



An
Bord
Pleanála

Inspector's Report

ABP-309263-21

Development	Construction of 2 dwellings
Location	Site to the rear of 23 Oaklands Drive, Rathgar, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3631/20
Applicant(s)	Prime GP1 Ltd
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	Third Party
Appellant(s)	Prime GP1 Ltd
Observer(s)	Ruth Kelly Richview Management DAC HSE Helen & Niall Tempamy
Date of Site Inspection	20 th of April 2021
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The appeal site is c. 4 km to the south of Dublin City centre on a parcel of land to the rear of 21 and 23 Oaklands Drive, Rathgar, Dublin 6. The site has a stated area of c. 350 sq.m.
- 1.2. The southern boundary includes a low level stone wall with agricultural style entrance gate. This boundary site fronts an internal private road along the northern boundary of St Luke's Hospital. There is no footpath along this road. The north, west and eastern boundaries of the site bounds the rear garden areas of residential properties at 19, 21, 23 and 31 Oaklands Drive and 30 Oaklands Crescent which appears to be known as Woodbine Cottage. This property does not appear to be in residential use with evidence of an office style use evident.
- 1.3. There is a solid block high wall (c. 2m) along the eastern boundary of the site which drops in height towards the rear. The boundary wall to the rear appears to be decorative block and low level. The north eastern and east boundary is made up of a wooden fence c. 2m in height. The site is in no obvious use, is overgrown in places and there are old blocks and wooden pallets stored on site.
- 1.4. There appears to be two possible routes to access the site. To the west of the site access can be achieved through the St. Luke's Hospital entrance gates and along the internal private road. The site can also be accessed to the east from Oaklands Crescent which runs perpendicular and parallel to the private internal access road. It is noted that c.70m of the road along Oaklands Crescent from the grounds of St Luke's Hospital does not benefit from a footpath. On entering Oaklands Crescent a sign was observed suggesting this was a private road.
- 1.5. There are double yellow lines directly to the front of the application site with private car parking associated with St. Luke's Hospital on the opposite side of this road.

2.0 Proposed Development

- 2.1. The proposed development comprises-
 - 2 no. two storey 3-bedroom houses of c.144sqm GFA (House A) and c.152sqm GFA (House B),

- 1st floor screened private balconies.
- The application will provide for no car parking

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission on the 15/12/20 for two reasons as follows-

1. *It has not been demonstrated that adequate arrangements for construction, refuse collection and access for emergency vehicles and deliveries would be provided, consequently the proposed development would endanger public safety by reason of traffic hazard and would therefore be contrary to the policies of the City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.*
2. *Having regard to the size and type of dwellings proposed and to the location of the site in an area surrounded by uncontrolled on-street parking, it is considered that the proposed development would result in overspill parking and congestion of surrounding streets and endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and would set an undesirable precedent. The proposed development would therefore be contrary to the policies of the City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.*

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (15/12/20) reflects the decision of the Planning Authority. The following is noted from the report:

- Having regard to the Z1 zoning and Development Plan policies which seek to promote residential development at sustainable urban densities and the

development of vacant or underutilised sites, it is considered that the principle of residential development on this site is acceptable.

- it is considered that the design of the proposed dwellings would be acceptable in terms of design and visual impact.
- The provision of private amenity space in the form of side rather than rear gardens is considered acceptable, particularly considering the constraints of the site and need for housing, and overall the provision of private amenity space is considered to be in accordance with Development Plan standards.
- With regard to aspect and outlook concern is raised in respect of Bedroom 3 of each dwelling which would have outlook only to the 1st floor balcony, the balustrades of which would be 2m distance from the windows.
- Concern is raised that balustrades would not adequately mitigate overlooking of neighbouring properties, and would need to have a higher degree of solidity.
- Boundary treatments to the east and west are not clear, but if the application were otherwise acceptable, details could be required by condition.
- The high level window serving the living room of Unit B is considered acceptable. However the high level window serving the living room of Unit B and located 4.55m from the rear boundary of No. 31 Oaklands Drive, being 1.5m above floor level, would give rise to overlooking..
- The timber screens to the balconies would have larger gaps above 1.2m in height and, given their proximity to neighbouring boundaries to the north and east/west, would result in an unacceptable degree of overlooking of those properties.
- The parts of the corner windows facing east/west at 1st floor level serving the living rooms of the dwellings would result in unacceptable overlooking of neighbouring properties and should be omitted.
- Given the scale of the proposed dwellings and separation distance to neighbouring dwellings, it is not considered that overbearance impacts would occur.

- The proposed dwellings would be constructed on the northern boundary and some overshadowing of the rear gardens of Nos. 21 & 23 Oaklands Drive would occur, given the reduced massing at 1st floor level due to the presence of the balconies, it is not considered that this would exceed BRE standards.
- Overall, it is considered that the proposed development would have an unacceptable impact on neighbouring amenity in terms of overlooking, though this could be addressed through omission of the balconies and omission/reconfiguration of Bedroom 3 in each dwelling.
- Pedestrian access is proposed from a private lane which runs through the grounds of St. Luke's Hospital. The applicant has demonstrated that they have established pedestrian access from this laneway legally.
- Vehicular access to facilitate construction, servicing, delivery, emergency and drop-off vehicles has not been demonstrated.
- The third party which owns this lane has submitted a third party submission stating that they would not be willing to give permission for vehicular access along the lane to the proposed development.
- Zero parking is proposed for this development. The site is located in Area 3 as outlined in Map J, Strategic Transport and Parking Areas. The parking standards for this area are a maximum of 1.5 spaces per dwelling.
- Given the uncontrolled parking in the area and the existing public transport service which would be mainly reliant on bus services, Transport Planning Division have advised that a minimum of 1 car parking space per dwelling would be desirable given the proposed dwelling type.
- It is considered inessential that any development of the site should not give rise to on-street parking on the laneway or on the adjoining residential streets and therefore, for the nature of development proposed, adequate on site parking is required.
- No Construction Management Plan has been submitted with the application.

- The third party which owns this lane has submitted a third party submission stating that they would not be willing to give permission for vehicular access along the lane to the proposed development.
- Bin storage would be provided within the curtilage of each dwelling. Again, the third party owner of the lane has stated that they would not be willing to give permission for vehicular access along the lane.
- Given the constraints on vehicular access and therefore parking, the proposed development would be unacceptable with regard to transport.

4.2. Other Technical Reports

- Drainage Division- No objection subject to condition
- Roads & Traffic Planning Division-
 - Refusal Recommended as detailed in section 4.1

4.3. Prescribed Bodies

- Irish Water- Further Information required in relation to the presence of a 225mm combined sewer located within the site boundary. The applicant should submit a confirmation of feasibility in relation to appropriate protection of Irish Water assets is provided during and post development.

4.4. Third Party Observations

Twelve third party submissions were received generally in opposition to the development. These are on file. The main issues raised are those as set out in the observations in section 7.4 below but can also be generally summarised as follows-

- Traffic, construction and access related concerns
- Legal rights to access the site and use road to front of site.
- Residential Amenity concerns

5.0 Planning History

This Site-

- 2905/03- 3 No. 1 bed apartments, Refused on the 14/08/03 for two reasons which can be summarised as-
 - premature pending the satisfactory demonstration of sufficient legal title to permit vehicular access the site of the proposed development.
 - The proposal by reason of its height and proximity to adjacent gardens, will result in an infringement of amenities of property to the north of the site, contrary to the Z1 zoning objective.
- 2145/02, PL29S.201222- 4 no. 1-bed apartments, Refused 16/04/03 for one reason-

‘Having regard to:-

(a) the small size of the site and its location relative to existing residential properties in the immediate vicinity,

(b) the design of the proposed development and the distance of external elevations from adjoining residential properties,

(c) the provisions of the current Dublin City Development Plan, and

(d) the backland location of the site and the absence of any suitable location for on-street parking in the vicinity,

it is considered that the proposed development would -

(i) be of excessive density, resulting in a serious deficiency in the provision of private open space for the residents of the apartments and, consequently, in a substandard form of development,

(ii) seriously injure the residential amenities of property in the vicinity by reason of overlooking and overshadowing, and

(iii) be deficient in terms of the provision of off-street car parking, resulting in onstreet car parking in adjoining residential streets and in the grounds of the adjacent hospital, which on-street parking would

result in serious traffic congestion and potential conflict with hospital traffic on the laneway off which access is proposed.

The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.'

Nearby Relevant Site (c. 80 metres to west)-

- 2010/19, ABP-305148-19, 14 no. new dwellings comprising, Refused on the 17/12/19 for two reasons-
 1. *On the basis of the information submitted with the planning application and appeal, it was noted that the proposed development would be reliant on works to provide access arrangements which are outside of the appeal site (red line) boundary. The Board considered that the proposed development would endanger public safety by reason of traffic hazard as it has not been demonstrated that safe access to the proposed development would be provided.*
 2. *Having regard to the location of the site within easy walking distance of high-quality transport in an existing fully serviced area, the Board considered that the proposed development with a density of 22 units per hectare and the preponderance of four-bed house types, would not provide for an acceptable efficiency in serviceable land usage and that therefore the density proposed would be contrary to the provisions of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued by the Department of Environment, Heritage and Local Government in May 2009, as they relate to cities and towns. The proposed development would, therefore, be contrary to these Ministerial Guidelines and contrary to the proper planning and sustainable development of the area*

6.0 Policy Context

6.1. Ministerial Guidelines

The following section 28 guideline are considered relevant-

6.1.1. Sustainable Residential Development in Urban Areas (2009)-

- Chapter 5 section 5.9 (d) Inner suburban / infill (i) Infill residential development-

“Potential sites may range from small gap infill, unused or derelict land and backland areas.....”

6.1.2. Development Management Guidelines for Planning Authorities June, 2007

- 5.13 Issues relating to title to land

‘The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In

other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.

6.2. Dublin City Development Plan 2016-2022

6.2.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective *'to protect, provide and improve residential amenities'*.

6.2.2. Relevant planning policies and objectives for residential development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan. The following sections are of particular relevance-

- 16.10.2 Residential Quality Standards – Houses
- 16.10.8 Backland Development
- 16.10.10 Infill Housing- *'the planning authority will allow for the development of infill housing on appropriate sites. In general, infill housing should comply with all relevant development plan standards for residential development; however, in certain limited circumstances, the planning authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land in the inner and outer city is developed'*
- 16.38 Car Parking Standards- Area 3 Max 1.5 per dwelling

6.2.3. Other relevant Policies include-

- *MT17: To provide for sustainable levels of car parking and car storage in residential schemes in accordance with development plan car parking standards (section 16.38) so as to promote city centre living and reduce the requirement for car parking.*

6.3. Natural Heritage Designations

- The site is located c. 4.3 km west of the South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024).

- The site is located c. 4.3 m west of the South Dublin Bay pNHA and c. 2km south of the Grand Canal pNHA.

6.4. EIA Screening

Having regard to the limited nature and scale of the proposed development it is considered that 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.

7.0 The Appeal

7.1. Grounds of Appeal

One first party appeal was received from Prime GP1 Ltd. The grounds of the appeal can be summarised as follows-

Response to Refusal Reason No. 1

- Adequate arrangements for construction, refuse collection and access for emergency vehicles and deliveries will be provided, and no endangerment of public safety by reason of traffic hazard will occur
- An auto-tracking drawing prepared by Corrigan Hodnett Consulting Engineers is submitted. The drawing demonstrates how a fire tender truck can safely access the subject site via Oaklands Crescent to the East which is the proposed emergency access route.
- An alternative emergency route via St. Luke's Hospital to the west has also been shown although it is the applicant's intention to access the site via the Oaklands Crescent route.
- This demonstrates an ambulance can safely access the site given it is a smaller vehicle.
- Regarding refuse, the proposed solution remains as per the application documentation. An area for bin storage is provided within the curtilage of the dwellings. The bins would then be wheeled out by the residents of the

properties along the adjacent roadway adjoining St. Luke's Hospital for collection on Oaklands Crescent where there are existing waste collection areas evident.

- Delivery vehicles would be required to safely park their vehicles for a short period at the southern end of Oaklands Crescent and proceed on foot with the deliveries over the adjacent roadway adjoining St. Luke's Hospital.
- Regarding the construction of the proposed development, it is proposed to limit the number of vehicles passing over the adjacent roadway adjoining St. Luke's Hospital as much as practically possible.
- Given the modest scale of development, no large machinery or vehicles are required to access the site.
- Materials delivery will be made via Oaklands Crescent where possible, with deliveries proceeding on foot or being wheeled from the southern end of Oaklands Crescent via the adjacent roadway adjoining St. Luke's Hospital to the site.
- Where unavoidable, the relatively modest construction traffic will access the site via Oaklands Crescent and the adjacent roadway and park within the site.
- No construction traffic will park on the adjacent roadway adjoining St. Luke's Hospital to ensure there is no disruption to the Hospital's operations. Construction will be coordinated with representatives of St. Luke's Hospital to ensure no impact results to hospital operations is caused.
- The applicants invite a condition requiring the submission and agreement of a Construction Management Plan with the Planning Authority.
- It is not clear what policies the Local Authority are referring to in the refusal reason. It is submitted that no such contravention of Development Plan policies results from the proposed development.

Response to Refusal Reason No. 2

- It is not for this application to solve issues of 'uncontrolled on-street parking' in the surrounding area.

- DCC or the relevant estate management company should ensure a parking permit and accompanying pay-and-display system is in place to manage this issue.
- HSE Estates will be required to ensure vehicular obstructions at the Hospital are prevented including along the internal roadway adjacent the subject appeal property.
- No overspill parking or congestion of surrounding streets will occur and public safety will not be endangered by reason of traffic hazard or obstruction of road users.
- Given the constrained nature of the site a decision was taken to omit car parking spaces. Another reason for omitting car parking spaces was to ensure no long-term traffic would pass over the adjacent roadway so as to minimise interference with St. Luke's Hospital operations.
- It is contradictory to say the provision of no car parking will cause traffic hazard where the opposite is true. The omission of car parking spaces was justified in national planning policy and locational terms as set out in the cover letter and CHC Engineers Report submitted with the planning application.
- It is submitted that the provision of zero parking represents 'sustainable levels of parking' as per Development Plan Policy MT17.
- Section 16.10.10 of the Development Plan 'Infill Housing' states the planning authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land in the inner and outer city is developed. Car parking standards are maximum rather than minimum standard and zero provision is in line with this.
- When it comes to selling the proposed two houses, it will be made clear to the purchasers that no car parking spaces are provided with the houses. Alternative transport modes are available as outlined in the planning application cover letter. Public transport and active modes of transport will be utilised by the end users.

- No overspill parking or congestion of surrounding streets will occur as a result of the proposed development and public safety will not be endangered by reason of traffic hazard or obstruction of road users.

Applicant position on legal rights over access.

- The applicant has the necessary rights for construction, emergency and delivery vehicles to pass and repass over the adjacent roadway adjoining St. Luke's Hospital.
- A letter is enclosed with the planning application from legal advisors representing Prime GP1 Limited. The letter outlines the rights Prime GP1 Limited have over the adjoining St. Luke's Hospital road and nearby Oaklands Crescent.
- The property has the benefit of full rights of way and access over the roads and paths leading to and from it for all purposes in connection with the full use and enjoyment of the property. These rights have been exercised as of right, openly and without objection or interruption for upwards of 57 years.
- The rights enjoyed are pedestrian and vehicular. Photographs submitted show the vehicular gates on the property which directly abut the roadway adjoining St. Luke's Hospital.
- It is clear from these photographs that the gates have been used and in place for a considerable period of time.
- The rights benefitting the appeal site are for all purposes associated with the use and enjoyment of the property and this would include day to day rights such as rights to dispose of refuse and to receive deliveries together with rights of escape in emergency, rights for emergency vehicles to access the property and rights to maintain, upgrade and replace the property.
- As per the Dublin City Planners Report position, it is not for the Planning Authority to assess such matters having regard to Section 34(13) of the Planning and Development Act 2001 (as amended).
- The issues raised regarding the extent of rights and existing easements to the site are considered legal and civil issues.

7.2. Planning Authority Response

- None received.

7.3. Observations

Four observations were received from-

- Ruth Kelly
- Marston Planning Consultancy on behalf of Richview Management DAC
- Thornton O'Connor Town Planning on behalf of the HSE
- Helen & Niall Tempany

The issues raised by observers include many of those raised in third party submissions to DCC. Relevant planning considerations can be summarised as follows-

- The HSE owns the laneway directly adjoining the site to the south. The HSE have no objection to residential units on the site but have concerns relating to access to the site over HSE lands. It is the HSE position that there is no legal right for the applicants to pass vehicular traffic over the laneway. The applicants only have a right of pedestrian access over the laneway.
- Proposals for waste collection and deliveries by foot from Oaklands Crescent to the site contradict the applicants contention that they have vehicular rights on the laneway.
- As there is no right of vehicular passage over the laneway it would appear impossible to construct the development.
- Given the nature of this critical health facility and the letter from the HSE's solicitor it is considered that Section 34 (13) cannot be relied upon to justify granting permission.
- A (blurred screenshot/snip) copy of the statutory declaration with black and white screenshot/snip map are enclosed and detailed from the owner of No. 23 Oaklands Drive from 1963 and dated 2002. This declaration details a right to pass the road by 'foot' only.

- The applicants have not demonstrated any vehicle access rights via Oaklands Crescent and the St Luke's Hospital private road.
- Deeds of easement to the site dated 28/08/2002 only grants rights relating to Services and Utilities through 23 Oaklands Drive.
- There are concerns over how the applicants can connect to services without interfering with 23 Oaklands Drive which would be in breach of the Deed of Easement.
- By virtue of the size, height and scale the proposal would not integrate with the surrounding area or adjoining properties. The proposal amounts to clear overdevelopment of the site.
- Impacts on visual and residential amenity including
 - windows and balconies leading to overlooking impacting on privacy and security.
 - The proximity of the development to boundaries will be overbearing.
 - The height will overshadow gardens.
- Richview Management DAC is the management company representing the residents and owners of Oaklands Crescent and are responsible for the management of the communal areas and private roadway.
- An Bord Pleanála should consider the planning history of the site as the key issues relating to residential amenity and car parking remain relevant.
- The applicants have not submitted a Construction Management Plan or a Traffic Impact Assessment.
- The appeal is devoid of details relating to vehicular movements to and from the site houses during construction and operational phase.
- The operational constraints of the site and proposed development will increase pressure on adjoining streets to accommodate and facilitate construction traffic and day to day traffic. This with increased traffic will lead to additional traffic volumes and increase traffic hazards endangering public safety.

- The appeal document includes generalised statements relating to construction traffic.
- The roads surrounding the site are privately owned and over spill car parking will not be allowed. The lack of car parking proposals put forward will put pressure on existing on street car parking in surrounding streets.
- Claims that adequate public transport is available is misleading and contradictory to the applicants argument that the dwellings are for senior living. The application fails to achieve any quantum of parking.

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file, including the submission received in relation to the appeal and the third party observations. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the relevant planning issues for consideration in this appeal are as follows-

- Zoning and Principle of Development
- Access to the Site
- Car Parking
- Visual and Residential Amenity
- Water Services
- Appropriate Assessment

8.2. Zoning and Principle of Development

8.2.1. The site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities'. The proposed use of the site for two houses is acceptable in this zoning.

- 8.2.2. In accordance with section 5.9 (d) (i) of the Sustainable Residential Development in Urban Areas (2009), I consider the site can be best described as a small gap infill, unused derelict land and a backland area. Infill development in this context is appropriate.

8.3. Access to the Site

- 8.3.1. The matter of access to the site appears to be the most contentious issue with this appeal. The application site is landlocked on all boundaries by private lands to which it appears the applicant has no control. The applicant, however, asserts they have the rights to submit the application, construct the development and for its successors to pass and repass over the road in order to access the site.
- 8.3.2. The HSE who are observers to the appeal and who own the road to the front of the site contest this and argue that such rights do not provide for vehicular access along the road.
- 8.3.3. Richview Management DAC are also observers to the appeal and are the management company representing the residents and owners of Oaklands Crescent. They are responsible for the management of the communal areas and the private roadway. They also contest the applicants do not have a legal vehicular right of way over Oaklands Crescent for the development and allege potential overspill of car parking from the proposal.
- 8.3.4. Generally, I would consider such concerns to be civil matters between the parties that would not come within the scope of planning considerations. In this regard section 34(13) of the Planning and Development Act 2000-20 (as amended) states “*A person shall not be entitled solely by reason of a permission under this section to carry out any development.*” This is clearly supported in section 5.13 of the Development Management Guidelines 2007 which states- “*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*”.
- 8.3.5. Section 5.13 of the 2007 Guidelines also states – “*Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis.*” Having regard to construction and operational requirements to access the site and potential for traffic impacts that could endanger

public safety, I consider it appropriate in this context to examine further the applicants legal entitlement to make the application and most importantly to execute the development if permitted.

- 8.3.6. The applicants state they are the owners of the site in question 7 of the application form. This is not disputed by any of the observers. The applicants have also submitted a letter on the applicants headed paper from Aimée Kirwan, Legal Counsel. This letter refers to attached coloured maps and details the applicants easements rights and privileges over the property at 23 Oaklands Drive which includes the lands subject to this appeal. Part (i) of this letter generally deals with services such as wastewater. Section (ii) of the letter states- *“Full rights to go pass and repass along the road adjacent to the property more particularly shown coloured green on Map 2 attached hereto for all purposes connected with the use and enjoyment of the property.”* It is noted that both maps 1 and 2 submitted with this letter do not clearly identify colours i.e. green, and as such I cannot determine from this information if the rights to go pass and repass along the road adjacent to the property are the road to the front of the application site or to the road to the front of 23 Oaklands Drive.
- 8.3.7. The HSE as observers identify that they own the road directly to the south of the application site. They also state they have no objection to residential development of the site but are concerned in relation to access to the site. It is the HSE’s stated position *‘that no vehicular traffic to or from the site is permitted by the Applicants’*.
- 8.3.8. The HSE submit a blurred screenshot of a letter from legal firm Mason Hayes & Curran to the HSE appearing to detail statutory declarations were signed by the owners of the application site from 1963 and from 2017. The declaration dated c. 2002 from a Monica Flood states her husband purchased the site in 1963 and since that date she has used the road as a means of access at all times (until its further sale). The declaration states that the use has been on foot. A screen shot of that statutory declaration has been provided and it is noted this declaration refers specifically to *‘all that and those rear of the garden of 23 Oaklands Drive’*. A map is also provided and the declaration refers to colouring. Again the submitted map does not identify such colours.

8.3.9. Richview Management DAC as observers to the appeal also contest the applicants do not have a legal vehicular right of way over Oaklands Crescent to carry out the development. The application appears silent in terms of the applicants entitlement to use the Oaklands Crescent private road.

8.3.10. It is clear that there is a civil matter between the applicants, the HSE and Richview Management DAC. However access arrangements to facilitate the development of the site are in my view considered planning matters. The Planning Authority recommended refusal for two reasons, one of which highlighted that adequate arrangements for construction, refuse collection and access for emergency vehicles and deliveries had not been demonstrated and consequently the proposed development would endanger public safety by reason of traffic hazard.

8.3.11. In the applicants appeal they address the refusal reason as follows

- auto-tracking drawings are submitted showing how a fire tender truck can safely access the subject site via Oaklands Crescent which is the proposed emergency route. Alternative access is also shown via St Luke's Hospital but this is not proposed.
- residents of the houses will be required to wheel refuse bins along the road to the front of the site to Oaklands Crescent for collection. The applicants state existing refuse collections are 'evident' at this location.
- Delivery vehicles will be required to park on Oaklands Crescent and proceed on foot to the houses.
- In terms of construction it is proposed to limit the number of vehicles passing over the adjacent roadway as much as practically possible. No large machinery or vehicles are required to access the site. Material deliveries will be via Oaklands Crescent with deliveries proceeding on foot or '*wheeled*' from Oaklands Crescent along the roadway. Where unavoidable such construction traffic will access the site via Oaklands Crescent and the roadway and park within the site. Access for the small number of vehicles would be time limited in passing over the adjacent road to access the site.
- A condition for a Construction Management Plan is invited.

- 8.3.12. Further in the appeal, where discussing legal rights over access, the applicants argue they benefit from full pedestrian and vehicular rights to access over the roads and paths leading to and from the property. They submit photos of the existing vehicular gates to the site from the road along the sites boundary.
- 8.3.13. The applicants clearly contend they have vehicular rights over the road to the front of the site. However I note the submitted construction and operational measures appear to contradict this and suggest otherwise. The legal documentation submitted in support of the applicants rights are not in my view unequivocal in relation to vehicular movements. Furthermore in order to access the road to the front of the site the applicants propose using Oaklands Crescent which is also a private road under the management of Richview Management DAC. The applicants have not submitted a letter of consent or evidence of legal entitlement to access the site along Oaklands Crescent for construction or for operational purposes such as refuse collection.
- 8.3.14. I refer to a nearby planning application ABP-305148-19 c. 80 metres west of the site where that applicant proposed 14 houses with vehicular access also through Oakland Crescent. The Board refused the development for two reasons one of which detailed the proposed development would be reliant on works to provide access arrangements which are outside of the appeal site (red line) boundary and as such it was considered that the development would endanger public safety by reason of traffic hazard as it has not been demonstrated that safe access to the proposed development would be provided.
- 8.3.15. I do not propose adjudicating over legal matters relating to the applicant's entitlement to vehicular access along the private road fronting the site or from Oaklands Crescent. However there is no doubt that considerable uncertainty remains in order to execute the permission if granted. This uncertainty fundamentally impacts upon planning considerations such as traffic and public safety and accordingly I cannot dismiss these concerns under section 34(13) of the Acts.
- 8.3.16. In my opinion the applicant has failed to demonstrate sufficient legal interest in terms of access arrangements to the site and accordingly permission should be refused on traffic and public safety grounds.

8.4. Car Parking

- 8.4.1. The Planning Authority's second refusal reason considers that the proposed development would result in overspill parking and congestion of surrounding streets and endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.
- 8.4.2. The applicants have clearly outlined that the proposed development does not provide for any car parking. They justify this by reference to the constrained nature of the site and the requirement for high quality 3 bedroom homes of contemporary design. They also sought to ensure no long term traffic would pass over the adjacent roadway so as to minimise interference with the hospital operations.
- 8.4.3. The applicants contend the omission of car parking spaces is justified in national policy and with reference to Policy MT17 of the City Development Plan 2016-22. They argue section 16.10.10 of the plan in relation to 'Infill Housing' allows for the relaxation of standards in certain circumstances in the interest of ensuring vacant derelict and under-utilised sites are developed. The original application engineering report identifies a number of bus stops all within 10 minute walk of the site i.e. 14, 15, 15a, 15b, 15d, 65, 65b, and 142.
- 8.4.4. Section 16.38 of the City Development Plan sets out Car Parking Standards. The site is identified in Area 3 where there is a maximum requirement of 1.5 spaces per dwelling. Therefore the proposed development should provide a maximum of 3 car parking spaces.
- 8.4.5. DCC's Transportation Planning Division have submitted a report on the application outlining Oaklands Crescent and Drive and have uncontrolled Parking. The site is approx. 1.5km from the Luas Green Line. Proposed Bus Connects Route 12 on the Rathgar Road is approx.. 600m from the site. The Transportation Planning Division recommend refusal on the basis of zero car parking in an area of uncontrolled on-street parking would result in overspill parking and congestion of surrounding streets.
- 8.4.6. Some of the observers to the appeal have raised similar concerns in relation to parking.
- 8.4.7. In accordance with section 5.9 (d) (i) of the Sustainable Residential Development in Urban Areas (2009) I consider the site can be described as a small gap infill, unused

derelict land and a backland area. It is therefore appropriate to consider the development of the site as an Infill development in the context of section 16.10.10 of the City Development Plan. This allows in certain limited circumstances, relaxation of the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land in the inner and outer city is developed.

- 8.4.8. In my opinion this site is suitable for development and a small residential scheme of two houses as proposed is appropriate. However it is difficult to see how these lands which are not within the control of St James Hospital can be developed given the constraints surrounding the site. It is noted that the HSE have highlighted that they have no objection to residential development on the site and their concerns relate to vehicular access arrangements. Notwithstanding City Development Plan's maximum requirement of 1.5 spaces per unit, I consider given the circumstances of the site including its need for appropriate infill development, the provision of zero parking provision is appropriate.
- 8.4.9. I acknowledge concerns raised by observers and the Planning Authority in relation to overspill car parking from the site. Oaklands Crescent is clearly a private road and in my view the matter of uncontrolled car parking on private lands would be the responsibility of the management company in this context. The closest public paid parking I observed in the general area was over 250m away from the site and in my view such a distance is likely to discourage car parking associated with the development.
- 8.4.10. The applicants have applied for two houses without car parking. The site is an infill site clearly in need of development. Residential development is an acceptable use given the site's zoning and constraints. The roads accessing the site are in private ownership. The application proposes no car parking and the houses will be sold as such. The site provides for cycle parking and is located in close proximity to a number of existing bus routes and less than 1.5km from the Luas line. I am not convinced the development will necessarily lead to overspill parking and congestion of surrounding streets in this context.

8.5. Visual and Residential Amenity

- 8.5.1. The application is for two semi-detached contemporary style two storey dwellings with a gently sloping up away from each other, butterfly style roof profile. The maximum ridge height to the east and west elevations is shown as 6.7m. The houses are to be finished with selected brick, timber screened first floor balconies and sedum roofs. Private open space is provided to the sides of each house. I have no concerns in relation to the visual impact of the development.
- 8.5.2. The DCC Planners Report highlights some residential amenity concerns including-
- Bedroom 3 of each dwelling which would have outlook only to the 1st floor balcony, the balustrades of which would be 2m distance from the windows.
 - the balustrades would not adequately mitigate overlooking of neighbouring properties, and would need to have a higher degree of solidity.
 - overlooking from the high level window serving the living room of unit B which is 4.55m from the rear boundary of No. 31 Oaklands Drive. It is stated this window is 1.5m above floor level and would give rise to overlooking.
 - Overall an unacceptable impact on neighbouring amenity in terms of overlooking, though this could be addressed through omission of the balconies and omission/reconfiguration of Bedroom 3 in each dwelling.
- 8.5.3. The above concerns raised in the Planners Report are not reflected in the Planning Authority's decision.
- 8.5.4. I note a number of the observers to the appeal also raise residential amenity concerns including overlooking, overshadowing, overbearing and also overdevelopment.
- 8.5.5. Having regard to the constrained nature of the site including separation distances to side boundaries, I consider the provision of first floor balconies off both proposed first floor bedrooms to be appropriate design interventions to address concerns of overlooking from the bedroom as well as from the balcony. The absence of roofs over the balcony spaces and provision of angled vertical screening will ensure sufficient quality of daylight into the bedrooms and oblique angles of view away from the rear of private amenity spaces to surrounding houses and in particular No. 31

Oakland Drive. However the spacing and angle of these spacing are difficult to determine from the drawings. Should the Board decide to grant permission I recommend conditions be attached to ensure the screens are angled towards the roadway to the front/south of the site and northern boundary screens should be completely solid or obscure glazing 2m in height.

- 8.5.6. I do have some concerns in relation to the means of fire escape from bedroom 3 which would be to an enclosed balcony with high vertical screenings. However, such considerations are not ones for the planning system.
- 8.5.7. Having reviewed the drawings submitted with the application as well as the A3 submission titled 'Methods to Avoid Overlooking – High Level Windows' I am satisfied the proposed high level windows to the first floor kitchen areas have windows 1.8m above the first floor level to the west and east elevation. I have no concerns in relation to overlooking in this regard.
- 8.5.8. The development will be built along the northern boundary of the site which directly adjoins private amenity to the rear of houses at No's 21 and 23 Oaklands Drive. Given the separation distances in excess of 20m, from the northern boundary of the site to these houses, it is my view that the proposal of 6.7m height would not be overbearing and would not lead to undue overshadowing that would warrant refusing the development.
- 8.5.9. The application proposes areas of private amenity spaces to the side of the two proposed houses i.e. 69 sq.m and 89 sq.m. Section 16.10.2 of the City Development Plan details that up to 60-70 sq.m of rear garden area is considered sufficient for houses in the city. The floor plan drawings and submitted 'Area Schedule' also appear to generally comply with the requirements of Section 16.10.2 in this regards. I am satisfied the proposed development cannot be considered overdevelopment of the site.
- 8.5.10. It is considered that should permission be granted that details of proposed boundary treatments should be submitted for the written agreement of the Planning Authority but should be no less than 1.8m in height to the boundaries of the identified garden areas.

8.5.11. Having regard to the above, I do not consider the proposed development will have a negative impact on residential or visual amenities of the area and would be in accordance with the 'Z1 zoning objective for the site.

8.6. Water Services

8.6.1. The application proposes connecting to existing public services and providing for surface water drainage through SUDS within the site before discharge to the public network. The applicants indicate there is an existing combined sewer within the site and the site is not currently served by water supply. They refer to an arrangement for potable water through the lands of No. 23 Oaklands Drive. The letter from Aimée Kirwan, Legal Counsel referenced in section 8.3.6 details the easements in this instance.

8.6.2. I note concerns are raised by the observer and owners of No. 23 Oaklands Drive in relation to the rights and easement to provide 'services'. In this context I am satisfied that these issues are civil matters and not ones for the Planning system to be concerned with as per section 5.13 of the Development Management Guidelines 2007.

8.6.3. I also note Irish Water sought further information in relation to confirmation of feasibility for appropriate protection of Irish Water assets during and post development.

8.6.4. I am satisfied the information sought by Irish Water through Further Information can be adequately addressed through condition should permission be granted.

8.7. Appropriate Assessment

8.7.1. Having regard to the nature and small scale of the proposal, its connection to existing public services and the sites distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site

9.0 Recommendation

9.1. I recommend that permission is refused for the following reason

10.0 Conditions

1. On the basis of the information submitted with the planning application and appeal, the proposed development is reliant on works to provide access arrangements to the site from outside of the appeal site (red line) boundary. Such arrangements are on/through private lands which appear to be outside the control of the applicant. The Board is not satisfied the applicant have demonstrated sufficient legal interest over the access roads to the site nor have the appropriate consents from the owners of the access roads been submitted with the application in order to execute the permission. The Board therefore considers that the proposed development would endanger public safety by reason of traffic hazard as it has not been demonstrated that safe access to the proposed development will be provided.

Adrian Ormsby
Planning Inspector

28th of April 2021