



An
Bord
Pleanála

Inspector's Report ABP-308705-20

Development

To demolish existing one storey shed on the site to the rear of No. 90 Rosemount Estate, Churchtown Lower, Dublin 14, and to construct a new two storey two bedroom house, in addition planning permission is sought to provide one car parking space to the front of the proposed dwelling off Taney Park Lane.

Location

Site to rear of No. 90 Rosemount Estate, Churchtown Lower, Dublin 14.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D19A/0849

Applicant(s)

Charco Properties Limited

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)

Margaret Corcoran & Michael Clarke

Larry and Mary Kelly & Others

Observer(s)

None.

Date of Site Inspection

15th March, 2021

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site (as detailed in the plans and particulars lodged with the initial application) is located within the Rosemount estate, a typically suburban and well established housing development characterised by two-storey terraced dwellings and a recently developed apartment scheme constructed to replace the former Local Authority flats. It encompasses the rear garden area of No. 90 Rosemount, a conventional two-storey, mid-terrace dwelling house with a single storey extension to the rear, although it also extends beyond this curtilage to include a small roadside grassed area populated by a single tree. It has a stated site area of 0.0155 hectares, is rectangular in shape, and presently accommodates a single-storey shed structure. The southern site boundary retains frontage onto an existing turning circle in Taney Park where the pattern of development includes a number of detached properties dominated by a large contemporary dwelling constructed to the immediate west of the application site to the rear of Nos. 89 & 89A Rosemount. A laneway further east provides a pedestrian link between Taney Park and the Rosemount Estate.
- 1.2. In response to a request for further information, the site area was subsequently extended to include the entirety of the lands occupied by No. 90 Rosemount, including the existing dwelling house and its front garden area / off-street parking.

2.0 Proposed Development

- 2.1. The proposed development consists of the subdivision of an existing housing plot and the construction of two-storey, 2-bedroom, detached dwelling house (floor area: 64.8m²) with independent vehicular access onto the adjacent cul-de-sac of Taney Park to the south. The contemporary design of the proposed dwelling employs a flat-roofed construction and is characterised by its use of rectangular forms with notable features including the recessing of the first-floor front bedroom and the provision of a clerestory to the rear bedroom. External finishes will include a plaster render, cement (grey) board cladding, glass block, and 'Rheinzink' cladding. Water and sewerage services are available via connection to the public mains.
- 2.2. Amended proposals were subsequently submitted in response to a request for further information which revised the house design to provide for the omission of the

raised roof element over the first floor bathroom, the replacement of the cement board cladding with a brickwork detail, and the use of a 'green' roof construction. The site area was also extended to include for the provision / regularisation of car parking to the front of No. 90 Rosemount while the foul and surface water service connections were amended to avoid crossing private property.

- 2.3. On 6th August, 2019 the Planning Authority issued a Certificate of Exemption (PA Ref. No. V/086/19) pursuant to Section 97 of the Planning and Development Act, 2000, as amended, with regard to the proposed development.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 21st October, 2020 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 15 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, surface water drainage, entrance design, construction management, and development contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report details the site context, planning history, and the applicable policy considerations, before stating that the overall principle of the proposed development is acceptable. It subsequently analyses the proposal and concludes that the contemporary house design and layout proposed can be accommodated on site without detriment to the residential amenity of neighbouring properties (subject to conditions). However, concerns are raised in relation to a number of issues, including discrepancies as regards the representation of the proposed development relative to adjacent properties and the potentially overbearing appearance of the construction when viewed from within neighbouring housing. The submission of additional details with respect to the proposed servicing and vehicular access arrangements was also deemed necessary.

Following the receipt of a response to a request for further information, a final report was prepared which recommended a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports:*

Drainage Planning, Municipal Services Dept.: An initial report recommended that further information be sought in respect of the surface water drainage arrangements. Following the receipt of a response to a request for further information, a subsequent report was prepared which indicated there was no objection to the proposal, subject to conditions.

Transportation Planning: Recommends that further information be sought in respect of the proposed front boundary treatment, the necessary consent etc. (if applicable) to lower the existing boundary walls, the visibility splay available from the new vehicular access, and the impact, if any, on the existing vehicular access arrangements serving 'Oakview', Taney Park & the rear of No. 91 Rosemount Estate.

3.3. **Prescribed Bodies**

Irish Water: An initial submission recommended that the applicant be required to provide evidence of any rights or permissions necessary to cross lands not in its exclusive ownership or control to connect into the foul sewer network. Following the receipt of a response to a request for further information, a subsequent report indicated no objection to the proposal, subject to conditions.

3.4. **Third Party Observations**

3.4.1. A total of 10 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- Inadequate separation between the proposed dwelling and adjacent properties.
- Interference with / encroachment of private property, including boundary walls.
- The projection of the construction beyond the established building line.

- Detrimental impact on the residential amenity of neighbouring properties by reason of overlooking, overshadowing, overbearing / overwhelming visual appearance, visual intrusiveness, loss of private open space, disturbance / disruption during construction works, and the loss of development potential.
- Devaluation of property.
- Failure to comply with the provisions of the Development Plan as regards infill / backland development.
- Overdevelopment of a restricted site.
- Excessive scale, height, mass and bulk / inappropriate design & finish.
- The proposal is out of character with the surrounding pattern of development.
- The inadequacy of the car parking provision.
- Increased traffic volumes / the inadequacy of the surrounding road network / traffic hazard.
- No consent for connection to a private sewer.
- Concerns as regards the capacity of the sewerage network to accommodate the additional loadings consequent on the proposal.
- The obstruction of access to neighbouring properties by cars protruding from the site.
- The safety implications of cars reversing from the proposed access / parking arrangement.
- Inaccuracies / deficiencies / misleading nature of the submitted plans and particulars.
- Concerns as regards specified procedural issues, including the length of time allowed for third party submissions following receipt of the further information.

4.0 Planning History

4.1. *On Site:*

4.1.1. PA Ref. No. D19A/0540. Was refused on 18th September, 2019 refusing Charco Properties Ltd. permission to demolish an existing shed and to construct a two-storey two-bedroomed house. Permission was also sought to provide 1 No. car parking space to the front of the dwelling with access off Taney Park Lane.

- The proposed development due its overall scale, and siting represents overdevelopment of this restricted site. The development would be contrary to the guidance set out in the Dún Laoghaire Rathdown County Development Plan 2016-2022 under section 8.2.3.4 (vi) regarding backland development with regard to garden depth and separation distances from adjoining properties, would be visually obtrusive and overbearing when viewed from the rear garden of the existing house at 90 Rosemount. The proposed development would, therefore, seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

4.1.2. PA Ref. No. D18A/0842 / ABP Ref. No. ABP-303060-18. Was refused on appeal on 11th February, 2019 refusing Charco Properties Ltd. permission for the demolition of an existing shed and construction of a two-storey three bedroom house plus roof setback containing outdoor terrace with bedroom and en-suite bathroom. Permission was also sought to provide 2 No. parking spaces to the front of the proposed dwelling off Taney Park Lane.

- The proposed development, by reason of its overall scale, height and siting, would represent overdevelopment of a restricted site, would be contrary to the guidance set out in the Dún Laoghaire Rathdown County Development Plan 2016-2022 under section 8.2.3.4 (vi) in relation to backland development with regard to garden depth and separation distances from adjoining properties, would be visually obtrusive and overbearing when viewed from the rear garden of the existing house and adjoining property no. 91 Rosemount and would result in a significant reduction in the private open space serving no. 90 Rosemount. The proposed development would, therefore, seriously injure the

amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

4.1.3. PA Ref. No. D06A/1348 / ABP Ref. No. PL06D.220913. Was granted on appeal on 20th April, 2007 permitting Martina O'Neill permission for the demolition of existing garden shed and single storey lean to extension and construction of a detached two-storey dwelling, including a new vehicular entrance onto Taney Park and associated site works.

4.2. *On Adjacent Sites:*

4.2.1. PA Ref. No. D05A/0054. Was granted on 21st April, 2005 permitting Sarah Sheridan permission for 1 No. two-storey end of terrace two-bedroom dwelling to the side of existing dwelling, 1 No. two storey detached two-bedroom dwelling to rear of the existing dwelling, and a porch extension to front of the existing dwelling. The development includes the provision of 2 No. entrance gates and driveways to the front of the existing dwelling, 1 No. entrance gate and driveway access from Taney Park, for off-street parking and rear access gate to the existing and proposed dwelling to side onto pedestrian walkway. The development also includes the realignment of the boundary onto the pedestrian walkway. All at No. 89 Rosemount Estate, Dundrum, Dublin 14.

4.2.2. PA Ref. No. D04A/1030. Was refused on 26th October, 2004 refusing Sarah Sheridan permission for 1 No. single storey detached house with rooms in roof space to rear of the existing dwelling. The development includes the provision of new entrance gates and driveway to the front of the existing dwelling for off-street parking and new entrance gates and a driveway to the rear for off-street parking. All at No. 89 Rosemount Estate, Dundrum, Dublin 14.

4.2.3. PA Ref. No. D03A/1256 / ABP Ref. No. PL06D.206586. Was refused on appeal on 26th July, 2007 refusing Sarah Dreelan Architecture permission for 2 No. two-storey semi-detached two-bedroom dwellings to the rear of the existing dwelling; the development includes the provision of new entrance gates and driveway to the front of the existing dwelling for off-street car parking and new timber fencing to the rear boundary including the relocation of existing pedestrian access gate, all at No. 89 Rosemount Estate, Dundrum, Dublin.

- Having regard to the restrictions to development on site, it is considered that the proposed development, by itself and by the precedent that a grant of permission would create, would constitute inappropriate development for a restricted backland site, would be visually obtrusive and would seriously injure the residential amenity of the existing dwelling and the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. National and Regional Policy

- 5.1.1. The ‘*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*’ note that, in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development, potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

5.2. Development Plan

- 5.2.1. ***Dún Laoghaire Rathdown County Development Plan, 2016-2022:***

Land Use Zoning:

The proposed development site is zoned as ‘A’ with the stated land use zoning objective ‘*To protect and / or improve residential amenity*’.

Other Relevant Sections / Policies:

Chapter 2: Sustainable Communities Strategy:

Section 2.1: Residential Development:

Policy RES4: *Existing Housing Stock and Densification:*

It is Council policy to improve and conserve the housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

Chapter 8: Principles of Development:

Section 8.2.3: Residential Development:

Section 8.2.3.1: Quality Residential Design

Section 8.2.3.2: Quantitative Standards

Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas:

(v) Corner/Side Garden Sites:

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing built up areas. In these cases the Planning Authority will have regard to the following parameters (Refer also to Section 8.2.3.4(vii)):

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Accommodation standards for occupiers.
- Development Plan standards for existing and proposed dwellings.
- Building lines followed where appropriate.
- Car parking for existing and proposed dwellings.
- Side/gable and rear access/maintenance space.
- Private open space for existing and proposed dwellings.

- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.

It is also recognised that these sites may offer the potential for the development of elderly persons accommodation of more than one unit. This would allow the elderly to remain in their community in secure and safe accommodation. At the discretion of the Planning Authority there may be some relaxation in private open space and car parking standards for this type of proposal.

(vi) Backland Development:

Backland residential development usually involves the establishment of a new single dwelling, and a building line to the rear of an existing line of houses. Residential development within the boundary of larger detached houses does not constitute backland development and will not be assessed as such. Where the Planning Authority accepts the general principle of backland residential development to the rear of smaller, more confined sites within the existing built-up area, the following standards will apply:

- Generally be single storey in height to avoid overlooking.
- Adequate vehicular access of a lane width of 3.7m must be provided to the proposed dwelling (3.1m at pinch points) to allow easy passage of large vehicles such as fire tenders or refuse collection vehicles.
- A wider entrance may be required to a backland development to or from a narrow laneway.

- Existing dwelling and proposed dwellings shall have minimum individual private open spaces of 48 sq.m. each - exclusive of parking - for one/two bedroom units or 60 sq.m. plus for three/four or more bedroom units.
- Proposed single storey backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.
- Proposed two storey backland dwellings shall be located not less than 22 metres from the rear façade of the existing dwelling where windows of habitable first floor rooms directly face each other. Proposed two-storey backland dwellings should have a minimum rear garden depth for the proposed dwelling of 11 metres.

Where there is potential to provide backland development at more than one site/property in a particular area, the Planning Authority will seek to encourage the amalgamation of adjoining sites/properties in order to provide for a more comprehensive backland development. Piecemeal backland development with multiple vehicular access points will not be encouraged.

(vii) Infill:

New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th Century suburban 'Garden City' planned settings and estates that do not otherwise benefit from Architectural Conservation Area status or similar. (Refer also to Section 8.2.3.4 (v) corner/side garden sites for development parameters, Policy AR5, Section 6.1.3.5 and Policy AR8, Section 6.1.3.8).

Section 8.2.3.5: *Residential Development – General Requirements*

Section 8.2.4.9: *Vehicular Entrances and Hardstanding Areas*

Section 8.2.8.4: *Private Open Space – Quantity*

5.3. Natural Heritage Designations

5.3.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The Fitzsimon's Wood Proposed Natural Heritage Area (Site Code: 001753), approximately 2.8km south of the site.
- The Booterstown Marsh Proposed Natural Heritage Area (Site Code: 001205), approximately 3.3km northeast of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 3.3km northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 3.5km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 3.5km northeast of the site.

5.4. EIA Screening

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. *Margaret Corcoran & Michael Clarke (No. 89 Rosemount Estate):*

- The proposed development will have a detrimental impact on the residential amenity and quality of life enjoyed by the appellants as occupants of the

neighbouring property to the immediate west by reason of overshadowing / loss of light.

- When taken in combination with the adjacent dwelling house known as 'Dreeland', the proposed development would be visually overbearing and oppressive / domineering when viewed from within the appellants' property.
- The proposed development will deprive the appellants of the remaining unobstructed aspect / view available from the rear of their property.
- The isometric view shown on Sheet No. 3 of the application drawings is misleading and unrepresentative of the actual scale of the proposed development. The perspective is distorted which serves to diminish the appearance of scale.
- There are concerns that the proposal could encroach upon or disrespect the private properties at No. 91 Rosemount Estate and the last house within Taney Park.

6.1.2. Larry and Mary Kelly & Others (No. 91 Rosemount Estate):

- The proposed development will have a detrimental impact on the residential amenity of neighbouring housing by reason of overlooking, overshadowing, and an unduly overbearing appearance with an associated devaluation of property.
- The inclusion of the first floor stairwell window in the eastern elevation of the proposed dwelling will undermine the development potential of the appellants' rear garden area.
- Notwithstanding the requirement to glaze the stairwell window in obscure glass, there are concerns that any such glazing will be replaced with transparent glass once the development has been completed and inspected by the Local Authority.
- The use of a grey-coloured sand and cement render to the northern and eastern elevations will make for a bleak and unappealing aesthetic. It should be a condition of any grant of permission that the external finish of the proposal be agreed with the Planning Authority and neighbouring residents.

- Any proposal to interfere with the boundaries of third party properties (i.e. 'Dreeland' and No. 91 Rosemount Estate) gives rise to major concern. In particular, the boundary wall used jointly by No. 91 Rosemount Estate and 'Oakview' must remain intact. While the developer has sought to reduce the height of this wall for its own purposes, any such works would compromise the security and privacy of the aforementioned properties.
- The applicant has sought to lay claim to the western site boundary, however, all the boundaries were set in 1962 by the Local Authority prior to the allocation of these houses as part of the Council's housing stock with the existing walls built atop the fence foundations as the boundary marker. If the applicant had any problems with the site boundaries then these should have been addressed on the folio by its solicitor before the purchase of the property was completed.
- The existing drainage network in Taney Park is already overburdened / overloaded and is laid not far below the road surface.
- The Drainage Planning, Municipal Services Dept. of the Local Authority failed to provide any substantial follow-up report on the additional drainage and servicing details provided by way of significant further information.
- The works involved in connecting the proposed dwelling to the public watermain and sewerage network will result in significant disturbance to the road surface in Taney Park. Given that this surface treatment is already in a very poor condition it will need to be replaced immediately upon the completion of construction works.
- Access to surrounding properties will be disrupted during the course of infrastructural works to be carried out in the public road.
- Due to the necessity to raise the ground floor slab to discharge to the public sewer in Taney Park, the height of the proposed dwelling will be unacceptably oppressive. It will also exacerbate the potential to overlook neighbouring housing and amounts to an overdevelopment of a restricted site.
- There is in excess of a 1.3m drop between the highest point on site (i.e. the road surface in Taney Park) and the patio to the rear of No. 91 Rosemount

Estate which will have the effect of increasing the overall height of the proposal when viewed from the adjacent property.

- The space allocated for parking is inadequate considering the size of modern cars with the result that parked vehicles will likely protrude beyond the space and impede access to neighbouring properties.
- There are severe blind spots for any person / vehicle egressing the proposed parking space as regards the visibility of persons etc. emerging from 'Dreeland', 'Oakview', and the rear of No. 91 Rosemount Estate. This gives rise to serious safety concerns.
- It is apparent from Drg No. 4B that the applicant is intent on extending the parking area beyond the site boundary thereby encroaching on the access to 'Oakview' and the rear of No. 91 Rosemount Estate. This will also interfere with the sewer from 'Ross Skelton' 3A Taney Park given the presence of an inspection chamber at this location.
- The proposed development is contrary to the land use zoning objective which seeks 'to protect and / or improve residential amenity'.
- The private open space for the proposed dwelling and that to the rear of No. 90 Rosemount Estate do not comply with the minimum recommended guidance.
- With the inclusion of access from Bedroom No. 2, there are concerns that the green roof to the front of the property could be used as a balcony / leisure area which would allow for overlooking of neighbouring properties with an associated loss of privacy.
- The Planning Authority has failed to adequately assess the overshadowing impact of the proposed development on the appellants' property.
- The proposal amounts to the significant overdevelopment of a very small and restricted site.

6.2. Applicant Response

6.2.1. *Response to Third Party Appeal of Margaret Corcoran & Michael Clarke:*

- The original owners of No. 89 Rosemount Estate developed the adjacent house at No. 89A which was followed by construction of the large contemporary dwelling ('Dreeland') to the rear of those properties and, therefore, the oppressive presence of the latter is entirely of their own making.
- The proposed dwelling is not immediately behind No. 89 Rosemount Estate and is much smaller in scale and massing than 'Dreeland'.
- The parapet height over most of the proposed dwelling is 56.0 with 56.9 above datum for the small clerestory section as opposed to 57.90 for 'Dreeland'. It is also lower than the ridge height of Nos. 89, 90 & 91 Rosemount Estate.
- The first floor level is set back by 2.3m thereby reducing the impact to the front and ensuring that the development is not overbearing.
- The contemporary design matches that of the much larger residence to the immediate west. It utilises a similar visual language and fenestration treatment etc.
- Relative to the neighbouring property of 'Dreeland', the footprint and frontage of the proposed dwelling are significantly smaller. In addition, the overall floor area of 64.7m² is the smallest possible for a viable house.
- The design of the proposed dwelling has a contemporary image that is entirely appropriate to the site context.

6.2.2. *Response to Third Party Appeal of Larry and Mary Kelly & Others:*

- Condition No. 6 as imposed by the Planning Authority requires the stairwell window within the eastern elevation of the proposed dwelling to be permanently fixed and finished in opaque glass to avoid overlooking. The use of such a condition / provision (in addition to the 1m separation between the window and the boundary wall) is commonplace and does not inhibit future development.

- The 22m separation distance applies to opposing bedroom windows within backyard developments. Given that there are no first floor bedroom windows to the rear of the proposed dwelling house, the reference to the 22m requirement is irrelevant.
- With respect to the potential for overlooking of the rear garden of No. 91 Rosemount Estate from the ground floor doors to the rear of the proposed dwelling, it is suggested that such a scenario is commonplace throughout Ireland and acceptable in most instances. The intervening 2m high boundary wall should also preclude any overlooking.
- Condition No. 4 of the notification of the decision to grant permission requires the external finishes to harmonise in colour and texture with the existing dwelling. Furthermore, due to the absence of any windows within the rear elevation of the dwelling, the design has sought to address the aesthetics of a large blank elevation by introducing a modulated series of planes differentiated by varying grades of white and grey render.
- Contrary to the grounds of appeal, it is not proposed to modify the party boundary walls.
- The foul and surface water drainage arrangements will comply with the submitted proposals and the requirements of the Local Authority.
- The proposed building height and massing is 56.0 above datum which compares favourably with 'Driana' (57.90) and No. 91 Rosemount Estate (57.40).
- Given the proximity of the site to the Luas public transport system, it is proposed to provide a single car parking space.
- Condition No. 9 requires the vehicular entrance to be reduced to 3.5m in width and to accord with the requirements of the Local Authority. In contrast, the owners of 'Oakview' and No. 91 Rosemount Estate' refer to the retention of their three cars.
- The colour palette for the plaster finish to the rear of the development is an aesthetic and highly subjective choice. The applicant will be guided by the Planning Authority in this regard.

- Condition Nos. 5 & 8 specifically prohibit any use of the green roof as a balcony and also refer to its properties as regards SUDS compliance.

6.3. **Planning Authority Response**

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Traffic considerations
- Infrastructural / servicing arrangements
- Appropriate assessment

These are assessed as follows:

7.2. **The Principle of the Proposed Development:**

7.2.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'. Moreover, it is apparent from the emerging pattern of development that this particular residential

area is gradually densifying with several examples of plots having been subdivided to accommodate the construction of additional dwellings whilst in other instances larger properties / sites have been redeveloped to provide for multiple unit schemes. Notable examples of recent infill developments in the locality include the construction of the contemporary two-storey property known as 'Dreeland' to the immediate west of the application site and the small housing scheme developed to the rear (south) of Nos. 4 & 5 Taney Park (the redevelopment of the former Local Authority flats further east is also of note).

7.2.2. In this respect, I would suggest that the subject site comprises a potential infill site situated within an established residential area where public services are available and that the development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Such an approach would correlate with the wider strategic outcomes of the National Planning Framework 'Project Ireland: 2040', including the securing of more compact and sustainable urban growth as expressed in National Policy Objective 35 which aims to *'increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights'*.

7.2.3. Further support is lent to the proposal by reference to Policy RES4: *'Existing Housing Stock and Densification'* of the Development Plan, which aims to increase housing densities within existing built-up areas having due regard to the amenities of established residential communities, wherein it is stated that the Planning Authority will encourage the densification of existing suburbs in order to help retain population levels by way of 'infill' housing that respects or complements the established dwelling types. These policy provisions are supplemented by the guidance set out in Section 8.2.3.4: *'Additional Accommodation in Existing Built-up Areas'* of the Plan which details the criteria to be used in the assessment of proposals that involve new infill development. The *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* also acknowledge the potential for infill development within established residential areas provided that a balance is struck between the

reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

- 7.2.4. In addition to the foregoing, I am cognisant that permission was previously granted for the construction of a detached, two-storey dwelling on site under ABP Ref. No. PL06D.220913 (PA Ref. No. D06A/1348) with the Board noting that the development would not seriously injure the amenities of the area and would be acceptable in terms of traffic safety (although permission has been refused more recently under PA Ref. Nos. D18A/0842 (ABP Ref. No. ABP-303060-18) & D19A/0540 for reasons pertaining to an overdevelopment of the site).
- 7.2.5. Therefore, having considered the available information, including the site context and land use zoning (noting that the site is within a short walking distance of the Luas and Dublin Bus services and is also proximate to local shops / retail services, employment opportunities, and other amenities), the planning history and pattern of development in the vicinity, and the design, scale & infill nature of the proposed dwelling, I am satisfied that the overall principle of the development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties.

7.3. Overall Design and Layout:

- 7.3.1. The proposed development involves the construction of two-storey, 2-bedroom, detached dwelling house, the contemporary design of which has progressively evolved through a series of connotations and planning applications. In this regard, the subject proposal employs a flat-roofed construction and is characterised by its use of rectangular forms with notable features including the recessing of the first-floor front bedroom and the provision of a clerestory to the rear bedroom. The design as initially submitted was subsequently amended further in response to a request for additional information through the omission of a raised roof element over the first floor bathroom and the replacement of the cement board cladding with a brickwork detailing thereby reducing the overall height, scale and massing of the structure.
- 7.3.2. While I would acknowledge that some concerns have been raised as to the appropriateness of the contemporary design proposed, in my opinion, the proposal is not in itself incompatible with the emerging pattern of development in the area as evidenced by the increasing proliferation of more innovative housing types

developed on neighbouring sites by way of infill housing. The broader trend in recent years has seen a noticeable shift towards more contemporary architectural design / housing types with nearby examples including the modern residence known as 'Dreeland' to the immediate west of the application site and the housing scheme developed to the south of Nos. 4 & 5 Taney Park.

7.3.3. Therefore, having considered the site context, the planning history and pattern of development in the surrounding area, and the provisions of Section 8.2.3.4 of the Development Plan, it is my opinion that the contemporary design and layout of the proposed development represents an appropriately innovative response to the site context and achieves a suitable balance between the need to respect the established character and residential amenity of the surrounding area and the desire to provide infill housing.

7.4. Impact on Residential Amenity:

7.4.1. The design of the proposed development has evolved in response to the constraints posed by the site and, more specifically, its relationship with neighbouring properties and the need to preserve existing residential amenity. In this respect, it is of particular relevance to consider the subject proposal in the context of previous applications on site and how the submitted design has responded to address any issues raised.

7.4.2. From a review of the available information, it is apparent that the design of the proposed development has changed considerably from the more conventional two-storey, two-bedroom dwelling house previously approved on site under PA Ref. No. D06A/1348 / ABP Ref. No. PL06D.220913 which comprised a front-gabled dormer construction set forward of 'Dreeland' with a stated floor area of 98m² and a ridge height of 7.477m. However, while the current proposal is more reflective of the contemporary designs refused permission under PA Ref. Nos. D18A/0842 (ABP Ref. No. ABP-303060-18) & D19A/0540, the design and layout of the dwelling has been significantly revised with a view to alleviating any concerns that it could have a detrimental impact on the residential amenity of neighbouring properties or otherwise be interpreted as amounting to an overdevelopment of the site.

7.4.3. While I would acknowledge the limited extent of the application site and the constraints arising from its relationship with neighbouring properties, in my opinion,

the overall scale, height and massing of the subject proposal has taken due cognisance of the areas of concern which led to the refusal of previous applications on site, with particular reference to ABP Ref. No. ABP-303060-18. The floor area of the proposed dwelling has been substantially reduced when compared to earlier development proposals (i.e. PA Ref. No. D06A/1348 / ABP Ref. No. PL06D.220913: 98m², PA Ref. No. D18A/0842 / ABP Ref. No. ABP-303060-18: 153m² & PA Ref. No. D19A/0540: 87.4m²) while the building height has been lowered to 6.26m when measured from the clerestory (as amended in response to the request for further information) and sits 1m below the ridge line of the adjacent property of 'Dreeland'. The construction has also been set back from the eastern site boundary to provide for a rear pedestrian access and its depth reduced to 8.7m while the house itself is positioned to broadly follow the rear building line of 'Dreeland' thereby maintaining a clear separation from the existing dwelling at No. 90 Rosemount Estate. The omission of the raised roof element over the first floor bathroom and the replacement of the cement board cladding to the rear of the proposal with a brickwork detail further serve to reduce the overall scale and bulk of the construction when viewed from within neighbouring properties.

7.4.4. In reference to the separation from adjacent housing, although Section 8.2.3.4(vi) of the Development Plan states that two-storey backland developments should typically be located not less than 22m from the rear façade of the existing dwelling and have a minimum rear garden depth of 11m, in the absence of any first floor windows to the rear of the proposed dwelling which could potentially overlook No. 90 Rosemount, the separation distance of c. 17m between the two-storey facades of the respective properties would seem to be sufficient and is directly comparable to that between No. 89 Rosemount and 'Dreeland' (with a lesser distance having been allowed between No. 89A Rosemount and 'Dreeland'). The rear garden depth of 7m would also accord with that permissible under Section 8.2.3.4(vi) for single storey backland development and in this regard I would reiterate the absence of any first floor fenestration to the rear of the proposed dwelling.

7.4.5. With respect to the inclusion of the stairwell window within the eastern elevation of the proposal and concerns that this will lead to undue overlooking of neighbouring property, with particular reference to the rear garden area of No. 91 Rosemount, I would suggest that circulation areas such as stairwells are not typically afforded the

same level of amenity or privacy as living areas / bedrooms etc. nor are they considered to give rise to overlooking concerns. In any event, it is proposed to glaze the window in opaque / frosted glass and I would concur with the Planning Authority that this issue could be satisfactorily addressed by way of condition in the event of a grant of permission.

- 7.4.6. In relation to the first floor 'green' roof, while it has been indicated on the submitted drawings that access to this area will be reserved for maintenance purposes only, given its relationship with a first floor bedroom and south-facing aspect, the imposition of a condition prohibiting its use as a balcony or terrace area would be appropriate in this instance to prevent any undue overlooking of neighbouring residences.
- 7.4.7. Although further concerns have been raised as regards the possibility of adjacent housing being overlooked from the french doors and windows proposed at ground floor level within the northern and eastern elevations of the development which will serve a combined kitchen / dining area, notwithstanding the change in levels, and having regard to the separation distances involved and the existing & proposed intervening boundary treatments, I am unconvinced by the merits of any such arguments. I would also draw the Board's attention to Class 1 of Part 1 (Exempted Development – General) of Schedule 2 of the Planning and Development Regulations, 2001, as amended, which refers to the erection of extensions to dwelling houses. Column 2 of this class sets out a series of conditions and limitations in respect of the construction of such domestic extensions and Item No. 6(a) of same states that '*Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces*'. Whilst the subject application does not relate to the construction of an extension, it is comparable in that it concerns the positioning of ground floor windows relative to an adjoining site boundary. The ground floor kitchen windows within the eastern elevation of the proposed dwelling window will be c. 0.9m from the site and thus are only marginally closer than would be permissible by way of exempted development.
- 7.4.8. By way of further comment, the opaque glass blocks within the western elevation serving the ground floor living room will obviate against overlooking whilst allowing for natural light.

7.4.9. Both third party appeals raise concerns as regards the potential for overshadowing of their respective properties, however, it is of relevance to note that the Board did not refer to any such impact in its decision to refuse permission for ABP Ref. No. ABP-303060-18 despite that proposal concerning a larger, wider and taller house in closer proximity to neighbouring housing. Notwithstanding the foregoing, while I would acknowledge that the siting of the proposed development will invariably result in the rear garden areas of adjacent properties experiencing some increase in overshadowing / loss of sunlight, given the site context and noting that some degree of overshadowing would not be unexpected within a built-up urban area, I am not convinced that this would be of such significance as to warrant a refusal of permission.

7.4.10. In the first instance any loss of sunlight or overshadowing of No. 89 Rosemount (and the limited rear garden areas serving same) as a result of the proposed development must be taken in context given that that property was previously subdivided under PA Ref. No. D05A/0054 to accommodate the construction of No. 98A Rosemount and 'Dreeland'. More particularly, the overall scale, height, mass, and siting of 'Dreeland' would be likely to have a far greater impact on the residential amenity of No. 89 Rosemount due to overshadowing and its overbearing appearance (including any loss of aspect / outward views) than the subject proposal given its positioning directly south of same. It is thus difficult to reconcile the opposition to the proposed development in light of the approval of PA Ref. No. D05A/0054.

(With respect to the purported loss of views / aspect from the rear of No. 89 Rosemount as a result of proposed development, it is of the utmost relevance to note that any such views are not of public interest nor are they expressly identified as views worthy of preservation in the relevant Development Plan. They are essentially views enjoyed by a private individual from private property. A private individual does not have a right to a view and whilst a particular view from a property is desirable, it is not definitive nor is it a legal entitlement and, therefore, I am of the opinion that the proposed development would not seriously injure the amenities of property in the vicinity simply by interfering with their views over the surrounding area).

7.4.11. With regard to No. 91 Rosemount, given the separation distances involved and the siting of the proposed dwelling relative to same, I would suggest that the appellants'

rear garden area and their wider property will continue to benefit from an acceptable level of daylight / sunlight and that any overshadowing impact consequent on the proposed development would not be of such magnitude as to unduly detract from the residential amenity of same.

7.4.12. In relation to the potential impact arising from the construction of the proposed development, whilst I would acknowledge that the subject site is located within an established residential area and that construction works, including the excavation of the roadway and the movement of vehicles / machinery etc., could give rise to the temporary disturbance / inconvenience of local residents, given the limited scale of the development proposed, and as any constructional impacts will be of an interim nature, I am inclined to conclude that such matters can be satisfactorily mitigated by way of condition through the submission of a Construction and Environmental Management Plan for written agreement with the Local Authority prior to the commencement of development.

7.4.13. A further concern raised in the grounds of appeal is that the proposed development will physically encroach into neighbouring properties or otherwise interfere with the established (shared) site boundaries, although the applicant has rejected these claims by stating that it is not proposed to modify any party walls. In this respect, I would refer the Board to the updated site layout plan received by the Planning Authority on 24th September, 2020 in response to the request for further information wherein it is clear that the proposed dwelling house will be set back from the eastern site boundary and thus will not encroach into No. 91 Rosemount or 'Oakview'. Furthermore, it is of relevance to note that the existing wall along the western site boundary would seem to be inset from the actual property line / ownership boundary as derived from the land registry and this is likely to have given rise to a level of confusion as regards the exact property boundary.

7.4.14. While I would acknowledge the concerns of third parties as regards any potential interference with property rights or shared boundaries, it is not the function of the Board to adjudicate on property disputes and in this regard I am inclined to suggest that any alleged trespass or interference with private property attributable to the proposed development is essentially a civil matter for resolution between the parties concerned. Accordingly, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be*

entitled solely by reason of a permission under this section to carry out any development' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property.

- 7.4.15. In terms of private open space provision, the proposed dwelling is to be provided with a rear garden that will measure 7m in depth and extend to 49m². This would accord with the minimum requirement of Section 8.2.8.4: '*Private Open Space – Quantity (i) Private Open Space for Houses*' of the Development Plan which states that the provision of 48m² of private open space may be acceptable for one / two-bedroom houses provided it amounts to good quality usable open space. Notably, such a proposal would compare favourably with the two-bedroom dwelling previously permitted on site under ABP Ref. No. PL06D.220913 (PA Ref. No. D06A/1348) which was to have been provided with a rear garden measuring 45m² and 6m in depth.
- 7.4.16. With respect to the existing dwelling, I note that the decision to refuse permission for ABP Ref. No. ABP-303060-18 (PA Ref. No. D18A/0842) cited that the proposed development would result in a significant reduction in the private open space serving No. 90 Rosemount (that property was to have been left with a rear garden of only 25m² (4m in depth), exclusive of any space to the front of the dwelling). The subject proposal has responded to the foregoing by repositioning the proposed dwelling further south in order to provide for a rear garden of 6.4m in depth and 44.16m² in area to serve No. 90 Rosemount. This is significantly greater than was proposed (and refused) under ABP Ref. No. ABP-303060-18 and is generally comparable to the open space provision previously accepted for the existing house under ABP Ref. No. PL06D.220913 i.e. a rear garden area of 47m² with a depth of 7m (for the purposes of clarity, I am not satisfied that it would be appropriate to include the area located to the front of the existing dwelling, as is shown in the site layout plan received in response to the request for further information, in the calculation of private open space). Although I would accept that 44.16m² of private open space will be below the recommended standard, I am cognisant that in the absence of the single storey extension constructed to the rear of the property that the open space provision would be within acceptable limits (and that the construction of an extension by way of exempted development would allow for a reduction to 25m²). In addition, it is notable that the private open space proposed to serve the existing dwelling will be

broadly comparable to that serving the neighbouring properties of Nos. 89 & 89A Rosemount (noting the loss of such space consequent on the construction of 'Dreeland').

7.4.17. Therefore, in light of the foregoing, I am satisfied that the private open space provision for both the existing and proposed dwelling houses is acceptable in this instance.

7.5. Traffic Considerations:

7.5.1. The proposed development will be accessed from Taney Park via a new entrance arrangement onto the existing turning circle and I note that the principle of an access at this location was previously accepted by the Board under ABP Ref. No.

PL06D.220913 (as was acknowledged by the reporting inspector in the assessment of ABP Ref. No. ABP-303060-18). In addition, I am satisfied that the provision and design of the single car parking space proposed within the confines of the application site accords with the requirements of the Development Plan.

7.5.2. Whilst the concerns of third parties regarding traffic impacts are noted, given the low volumes of traffic likely to be associated with the development, the site location at the end of a small cul-de-sac where lower traffic volumes and speeds would be expected, the fact that the proposed access arrangement will be comparable to that serving existing housing in the immediate surrounds, and as the Transportation Planning Department has not objected to the principle of an access at this location, I am satisfied that the proposed development will not result in a traffic hazard.

7.5.3. In the interests of completeness, the Board is advised that the response to the request for further information has extended the site area to include the entirety of No. 90 Rosemount with a view to amending the parking provision and garden area to the front of the property. This revised layout is reliant on the use of an entrance / access across the full frontage of No. 90 Rosemount and while I note that such an arrangement is presently in place on site, it would not appear to have the benefit of planning permission.

7.5.4. Given that the revisions proposed to the front of No. 90 Rosemount were in an effort to provide additional open space for the existing dwelling and that I have already discounted the inclusion of same in any open space calculation, the failure to expressly refer to the new entrance arrangement in the updated public notices, the

seemingly unauthorised nature of the existing entrance, the requirement of the Planning Authority to limit the entrance width to 3.5m thereby severely undermining any practical use of the 2 No. parking spaces proposed, and as there is no overwhelming need to undertake the works proposed to the front of No. 90 Rosemount to facilitate the proposed dwelling house, it is my opinion that it would be appropriate to omit these works from any grant of permission.

7.6. Infrastructural / Servicing Arrangements:

- 7.6.1. Both the Local Authority and Irish Water have stated that they have no objection to the proposed development (including the servicing arrangements) and I would suggest that the final details of connection to public services can be addressed by way of condition.
- 7.6.2. In addition, the revised routing of the sewer connections provided in response to the request for further information has obviated any requirement to cross private land.

7.7. Appropriate Assessment:

- 7.7.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the land use zoning of the site in the current Development Plan for the area, to the infill nature of the site, to the design, layout and scale of the

proposed development, and to the nature and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would represent an appropriate residential density, would comply with the provisions of the Development Plan, and would 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.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 24th day of September 2020, 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. The revisions to the layout of the garden area and parking provision to the front of No. 90 Rosemount as shown on Sheet No. 1 received by the Planning Authority on 24th September, 2020 shall be omitted from the development.

Reason: In the interests of clarity, orderly development, and traffic safety.

3. The first floor stairwell window on the eastern elevation of the dwelling house shall be glazed with obscure glass.

Reason: To prevent overlooking of adjoining residential property.

4. No part of the first floor flat roof shall be used as a balcony or terrace and access to this area shall be restricted to maintenance requirements only.

Reason: In the interest of clarifying the extent of the proposed development and in the interest of residential amenity.

5. 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, details of which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health.

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

Reason: In the interest of public health.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Reason: In the interests of visual and residential amenity.

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

Reason: In the interest of visual amenity.

9. Site development and building works shall be carried out only between the hours of 0700 and 1900 Mondays to Fridays inclusive, between the hours of 0800 and 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall 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.

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. 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.

Robert Speer
Planning Inspector

18th June, 2021