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interest of orderly development.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction

practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

11. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwellinghouse without a prior grant of planning permission.

**Reason:** In the interest of residential amenity.

12.

Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation 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.

13.

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 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 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.

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**Paul Caprani**

**Senior Planning Inspector**

**7<sup>th</sup> December 2020**