



An
Bord
Pleanála

Inspector's Report ABP 309542-21.

Development	Material change of use of the structure to residential usage, provision of two lightwells, to provide a part one storey/part two storey 2 bed dwelling.
Location	76, Patrick's Street, Dun Laoghaire, Co. Dublin.
Planning Authority	Dún Laoghaire-Rathdown Co. Council
Planning Authority Reg. Ref.	D20A/0881
Applicants	Alison and Mark Whelan
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellants	Alison and Mark Whelan
Observers	(1) Iseult Masterson (2) Ger Ryan
Date of Site Inspection	23/6/2021
Inspector	Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The site is located at 76, Patrick Street, Dun Laoghaire. The site has a stated area of 0.0248 hectares it is L-shaped and is located on the eastern side of Patrick Street.
- 1.2. The site contains a single storey structure located at the eastern boundary. The current use of the structure is stated as office/ workshop. There is a covered car port area to the northern boundary of the site and an open yard area to the front of the structures. The main area of the site is separated from the laneway access by a gated entrance. The laneway lies between two properties no. 77 Patrick's Street situated to the north and no. 75 Patrick Street situated to the south.
- 1.3. The adjoining site to the west no. No. 77 contains a low profile single storey cottage with a double pitched roof behind a front parapet. The cottage has been extended to the rear and is served by a small area of private open space. No. 75 Patrick's Street is a single storey detached cottage with a hipped roof. The eastern boundary of the site adjoins the rear gardens of two properties on Mulgrave Street no's 27 and 28. There are a mix of single and two-storey properties along this section of Patrick Street and a varied mix of commercial and residential uses.

2.0 Proposed Development

- 2.1. Permission is sought for the material change of use of the existing structure from part workshop/ part office to residential usage, with alterations/extension to include; flat roof single storey and two storey extensions along southern boundary, realignment of existing west facing elevation, replacement of existing roof structure to form flat, green roof, provision of two lightwells along east boundary , all associated site works, to provide a part one storey/ part two storey 2 bed dwelling of 100sq m.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission for the following reason.

The dwelling as proposed, by reason of its massing, design and proximity to site boundaries, would adversely impact on the residential amenity of adjacent properties by reason of overbearing appearance, and represent overdevelopment of the subject site. The proposed development would detract from the existing amenities of the area, would depreciate the value of property in the vicinity, and if permitted, would set an undesirable precedent for similar development in the area, which would be contrary to the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022. The proposed development would not accord with the provisions of Section 8.2.3.4 of the Dun Laoghaire-Rathdown County Development Plan 2016-2022 regarding Additional Accommodation in Existing Built-up Areas (vi) Backland Development, and would thus be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the Planning Officer concluded that while the principle of the residential development of the site may be considered that the development as proposed would be unacceptable. It was considered that the proposed development due to its massing, design and proximity to boundaries would be visually overbearing when viewed from existing adjacent properties to the north and that it would be seriously injurious to the amenities of existing adjacent properties and would represent overdevelopment of the site.

3.2.2. Other Technical Reports

Transportation Planning: No objection subject to conditions.

Drainage Planning: No objection subject to condition.

3.3. Prescribed Bodies

- No reports received.

3.4. Third Party Observations

- 3.4.1. The Planning Authority received two submissions/observations in relation to the application. The main issues raised are similar to those set out in the observations to the appeal.

4.0 Planning History

- None on site

Adjacent sites

PA Reg. Ref. D20B/0272 & PL06D.308797 – Permission was refused by the Board for a rooftop extension to create a two-storey house, demolition of existing single storey extensions and replacement with one single storey rear extension and enlarged rear garden at 77 Patrick Street, Dun Laoghaire, Co. Dublin. Permission was refused for the following reason;

The proposed development, by reason of its excessive height and blank gable wall, would represent an incongruous form of development which would detract from the established pattern and character of development at this location. Furthermore, the proposed development would represent significant overdevelopment of a constrained site, would lead to overbearing impacts on adjoining properties and would provide inadequate private open space for future occupants. As such, the proposed development would seriously injure the residential amenities of adjoining properties, would provide for a poor quality of amenity for future occupants, and would be contrary to Section 8.2.3.4 of the current Dún Laoghaire-Rathdown County Development Plan in relation to additional accommodation in built-up areas. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Reg. Ref. D14A/083 & PL06D.244662 – Permission was granted by the Planning Authority and granted on appeal for the retention of a material change of use from offices and store to a two bedroom residential unit and internal only material alterations to previous offices at 78 Patrick Street, Dun Laoghaire, Co. Dublin.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Dún Laoghaire Rathdown County Development Plan 2016-2022. The subject site is zoned Objective A: 'To protect and/or improve residential amenity'.
- 5.1.2. Section 8.2.3.4 refers to Additional Accommodation in Existing Built-up Areas
- 5.1.3. Section 8.2.3.4(vi) refers to Backland Development.

5.2. Natural Heritage Designations

- None relevant.

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the proposed development comprising of a change of use of an existing structure to residential use and an extension in an established urban area, 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

A first party appeal has been submitted by NKB Architects on behalf of the applicants Alison and Mark Whelan. The main issues raised can be summarised as follows;

- It is contended that the proposal would not, by reason of its massing, design and proximity to site boundaries, adversely impacted on the residential amenity of adjacent properties by reason of overbearing appearance, nor would it represent overdevelopment of the subject site.
- The proposal is designed to provide a single storey main body along the rear wall of the site, incorporating the existing structure, altered to realign the west facing wall, to provide a parallel alignment to the rear (East) wall of the site.
- A set back of 655-1494mm from the existing building alignment between no. 77 would be provided. This element is to open onto the courtyard and is bounded by existing walls, 2600mm to the north and 2350mm to the west along the boundary with no. 77 Patrick Street. A timber fence is also proposed along this wall. Two lightwells are proposed to be installed within the structure along the rear (East) wall.
- A second storey flat roofed structure contains screened glazing this faces west down the existing driveway. The proposed screening to the window of the first floor bedroom would prevent views into the private amenity space of no. 77.
- North facing glazing is proposed to the single storey element with a parapet which prevents overlooking of adjacent property.
- It is submitted that the screening can be increased from 150mm deep to 200mm deep which would provide additional protection to the amenity of surrounding properties.
- In relation to Section 8.2.8.4(ii) of the Development Plan which refers to separation distances, it is stated that there are no directly facing first floor windows within 22m therefore the proposal would be in accordance with this.
- The scheme has been designed to reduce/eliminate concerns regarding overshadowing as it is predominately with the existing height of current walls within the second storey element which has setbacks from all boundaries aside from the boundary with no. 75 Patrick Street.

- It is stated that as indicated on Shadow Study Dwg: 119-106A that no part of any surrounding property would be subject to additional shadowing due to the proposed upper storey.
- The report of the Planning Officer refers to serious concerns regarding the potential visual impact of the proposed development as viewed from existing property at 28 Mulgrave Street. It is noted that no observations/objections were submitted by the owners of no. 75 Patrick Street or no's 27 and 28 Mulgrave Street.
- The first party note a number of other examples of grants of permission with two-storey elements in close proximity to existing dwellings in the locality. Under Reg. Ref. D19B/0214 permission was granted for a second storey extension at 25 Coldwell Street, Glashule, which came within 6m of the dwelling to the rear. Under Reg. Ref. D20A/0196 & ABP 307447-20 permission was granted for a second storey extension which came within 4650mm of a side boundary at Kingston House, 64 Patrick Street. It was within 14.6m to the rear boundary of no. 22 Mulgrave Terrace. Under Reg. Ref D14A/0358 permission was granted for a two-storey house 14m to the rear of no. 8 George's Place.
- The west elevation of the upper storey is arranged to face directly down the driveway of the property and a blank wall would face the rear extension at no. 77 Patrick Street.
- The provisions of Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) specifically Section 5.6 and Section 5.9 are noted. The proposal would have site coverage of 29.7%, the existing site coverage is 36.9%. The proposed plot ratio is 0.4/1. It is submitted that to deem the proposed scheme overdevelopment would be contrary to the provisions of the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities.
- It is contended that the proposed development would not detract from the existing amenities of the area, would not depreciate the value of property in the vicinity and would not set an undesirable precedent for similar development in the area. The proposal for a part one storey and part two-

storey dwelling would accord with the heights prevailing. In relation to the matter of setting an undesirable precedent, it is noted that between no. 67 and no. 77 Patrick Street there are ten houses which are located to the rear of street fronting houses. It is noted that the lease mapping for the adjacent house no. 75 Patrick Street indicates a structure being marked as a cottage.

- It is stated that the subject property has been in independent occupation/usage since 1948. The existing structures have permitted status aside from the car port due to them being pre 1963. The proposal will replace the function of the structure which are a non-conforming use and through extension and alteration it will enable the site to operate in a manner which corresponds to its zoning. It is therefore contended that precedent has been established for development behind the street fronting houses within this urban block.
- It is contended that the application of Section 8.2.3.4 of the Development Plan regarding Additional Accommodation in Existing Built-Up Areas (vi) Backland Development is not appropriate.
- It is submitted that the proposed development is located on a pre-existing, independent site within an area zoned Objective 'A' with a stated objective 'to protect and/or improve residential'. Residential is permitted in principle. The current usage with the current zoning could be argued as an undesirable use in the context of promoting residential amenity.
- The appellants refer to Section 8.2.3.2(ii) which refers to residential density and states, 'As a general principle, and on the grounds of sustainability, the objective is to optimise the density of development in response to type to site, location and accessibility to public transport.
- It is argued that the proposal would meet this principle with the proximity of the town centre.
- The proposal has the benefit of an existing building line and therefore does not fall into the definition of backland development.
- It is submitted that a prescriptive application of the guidelines for Backland Development is not warranted as it does not meet the description of backland

development. It is submitted that either a prescriptive approach be fully implemented or alternatively a logical approach be considered.

- It is submitted that a hybrid approach should be used in assessing the proposal. They note that this approach has been taken in the decision of the Board under PL29S.209251 (3961/04) at the rear of 31 Rathmines Road Lower, Dublin 6 and under PL29S.242631 and PL29S.244575.
- When judged against the development standards that apply to existing buildings all provisions have been met. It is stated that there is ample internal accommodation, ample usable private open space and separation from surrounding structures.
- The site is completely surrounded by existing development and it is submitted that the proposal represents the most appropriate response to development for the site.
- It is proposed to replace the existing connection to the combined sewer with new separate drainage connections. The size of the property is not suited to use soak pits. It is proposed to use a combination of green roof, water butts and permeable paving to attenuate surface water.
- Observations to the application raised the issue of proximity to a drainage line to the rear of the applicant property. The drainage pipe appears to be located 900mm from the boundary with the gardens of properties along Mulgrave Street.
- It is noted that there are numerous examples of precedents for permitting structures in proximity to this boundary including Reg. Ref. D97A/0566, Reg. Ref. D02A/1074, Reg. Ref. D04A/0273 and Reg. Ref. D13A/0385.
- In the case of Reg. Ref. D04A/1319 at no. 23 Mulgrave Street which was refused due to the proximity to the drainage line, it was subsequently granted permission under Reg. Ref. D05A/1640. Condition no. 6 attached to the permission stated, '....Given the wayleave starts at the western boundary, the current proposals appear to involve a very minor intrusion into the wayleave at one point, but with an improvement at another point.'

- It is noted that this principle was supported by the Bord in their decision to overturn a refusal by Dún Laoghaire-Rathdown County Council under ABP 307668 at 26 Acorn Road, Dundrum, Dublin 16 and PL06D.233026 at no. 8 Dunedin Terrace, Dún Laoghaire.
- Regarding parking, one existing car parking space is provided on the existing driveway. This is in compliance with Section 8.2.4.5 of the Development Plan which requires 1 space per 1 bed unit and 2 per 2 bed unit.
- It is submitted that the proposal is consistent with the proper planning and sustainable development of the area and with the provisions of the County Development Plan 2016-2022. Accordingly, the appellants request that the Board grant permission for the application.

6.2. Planning Authority Response

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

6.3. Observations

Observations to the appeal have been submitted by (1) Iseult Masterson and (2) Ger Ryan.

(1) Iseult Masterson

- The first party appeal does not include revisions to the proposal aside from a slight alteration to a screen.
- The contents of the objection submitted in relation to the application remain. They referred to the following matters.
- The unsuitability of the site and existing structure to accommodate the proposed scheme.
- That the proposed development would negatively impact upon the existing residential amenities of the observer's property no. 78 Patrick's Street.

- It is submitted that the proposed dwelling would be visually obtrusive and would cause overlooking of the observer's property to the north.
- The accuracy of the building heights used in the formation of the applicant's shadow study was queried. It is submitted that having regard to the orientation of the site relative to the observer's property and to the two-storey scale of the dwelling that the proposal would cause moderate, permanent and negative loss of light/overshadowing to the observer's rear garden and property.
- The proposal would negatively impact upon the character of the streetscape.
- It is submitted that there is no rear building line at this location.
- The proposal is contrary to Section 8.2.3.2(ii) of the Dún Laoghaire-Rathdown Development Plan 2016-2022 which refers to residential density. The proposal is contrary to Section 8.2.3.4(vi) of the development plan which refers to backland development.
- The matter of drainage concerns are raised.
- The proposal if permitted would set a poor precedent.
- The decision of the Board in relation to the neighbouring site no. 77 Patrick Street, under ABP 308979-20 is noted. The observer raised concerns in their objection to that application where the cumulative impact of the development of the two properties was raised.
- The observer fully concurs with the decision of the Planning Authority to refuse permission and considers that the reason for refusal vindicates her position that the proposal represents overdevelopment of the site.
- The proposed development would represent significant overdevelopment of a constrained site. It would lead to overbearing impacts on adjoining properties and would provide inadequate private open space for future occupants.
- It is requested that the current proposal be refused for the same reason as the proposed development on the adjacent site no. 77 Patrick Street was refused for.
- It is noted that discussions took place between the applicant and the observer Iseult Masterson after the proposed development was designed.

- The observers concerns in respect of massing, design, proximity to site boundaries and impact on her property remain.
- The location of the proposed dwelling adjoining the boundary of a number of rear gardens is unacceptable and provides an unacceptable setback.
- It is submitted that based on the appellant's submitted grounds for appeal that there is no basis for overturning the decision of the Planning Authority to refuse permission.
- The appeal refers to the history of the site to support the proposal and that they consider that the proposal represents the only possible development approach for the site. It is considered that there are other options to appropriately develop the site.
- The argument in the appeal that Section 8.2.3.4(vi) of the Development Plan which refers to backland development should not apply is not reasonable.
- The number of cited appeals referenced in the first party appeal are not considered relevant.
- It is noted that the applicant accepts that there were several discrepancies in the plans submitted and has sought to rectify the errors.
- The observer requests that the decision of the Planning Authority be upheld and the appeal be refused.

(2) Ger Ryan

- The Planning history on the observers site at no. 77 Patrick Street is highlighted. Under PL06D.308797 & Reg. Ref. D20B/0272 permission was granted by the Planning Authority and refused on appeal for a first floor extension. The report of the Inspector noted the relationship between the two sites and two applications. "I note that permission has recently been refused by the Planning Authority for redevelopment of an existing shed/workshop/office to a two-storey, two-bedroom house to the rear of the site (No. 76) for one reason relating to overdevelopment, design and negative impact on residential amenity. Both sites are constrained and are zoned as 'Objective A'. To protect or improve residential amenity."

- It is requested that a consistent approach is taken in relation to the two sites.
- In relation to backland development Section 8.2.3.4(vi) of the Development Plan sets out the policy. The definition of the term is given as “the establishment of a new single dwelling, and a building line to the rear of an existing line of houses.” It is noted that there is a strong building line of houses fronting the east side of Patrick Street from no’s 74 to 79. The proposed dwelling would be located to the rear of that line and therefore Section 8.2.3.4(vi) applies. The policy requires that development is generally single storey to avoid overlooking. The proposal is in breach of this. A laneway width of 3.7m is required under 8.2.3.4(vi). The access lane has a width of approximately 3.25m between the exterior walls of no’s 77 and 75. In terms of backland development it is required that single storey backland dwellings be located not less than 15m from the rear façade of the existing dwelling with a minimum rear garden depth of 7m. As the proposed dwelling is not single storey it does not apply.
- The west facing bedroom of the proposed development would directly overlook the observer’s main bedroom window. The separation distance is 13.8m. The rear garden of the appellant’s property would also be overlooked and would result in an unacceptable loss of privacy. While it is noted that additional timber screening is proposed over part of the window it is not considered sufficient to prevent overlooking.
- Regarding the location of the public sewer, it is noted that on a site to the north under Reg. Ref. D04A/1319 permission was refused due to the proximity of the works to the public sewer. It would appear that the Planning Authority/Irish Water require a 3m setback either side of public wastewater infrastructure. It is understood that the alignment of this sewer continues along the shared rear boundaries of Patrick Street and Mulgrave Street, including along the eastern boundary of the site.
- Having regard to the location of the public sewer and the constraints of the backland development policy as set out under Section 8.2.3.4(vi) of the Development Plan, it is submitted that the development of the site as envisaged is not viable under the current policies and requirement of the

Planning Authority and Irish Water. While it is noted that no objections were raised by the Drainage Planning Section in the report dated 16/12/2020, it is clear that the presence of a public sewer was not addressed.

- It is noted that the application was not referred to Irish Water. In the absence of the consent of Irish Water it is considered that permission should not be granted for a new structure on this footprint.
- In relation to vehicular access, it is noted that from comparable precedents that there is a requirement of the Transportation Planning Section that it should be possible for vehicles to both enter and leave the site in a forward direction. This is possible for vehicles using the site currently, however it would not be possible under the current proposal. It is considered that having regard to the busy road conditions at this location on Patrick Street that the proposal would represent a traffic hazard.
- It is noted that the proposal to use the existing laneway as a car parking space would have a potential impact to the observer as the residents of no. 77 have enjoyed unimpeded access across the laneway. The parking for no. 76 was within the gates on the site.
- It is submitted that the description of development is inconsistent with what is being proposed. It is considered that if the proposal were implemented it would entail the demolition of the existing structure on site and the construction of a new two-storey house with associated site clearance and construction of foundations.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and observation to the appeal. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Design and impact on residential amenity

- Drainage
- Access and parking
- Appropriate Assessment

7.1. Design and impact on residential amenity

- 7.1.1. The Planning Authority refused permission for the proposed development on the basis of its massing, design and proximity to site boundaries that it would adversely impact on the residential amenity of adjacent properties by reason of overbearing appearance, and represent overdevelopment of the subject site.
- 7.1.2. The observations to the first party appeal state that the proposed development would give rise to overlooking and overshadowing.
- 7.1.3. The first party contend that in assessing the proposed development that it would not be appropriate to assess it under the provisions of Section 8.2.3.4 of the Development Plan which refers to backland development. They request this on the basis of the historical use of the site and state that the proposal has the benefit of an existing building line and that it does not fall into the definition of backland development.
- 7.1.4. The Planning Authority in their assessment of the proposal addressed it under the provisions of Section 8.2.3.4(vi) of the Development Plan and considered that the development as currently proposed would not accord with that section of the plan. Having regard to the configuration and layout of the site and adjacent dwelling no. 77, I would concur with the Planning Authority that the proposed development would constitute backland development.
- 7.1.5. Accordingly, the issues that need to be addressed are whether the proposed development is acceptable on this site, taking into consideration the design and layout and the impact on the amenities of adjoining residents. I shall examine these issues in the subsequent sections of the report.
- 7.1.6. Section 8.2.3.4 (vi) of the Development Plan refers to Backland Development and requires that a single storey backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.

- 7.1.7. In the case of the current proposal a minimum separation distance of 5.3m is provided between the western (front) elevation of the proposed new dwelling and the eastern (rear) elevation of the existing dwelling no. 77 Patrick Street. I note that section 8.2.3.4 (vi) refers to the requirement of a minimum separation distance of 15m between rear façade of the existing dwelling and the proposed dwelling. Furthermore, this in the case where a single storey backland dwelling is proposed. The current scheme involves the development of a first floor extension to the existing structure to provide bedroom accommodation. Therefore, I would conclude that the proposed development would be contrary to the provisions of section 8.2.3.4 (vi) of the plan.
- 7.1.8. In relation to the matter of potential overlooking, I note this was not specifically included by the Planning Authority in the reason for refusal. The two observations to the appeal have expressed concerns at potential new overlooking particularly from the first floor. In relation the property of one of the observers, no. 77 Patrick Street, it is submitted that the west facing bedroom of the proposed development would directly overlook the observer's main bedroom window. It is also stated that the overlooking of the rear garden of the property would result in an unacceptable loss of privacy. It is noted in the observation that additional timber screening is proposed over part of the window, however this it is not considered sufficient to prevent overlooking.
- 7.1.9. The adjacent dwelling no. 77 Patrick Street is a single storey cottage. The proposed first floor extension would be situated a minimum distance of 6.93m from the boundary between the sites and a minimum distance of 7.8m from the rear the dwelling. As indicated on Drawing No: 119-105A of the proposed west elevation, timber screening is proposed to the first floor window to this elevation. It is argued in the appeal that the proposed screening would prevent overlooking of into the private amenity space of no. 77. While I note that the screening would reduce potential overlooking, having regard to the proximity of the proposed two-storey element to the party boundary and the single storey nature of the adjacent property, a perception of overlooking would be experienced which would negatively impact upon the existing amenities of the neighbouring property no. 77. The neighbouring dwelling no. 78 Patrick Street to the north of the appeal site is the property of the other observer. In relation to the matter of potential overlooking of this property, I note that to the

northern elevation of the proposed first floor, two windows are proposed to serve an en-suite bathroom and walk-in wardrobe. As per the submitted drawings, the use of opaque glazing to these windows is not specified. The proposed first floor windows would be situated circa 6.5m from the boundary of no. 78. The window design does include timber screens and a parapet is proposed to the single storey element to prevent overlooking of adjacent property. It is submitted in the appeal that the screening can be increased from 150mm deep to 200mm deep which would provide additional protection to the amenity of surrounding properties. While I note these design measures, having regard to the relatively close separation distance between the first floor north facing windows and the boundary of the observer's property, I would have concerns in relation to potential overlooking and the perception of overlooking. Should the Board decide to grant permission for the proposal, I would consider that it would be appropriate to seeking that the north facing first floor windows be fitted with opaque glazing.

- 7.1.10. Regarding the matter of overshadowing and loss of daylight, the applicants submitted a Shadow Analysis with the application. The Shadow Analysis indicated the impacts of shadows cast by existing walls and structures and by the proposed development on the 21st of June, 21st of March and 21st of December.
- 7.1.11. Having viewed the submitted Shadow Analysis diagrams, I note that on June 21st at 5.30pm and 7pm there would be some additional shadowing of the rear gardens of the adjacent properties to the east no. 27 and no. 28 Mulgrave Street. On the 21st of March, there would be some limited additional shadowing of the rear yard of no. 77 Patrick Street at 8.30am. On the 21st of December there would be some additional shadowing at 8.30am and 12pm of the rear garden of no. 78 Patrick Street. I note that this shadowing would occur onto existing sheds. Accordingly, having regard to the proximity of the proposed two-storey extension I would consider that there would be some limited additional shadowing to the rear gardens on the adjacent properties to the east on Mulgrave Street on June 21st.
- 7.1.12. In relation to the matter of the visual impact of the proposed development on the neighbouring properties in terms of it being overbearing, I note that the proposed first floor extension would be built up to the southern site boundary with no. 75 Patrick Street. The proposed first floor extension would be inset 1.9m from the eastern site boundary. It would extend for a length of 7m along the eastern boundary with rear

garden of no. 28 Mulgrave Street at a height of 6m. I consider this would appear incongruous and visually obtrusive when viewed from this property. Furthermore, having regard to the close proximity of the proposed first floor element of the development to the observers properties to the north and west, I would consider that the proposal would have an overbearing impact upon those properties also. Accordingly, I consider having regard to the limited site size and the undue proximity of the proposed development to adjacent properties that the proposal would have an overbearing impact.

7.1.13. Accordingly, in conclusion, having regard to the limited site, to the height and design of the proposed development and proximity adjacent properties, it is considered that the proposed development would constitute overdevelopment of the site and would adversely impact on the residential amenity of adjacent properties by reason of overbearing appearance and potential overlooking. In particular, the proposed development would be contrary to Section 8.2.3.4 (vi) of the Development Plan which refers to Backland Development. Accordingly, I would concur with the assessment and recommendation of the Planning Authority.

7.2. Drainage

7.2.1. The observations to the appeal have raised the matter of drainage, specifically the proximity of the subject development to the public sewer. Reference is made in an observation, to a refusal of permission on a site to the north of the appeal site. It is noted that at no. 23 Mulgrave Street, Dun Laoghaire, permission was refused for an extension under Reg. Ref. D04A/1319 due to the proximity of the works to the public sewer. The observation refers to the requirement of the Planning Authority/Irish Water for a 3m setback either side of public wastewater infrastructure.

7.2.2. In response to the matter, it is stated in the appeal that based on reference to Irish Water mapping that the sewer line appears to be located 900mm from the boundary within the gardens of the properties along Mulgrave Street. The location of the existing combined sewer is indicated on the 'Proposed Site Plan' on Drawing No: 119-103A submitted with the application. This illustrates the location of the sewer line to the east of the site approximately 900mm from the boundary.

- 7.2.3. It is noted in the appeal that there are a number of examples of precedents where structures were permitted in proximity to this boundary including Reg. Ref. D97A/0566, Reg. Ref. D02A/1074, Reg. Ref. D04A/0273 and Reg. Ref. D13A/0385. It is also noted in the appeal that following the refusal of permission under Reg. Ref. D04A/1319 at no. 23 Mulgrave Street due to the proximity to the sewer, permission was subsequently granted under Reg. Ref. D05A/1640 for an extension to the rear of the property. Condition no. 6 of the permission included a note which referred to the wayleave and stated, '....Given the wayleave starts at the western boundary, the current proposals appear to involve a very minor intrusion into the wayleave at one point, but with an improvement at another point.'
- 7.2.4. Having regard to the separation distance provided to the existing sewer, the existence of the existing structure on site and the cited examples of permitted development in proximity to the existing sewer, I consider that it would not warrant a refusal of permission on that basis.
- 7.2.5. It is confirmed in the appeal that it is proposed to replace the existing connection to the combined sewer with new separate drainage connections. In relation to surface water drainage the applicants proposed to use a combination of green roof, water butts and permeable paving to attenuate surface water because the site size is not suited to use soak pits. The proposed drainage layout is indicated on the Proposed Site Plan, Drawing No. 119-103A. I note that in relation to surface water drainage the Drainage Planning Section of the Council in their report dated the 16/12/2020 stated that there were no objections to the proposed scheme.

7.3. Access and parking

- 7.3.1. The matter of access and car parking was raised in an observation to the appeal. It is proposed to provide one car parking space within the existing lane section of the site. The observation referred to the issue of a vehicle parked on site not being able to both access and exit the site in a forward direction as there would be no area to turn the vehicle within the site. However, while I note this matter, the report of the Transportation Planning Section states that there are no objections to the proposed development. Accordingly, I consider the access and parking proposals are acceptable. Furthermore, I note the town centre location of the site, which may negate the requirement of occupants to own a vehicle.

7.4. Appropriate Assessment

- 7.4.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, a change of use of an existing structure to residential use and an extension and the location of the site in a serviced urban area and the separation distance to 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.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the reason set out below.

9.0 Reasons and Considerations

1. The proposed development is located within an area covered by zoning objective A in the Dún Laoghaire-Rathdown County Development Plan 2016 – 2022, the objective of which is to protect and improve residential amenities. Having regard to the configuration of the site, its limited size, the massing design of the proposal and the undue proximity to adjacent properties, it is considered that the proposed development would constitute overdevelopment of the site and would adversely impact on the residential amenity of adjacent properties by reason of overbearing appearance and overlooking. In particular, the proposed development would be contrary to Section 8.2.3.4 (vi) of the current Development Plan for the area, which refers to Backland Development. It would set an undesirable precedent for similar development in the area. The proposed development would, therefore, seriously injure the amenities of the residential properties in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Siobhan Carroll
Planning Inspector

29th of July 2021