



An
Bord
Pleanála

Inspector's Report

ABP-309536-21

Development	Construction of a two-storey dwelling and new pedestrian entrance.
Location	32, Nuns Walk (Accessed off Middle Third Terrace), Killester, Dublin 5.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	WEB1260/20
Applicant	Gerry Leigh
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	William Kelleher Peter Walsh
Observer	Richard Murray
Date of Site Inspection	26 th July 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The application site (298sq.m) is located on the northern side of a tree lined laneway known as Nun's Walk and is situated to the rear of house no. 32 Middle Third which is located in the primarily residential area of Killester, Dublin 5, approximately 300 metres northeast of Killester railway station. The site was formerly the rear garden of no.32 Middle Third but was sold some years ago and is under separate ownership now and contains an existing single storey lean to garage shed along the western boundary and two open sided sheds (canopy sheds), one in the north eastern corner of the site and one adjoining the single storey shed on its eastern side.
- 1.2. Access to the site is via a Nun's Walk which runs perpendicular to Middle Third Terrace to the site's north. Nun's Walk provides access to Killester Sports & Social Club and its associated sports grounds approx. 40m to the east of the subject site. Nun's Walk is lined on its southern side by evenly spaced deciduous trees, with two other trees located along the northern part of the laneway which reduce the effective width of the laneway to c.2.7 m. The existing entrance to the site is comprised of a 4-metre-wide high gate and concrete block walls of approx. 2.5m in height. Two existing trees flank either side of the existing entrance.
- 1.3. The rear gardens of nos. 1 to 3 Middle Third Terrace, which are terraced two storey dwelling houses, run along the western boundary of the subject site and the rear garden of no.31 Middle Third Terrace borders the site to the east.

2.0 Proposed Development

- 2.1. The proposed development is to comprise:
 - Demolition of two canopy style sheds on site.
 - Construction of a two-storey dwelling, 3 bedroom, 146sq m dwelling house (ridge height 7.67m) on site.
 - Off street parking provision for two no. cars.
 - New pedestrian entrance in boundary wall to the front of the dwelling house 1.5m in width.

- Relocation of existing 4-metre-wide entrance by approx. 1.6 metres to the west, and
- Associated site development works and service connections.

2.2. The existing single storey lean to shed (53sq.m) located in the southwestern corner of the site is to be retained and used ancillary to the proposed dwelling house.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to twelve conditions, most of which are standard in nature, but also including the following conditions no.4, no. 6. (a) and no.12:

4. All legal rights of way access to Nuns Walk shall be retained and observed.

Reason: In the interest of clarifying the scope of this permission.

6. (a)The vehicular entrance shall not exceed 3.5metres in width. The pedestrian and vehicular entrance shall not have outward opening gates.....

Reason: *In the interests of public safety and the proper planning and sustainable development of the areas*

12. The trees indicated in the Nuns Walk laneway shall be retained and adequately protected during the period of construction as per BS 5837, such measures to include the protection fence beyond the branch spread, with no construction work or storage carried out within the protective barrier. (the tree protection measures shall have regard to the Guidelines for Open Space development and Taking in charge, copies of which are available from the Parks and Landscape Services Division).

Reason: *In the interest of amenity, ecology and sustainable development.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first report on file (dated July 2020) requested further information on the following point:

- *Access to the site is via a private laneway which is not taken in charge. Third parties have raised concerns that the applicant does not have sufficient legal interest to access the proposed development from the laneway. The applicant is requested to address these concerns.*

On receipt of further information, the planning officer noted the following in their second report (dated January 2021):

- The planning authority has previously granted planning permission on the site to the immediate north across Nun's Walk under P.A. Ref. 3911/03 as modified by P.A. Ref. 1604/04 to provide for 4 semi-detached, 4 bed roomed dormer type dwellings, which are now constructed.
- The proposed development would meet the minimum requirements for a 3-bedroom, 4 person, 2 storey house as set out under Table 5.1. *Best Practice Guidelines for Delivering Homes Sustaining Communities*, DoEHLG, 2007'
- The applicant has submitted information which indicates that the applicant has exercised his right of access for 26 years.
- The applicant has also submitted an affidavit from a previous chairman of the Killester Sports and Social Club which indicates that the club was in full knowledge that Nun's Walk was subject to rights of way access.
- The matter of contention between the applicant and Killester Sports and Social Club regarding the ownership and control over the laneway is noted. The planning authority consider the issues regarding the extent of the applicant's access rights a legal and civil issue which in itself does not warrant a prohibition on the applicant to apply for planning permission.
- Due to the design and orientation of the house no issues in relation to excessive overlooking, overbearing or overshadowing on nearby residences are expected.
- The proposed development would not block or hinder the redevelopment of any adjoining sites.

3.2.2. Other Technical Reports

- Drainage Division – DCC Report dated 11/06/20 – no objection subject to conditions.
- Transportation Planning Division – DCC Report dated 03/07/20 which noted:
 - Access to the site is via a private laneway over which the applicant has stated they have right of way.
 - The lane is not in charge of Dublin City Council.
 - It is proposed to relocate the existing site entrance marginally and reduce it to 4 metres.
 - There is an existing utility pole outside the gate that may require relocation.
 - The principle of using the existing entrance is considered acceptable, subject to its reduction in width in line with Development Plan standards – 3.5m max width.
 - No objections to the proposed development in the context of traffic safety and the division consider the issues regarding the extent of the applicant's access rights a legal and civil issue.

3.3. Prescribed Bodies

- Irish Water – no response received.

3.4. Third Party Observations

3.4.1. Six third party observations were received from concerned parties including neighbouring property owners and representatives of Killester Sports and Social Club. Some of these third parties expressed support for the use of the lane by the proposed development. The observations received can be summarised as follows:

- The lane is in the ownership of Killester FC and the applicant does not have consent to use this laneway for anything other than access to a repair garage;
- Nun's walk is not taken in charge by Dublin City Council;

- The existing 4 no. houses on Nun's Walk have been authorised by Killester Sports and Social Club for access
- Development will impact on young children travelling along this lane to the pitches.
- Proposed development could lead to similar development which would result in vehicle parking on laneway prohibiting emergency vehicle access.
- The development would constitute overdevelopment of the site in an area characterised by bungalows.
- Applicant has no access to public facilities located in the laneway.
- Impacts on neighbouring properties as a result of overlooking and overshadowing.
- Mature trees along laneway will be impacted by the development.
- Nun's Walk and what is now known as Hadden Park has been in use for the public since the 1920's by right, by design, and by intent.

4.0 Planning History

4.1. Subject Site:

- DCC ref: 1215/05- 2005 – Invalid – refers to permission for new entrance, two storey detached dwelling with car parking for two cars to front courtyard and associates site works at rear 32 Middle Third, Killester, Dublin 5.
- DCC ref: 5394/04 – 2004 – Invalid - refers to the application for permission for new entrance and two storey dwelling with car parking to front at rear 32 Middle Third, Killester, Dublin 5.
- DCC ref: 1671/96 – 1996 - Permission granted for parking storage of vintage cars, also to raise roof of existing building.

4.2. Adjoining sites:

- DCC ref: 2238/16 – 2016 – Permission granted at 32 Middle Third for alterations, conversion and extension of existing garage area to side creating home work area to allow professional holistic treatment area, a small scale

home based economic activity, new single storey extension to side and rear, conversion of existing attic space and the extension of same to rear to accommodate 2 new dormer bedrooms, and new family bathroom at first floor level, new velux roof lights to front, side and rear elevations, with internal modifications. New porch area to front, re-positioning & revision of the existing vehicular access with associated site works.

- DCC ref.: 3320/11 – 2011 - Permission granted for a new sign fixed to pole at entrance to Nun’s Walk and for retention of fence/net structure around football pitch for the Killester Sports & Social Club.
- ABP Ref. 207121 – 2004 – Permission granted for alterations to plans to provide 4 semi-detached dormer bungalows in place of single storey bungalows at Nuns Walk to the rear 46/47 Abbeyfield, Killester.
- DCC Ref. 3911/03 – 2004 - Permission granted for 4 no. two storey semi-detached dormer houses and ancillary site works with vehicular access onto Nuns Walk at rear 46/47 Abbeyfield, Killester.

5.0 Policy Context

5.1. National Policy and Guidance

5.1.1. National Planning Framework (NPF) 2040

- **National Policy Objective 3a** seeks to deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.
- **National Policy Objective 3b** seeks to deliver at least 50% of all new homes targeted in the five cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.

5.1.2. **Quality Housing for Sustainable Communities** – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007). The following sections are particularly relevant to the current proposal:

- Section 1.4 Detailed Considerations, Inspection and Report and Subsection 1.4.1 – Infill sites.

- Section 4.3.4 Densities – states *'Infill developments and urban redevelopment projects should respect the character of the existing neighbourhood'*.
- Section 4.3.5 Private Space states *'Provision for private open space should take account of the requirements of the Development Plan for the area'*.
- Table 5.1: Space provision and room sizes for typical dwellings.

5.1.3. **Sustainable Residential Development in Urban Areas** (Cities, Towns and Villages) Planning Guidelines, DEHLG, 2009.

- Section 5.9 Inner suburban/infill:
 - (i) Infill residential development – *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 privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.*

5.1.4. **Quantitative methods for daylight assessment are detailed in the following documents:**

- BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' (2011): and

5.2. Development Plan

5.2.1. The appeal site has a zoning objective 'Z2 - Residential Neighbourhoods (Conservation Areas)' within the Dublin City Development Plan 2016-2022, with a stated objective *'to protect and/or improve the amenities of residential conservation areas'*.

5.2.2. Relevant planning policies and objectives for residential development are set out within Volume 1 of the Development Plan under Chapters 11 – Built Heritage and Culture, and 16 – Development Standards, detailing the policies and objectives for residential conservation areas and standards respectively.

5.2.3. **Chapter 5 Quality Housing**

- **Policy QH1:** To have regard to the DEHLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes

Sustaining Communities’ (2007), ‘Delivering Homes Sustaining Communities – Statement on Housing Policy’ (2007), and ‘Sustainable Residential Development in Urban Areas’ and the accompanying ‘Urban Design Manual: A Best Practice Guide’ (2009).

- **Policy QH5:** To promote residential development addressing any shortfall in housing provision through active land management and a coordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and under-utilised sites.
- **Policy QH7** - To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.
- **Policy QH8** - To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.
- **Policy QH13** - Housing design compatible with ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007).
- **Policy QH22** – To ensure that new housing development close to existing houses has regard to the character and scale of existing houses unless there is a strong design reason for doing otherwise.

5.2.4. **Chapters 11 – Built Heritage and Culture**

Section 11.1.5.6 - Conservation Area – Policy Application states that ‘*All new development must have regard to the local context and distinctiveness and the contribution to the local scene of buildings, landmarks, views, open spaces and other features of architectural, historic or topographical interest*’

5.2.5. **Chapter 16 – Development Standards**

- **Section 16.2.1 – Design Principles**
- **Section 16.10.2 Residential Quality Standards** – Houses – sets out standards to be achieved in new build houses, including consideration of:
 - Floor space

- Private Open Space – 10sqm per bedspace. Generally, up to 60-70 sq.m of rear garden area is considered sufficient for houses in the city.
- Aspects, Natural Light and Ventilation.
- Separation distance – 22m sought between the rear of 2-storey dwellings.
- **Section 16.10.8 Backland Development**
 - Dublin City Council will allow for the provision of comprehensive backland development where the opportunity exists.
 - Backland development is generally defined as development of land that lies to the rear of an existing property or building line.
 - The development of individual backland sites can conflict with the established pattern and character of development in an area. Backland development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. Applications for backland development will be considered on their own merits.

5.2.6. **Appendix 5: Roads Standards for Various Classes of Development** states:

- Where driveways are provided, they shall be at least 2.5m or, at most, 3.6m in width, and shall not have outward opening gates.
- The design standards set out in the planning authority's leaflet 'Parking Cars in Front Gardens' shall also apply.
- The planning authority will adopt a flexible attitude regarding restricted road widths over short lengths, where no other practicable solution is possible. However, this flexible attitude will not apply where it is not possible to provide an access of sufficient width to comply with safety and engineering requirements.

5.2.7. In this part of the city (zone/area 2), a maximum of 1 car parking spaces per house is allowed based on map J and standards within Section 16.38 of the Development Plan and Table 16.1.

5.3. **Natural Heritage Designations**

5.3.1. None relevant.

5.4. EIA Screening – Preliminary Examination

- 5.4.1. Having regard to the nature and scale of the proposed development, comprising 1 no. proposed residential dwelling in an established residential area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two appeals have been lodged on this application.

- 6.1.2. The first from William Kelleher can be summarised as follows:

- An Bord Pleanála are respectfully asked to formally act to protect the rights of use, rights of access etc. that both apply to this development and lie in the public interest.
- Originally Nuns' Walk was a road intended, purposefully laid out and maintained for public use.
- Nuns' Walk is in fact a long-established unregistered public road, having most recently under the ownership of the Irish Sailors' and Soldier's Land Trust and the football club 90 years of continual uninterrupted public enjoyment.
- Historical records, reference photos, notes, and background information regarding the former public ownership of the lands in the area, as well as references to use of the access road for public use have been submitted, all of which the appellant states support the claim that Nuns' Walk is a public route.

- 6.1.3. The second appeal made by Peter Walsh (on behalf of Killester Sports and Social Club) can be summarised as follows:

- Nun's Walk is a private laneway owned wholly and exclusively by Killester Sports and Social Club.

- Nun's Walk is not in charge of Dublin City Council (attached certificate to this effect from Roads Section of DCC).
- The applicant has a personal right of access for the specific purpose of repairing cars in a workshop situated on the subject site. As there was no right of way for a business to operate in the lane, this permission for access for business purposes was granted by the club several years ago as a neighbourly gesture, as the applicant does not intend to live in the proposed house this permission will now lapse.
- There is no permission for construction traffic to pass through the lane or any future resident of the proposed house.
- The right of way that applies on Nun's Lane and noted on Folio 14267 only applies to access relating to those occupants of the infill development which is located across from the subject site.
- It is the appellant's contention that no general right of way exists on the lane.
- Concerns in relation to the impacts on emergency access to the club grounds if the proposed dwelling or future mews dwellings are constructed and the potential for vehicles associated with same to block the laneway. Traffic resulting from the development would also obstruct access by club members and sports ground users.
- The proposed development would adversely affect the value of lands at Nun's Walk and future potential to develop the sports grounds lands and would have an impact on recently installed lighting and the recently resurfaced laneway.
- The proposed planning application would need insurance to cover any claims or liabilities arising from planned works.
- The development would result in over development of such a small site and impact on the surrounding area's character.
- The right of way marked on the map received in response to further information by the Council is no longer operational as there is no entrance from Hadden Park into Venetian Hall. The remainder of the right of way (history information) submitted by the applicant is also incorrect. The affidavit

submitted by the applicant was for a court case regarding right of way in 2007 and cannot be relied upon as it was not made by an objective witness.

- The 4 no. houses constructed across from the subject site did not create a precedent for development along the laneway as stated by the applicant. The developer of these houses negotiated and signed a legal agreement with the club for access to the site involved.

6.2. Applicant Response

6.2.1. A response to the third-party appeals was lodged on 29th March 2021, which can be summarised as follows:

- The applicant has owned the site since 1994 with unimpeded daily access along Nun's Walk since that date.
- The site is zoned residential, and the house is being constructed for the applicant's daughter and her family.
- The 4 no. houses constructed in 2004 (DCC Ref. 1601/04 and 3911/03) also have full right of way to their entrance gate along Nun's Walk. This planning precedence makes for a logical conclusion for the planning permission decision required on this matter.
- Killester Club never gave (implied or explicit) consent to the applicant for use of Nun's Walk.
- A prescriptive and or other Right of Way exists along Nun's Walk for the benefit of the applicant's property in Folio DN105972F.

6.3. Planning Authority Response

- None received.

6.4. Observations

6.4.1. One observation was received from Richard Murray (owner of 32 Middle Third), this can be summarised as follows:

- The proposed site is located to the rear of the observer's property, this portion of the rear garden was sold prior to the observer's purchasing the house at no. 32 Middle Third and therefore would have formed part of the original garden.
- The proposed two storey development would overlook the observer's rear garden. If the trees on the subject site are to be removed, then further overlooking would occur.
- The applicant had stated in their response to DCC that if permission was granted that an agreed form of planting that suits all parties would be agreed, however no such condition was attached to the grant of permission or any reference to landscaping. The observer states that the planning authority ignored their concerns.
- The design and scale of the proposed dwelling does not correspond to the criteria stated under the Development Plan for corner/garden sites. The observer's property is a bungalow and they do not believe that any consideration has been given to the impact on residential amenities of adjoining sites. The Development Plan also states for mews developments that there should be sufficient depth between the main building and the proposed new building to ensure privacy. This has not been demonstrated.

6.5. Further Responses

- None received.

7.0 Assessment

7.1. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application, relate to the following:

- Principle of the Development
- Access, Traffic and Parking
- Impact on Residential Amenity
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The subject site is located in an area governed by the Z2 zoning objective which seeks to provide and improve the amenities of Residential Conservation Areas. Residential use is a permissible use under this zoning objective. Furthermore, the principle of infill development on backland is acceptable in principle, primarily on the basis that it makes the most efficient use of serviced residential lands in existing built-up areas. There are a number of policy statements contained in the development plan which support residential development at sustainable urban densities throughout the city and reuse of underutilised sites including Policy QH5, Policy QH7 and Policy QH8.
- 7.2.2. There are also numerous policy statements in the more recently adopted National Planning Framework which seek to ensure that infill brownfield sites are developed within existing urban areas in order to ensure more compact urban development at sustainable densities in order to reduce land take, utilise existing infrastructure, improve the viability of public transport and creating a more walkable and cycling friendly urban environment.
- 7.2.3. The provision of backland development such as that proposed under the current application is therefore in my view in accordance with the zoning provisions and policies at local and national level to develop urban areas at sustainable densities and is therefore acceptable in principle. The development plan however also points out that such development will only be permitted subject to appropriate qualitative safeguards in relation to protecting the amenity of adjoining residential developments and protecting the character of Residential Conservation Areas. The sections that follow will further address these issues.

7.3. Access, Traffic and Parking

- 7.3.1. Access to the proposed site is to be provided via Nun's Walk which is a narrow access road which runs along the northern boundary of the site and provides access to Killester Sports and Social Club to the east. Nun's Walk also provides access to the 4 no. houses granted under DCC Ref. 3911/03 and amended under subsequent permission by the Board ABP Ref. 207121. I note that the main issue raised in both appeals received relates to the ownership and right to access Nun's Walk. The submitted third party appeals differ in their opinions as to whether a right of way

exists on this access road. The applicant has also submitted a response to third party concerns on this matter. I note that correspondence from the Roads Section of DCC states that Nun's Walk is not in charge of the Council.

7.3.2. With regard to legal interest, ownership and rights of way I would make the following comments. I have noted all the information provided by both the applicant and the appellants that included interalia historical records, photographs, land registry folios, previous planning permission details within the area etc. I also note condition no. 4 attached to the planning authority's decision, however I would point out that issues concerning ownership of or title to specific lands and / or acts of trespass are not, planning issues and are therefore out with the remit of this appeal. If planning permission is granted and if the appellants consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant. This section of the Act states that a person shall not be entitled solely by reason of a permission under this section to carry out any development. It should also be noted that decisions on planning applications and appeals do not form binding precedents in a way that court judgments can. A grant or refusal in this case would not require the board or the council to make a similar decision in any future case if they had reasons to come to a different conclusion.

7.3.3. The applicant seeks to relocate their existing vehicular entrance on the front boundary of the site by approx.1.6m to the west and also insert a new pedestrian entrance of 1.5m in width to the front of the proposed dwelling house on same front boundary wall. The applicant has asserted that they have the necessary legal interest in land to carry out the development as they own the site including the relevant part of the boundary wall. Therefore, while the board cannot conclusively determine any dispute with regard to legal interest in land in the course of a planning appeal, there are insufficient grounds to conclude that application and appeals should not be given further consideration due to any lack of legal interest in land by the applicants notwithstanding the queries raised in the appeals. In addition, there is no reason to conclude that the residents that would use this gate would be any more or less likely to obstruct Nun's Walk than any other person who uses the access road. I would consider the parking provision on site, which provides space for two cars, sufficient to serve the proposed development. The assertions regarding traffic

hazard or obstruction in the submitted appeal would therefore not justify refusing permission for the proposed development.

- 7.3.4. I also note that the existing mature trees which line Nun's Walk and flank the existing vehicular entrance to the east and west will not be impacted by the proposed development. The applicant proposes to retain the width of the current entrance at 4 metres, albeit relocate same entrance marginally to the west. I acknowledge DCC's Transportation Division's concerns in relation to same and also the guidance provided under Appendix 5 of the operative development plan which states that '*where driveways are provided, they shall be at least 2.5m or, at most, 3.6m in width, and shall not have outward opening gates*'. Considering that a separate pedestrian entrance is also proposed, I consider the proposed entrance at 4 metres in width excessive and I would consider a vehicular entrance of max width 3.6 metres would be sufficient in this case to serve the site. This reduction in entrance width can be addressed by way of condition if the Board are minded to grant permission.

7.4. Impact on Residential Amenity

- 7.4.1. It is contended by the observer on the appeal that the proposed development will negatively impact the current levels of amenity within their property to the south at no.32 Middle Third. Whilst I acknowledge that the proposed development will introduce a residential property with a proposed ridge height of 7.672m in close proximity to a rear boundary wall where there was none previously, it is important to acknowledge that a distance of over 30 metres exists between the first-floor window to the rear of the proposed dwelling and the rear of the property at no.32 which is a single storey structure. A distance of 6.3m is to be provided from the rear of the proposed dwelling to the rear/shared boundary with no.32 Middle Third. The applicant also proposes to retain the existing trees along the southern and south-eastern boundary of the site which provide additional screening from the site to the rear (no. 32). Concerns regarding the possible removal of these trees was raised by the observer. While I note that these trees are to be retained according to the site layout, I would suggest to the Board that if they are minded to grant permission that a suitable condition be attached to ensure that these trees are protected during construction works and that appropriate landscaping is provided along the southern boundary of the site to ensure an adequate level of screening.

- 7.4.2. Regarding the houses adjoining the subject site to the west at Middle Third Terrace, I note the provision of obscure glazing on the west facing office and en-suite windows of the proposed house, however I note that neither the landing nor the secondary master bedroom window which also face west have been identified to include this type of glazing. If the Board are minded to grant permission I would suggest that these windows also should be conditioned to include obscured glazing. In my opinion this measure combined with the separation distances of min. c.16.8 metres in the case of the landing window and c.20 metres in the case of the secondary bedroom window from the opposing first floor rear windows of the houses at Middle Third Terrace should provide sufficient protection of privacy. The proposed development in my opinion would not block or hinder the redevelopment of any adjoining or nearby sites.
- 7.4.3. While I also note the observer's concerns in relation to overshadowing, considering the location of the proposed dwelling house at a sufficient distance from no.32 and given same neighbouring dwelling's location to the south of the subject site, I would not consider that any significant overshadowing will occur. Section 16.10.2 Residential Quality Standards – Houses of the operative development plan states that "*development shall be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011)*". I have had regard to this document in assessing the current development and have also considered the impacts on other surrounding properties. I consider the properties at nos.1 to 3 Middle Third Terrace a sufficient distance to the west and note that the submitted Drawing No.4 Proposed House Elevations illustrates that the 25-degree angle as outlined under the BRE Daylight Test will not be breached. The existing 4 no. houses located across Nuns Walk to the north are also considered a sufficient distance away. Therefore, in conclusion, I do not consider that overshadowing of neighbouring gardens or properties will arise.
- 7.4.4. I note the observer's reference to development plan criteria and corner/garden sites which appears to be incorrect. Section 16.10.9 of the operative development plan actually refers to Corner/Side Garden Sites which would not apply in the current case. Firstly, the site is not a "corner or side garden" site and secondly the site is in fact and has been since 1994 as stated by the applicant in use for the storage of and works on vintage cars, and although I note the site did originally form part of the rear

garden of no.32 Middle Third Terrace it has not been used as this for some time. In addition, I would not consider the site a 'mews' development site and instead would refer to it as a 'backland' site given its entrance off Nun's Walk and the fact that the site has not been associated with the main house at no.32 Middle Third Terrace for some time. Having reviewed the proposed design of the dwelling and the taking into consideration the mix of house designs in the surrounding Z2 Residential Conservation Area, I consider the proposal and its orientation on site acceptable.

- 7.4.5. Having examined the plans and particulars submitted as part of the planning application, I am also satisfied that the proposed development would meet the minimum internal space standards for a house and the minimum standards for private open space as required under Table 5.1 of the 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities', DoEHLG, 2007' for a 3 bedroom, 4 person, 2 storey house.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development for a two-storey dwelling house, its location within an existing built up and serviced urban area and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted subject to conditions.

9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objective for the area, the existing pattern of development in the area, and to the relevant provisions of the Dublin City Development Plan 2016-2022 including policy regarding Backland Development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the character of the area or the

residential amenity of the property in the vicinity, would provide a suitable level of amenity for future occupants of the residential unit, 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.

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 the 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. Obscure glazing shall be provided in all west facing windows at first floor level.

Reason: In the interests of residential amenity.

3. The Developer shall comply with the following requirements:
 - a) The vehicular entrance shall not exceed 3.6metres in width.
 - b) The pedestrian and vehicular entrances shall not have outward opening gates.
 - c) The applicant/developer shall liaise with the relevant utility providers to ascertain their requirements if the existing electricity column requires relocation. Any costs incurred shall be at the applicant/developer's own expense.
 - d) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.
 - e) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: To ensure a satisfactory standard of development

4. A scheme of landscaping for the site shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
- a) Proposals for the planting and location of native tree species to screen the southern boundary of the site; and
 - b) Proposals for the protection of existing trees, including the root systems of trees located along the southern and eastern boundaries and on lands along the northern (front) boundary of the site that may be encountered during site works.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

5. The materials, colours and textures of all the external finishes to the proposed houses shall be submitted to and agreed in writing with the planning authority before the commencement of development.

Reason: In the interest of the visual and residential amenities of the area.

6. The existing garage/shed shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses or for any use other than as a use incidental to the enjoyment of the dwelling house as such, unless authorised by a prior grant of Planning Permission.

Reason: In the interests of residential amenity.

7. Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

8. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will 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.

9. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

11. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining roadways, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

12. 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 the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

13. 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.

Máire Daly
Planning Inspector

30th July 2021