



An  
Bord  
Pleanála

## Inspector's Report ABP 307959 - 20.

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<b>Development</b>	Demolition of the two-storey house and single storey garages and construction of four two storey houses in two semi-detached pairs and associated site works.
<b>Location</b>	No 1A Maxwell Road. Rathgar, Dublin 6.
<b>Planning Authority</b>	Dublin City Council.
<b>P. A. Reg. Ref.</b>	2782/20
<b>Applicant</b>	Genesis Estates Ltd.
<b>Type of Application</b>	Permission.
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party X Grant
<b>Appellant</b>	Padraig Francis and Sarah Tiffen.
<b>Observer</b>	David Conlan Smyth and Orla Crowe
<b>Date of Inspection</b>	2 <sup>nd</sup> December, 2020.
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The application site which is triangular in shape has a stated area of 1,113 square metres and is located on the north east side of a mews lane adjoining No 1 Maxwell Road a short distance from the junction with Frankfort Avenue and from Rathgar Road and, a junction with York Road to the east. There is a house (No 1A) on the site and garage structures at the rear along the frontage of the lane and along the northern boundary opening inwards within the site and a single storey mechanics workshop/office structures is at the north eastern end facing down the lane. The frontage between the garage structures is fenced off along the lane frontage by timber panel fencing.
- 1.2. The Appellant property, No. 155 Rathgar Road, the site of a large, detached house with access from Rathgar Road via a long driveway through a front garden adjoins the northern boundary of the application site. It has side and rear garden space adjacent to the dwelling. No 1 Maxwell Road which has front and rear gardens is located to the south east side of the site. On the west side of the lane opposite the site frontage there is walling, some garage structures with up and over doors and the rear gardens of the residential properties facing onto Frankfort Avenue the properties which have a right of way over the lane.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for demolition of the existing buildings, site clearance and for construction of four houses on the site in two semi-detached pairs facing onto the lane. Two parking spaces are shown at the centre of the site at the frontage between the semi-detached pairs and one space at each end of the site. Green roofing over the single storey kitchen dining space at ground floor level is shown at first floor level at the rear. Private open space is shown to the sides of the outer dwellings and at the rear and rear side of the two centrally positioned dwellings.
- 2.2. The existing buildings are to be demolished have a stated area of 548 square metres and the stated floor area of the proposed development of four two storey houses is 499 square metres. The stated plot ratio is 0.45 and the stated site coverage is thirty four percent.

2.3. The application is accompanied by a planning statement, a drainage report and a sunlight and daylight access analysis.

#### 2.4. **Planning Authority Decision**

#### 2.5. **Decision**

By order dated, 23<sup>rd</sup> July, 2020 the planning authority decided to grant permission subject to standard conditions which include the following requirements.

- Hours of construction work 7.00 am to 18.00 pm weekdays and 08.00 am to 14.00 pm Saturdays (Condition No 2)
- Submission for agreement with the planning authority, an agreement with a constituted owner/management company's maintenance agreement prior to occupation. Condition No 6 (b)
- A standard demolition and construction noise limitation and management condition. (Condition No 3)

#### 2.6. **Planning Authority Reports**

2.6.1. The report of the planning officer incites satisfaction with the proposed development, and it is stated that the proposal is significantly modified from the original unsuccessful proposal for five dwellings lodged with the planning authority under P. A. Reg. Ref. 3861/19. It is also stated that the setbacks for the upper floors minimise overshadowing, with the current shadow impact on No 157 Rathgar Road being reduced by the proposed demolition of existing structures and that overlooking to the north and north east is mitigated in the design. The layout of the development, vehicular access and parking and cycle parking arrangements are also stated to be satisfactory.

2.6.2. The internal reports of the Transportation Planning and Drainage Divisions indicate no objection to the proposed development subject to conditions which include the requirement for a management company to be established prior to occupation.

## 2.7. Third Party Observations

- 2.7.1. Submissions were received from parties which include the observer and appellant parties in which issues of concern raised include that of potential adverse impact on residential amenities due to overlooking and overshadowing, visual impact, drainage and traffic impact and demand for parking in the area.

## 3.0 Planning History

**P. A. Ref. Ref. 6268/05:** Permission was granted for demolition of the existing house and construction of four houses on the site.

**P. A. Ref. Ref. 3861/19:** Permission was refused for demolition of the existing house and construction of five houses and seven car parking spaces on the site.

**P. A. Ref. Ref. 3997/05 / PL 214601:** The planning authority decision to refuse permission was upheld following appeal for a proposal for seven three storey houses and five carparking spaces on the site.

## 4.0 Policy Context

### 4.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site comes within an area subject to the zoning objective Z2: *to protect and/or improve the amenities of residential conservation areas.*

Development Management Standards for residential development are set out Chapter 16 with guidance and standards for residential quality in section 16.10.2 and criteria for mews lane development is set out in section 16.10.16 and for infill developments are set out in section 16.10.10. Objective QH 8 provides for higher density development which respects the character of surrounding development on vacant or under-utilised sites.

The site location is in 'Area 3' for carparking standards as provide for in Table 16.1.

## 5.0 The Appeal

### 5.1. Grounds of Appeal

5.1.1. An appeal was received from Padraig Francis and Sarah Tiffen of No 89 Anglesea Road, Ballsbridge, on 18<sup>th</sup> August, 2020. According to their appeal:

- The development should not overlook the appellant property. The first floor living room window of House No 2 directly overlooks the garden at their property. The window would be 7606 mm from the boundary wall.
- Sunlight access at the rear garden of the appellant property should not be reduced. The increase in height above the boundary wall resulting from the proposed development would obstruct sunlight from the south west to the appellant property garden which has limited sunlight access at present, to a considerable extent.
- All rainwater should be drained within the application site. Rainwater goods which would be at the boundary wall are not shown on the application drawings.
- Construction should start at the later hour of 0800 hrs weekdays and 0900 hrs on Saturdays. Construction and demolition noise would affect residential amenity.
- Construction damage could occur, the appellant and application site having a shared boundary wall.

### 5.2. Applicant Response

5.2.1. A submission was received from the applicant's agent on 17<sup>th</sup> September, 2020. According to the submission:

- potential for overlooking has been designed out of with, heights relative to finished floor levels and separation distances.
- A diagram is included to demonstrate views from eye height from the living room at House No 2 towards No 1 Mawell Road. The drawings have been prepared using 3-D BIM Revit

software programme which provides for accurate modelling and can accurately demonstrate shadow cast for any day of the year.

- It is confirmed that it is demonstrated that on 21<sup>st</sup> March, at Maxwell Road, 56% of the garden receives more than two hours sunlight at present and would receive 61 percent post development and at 157 Rathgar Road, 54% of the garden receive more than two hours sunlight a day at present and it would receive 66% sunlight post development. Post development the adjoining properties will receive sunlight in excess of the levels recommended in BRE guidance: *Sunlight and Daylight Planning: A Guide to Good Practice*, 2011.

### 5.3. Planning Authority Response.

- 5.3.1. There is no submission from the planning authority on file.:

### 5.4. Observations

- 5.4.1. A submission was received from David Conlan Smyth and Orla Crowe of No 157 Rathgar Road on their own behalf on 8<sup>th</sup> September, 2020 and it includes some photographs. No 157 Rathgar Road is to the north side of which the proposed development is to be located.

- 5.4.2. According to the submission:

- The proposed development will obstruct sunlight and daylight access to No 157 Rathgar Road, at the end of the gardens adjacent to the garages, contrary to the reports of the planning officer and applicant's submissions. The dwellings would be considerably higher than the garages. Windows and a glass door at No 157 have been omitted in application drawings and the ground level at No 157 should be shown at a level lower than at the application site. (Drawing Nos 102, 106 and 107)
- House No 3 and House No 4 which is 4200 mm from the boundary wall will overlook No 157 Rathgar Road which is 2900 mm from the shared boundary wall. The separation distance is less than twenty-two metres.

## 6.0 Assessment

6.1. The issues central to the determination of the decision are considered below under the following subheadings.

Overshadowing

Overlooking

Construction Noise and Disturbance.

Residential Qualitative standards.

Traffic generation and Parking.

Visual Amenities of the Area.

Encroachment onto third party property.

Environmental Impact Assessment Screening.

Appropriate Assessment.

### 6.2. Overshadowing

6.2.1. The footprint of the appellant property (No 157 Rathgar Road) which incorporate both single and two storey elements is in close proximity to the application site boundary. To the south west and east sides of the dwelling there is private open space whereas area between the front of the dwelling and the frontage on Rathgar Road is laid out in landscaped gardens.

6.2.2. It is submitted in the application that sunlight and daylight access to No 157 Rathgar Road, post development accords with the standards and recommendation within *BRE Site Layout Planning for Daylight and Sunlight: A Good Practice Guide*. P.J. Littlefair, 2011 and shadow diagrams have been provided. The shadow diagrams shown on Drawing No 108 submitted with the application show an increased area in the rear garden and side elevation at No 157 under shadow relative to the predevelopment scenario and an accompanying statement that the garden area receiving more than two hours direct sunlight daily is increased from 64% to 66%. For the rear garden at No 1 Maxwell Road it is stated that the rear garden area receiving more than two hours direct sunlight daily is reduced from 56% to 51%.



6.2.3. It is considered, that variation in shadow effect on the adjoining properties, having regard to the height and sloped roof profile form of the proposed dwellings relative to the existing heights at the boundary are relatively modest and in accordance with minimum standards set out in the BRE guidelines as referred to in the CDP.

### 6.3. **Overlooking**

6.3.1. The site layout, dwelling design, form, internal layout and fenestration are such that direct overlooking or overlooking to an undue degree over to or across the rear private open space for No 157 Rathgar Road and No 1 Maxwell Road would not occur. In the regard the green roof surfaces over the ground floor kitchen dining room space at ground floor level will not be accessible, other than for maintenance purposes according to the application and the views from the first floor windows towards adjoining properties are screened off by the pitched roof element at the outer end of the green roof space of the dwellings.

6.3.2. The proposed development due to the considerable separation distances and the design, would not give rise to undue overlooking of the properties to the far side of Frankfort Avenue on the west side of the lane.

### 6.4. **Construction Noise and Disturbance.**

6.4.1. The concerns as to adverse impact on the residential amenities of the adjoining properties during the construction stage, due to noise and nuisance are noted. However, subject to adherence to an agreed demolition and construction management plan the impact should be managed and mitigated in accordance with the relevant codes for demolition and construction methodology and mitigation measures and having regard to the limited duration of a construction stage no additional requirements from the applicant are recommended. In this regard, it is not agreed that the hours of construction be reduced from the standard hours provided for under Condition No 3 as has been requested in order that the carrying out and completion of the project is not unduly impeded.

## **6.5. Residential Qualitative standards.**

- 6.5.1. It is agreed with the planning officer that the residential quality and attainable amenities for the proposed development, including the internal layouts and the quantum, distribution and layout of private open space are satisfactory and in accordance with the recommendations within the relevant statutory guidance: “*Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities*”, 2009.

## **6.6. Traffic generation and Parking.**

- 6.6.1. A requirement of up to 1.5 car parking spaces per dwelling is recommended for Area 3 according to Section 16.38 and Table 16.1 within the CDP. The four parking spaces incorporated in the proposed development are considered sufficient and their locations within the site layout is appropriate. Along Maxwell Road and the surrounding local road network there is a good provision of pay and display parallel parking. Cycle storage facilities are also included although there is scope for bicycles to be stored at the rear of two houses without passage through the dwelling.
- 6.6.2. Traffic generation on the local road network and at the junction of the lane is not a matter of concern with regard to potential to impede traffic flow or public safety concerns.
- 6.6.3. As indicated in the Transportation Planning Division report, a requirement, should permission be granted, inclusion of a condition for a management company to oversee maintenance and management the lane would be advisable given that the lane is in private ownership.

## **6.7. Visual Amenities of the Area.**

- 6.7.1. It is considered that a creative and compatible design and layout for the development on the site, the configuration of which is restrictive and complex. The dwelling design and form and the selected materials and finishes define the development as a small cluster with its own identity and is compatible with the surrounding built environment.

## **6.8. Encroachment onto third party property.**

6.8.1. Finally, should any dispute arise as to encroachment and containment of drainage and rainwater goods within the site the matter would be outside the planning remit and can be resolved between the parties through the legal system. The applicant has no entitlement to encroachment on third party property without consent. For the purpose of clarity, a note can be included should permission be granted.

## **6.9. Environmental Impact Assessment Screening.**

6.9.1. 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.

## **6.10. Appropriate Assessment.**

6.10.1. Having regard to and to the nature of the proposed development and the inner urban site location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **7.0 Recommendation**

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

## **8.0 Reasons and Considerations**

Having regard to the established pattern and character of development in the area, to the layout, design, form, heights, materials and finishes for the proposed development it is considered that subject to compliance with the conditions below,

the proposed development would not seriously injure the residential and visual amenities of the area, would be in accordance with the proper planning and sustainable development of the area.

## 9.0 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. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

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

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

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

4. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

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

5. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

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

6. 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.

7. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

8. Arrangements for demolition and clearance of the site and for construction of the development shall be managed in accordance with a Demolition, Waste and Construction Management Plan which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development:

**Reason:** In the interests of clarity, amenities and public health and safety and sustainable development.

9. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays and 0800 to 1400 hours on Saturdays. Deviation

from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

**Reason:** In the interest of residential amenities of surrounding properties and clarity.

10 Landscaping, planting, and boundary treatment shall be fully implemented within the first planting season following completion of construction.

**Reason:** In the interests of the visual amenities of the area and orderly and sustainable development.

11 The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the access lane, and communal spaces, shall be submitted to and agreed in writing with the planning authority, prior to occupation of the development.

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

12. 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.

**Jane Dennehy**  
Senior Planning Inspector  
4th December, 2020.