



An
Bord
Pleanála

Inspector's Report ABP 308893-20.

Development	Two storey, three bedroom detached dwelling with attic conversion, driveway m vehicular and pedestrian entrance and site works
Location	Nos 36 and 38 Rathdown Park, Terenure, Dublin 6.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	3499/20
Applicant	Discus Partnership
Decision	Refuse Permission.
Appellant	Discus Partnership
Observers	Terenure Residents' Association James Moran, Caroline and Colin Graham Kevin Walsh Trona Stack Michael Cranston Kelly Ursula and Tony Duffy
Date of Site Inspection	1st April, 2021
Inspector	Jane Dennehy.

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1.0 Site Location and Description

1.1. The site has a stated area of 331 square metres, is rectangular in shape and is to the north side of No 36 Rathdown Park and to the south side of the rear gardens at Nos 38 and 40 Rathdown Park which face Rathdown Park to the north and are perpendicular to the application site frontage. No 36 Rathdown Park a semi-detached house facing south onto Rathdown Park. At the southern end of the *cul de sac* along with there are pairs of semi-detached located, is an entrance to Bushy Park. A two metres high boundary wall is located along the site frontage on the west side of Rathdown Park. An opening in the wall had been filled in and a letter box mounted on it with a sign for No 36A at the time of inspection. The ground level within the site which is under grass is relatively flat.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for construction of a two-storey detached house inclusive of attic level habitable accommodation beneath a half-hipped roof with three rooflights along with a new vehicular and pedestrian entrance off Rathdown Park. The total stated floor area is 184.1 square metres.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 23rd November, 2020, the Planning Authority decided to refuse permission based on the reason below.

“The site of the proposed development is located within a designated Residential Conservation Area to which the zoning objective Z2 of the Dublin City Development Plan 2016-2022 applies. Having regard to the restricted size of the site and to the design of the proposed dwelling, in particular its form and massing at roof level, it is considered that the proposed development would seriously injure the visual character and architectural

coherence of this residential conservation area and would be contrary to the said zoning objective set out in the development plan. The proposed development would, therefore, by itself and the precedent it would set for further similar development in the area, be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

- 3.2.1. The planning officer indicated a recommendation for refusal of permission based on the reasoning for the decision to refuse permission. He remarks in his report that he considers the current proposal has a greater adverse impact on the visual and architectural character of the area than the previous proposal in that there an increase in incongruity within the streetscape and the Residential Conservation Area. He also notes that the proposed vehicular entrance exceeds the maximum of 3.6 metres provided for in the CDP.
- 3.2.2. The reports of the Drainage Division and the Roads and Traffic Planning Division indicate no objection subject to conditions, the latter indicating a requirement for a reduction in width for the entrance to a maximum of 3.6 metres.

3.3. Third Party Observations

Seven submissions were lodged at application stage. These parties have also lodged observations on the appeal and they are outlined in detail in Section 6.3 below:

4.0 Planning History

There is no record of planning history for the application site as shown in the current application.

There is a record of four unsuccessful applications for development of a single house on the application site although it is described in the public and newspaper notices as at the rear of Nos 38 and 40 Rathdown Park for reasoning based on the ‘Z2’ (residential conservation area) zoning objective, on grounds of serious injury to the

visual amenities and architectural character and coherence of the area having regard to restricted size. The decisions to refuse permission were upheld following appeal. Register Reference Nos. 4878/08 (PL 232316; 2129/10 (PL 236567); 3950/17 (PL 300518); and 2809/19 (PL 305348) refer.

5.0 Policy Context

5.1. Development Plan

The operative Development plan is the Dublin City Development Plan, 2016-2022

The site location is within an area subject to the zoning objective Z2 "*Residential neighbourhoods (Conservation Areas)*", '*To protect and/or improve the amenities of residential conservation areas.* According to section, 14.8.2 the overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such area, both protected and nonprotected within Z2 zoned lands.

Policy CHC4 provides for the protection of the special interest and character of conservation areas and a requirement that new development contributes positively to and enhances the character and setting of the area.

Development Management Standards are set out in chapter 16: Residential Quality Standards in Section 16.10.3, Infill housing in section 16.10.10 and corner/side garden sites in Section 16.10.9.

Under Section 16.38.9 there is a presumption against removal of on street parking to facilitate private entrances to single dwellings in residential areas and Policy MT 14 seeks to minimise loss of on street parking unless required for public transport access to new development or public realm improvements.

5.2. Strategic Guidance.

Guidelines for Planning Authorities, Sustainable Residential Development in Urban Areas and accompanying *Best Practice Urban Design Manual*, DoEHLG, December 2008.

Quality Housing for Sustainable Communities – Best Practice Guidelines for delivering Homes Sustaining Communities, 2007

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from PCOT Architects on 14th December, 2020 attached to which there are three photographs. According to the appeal:

- Clear precedent can be taken from prior grants of permission on infill sites which are smaller than the application site and are within two hundred metres of its location. They are P. A. Reg. Refs:

1473/17 at 9 Rathdown Villas,

3804/18 at 36 (*sic*) Rathdown Park and

2057/17 at 35 Rathdown Park.

- The proposed dwelling is consistent with all regulatory guidelines and regulations and is in a cohesive and sympathetic design which complements the streetscape and architecture and, is similar in roof and overall form to most of the houses in Rathdown Park.
- The site is separated from the rear gardens of Nos 38 and 40 Rathdown Park by a two metres' high concrete block wall is as a separate Folio Registration. DN 221109F.

It is requested that the previous proposals for which permission was refused be reviewed in the context of the precedents which confirm that the principle of infill development has been established in the surrounding area, which is

zoned: "Z2" and that the decision to refuse permission on the current proposal be overturned.

6.2. **Planning Authority Response**

There is no submission on file from the planning authority.

6.3. **Observations**

Submissions were received from the following seven parties:

Terenure Residents' Association

James Moran, No 36 Rathdown Park.

Caroline and Colin Graham, No 42 Rathdown Park.

Kevin Walsh, NO 26 Rathdown Park

Trona Stack, No 10 Rathdown Park

Michael Cranston Kelly, No. 14 Rathdown Park

Ursula and Tony Duffy, 12 Rathdown Park

6.3.1. Several of the issues raised are similar and are outlined below followed by an outline of issues specific to individual parties.

- The current proposal is similar to the previous proposal for which permission has been refused, except for the attic floor, larger roof, of rear footprint and inclusion of a lift. The only difference is the inclusion of the walls which make no difference to it.
- The proposed development is not consistent with the Z2 zoning objective and would fail to integrate with and would negatively alter rather than enhance the character appearance and setting of the area. A two-storey house with attic conversion in the rear gardens of the existing semi-detached dwelling is at odds with the established pattern layout, density and character of development. It would detract from and negatively impact on it and would set

precedent for further similar development. The proposed new entrance onto the *cul de sac* would also seriously injure the character of the street.

- Residential Conservation areas must be protected from inappropriate and insensitive new development that fails to integrate with the existing character, layout, is excessive in site coverage, density or which affects residential amenities of existing properties through overbearing impact, visual obtrusiveness, overlooking and overshadowing.
- The proposed development would overlook adjoining properties and, the proposed rooflights / second and third floor windows would lead to overlooking and perceptions of overlooking.
- The application was not accompanied by consent from Mr Menton, the applicant for the previous unsuccessful proposals, who appears to be the registered owner of No 38 Rathdown Park and the site. The planning unit should be the entire property at No 38 and 40 Rathdown Park.
- The proposed dwelling is out of context with existing development due to narrow width, smaller footprint and a roof profile which is out of context with the streetscape character.
- There is no precedent for the proposed development in that it involves subdivision of two gardens of existing properties. It would set undesirable precedent if permission is granted. The three developments, At Nos 9 Rathdown Villas and Nos 35 and 56 Rathdown Park for which it is contended precedent can be taken are not comparable. These and these developments are acceptable and suitably integrated into the site, the location and with the existing pattern of development. The subject site, and *cul de sac* has been untouched and is an exemplar of the Arts and Crafts style. 1920s Stringer development.
- The creation of the access and the construction of the walls is unauthorised development.
- The site is at Nos 38 and 40 Rathdown park so it is incorrect to describe it as between Nos 36 and 38 raising issues as to validity of the application.

- A copy of the claimed portfolio should be provided to clarify the ownership and status of the applicant having regard to the references to Mr Menton of No 38 Rathdown Park and the applicant's name, Discuss Partnership, the only named owner being Mr. Menton.
- In the event that permission is granted stringent conditions should be attached to address the incongruous appearance of the proposed development and the boundary walling and should be completed with aping provide

The proposed development would overlook No 12 Rathdown Park. The property of Ursula and Tony Duffy, opposite the site, directly over the rear garden at No 42 Rathdown Park.

7.0 **Assessment**

7.1. The issues central to the determination of a decision are considered below under the following subheadings:

Site ownership and Notices.

Architectural Heritage Protection and Visual and Residential Amenities.

Precedent.

Vehicular entrance, access and parking.

Environmental Impact Assessment Screening.

Appropriate Assessment.

7.2. **Site ownership and Notices.**

7.2.1. It is noted that the planning officer was satisfied that the application should be validated having regard to the location details provided for the location and the applicant and prior enforcement history. It is considered that there is no basis whereby the Board should not proceed with an assessment and determination. As clarified under section 34. 13 of the Planning and Development Act, 2000 as amended, a grant of permission does not provide for entitlement to implement it. Any dispute over the matter can be resolved through the legal system.

7.3. Architectural Heritage Protection and Visual and Residential Amenities.

- 7.3.1. The subject site is located along a cul de sac off the central crossing, (with a small roundabout) of four residential roads on which there is a distinct symmetry and homogenous architectural characteristic of 1920s Arts and Crafts style semi-detached pairs of dwellings, well set apart on relatively wide and deep plots which have remained unaltered. Additional development therefore may be precluded by the requirement to provide for protection of these characteristics of special merits and interests as provided under CDP Policy objective CHC4 and the Z2 zoning objective. There is greater scope to accept new, additional or infill development towards the edge or adjacent the Z2 zoned area beyond the location in which the site is located.
- 7.3.2. The proposed subdivision of the rear private open space, (denoted by the construction of the boundary wall) results in severance of the deep plots and interference with the original layout with the insertion of the proposed dwelling, particularly with regard to its form and height on resultant narrow plot width altering the established pattern and layout. The subdivision causes diminution of the attainable residential amenities of the properties at Nos 38 and 40 Rathdown Park although a minimum depth of eleven metres has been achieved. It is likely that the dwelling would result in some overshadowing at the southern remaining private open space for these two dwellings but the extent to which this may occur is unclear in the absence of a shadow analysis.
- 7.3.3. As is clearly documented, the application site has a recent history of unsuccessful applications and subsequent appeals for prior proposals development. In the subject application the planning officer has noted in his report that compared to the previous application under P. A. Reg. Ref. 2809/19, the current application for include attic level accommodation with the total floor area being increased from 130 square metres to 184, square metres, an increase in plot ratio to 0.55 from 0.39, the ridge height is increased to 9.11 from 8.8 metres with a half hipped profile instead of the hipped profile for the previous proposal and a reduction in private open 83 square metres from 95 square metres.

7.3.4. It is agreed with the planning officer that the current proposal would have a greater adverse impact on the architectural character and established pattern and layout of development than the previous unsuccessful proposal. It is considered that the principle concern in this regard is the half hip roof profile, (providing for the attic level accommodation) which is bulky and disproportionate, dominant and obtrusive and incompatible with the full hipped, relatively shallow sloped profile of the original pairs of semi-detached houses. The proposed front elevation mimics the characteristics and features of the original dwellings and is arguably pastiche whereas the rear elevation has no visual connectivity with the original dwellings but this element would not be visible in streetscape views from the public realm.

7.4. Precedent Cases

7.4.1. It is fully agreed with the observer parties that three permitted developments cited in the appeal as relevant precedent for favourable consideration of the current proposal and it is noted that the case for precedent was not accepted by the inspector who considered the previous proposal under P. A. Reg. Ref 2809/19 (PL 305348)

7.4.2. The site at the end of a *cul de sac* at the side of No 9 Rathdown Villas if developed can be accommodated without adverse impact on the established architectural character, visual amenities and layout of the area and is not within the core area of the designated Z2 zoned area.

7.4.3. The site at No 56 Rathdown Park, (erroneously referred to as No 36 in the appeal) is outside the designated Z2 zoned area and, if developed can be accommodated without adverse impact on the would not affect the established architectural character visual amenities and layout of the area and, is not within the core area of the designated Z2 zoned area.

7.4.4. The site at No 35 Rathdown Park, although formed from exceptionally large rear garden lands addresses and fronts onto Templeogue Road and is clearly severed from and outside the core area of the designated Z2 zoned area.

7.5. Vehicular entrance, access and parking.

7.5.1. From a technical perspective, there is no objection to the opening of a new vehicular and a new pedestrian entrance having regard to attainable sightlines along the cul de sac. However, the width should be reduced to a width between 2.5 and 3.6 metres so that it accords with the CDP standards and guidance (Parking in Front

Gardens) as provide for individual dwellings with front curtilage parking. However, pay and display parallel parking is located along both sides of the *cul de sac*, off the end of which an entrance to Bushy Park although is no pay and display parking along the adjoining roads.

- 7.5.2. Development of the entrance would involve removal of on street parking which would be contrary to the policies under section 16.38. 9 and Policy MT 14 of the CDP and one tree at the kerbside on the site frontage. The observation in the Roads and Traffic Planning Division's report as to a willingness to accept the proposal in this instance due to the low number of residential parking permits issued in the area is of note, most of the existing properties having ample front curtilage parking. Therefore, in the event of favourable consideration of the proposal otherwise, it is considered that the proposed new entrance, subject to a reduction in width should be accepted.

7.6. Environmental Impact Assessment Screening.

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

7.7. Appropriate Assessment.

Having regard to the planning history for the site, the zoning objective, the location of the site is on serviced land, and, to the nature and scale of the proposed development, no appropriate assessment issues arise, the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld, and that permission be refused based on the reasons and considerations overleaf:

9.0 Reasons and Considerations

Having regard to the Dublin City Development Plan 2016-2022 according to which the site is within an area subject to the zoning objective a Z2 “*Residential neighbourhoods (Conservation Areas);- To protect and/or improve the amenities of residential conservation areas*’, it is considered that owing to the restricted size and configuration of the site and the mass and form of the dwelling, especially the proposed roof profile, the proposed development would fail to integrate into the established pattern, layout and the architectural character and coherence of existing development in the streetscape. The proposed development would, therefore, by itself and the precedent it would set for further similar development in the area would be contrary to a development objective of the development plan and the proper planning and sustainable development of the area.

Jane Dennehy
Senor Planning Inspector
19th April, 2021.