



An  
Bord  
Pleanála

## Inspector's Report ABP-309225-21

### Development

The partial yet extensive demolition of the two-storey structure commonly known as the “3 Garages” and the replacement of this to provide a change of use to a new two storey studio dwelling.

### Location

Rockfort Avenue, Dalkey, Co. Dublin.

### Planning Authority

Dún Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

D20A/0793

### Applicant(s)

Clare & David Rogers

### Type of Application

Permission

### Planning Authority Decision

Refusal

### Type of Appeal

First Party v. Decision

### Appellant(s)

Clare & David Rogers

### Observer(s)

Dermot & Deirdre Deverell

Peter & Nuala O'Neill

**Date of Site Inspection**

27<sup>th</sup> April, 2021

**Inspector**

Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located along a narrow residential cul-de-sac extending from Rockfort Avenue, approximately 400m southeast of Dalkey village centre and 300m east of the railway station, in an area characterised by a variety of contemporary and more traditionally designed houses of both single-storey and two-storey construction. The site itself has a stated site area of 100.2m<sup>2</sup>, is broadly triangular in shape, and is presently occupied by a dilapidated two-storey shed / garage structure with a mono-pitched roof construction, corrugated iron & rolling shutter entrance doors, and a dash finish. An open area surfaced in loose gravel and used for car parking is situated to the front of the existing building. The rear of the structure adjoins the front garden area of a single-storey dwelling house on the neighbouring lands to the immediate north / northwest whilst a two-bay, single-storey garage within that property adjoins the eastern / north-eastern boundary of the application site. The remainder of the site perimeter adjoins the public road.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the partial, yet extensive demolition of the existing two-storey structure commonly known as the “3 Garages” (floor area: 101.5m<sup>2</sup>) and its replacement to provide for a change of use to a new two-storey studio dwelling (floor area: 72.3m<sup>2</sup>).
- 2.2. The new construction will be of a contemporary design with 2 No. bedrooms on the ground floor and living / dining / kitchen space at first floor level. External finishes will include stonework on the ground floor to match the adjoining boundary walls whereas the primary finishes at first floor level will include a combination of concrete walling, steel plate, ‘opening corten shutters with window behind’, and a planted sedum roof.
- 2.3. Private open space (totalling 11.6m<sup>2</sup>) will be provided at ground level by way of 2 No. enclosed garden areas located at the eastern and western ends of the proposed dwelling with access through the bedroom accommodation. A single off-street car parking space will be provided to the front of the proposed dwelling with access via Rockfort Avenue. Water and sewerage services are available via connection to the public mains.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 16<sup>th</sup> December, 2020 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 2 No. reasons:

- The proposed development would not accord with the provisions of Section 8.2.8.4(i) of the Dun Laoghaire Rathdown County Development Plan 2016-2022 regarding Private Open Space for Houses. The proposed development would represent overdevelopment of the subject site, and if permitted, would set an undesirable precedent for similar development in the area, and would thus be contrary to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 and the proper planning and sustainable development of the area.
- The proposed dwelling, by reason of its proximity to site boundaries and overall design, including layout and treatment of first floor level fenestration, would adversely impact on the residential amenity of adjacent properties by reason of overbearing appearance and overlooking. The proposed development would depreciate the value of property in the vicinity, and would, therefore, be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports:*

States that the layout, siting, profile and floor area of the proposed development is unchanged from that previously approved under PA Ref. No. D10A/0130 / ABP Ref. No. PL06D.236824 (as extended by PA Ref. No. D10A/0130E) whilst the individual floor areas would accord with the provisions of the '*Quality Housing for Sustainable Communities – Best Practice Guidelines, 2007*' for a '*two-bedroom / 3 person house*' (as well as the requirements of the Development Plan). However, concerns arise as regards qualitative and quantitative deficiencies in the private open space provision and the potential for the proposal to have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking / loss of privacy,

overshadowing, and a visually overbearing appearance. The report subsequently states that the proposal would represent an overdevelopment of the site which would detract from existing amenities and would, if permitted, set an undesirable precedent for similar development in the area. It proceeds to recommend that permission be refused for the reasons stated.

### 3.2.2. *Other Technical Reports:*

*Municipal Services Dept., Drainage Planning:* Recommends that further information be sought with respect to the proposed surface water drainage arrangements, with particular reference to the sedum roof and rainwater harvesting system.

*Transportation Planning:* Recommends that further information be sought as regards the relocation etc. of an existing ESB / public lighting pole.

### 3.3. **Prescribed Bodies**

*Irish Water:* No objection, subject to conditions.

### 3.4. **Third Party Observations**

3.4.1. A total of 2 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The boundary of the site includes an area of public land (as evidenced by the presence of a streetlight) which is used for the turning of cars in the cul-de-sac.
- Permission has been sought to re-open a pre-existing entrance / gateway from the site into Trafalgar House.
- There is a lack of clarity within the submitted plans and particulars.
- Detrimental impact on the residential amenity of neighbouring property by reason of overlooking / loss of privacy, an overbearing appearance, the obstruction of views towards Dún Laoghaire Harbour & Dublin Bay, and general disturbance / disruption during the construction phase.
- The design and external finishes are out of character with the area.

- Clarification is required as regards ownership of the entirety of the site area, with specific reference to the triangular 'wedge' of land situated to the front of the proposed dwelling.
- The proposed development could impinge on any right of way over the triangular 'wedge' of land to the front of the proposed dwelling as well as the use of that area as a turning bay.
- In the absence of a bat survey, the presence of bats on site or within the structure proposed for demolition cannot be excluded.
- There is a lack of clarity as regards the proposed water services (i.e. water supply and foul & surface water drainage).
- Deficiencies in the display of the site notice(s).
- The description of the proposed development in the public notices is misleading and gives rise to confusion.
- The inadequacy of the private open space provision.

## 4.0 Planning History

### 4.1. *On Site:*

PA Ref. No. D20A/0651. Application by David Rogers for permission for minor yet material alterations and modifications to previously approved plans for the construction of a 2 storey house. Register Reference: D10A/0130E, PL.06D.236824. The alterations consist of 1. A sedum planted roof in lieu of zinc; 2. Corten steel external finish to kitchen at first floor level in lieu of Iroko timber sheeting; and 3. The elimination of the high level windows at ground floor level on the southside to eliminate privacy issues. The modifications are necessary to comply with Building Regulations, sustainability and to make for a more robust construction. This application was withdrawn.

PA Ref. No. D10A/0130 / ABP Ref. No. PL06D.236824. Was granted on appeal on 28<sup>th</sup> September, 2010 permitting David Rogers permission for the partial yet extensive demolition of the existing two-storey structure, commonly known as the '3 garages', and the replacement of this to provide a change of use to a two-storey studio dwelling in the same location.

- PA Ref. No. D10A/0130E. Was granted on 25<sup>th</sup> November, 2014 permitting David Rogers an 'Extension of Duration' of PA Ref. No. D10A/0130 / ABP Ref. No. PL06D.236824 until 27<sup>th</sup> September, 2020.

## 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*'.

- 5.2.2. *Other Relevant Sections / Policies:*

*Chapter 2: Sustainable Communities Strategy:*

*Section 2.1: Residential Development:*

*Policy RES3: Residential Density:*

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009)
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009)
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007)
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013)
- ‘National Climate Change Adaptation Framework
- Building Resilience to Climate Change’ (DoECLG, 2013).

*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: (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.

Section 8.2.3.5: *Residential Development – General Requirements*

Section 8.2.8.4: *Private Open Space - Quantity*

### **5.3. Natural Heritage Designations**

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

- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 220m east-northeast.
- The Dalkey Islands Special Protection Area (Site Code: 004172), approximately 280m east-northeast.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale of the development proposed, the site location in an established built-up area outside of any protected site, the nature of the receiving environment, 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**

- By way of background, the Board is referred to its determination of ABP Ref. No. PL06D.236824 (PA Ref. No. D10A/0130) wherein it previously granted permission for the replacement of the existing structure on site with a new two-storey studio dwelling. Furthermore, while that grant of permission was subsequently extended until late September, 2020, due to the impact of the

COVID-19 pandemic the applicant was unable to carry out such works as to prevent the permission from withering.

The applicant's intention on receipt of planning permission had been to sell his existing property and to downsize to the proposed development, however, he was not in a position to proceed before 2015 and an extension of duration was obtained. He was then in the process of preparing to commence works in 2020 when the permission expired and he had to reapply. Accordingly, it came as a shock that permission was refused by the Planning Authority.

- The layout, siting, profile and floor area of the proposed dwelling is unchanged from that permitted under ABP Ref. No. PL06D.236824 (PA Ref. No. D10A/0130) and, therefore, it is clear that the Planning Authority has not taken the Board's previous decision into consideration. On the basis that the proposal is unchanged, the Board should be consistent in its position and grant permission accordingly.
- The applicants are downsizing to the proposed dwelling and are comfortable with the quantum of private open space shown. Moreover, if the proposal were an apartment of a similar size, it would only require 6m<sup>2</sup> of private amenity space. The proposed development provides for double that figure in a form where the space integrates with the adjoining internal rooms thereby increasing its effectiveness.
- Given the site context, it is considered that the design of the proposed infill building is of such architectural quality and townscape value (as was seemingly accepted by the Board in its determination of ABP Ref. No. PL06D.236824) as to warrant a relaxation / reduction in the applicable development management standards.
- Having regard to the presence of intervening vegetation and the relationship of the proposed development with those properties to the east & northeast (i.e. 'Trafalgar House' and 'Dames Court'), the proposal will not give rise to unacceptable levels of overlooking.
- The assertion that the proposed development will be overbearing by reason of its overall height is an exaggeration and does stand up to scrutiny having

regard to the relative orientation of the proposed dwelling and the pattern of development in the immediate area.

- The reasons for the refusal were previously rebutted in the appeal of PA Ref. No. D10A/0130 and the subsequent approval of that development under ABP Ref. No. PL06D.236824.
- The proposed dwelling has been set back from the eastern (and western) site boundary thereby improving the amenity of adjacent residential property.
- The southern elevation of the proposed dwelling will face onto a forecourt and the public road with the front gardens of neighbouring housing beyond and, therefore, it is contended that existing residential amenity will not be affected by the proximity of boundaries.
- It is a feature of Dalkey that buildings are in close proximity to one another and much of the village does not comply with development plan standards as it was built in the 'pre-planning' era. Notwithstanding, Dalkey is a much sought-after area and has been complemented by the planning system through its designation as a 'Heritage Village'. The proximity to boundaries is a feature of the village.
- The suggestion that the proposal amounts to an overdevelopment of the site is rejected given that the proposed floor area, site coverage (45%) and plot ratio (1:1) are all less than the existing construction.
- The private open space provision should be assessed in the context of an 'infill' proposal rather than as a 'mews' development.
- Given the site context where buildings are located in close proximity to neighbouring properties, the proposal should be assessed by reference to the following: (a) the standard of residential amenity provided for future residents; (b) can the proposal be built in a way which is not injurious to adjoining residential amenities by way of overlooking, overshadowing, or a reduction in privacy; and (c) a high standard of design.
- The proposal provides for a high standard of living accommodation and is more sustainable than a 'greenfield' development given its proximity to the DART station.

- The proposed development will not give rise to any overlooking or overshadowing and provides for adequate car parking.
- If the commercial use of the site were to be reactivated it could adversely impact on the existing residential amenity of the area.
- The proposal accords with the applicable land use zoning objective.
- The contemporary design will make a positive contribution to the character of the area.
- The application site is located outside of the Architectural Conservation Area where new build should avoid pastiche development.
- The proposal will be a visual improvement over the existing situation on site.
- The proposal will not injure neighbouring residential amenities.
- The Board Direction issued in respect of ABP Ref. No. PL06D.236824 stated the following:

*‘ . . . the Board had regard to the nature and scale of existing building on the site, the pattern of development in the area, including the garage to the north-east and consent from the owners of same for window in north-eastern façade, and the separation distance to any residential property to the southwest and the high quality design of the living spaces and their orientation and the response to the site, the scale and nature of the proposed development and considered that, in this instance a relaxation of overall quantitative standards relating to open space would be justified and subject to conditions, the proposed development would not seriously injure the amenity of the area or of adjoining property or property in the vicinity and would result in an acceptable standard of amenity for future occupants’.*

Permission was subsequently granted on the basis of the following considerations:

*‘Having regard to the scale and nature of the existing structure on the site, the pattern of development in the area, the design, scale and nature of the proposed development, it is considered that, subject to the conditions as set out below, the proposed development would not seriously injure the amenity*

*of the area ,or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, and would therefore be in accordance with the proper planning and sustainable development of the area’.*

Given that the same circumstances apply, the Board should abide by its decision as issued for ABP Ref. No. PL06D.236824.

- The proposal will contribute to the area visually and will add to the inventory of buildings of architectural quality in the county.

## **6.2. Planning Authority Response**

- The Board is referred to the planning report prepared in respect of the application which has already comprehensively addressed the issues raised and justifies the decision to refuse permission.

## **6.3. Observations**

### **6.3.1. Dermot & Deirdre Deverell (Trafalgar House):**

- The boundary of the application site includes an area of public land (as evidenced by the presence of a streetlight alongside the existing garages) which is used for the turning of cars in the cul-de-sac.
- There were 2 No. pre-existing entrances at this location (i.e. the development site), one into ‘Dames Court’ and the other into Trafalgar House.
- Permission has been sought to re-open a pre-existing entrance / gateway into Trafalgar House with access across the triangular ‘wedge’ of lands to the front of the existing garages.
- Although permission was refused by the Planning Authority, it did not definitively address the observers’ concerns with regard to land ownership. Therefore, the Board is requested to address this issue by upholding the refusal of permission until such time as the applicant’s claim of land ownership is resolved.

6.3.2. *Peter & Nuala O'Neill (St. Marys):*

- The observers' wish to reaffirm the content of their original objection, with particular reference to a loss of residential amenity by reason of overlooking and overbearance.
- In granting permission for ABP Ref. No. PL06D.236824, it is contested that the Board did not fully consider the detrimental impact of the development on the residential amenity of the observers' dwelling house ('St. Marys') by reason of overlooking given the separation distances involved.
- Any reliance on ABP Ref. No. PL06D.236824 is flawed in light of the updated / differing policy provisions etc. of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 when compared to those of the now expired County Development Plan, 2004-2010 (with particular reference to Section 8.2.4.8(ii) of the current Plan which states that '*In all instances, private open space should not be unduly overshadowed and where there is the potential for the proposed development to overshadow or overlook existing / future development adjoining the site, minimum separation distances to boundaries should be increased*').
- Changes in national planning policy have sought to improve and promote the quality of residential amenity in existing and proposed developments. There have also been changes in the nature, pattern and extent of development at Rockfort Avenue since 2010 with an intensification of residential activity thereat. Consequently, the current development context is considerably different to that which was in place during the assessment of ABP Ref. No. PL06D.236824 and any suggestion of precedent is inappropriate.
- The decision-making process associated with the granting of PA Ref. No. D10A/0130 / ABP Ref. No. PL06D.236824 was flawed in that the applicant had then (as now) failed to provide any evidence of ownership of the site. Therefore, the application should be refused on the grounds of invalidity.
- There are continued concerns as regards the detrimental impact on the residential amenity of the observers' property by reason of overlooking, loss of privacy, and overbearance which can be summarised as follows:

- The active daytime first floor uses will result in frequent overlooking of St. Marys.
  - The inclusion of first floor windows and glazing along the entire length of the southern elevation facing towards the observers' dwelling house and its private amenity space.
  - The inadequacy of the separation distance between the proposed dwelling and the observers' property in contravention of the Development Plan.
  - The proposed height will obstruct views from St. Marys towards Dún Laoghaire Harbour and Dublin Bay.
  - The design and external finishes will result in a harsh, imposing and visually obtrusive development out of character with the surrounding area.
- The observers wish to stress that they fundamentally disagree with the opinion and decision of the Board in its determination of ABP Ref. No. PL06D.236824 that '*the proposed development would not seriously injure the amenity of the area, or of property in the vicinity*'. Instead, it is considered that the assessments previously undertaken by the case planners and Board Inspector more appropriately reflect the reality of the impact on the residential amenity of the observers' property.
  - The applicant has failed to demonstrate absolute ownership of the full extent of the site area. In this respect, there is a distinct possibility that the triangular area to the front of the property is either (1) in the historic ownership of the property / properties to the east or (2) in public ownership.

The suggestion that the area is question is in the ownership of those lands to the east derives from the presence of an historic entrance evident within the eastern / north-eastern site boundary (a second entrance is understood to have also existed to the south of this).

Regardless of whether the triangular portion of the site forms part of those lands to the east, it is considered to represent a right-of-way over which that property could be accessed and is also used as a turning area serving this

part of Rockfort Avenue. Therefore, the proposed development would materially infringe on a right of way and the prospect of the properties to the east reinstating their accesses.

A further basis to suggest that the triangular portion of the site is not owned by the applicant is the presence of a utility pole within same. The siting of this pole suggests that the area is a publicly accessible space, historically and recently traversed by various parties, as evidenced by the setback from the main thoroughfare.

- The fundamental requirement to provide evidence of landownership and the matter of invalidity is set out in the Planning and Development Regulations, 2001, as amended. Without proof of ownership or a letter(s) of consent from the owner(s), the planning application should have been invalidated.
- Issues of validity are within the scope of the Board as informed by the 2013 High Court Judgement in *McCallig v. An Bord Pleanala* wherein it was stated that the Board's inaction to consider and respond to a validation matter raised was '*. . . unfair and incorrect. The respondent had jurisdiction to consider this*'. Therefore, in its assessment of the subject application, the Board should consider the issue of land ownership and, without proof of same, refuse permission on the grounds of invalidity.
- Given the multiple entrances / doors to the existing property, the number of site notices erected fails to accord with the requirements of the Planning and Development Regulations, 2001, as amended.
- The description of the proposed development in the public notices as a '*two storey studio dwelling*' is misleading, creates confusion, and does not accord with the requirements of the Planning and Development Regulations, 2001, as amended.
- The private open space provision is deficient in both qualitative and quantitative terms by reference to the Development Plan.

#### 6.4. 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
- Procedural issues
- 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, the surrounding area is primarily residential with the prevailing pattern of development in the immediate vicinity of the application site characterised by a variety of contemporary and more traditional / vernacular dwelling houses. 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 national strategic outcomes set out in the National Planning Framework 'Project Ireland: 2040', including the securing of more compact and sustainable urban growth such as is 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'*.

7.2.2. 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 further 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. Indeed, the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' 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.

- 7.2.3. The site is also located within walking distance of DART and Dublin Bus services (with Dalkey Railway Station c. 300m to the west) and is proximate to the village centre with its assortment of local shops / retail services, places of worship, employment opportunities, and other amenities.
- 7.2.4. In addition to the foregoing, I am cognisant that the permission was previously granted on site under ABP Ref. No. PL06D.236824 (PA Ref. No. D10A/0130) for the construction of a directly comparable dwelling house and that the broader design of the subject development remains unchanged from that proposal, save for certain alterations to the elevational treatment / external finishes.
- 7.2.5. Therefore, having considered the available information, including the site context and land use zoning, the planning history of the site, and the design, scale and infill nature of the proposed dwelling, I am satisfied that the overall principle of the proposed 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 and the overall character of the wider area.

### 7.3. **Overall Design and Layout:**

- 7.3.1. The proposed development consists of the substantial demolition of the existing dilapidated, two-storey shed / garage on site and its replacement with a new contemporary, two-storey dwelling house. In this regard, the overall design, height,

form, profile and siting of the proposed construction is directly comparable to that previously approved on site in 2010 under ABP Ref. No. PL06D.236824, although I would draw the Board's attention to a number of alterations to the elevational treatment / external finishes, including the use of a planted sedum roof (as opposed to the original zinc roof finish), the omission of high-level ground floor windows from the southern / roadside elevation, and the combination of concrete walling, steel plate & '*opening corten shutters with window behind*' at first floor level.

- 7.3.2. With respect to the site context, it is clear that the confined nature of the site and its relationship with neighbouring residential properties gives rise to certain difficulties, whilst cognisance should also be taken of the close proximity of the Dalkey Architectural Conservation Area to the northwest, however, I would reiterate that the overall design of the subject proposal is broadly identical to that previously approved under ABP Ref. No. PL06D.236824. Moreover, I am of the opinion that the recent addition of the large, two-storey, contemporary dwelling (to the rear of No. 28 Sorrento Road) which fronts onto the cul-de-sac a short distance from the application site (as approved under ABP Ref. No. PL06D.244810 / PA Ref. No. D15A/0088) has served to expand the built form / building typologies prevalent in the immediate area since the approval of ABP Ref. No. PL06D.236824 and that the changing character along this section of Rockfort Avenue is further illustrated by the modern extension approved on appeal under ABP Ref. No. ABP-302751-18 at No. 5. Rockfort Cottages towards the end of the cul-de-sac.
- 7.3.3. Accordingly, in light of the foregoing, I am satisfied that the submitted proposal represents an appropriate and sympathetic design response to the site context which suitably reflects the character and evolving pattern of development in the area.
- 7.3.4. In specific reference to the adequacy of the private open space provision, it should be noted that the proposal to provide 2 No. enclosed gardens at the western and eastern ends of the dwelling house (totalling 11.6m<sup>2</sup> in area) with access through adjacent bedroom accommodation is identical to that previously approved under ABP Ref. No. PL06D.236824. In this regard, I would refer the Board to Section 8.2.8.4(i): '*Private Open Space for Houses*' of the Development Plan which states that a (minimum) of 48m<sup>2</sup> of private open space for a two-bedroom house may be acceptable in cases where it can be demonstrated that good quality usable open space will be provided, although this is qualified by the caveat that '*in instances*

*where an innovative design response is provided on site, a relaxation in the quantum of private open space may be considered on a case-by-case basis’.*

- 7.3.5. Clearly, the subject site is challenging in design terms, and although I would share the reservations of the previous reporting inspector in their assessment of ABP Ref. No. PL06D.236824 that the open space proposed is deficient in both qualitative and quantitative terms given its small size and limited amenity value, it is of note that the Board was satisfied in its determination of ABP Ref. No. PL06D.236824 that the development response to the specifics of the site context, along with the high-quality design and orientation of the living spaces proposed, would justify a relaxation in the overall quantitative standards relating to open space (by reference to Section 16.3.2(iv): *‘Private Open Space – Houses’* of the County Development Plan, 2010-2016 which stated that in exceptionally well designed schemes providing an otherwise very high quality living environment the private open space standards for housing could be relaxed) and ensure an acceptable standard of amenity for future occupants of the proposed dwelling.
- 7.3.6. Accordingly, having regard to the planning history of the site, and given that the specifics of the proposal, including the overall design, size & configuration of the dwelling house and the associated open space provision, are broadly identical to those previously approved on site, and as Section 8.2.8.4(i) of the Development Plan allows for a relaxation in the quantum of private open space where an innovative design response is provided on site (in a manner similar to Section 16.3.2(iv): *‘Private Open Space – Houses’* of the previous development plan which informed the assessment of ABP Ref. No. PL06D.236824), in my opinion, it is reasonable to conclude that the private open space provision in this instance is acceptable by reference to the design merits of the proposal and the relaxation in the applicable standard afforded by the Development Plan.

#### **7.4. Impact on Residential Amenity:**

- 7.4.1. Having reviewed the available information, in my opinion, the principal issue necessitating consideration in the assessment of the subject appeal is whether the proposed development will have a detrimental impact on the established residential amenities of neighbouring properties by reason of overlooking with an associated loss of privacy, however, in the interest of completeness, I propose to briefly

consider the concerns raised by the Planning Authority and third party observers as regards the potential for adverse impacts attributable to overshadowing, an excessively overbearing appearance, and a loss of views.

7.4.2. In relation to the issue of overshadowing, I would advise the Board that the proposed dwelling house will be sited along the northern side of the cul-de-sac and, therefore, it will not give rise to any significant overshadowing of those properties to the south of same. Furthermore, although the proposed construction will adjoin the front garden of an adjacent dwelling house and a single-storey garage within the confines of that property to the northwest and northeast respectively, in my opinion, no significant loss of amenity arises given the nature of the areas affected, the comparative height and reduced footprint of the proposed works relative to the existing structure for demolition, and the separation distance between that dwelling house and the proposed development. I am also cognisant that the overall design, scale, height and form of the proposal remains unchanged from that granted under ABP Ref. No. PL06D.236824 and that there has been no notable change to the site context to the immediate north of the application site.

7.4.3. With regard to the suggestion that the proposed dwelling will have an unacceptably overbearing or negative visual impact on neighbouring housing, in the first instance, I would consider that the design of the proposed dwelling represents a visual improvement over the existing structure on site. Secondly, in light of the separation distances from nearby residences, the presence of an intervening public road, and the planning history of both the application site and the surrounding area, I am unconvinced that the proposal could be construed as having an overbearing impact on the amenity of nearby properties. For comparison purposes, I note that the report of the case planner raised concerns as regards the limited separation between the proposed two-storey (6.2m high) construction and those dwelling houses to the south of Rockfort Avenue, however, the grant of permission issued for PA Ref. No. D15A/0088 / ABP Ref. No. PL06D.244810 to the rear of No. 28 Sorrento Road approved the construction of a dwelling house along Rockfort Avenue with a two-storey construction extending to almost 5m in height immediately alongside the boundary shared with 'Siena' to the east. Therefore, having considered the proposed building height, the presence of an intervening public road, and as the separation distance between the proposal and surrounding residences is considerably greater

than that approved under ABP Ref. No. PL06D.244810, I am not of the view that the proposed development could reasonably be considered to have an undue adverse impact on existing residential amenity by reason of an overbearing appearance.

- 7.4.4. In addition to the foregoing, whilst I would acknowledge that there may be some concerns that the proposed development will have a detrimental impact on the residential amenity of nearby dwelling houses by reason of the obstruction of any views towards Dún Laoghaire Harbour and Dublin Bay that may presently be available from those properties, 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 a 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 of the surrounding area.
- 7.4.5. With respect to the issue of overlooking, at the outset I would advise the Board that no significant changes are proposed to the fenestration arrangements within the northern and western elevations of the dwelling house when compared to the development previously approved on site under ABP Ref. No. PL06D.236824. Furthermore, given the absence of any windows within the eastern gable elevation of the dwelling house constructed pursuant to PA Ref. No. D15A/0088 / ABP Ref. No. PL06D.244810, no additional overlooking concerns arise as regards properties to the west.
- 7.4.6. However, from a detailed examination of the submitted drawings, it is apparent that the elevational treatment of the proposed dwelling to the south and east differs somewhat from that approved under ABP Ref. No. PL06D.236824. More specifically, within each of these elevations it is proposed to replace the original '*wood plank shutters*' serving the combined kitchen / dining / sitting area with '*opening corten shutters with window behind*' and thus concerns arise in relation to the potential for overlooking of those properties to the east and south. Regrettably, no further details have been provided of the precise nature or opening mechanism of the proposed '*corten shutters*' or the window type, although it should be noted that the originally permitted proposal would appear to have included some form of shuttering

arrangement on the elevations in question (with the first-floor plan approved under ABP Ref. No. PL06D.236824 clearly indicating an elevational treatment serving the sitting area which differs from the remainder of the solid wall construction proposed along the south-facing elevation). It is possible that the proposed shutters will be top-hung or otherwise limited in their opening to allow for natural light / ventilation whilst avoiding any direct overlooking of neighbouring properties and I would suggest that this matter could be satisfactorily addressed by way of condition so as to preserve the residential amenity of neighbouring housing.

## **7.5. Procedural Issues:**

### **7.5.1. Land Ownership:**

Concerns have been raised that the applicant may not retain ownership of the triangular 'wedge' of land to the front of the existing structure on site and that in failing to provide any evidence in this regard he has not demonstrated a sufficient interest to progress the development or to lodge the application with the effect the planning application should have been invalidated. In support of this assertion, reference has been made to a blocked entranceway through the area in question into the grounds of Trafalgar House to the east (and the prospect of reopening this access) thereby suggesting it is the ownership of that property owner (who may alternatively retain a right of way over the lands in question), as well as the presence of a streetlight / public utility pole which may indicate that the lands are in public ownership (noting that they are also used as a turning area for the cul-de-sac).

7.5.2. The applicant has indicated in the submitted documentation (i.e. in response to Question No. 7 of the application form) that he is the sole owner of the site whilst his historical use and ownership of the property was also referenced in ABP Ref. No. PI06.236824. While I would acknowledge the points made by observers to the appeal, I do not propose to engage in unfounded speculation as to the issue of landownership. Neither of the observers has provided any clear evidence which would contradict the applicant's claim of ownership and it would not be normal practice to require the submission of land registry / ownership details for the purposes of planning application validation.

7.5.3. The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution

in the Courts. In this regard, 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. It is not the function of the Board to adjudicate on property disputes and should a party consider that any grant of permission cannot be implemented because of landownership or title issues, then Section 34(13) of Act is relevant.

**7.5.4. The Adequacy of the Public Notices:**

A third-party observer has suggested that the number of site notices erected fails to accord with the requirements of the Planning and Development Regulations, 2001, as amended, as separate notices should have been erected at each of the individual entrances / doorways to the existing structure on site.

- 7.5.5. Article 19(1)(c) of the Regulations requires a site notice to be *'securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from public roads, on or near all such entrances, or on any other part of the land or structure adjoining a public road, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time'*. In this regard, I am satisfied that the erection of the site notice at the location shown on the site plan (i.e. on southern elevation of the existing structure at its closest point to the public road) would have accorded with the requirements of the Regulations. In my opinion, the site notice was positioned at or near the main entrance to the application site and would have been easily visible and legible by persons using the public road. Furthermore, given that the multiple individual doorways to the existing structure do not adjoin the public road and are set back beyond the site boundary, I would have concerns that any notices erected thereon may not be legible from the public road (and would necessitate entry onto the site in order to allow for a reading of same) and thus would not accord with the Regulations.

- 7.5.6. It is my opinion that a reasonable interpretation of the practical intent and statutory requirements of the Regulations is that the position of the single site notice as shown on the site plan would be sufficient to inform members of the public of the lodgement



of the application and thus would comply with Article 19(1)(c). The erection of multiple individual notices within metres of each other as has been suggested by the observer would serve no meaningful additional purpose in terms of public notification.

- 7.5.7. In relation to the suggestion that the description of the proposed development as set out in the public notices is misleading on the basis that it refers to a *'two-storey studio dwelling'*, it is my opinion that procedural matters, such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application. Notwithstanding the foregoing, I would advise the Board that Article 18(1)(d) of the Planning and Development Regulations, 2001, as amended, requires a newspaper notice to provide *'a brief description of the nature and extent of the development'* and in this regard I am satisfied that the description of the subject proposal provides for a sufficient and reasonable explanation of the nature of the proposed works for the benefit / notification of interested third parties. I do not propose to comment further on this matter other than to state that the right of third parties to make a submission or to subsequently lodge an appeal would not appear to have been prejudiced in this instance.

**7.6. Appropriate Assessment:**

- 7.6.1. 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 overturned 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 scale and nature of the existing structure on 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 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, 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 first floor windows on the eastern elevation shall be glazed with obscure glass.

**Reason:** To prevent overlooking of adjoining residential property.

3. Details of the design, nature and mechanics of the 'opening corten shutters with window behind' at first floor level within the eastern and southern

elevations of the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual and residential amenity; and to prevent overlooking of neighbouring residential property

4. 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.

5. 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.

6. 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.

7. 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.

8. Details of the storage of waste shall be submitted to the planning authority prior to commencement of development.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

9. Site development and building works shall be carried out only between the hours of 0800 and 1800 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.

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Robert Speer  
Planning Inspector

30<sup>th</sup> April, 2021