



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309681-21

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<b>Development</b>	Demolition of existing shed to rear of main house, construction of mews dwelling to Orwell Mews
<b>Location</b>	Land at Orwell Mews, to the rear of 30 Orwell Road, Rathgar, Dublin 6 D06 HE30
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3922/20
<b>Applicant(s)</b>	Daniel and Mary O'Dea
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Daniel and Mary O'Dea
<b>Observer(s)</b>	Patrick & Judith Deeley Michael O'Brien Denis Cleary
<b>Date of Site Inspection</b>	29 <sup>th</sup> of October 2021
<b>Inspector</b>	Adrian Ormsby

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## 1.0 Site Location and Description

- 1.1. The appeal site is c. 4.3km to the south of Dublin City centre to the rear of a house at No. 30 Orwell Road, Rathgar, Dublin 6. No 30 is a two storey house within a terrace of six similar style houses fronting Orwell Road. The application site is part of the curtilage to the rear of the house onto a road/laneway known as Orwell Mews.
- 1.2. The application site has a stated site area of 122 sq.m. It includes a recessed gable fronted, pitched roof, garage style building set back from Orwell Mews. The building has a vehicular door with hardstanding to the front with a poorly maintained, low level block wall style boundary treatment.
- 1.3. There are two other garage style structures to the immediate south of the site. These structures generally maintain the building line of a terrace of nine two storey houses further south of the site. These houses appear to have been built in the rear gardens of a terrace of nine houses fronting Orwell Road.
- 1.4. There is corrugated sheet style fencing to the northern boundary of the site which steps forward from the front elevation of the garage to Orwell Mews before enclosing its roadside boundary. There is a flat roof garage north of the corrugated fencing.
- 1.5. Orwell Mews road/lane runs generally from north to south connecting Terenure Road East to Orwell Road. There is also a private road spurring west slightly north of the application site known as Rathgar Park. This serves c. 13 houses that appear to have been built in the rear gardens of property's on Terenure Road East.
- 1.6. The site directly opposes a boundary to Herzog Park which includes high hedgerows/trees. There is on-street public parking located along this boundary and a dedicated car parking area located c. 25m south of the site and in front of the nine house on Orwell Mews. There is no footpath fronting the site but there is one to the front of the nine houses south of the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises of-
  - Demolition of the existing shed (40.3 sq.m) fronting Orwell Mews
  - The subdivision of the site from No. 30 Orwell Road with a new boundary wall,

- Construction of a 102sqm two storey, two bedroom house designed with three ridges stepped to the rear of the site-
  - a front ridge level height of c. 8.48m,
  - a mid-ridge level height of c. 6.967m and
  - a rear ridge height of c. 6.8m
- One internal style car port parking space c. 15 sq.m, accessed via a new vehicular entrance gate from Orwell Mews
- One first floor terrace to Orwell Mews, an internal courtyard at first floor level towards southern boundary and a rear garden space

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to refuse permission on the 15/02/21 for three reasons which can be summarised as follows-

- Having regard to the scale, mass and height of the proposed building, it is considered that the proposed development would appear overly dominant in relation to the context of the mews lane.
- Having regard to the scale, mass and form of the proposal, it is considered that the proposed building would result in an unacceptable impact on the amenity of neighbouring occupiers by virtue of creating an overbearing effect.
- Having regard to the size of the proposed dwelling and to the position, layout and enclosure of the proposed external spaces, it is considered that the proposed development would fail to provide adequate private amenity space.

### **4.0 Planning Authority Reports**

#### **4.1. Planning Reports**

The report of the Planning Officer (12-02-21) reflects the decision of the Planning Authority. The following is noted from the report-

- A previous application (3163/20) for a 126 sq. m, part two storey/ part three-storey three-bedroom mews dwelling was refused. The subject proposal has been redesigned in response to the issues raised.
- This application proposes a 102 sq.m two-storey, two bed, mews dwelling, with a terrace to the front, central court yard and a 17 sq. m rear garden.
- The application site is zoned Z1, under which residential uses are permissible.
- Mews development along Orwell Mews road has been established by virtue of multiple planning permissions.
- the key issue is whether the revised design addresses the reasons for refusing the previous application.
- The overall height of the proposed dwelling would exceed that of existing dwellings to the south along Orwell Mews and the main dwelling at 30 Orwell Road. The site is situated on slightly elevated ground relative to its surroundings which would result in the dwelling being much more apparent and visually dominant in the context of the local area.
- It is considered that the proposed dwelling height is considered excessive and would adversely impact on the visual amenities of the area.
- The building depth remains at 15.5m as per the previous proposal which was considered excessive. The scale of the proposed building, would appear excessive and incongruent.
- The proposed architectural form does not relate to surroundings and does not complement the character of the mews lane.
- Bedroom 1 incorporates a frosted glazing window opening at the rear elevation, it is largely reliant on receiving light from a lightwell.
- The aspect, natural light and ventilation for bedroom 2 is also wholly unsatisfactory given that it opens onto the internal car parking space which is enclosed from the first floor level above; it is not considered that a suitable level of amenity would be achieved in this room.
- The applicant has not provided a sunlight/daylight penetration analysis to demonstrate that sufficient daylight into these areas would be achieved.

- Open space is in the form of a rear garden, a courtyard and a front terrace to which equates to an overall provision of 31.9 sq.m. This is below Development Plan standards. The garden depth of 7.5m is not achieved therefore the space requirement cannot be relaxed. There are concerns regarding the quality of the space given overshadowing of the internal courtyard and the balcony.
- Separation distances of c.14 m and less than 10m to the main rear elevation and rear return elevation respectively of No.30 Orwell Road.
- The proposed development would have an unacceptable impact on neighbouring amenity in terms of overbearing impact and overshadowing.
- There is pay and display/permit parking located to the south of the site. There are a few pay and display parking spaces on Terenure Road East, but no permit parking and there is no parking on Orwell Road.
- The permit parking scheme to the rear of the site at Orwell Mews would be accessible to the residents of no. 30 Orwell Road.

#### 4.2. Other Technical Reports

- Drainage Division- No objection subject to condition
- Roads & Traffic Planning Division- No objection subject to condition

#### 4.3. Prescribed Bodies

- None

#### 4.4. Third Party Observations

- Four submissions were received. The main issues raised are generally those as covered in Section 7.3 of this report.

### 5.0 Planning History

*This Site and adjoining site-*

- 3163/20- construction of a 126 sqm, part two-storey/ part three-storey three-bedroom mews dwelling to rear of No. 30 Orwell Road, formation of a vehicular car parking space to front of No. 30 Orwell Road, **Refused** 01-10-20, for four reasons
  - 1) the proposed development would appear overdominant in relation to the context of the mews lane and would seriously injure the amenities of the local area, contrary to the Development Plan.
  - 2) the proposed building would result in an unacceptable impact on the amenity of neighbouring occupiers by virtue of creating an overbearing effect. It would seriously injure the amenities of neighbouring occupiers and would be contrary to the Z1 zoning objective.
  - 3) the proposed development would fail to provide adequate private amenity space, contrary to the provisions of the Development Plan
  - 4) The proposed vehicular entrance onto Orwell Road would endanger public safety by reason of traffic hazard and obstruction of road users.

#### *Nearby Site*

- 2589/18- Construction of part 2.5 storey/part 3 storey mews dwelling in lieu of existing garage, (site within curtilage of a Protected Structure), **Grant**, 23-Aug-2018

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. 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*'.
- 6.1.2. 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 relevant-
  - 16.5 Plot Ratio Indicative Plot Ratio Z1 - 0.5 – 2.0



- 16.6 Site Coverage Indicative Site Coverage Z1 – 45% - 60%
- 16.10.2 Residential Quality Standards – Houses
  - a) Floor Areas- *Houses shall comply with the principles and standards outlined in Section 5.3: ‘Internal Layout and Space provision’ contained in the DEHLG ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities...’*
  - b) Aspect, Natural Light & Ventilation- *Living rooms and bedrooms shall not be lit solely by roof lights and all habitable rooms must be naturally ventilated and lit...glazing to all habitable rooms shall not be less than 20% of the floor area of the room. 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).*
  - c) Private Open Space-.....*A minimum standard of 10 sq.m of private open space per bedspace will normally be applied. A single bedroom represents one bedspace and a double bedroom represents two bedspaces....*

*At the rear of dwellings, there should be adequate separation between opposing first floor windows. Traditionally, a separation of about 22 m was sought between the rear of 2-storey dwellings but this may be relaxed if it can be demonstrated that the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers....*

*Where dwellings have little or no front gardens in urban settings, it is important that ‘defensible space’ is created behind the public footpath....Rear gardens and similar private areas should: be screened from public areas....*
- 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.*

- 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*
- 16.10.16 Mews Dwellings
  - a) *Dublin City Council will actively encourage schemes which provide a unified approach to the development of residential mews lanes and where consensus between all property owners has been agreed. This unified approach framework is the preferred alternative to individual development proposals.*
  - e) *New buildings should complement the character of both the mews lane and main building with regard to scale, massing, height, building depth, roof treatment and materials. The design of such proposals should represent an innovative architectural response to the site and should be informed by established building lines and plot width. Depending on the context of the location, mews buildings may be required to incorporate gable-ended pitched roofs.*
  - j) *Private open space shall be provided to the rear of the mews building and shall be landscaped so as to provide for a quality residential environment. The depth of this open space for the full width of the site will not generally be less than 7.5 m unless it is demonstrably impractical to achieve and shall not be obstructed by off-street parking. Where the 7.5 m standard is provided, the 10 sq.m of private open space per bedspace standard may be relaxed.*
- 16.38 Car Parking Standards- Area 3 Max 1.5 per dwelling

6.1.3. The Development Plan Mapping shows the Zone of Archaeological Constraint for Recorded Monument ‘022-091’ applying to the application site. The National Monuments Service identify DU022-091 as a ‘windmill’ and their Historic Viewer Application locates this c. 46m south of the site. The NMS zone of notification does

not encroach upon the application site. Notwithstanding this, the site is located within a Zone of Archaeological Interest as per the Development Plan.

## 6.2. Guidance

- 6.2.1. Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007) DEHLG- Chapter 5- Dwelling Design, Section 5.3.2- ‘Space Requirements and Room Sizes’-

*The area of a single bedroom should be at least 7.1m<sup>2</sup> and that of a double bedroom at least 11.4m<sup>2</sup>. The area of the main bedroom should be at least 13m<sup>2</sup> in a dwelling designed to accommodate three or more persons.*

*The recommended minimum unobstructed living room widths are 3.3 metres for one bedroom, 3.6 metres for two bedroom and 3.8 metres for three bedroom dwellings, and the minimum room widths for bedrooms are 2.8 metres for double bedrooms and 2.1 metres for single bedrooms.*

Table 5.1: Space provision and room sizes for typical dwellings-

Dwelling Type	Target Gross Floor Area*	Minimum Main Living Room*	Aggregate Living Room Area*	Aggregate Bedroom Area*	Storage*
2Bed/4P House (2 storey)	80	13	30	25	4

\* dimensions is sq.m

- 6.2.2. Architectural Heritage Protection Guidelines for Planning Authorities (2011)
- 6.2.3. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

## 6.3. Natural Heritage Designations

- The site is located c. 4.75 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. 2 km south of the Grand Canal pNHA.

## **6.4. Preliminary Examination Screening for Environmental Impact Assessment**

- 6.4.1. It is proposed to construct one house on a stated site area of 122 sq.m in an existing built up area. The scale of the development and site area are well below the applicable thresholds of Class (10) Infrastructure Projects of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) i.e. number of units and the size of the area of urban development.
- 6.4.2. The introduction of one house will not have an adverse environmental impact on surrounding land uses. The proposal would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be marginal.
- 6.4.3. I have concluded that, by reason of the limited nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development is not necessary (See Preliminary Examination EIAR Screening Form).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

A first party appeal has been received and can be summarised as follows:

- The appeal sets out key information including a recent previous application on the site- 3163/20 that was not appealed. This application is referenced through the appeal and a copy of its drawings are also included.
- A site overview is provided and details that several mews houses have been developed in recent years. A terrace has been constructed to the east side of Orwell Mews and terminates at No. 9 Orwell Mews.
- Further north of this, the streetscape is ill defined by haphazard shed placement and poor quality boundary treatments which is no longer in keeping with the largely residential nature of the area.

- The carriageway to the front of the site is in excess of 7m wide. This exceeds the development plan requirement of 5.5m where no footpath is provided. The application proposes a footpath to the front of the site.
- There is no car parking serving the existing dwelling No. 30 Orwell Road. The proposed parking within the site overcomes the requirement of section 16.1.16 (h).
- Application 3163/20 was refused due to its proposed scale, mass and height and resulting impact on surrounding amenities and neighbouring occupiers.
- The key takeaways and briefs from 3163/20 include-
  - Reducing the scale and height,
  - Removal a bedroom, living area and utility
- The primary function of the second bedroom at ground floor is to mitigate against invalidity should that arise in the future. The application provides a more traditional roof form similar to the surrounding context with the line of apex running parallel to the lane.
- The appeal illustrates that -
  - the Planning Authority did not consider precedent for similar approved development in the locality
  - did not use the discretion available for mews development 16.10.16 of the Development Plan.
  - Concerns in relation to Daylight of the two bedrooms are unfounded
  - The calculation of required private amenity space based on bed spaces does not consider the intended use of the bedroom 2.
- In terms of scale, mass, form and height the appeal refers to precedent under 2589/18 (27m from the site). This was for a part 2 part 3 storey house with a similar ground level to the application site and a permitted height 65mm higher than the proposed development. Reference is also made to 3061/09<sup>1</sup>

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<sup>1</sup> To rear of No. 26 Orwell Road, outline permission now expired.

5m north of the application site with similar ground levels and a condition requiring a maximum ridge height of 8.7m.

- The proposed height is below 8.7m and the reasoning that the proposal would appear overly dominant in relation to the context of the mews lane is refuted. The terrace of existing mews houses adjacent to the site are lower in height due to the sloping nature of the lane. The height of the terrace is 7.95m and 680mm lower in relative height to the proposed house.
- The rear wall of the proposed mews at first floor will be 13.875m from the rear wall of the main body of the existing house No. 30 Orwell Road. A precedence has been set for development opposing the rear wall of a main house between 1 Orwell Mews and No. 52 Orwell Road. Reference is also made to 4626/17 at 161 Leinster Road. The Planning Authority did not seek further information to establish if the scale height and mass of the dwelling could have been reduced further.
- The proposed application provides a roof profile similar to nearby mews dwellings.
- It is incorrect to say the front facing window of the downstairs bedroom opens onto an 'enclosed' space (the car parking space). The parking space is open to the elements but sheltered due to living room above. Daylight to the bedroom is supplemented via a large rooflight from courtyard above.
- A sunlight/daylight analysis is a specialised study that is not required, nor typical to include, when making a planning application. The concern could have been alleviated by a request for further information and should not be considered grounds for refusal.
- The master bedroom at first floor has east, south and west facing windows. The downstairs bedroom has a west facing window which is supplemented by a 3.8m by 0.8m skylight. Both rooms will be adequately lit. should the Board require a daylight study, it can be commissioned upon request.
- A screened lightwell at the rear of the proposed mews ensures adequate light is provided to the main bedroom and ensures adequate privacy is provided to neighbouring amenity spaces and opposing windows.

- Bedroom 2 could have been designed as a single bedroom thereby reducing the private open space requirement to 30sq.m ensuring technical compliance. The applicants are retired and wish to future proof this room.
- In addition to the three areas of private amenity space consideration should be given to the proximity of Herzog Park.
- There is scope to further reduce the height of the house and the applicants would be willing to accept this by condition.
- If the original proposal is not acceptable a revised proposal is also put forward. This increases the distance at first floor level from No. 30 Orwell Road by a further 0.9m and the roof apex is lowered by 0.44m.
- The applicants are retired and are looking to downsize to a modest house in close proximity to family at No. 30 Orwell Road.

## 7.2. Planning Authority Response

- None received

## 7.3. Observations

Three observations were received from Patrick & Judith Deeley, Michael O'Brien and Denis Cleary. The issues raised by observers can be summarised as follows:

- The scale, mass and height of the development would negatively impact upon existing residential amenity by way of overbearing, overshadowing, loss of south westerly light, overlooking and impacts on privacy.
- The proposed development would be visible from Orwell Road and would have a negative visual impact on the character of the area. Views to Herzog Park from Orwell Road will be adversely affected.
- The design of existing mews are sympathetic to the surrounding area.
- The proposal would set an undesirable precedent for the area.
- The proposal would be contrary to the zoning objective.

- The proposed development could potentially exacerbate subsidence in the area. There was previously a quarry in the area.
- The proposal may impact future development as it is located in the middle of 5 undeveloped rear gardens.
- The development would be an improper use of a garden.

## 8.0 **Assessment**

### 8.1. **Introduction**

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

- Zoning and Principle of Development
- Refusal Reasons 1 and 2
- Refusal Reason 3 and Development Standards
- Residential Amenity- Daylight and Sunlight
- The revised proposal submitted with the appeal
- Other Matters
- 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 residential use of the site for a house is therefore, considered acceptable.

8.2.2. The applicants have applied for a 'mews dwelling' in lieu of an existing shed. The address of the site is given as lands at Orwell Mews, to the rear of Orwell Road. The 'Planning Stage Design Report' submitted with the application describes the



application site to the rear of the house at No.30 Orwell Road. No. 30 is described as an early to mid-twentieth century, bay fronted, mid terrace house. The report details that Orwell Mews and the adjoining Rathgar Park have become an established residential enclave with several mews houses being developed in recent years forming established single sided, street frontage on both lanes. A terrace of nine residential homes has been constructed to the south of Orwell Mews and terminates c.9.2m to the south of the site.

8.2.3. The DCC Development Plan does not provide a definition for 'Mews' housing. Section 11.1.5.3 and 11.1.5.6 of the Plan discuss 'Mews' in the context of 'Protected Structures' and 'Conservation Area' 'policy application'. Section 16.2.1 discusses 'Design Principles' and states- *'development will respond creatively to and respect and enhance its context, and have regard to.....The character, scale and pattern of historic streets, squares, lanes, mewses and passageways'*. Section 16.10.16 deals specifically with 'Mews Dwellings' and sets a number of development standards.

8.2.4. The site is not located within the curtilage of a Protected Structure or within a Conservation Area. Having considered DCC's references to build heritage and the connotations of same as regards to 'Mews' buildings and laneways, I note the Architectural Heritage Protection Guidelines for Planning Authorities 2011 provides a 'Glossary of Architectural and Building Terms' in which 'Mews' is described as-

*'Stabling with living accommodation above. Usually built at the rear of large town houses.'*

This description is more comparable to my understanding of the term 'Mews' that the context of the subject application.

8.2.5. I accept the site is located on a road/laneway that is known as 'Orwell Mews'. However, in my opinion, other than the fact there are 9 houses built to the rear of Orwell Road, there is nothing on this laneway to suggest the stretch of the laneway to Rathgar Park is an actual 'Mews' laneway in accordance with the description of 'Mews' provided by the Architectural Heritage Protection Guidelines. In this regard the existing structure on the site is a gable fronted shed with vehicular style garage door. The nine houses on this laneway appear to me to be typical two/three bedroom two storey dwellings with no design references pointing to stabling or the historical significance of the original sites these houses came from. I also noted that none of

the housing fronting Orwell Road are Protected Structures or are in a designated Conservation Area.

- 8.2.6. The Development Plan mapping does show a Zone of Archaeological Constraint for Recorded Monument '022-091' applying to the application site and to the houses along Orwell Mews. I note the National Monuments Service (NMS) identify DU022-091 as a 'windmill' and their Historic Viewer Application locates this c. 46m south of the site and within the boundary of No. 2 Orwell Mews. The NMS describe a 'windmill' as

*'A tower-like structure of stone, wood or brick with a wooden cap and sails which are driven around by the wind producing power to work the internal machinery. These date from the late medieval period (c. 1400 to the 16th century AD) onwards.'*

I did not observe the feature on my inspection and consider it unlikely to be within the terrace of houses at Orwell Mews. I do not consider the monument would have had a material influence on the determination of this laneway as a 'Mews Laneway'. It appears to me this road/lane is a 'Mews' lane/road in name only.

- 8.2.7. I note a number of properties to the North East of the site fronting Terenure Road East are Protected Structures. The rear of these properties extend to a private laneway adjoining Rathgar Park and are generally located across from the site. Having inspected the houses erected along this road I note the general design of the houses would not come under the description of 'Mews' as per the Architectural Heritage Protection Guidelines. However I do note the front boundary treatments appear to retain parts of what may have been the original walls to the rear of the Protected Structures. Notwithstanding this I do not consider the Protected Structure status of properties to Terenure Road and the development of houses in their curtilages onto Rathgar Park would have a material influence on the consideration of the subject application as a 'Mews' or the road/lane it fronts to be a 'Mews laneway'.

- 8.2.8. I accept the laneway is known as Orwell Mews, however in this context, and having inspected the site and walked the general area including Orwell Road I do not consider the existing houses on Orwell Mews to be 'Mews' houses or Orwell Mews to be a 'Mews laneway' as per the references to 'Mews' in Section 11.1.5.3 and 11.1.5.6 of the Development Plan or the glossary of the Architectural Heritage

Protection Guidelines for Planning Authorities. The Planning Authority's first refusal reason specifically refers to the 'context of the mews lane'.

8.2.9. In my opinion Development Standards as set out in Sections 16.10.8- 'Backland Development' and 16.10.10 'Infill Housing' are the most appropriate criteria for considering the proposed development. In this regard the Backland Development is defined-

*'as development of land that lies to the rear of an existing property or building line'.*

Section 16.2.2.2 describes Infill Development as-

*'gap sites within existing areas of established urban form'*

8.2.10. I also refer to section 5.9 (d) (i) of the Sustainable Residential Development in Urban Areas (2009) which discusses 'Inner suburban/ Infill' and 'Infill residential development' and details such development proximate to existing public transport corridors, has the ability to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such development can be provided either by infill or by sub-division. In this regard, the sites proximity to bus stops on Orwell Road is evident. The application proposes subdivision of lands at No. 30 Orwell Road. I consider the site is best described as a small gap infill, and a backland area. Infill backland development at this site on this road/lane is considered appropriate.

8.2.11. In this regard I intend to primarily assess the application against the Development Standards set out in section 16.10.2 Residential Quality Standards and the provisions of 16.10.8 Backland Development and 16.10.10 Infill Housing. I will have some regard to section 16.10.16 in relation to Mews Housing.

### **8.3. Refusal Reasons 1 and 2**

8.3.1. The Planning Authority's first two refusal reasons relate to the scale, mass, height and form of the proposed development. The reasons consider the development would-

- appear overly dominant in the context of the mews lane and
- have an unacceptable overbearing impact on neighbouring occupiers

- 8.3.2. The appeal argues that the streetscape is ill defined by haphazard shed placement and poor quality boundary treatments which are no longer in keeping with the largely residential nature of the area. In terms of scale, mass, form and height the appeal refers to precedent under 2589/18 (27m from the site) on Rathgar Park. This was for a part 2 part 3 storey house with a similar ground level to the application site and a permitted height 65mm higher than the proposed development. Reference is also made to 3061/09 (which I note has now expired) 5m north of the application site with similar ground levels and a condition requiring a maximum ridge height of 8.7m.
- 8.3.3. As discussed in section 8.2 I do not consider the proposed development to be a 'Mews' style house on a 'Mews lane'. The proposed development is more accurately described as a gap infill development on a backland site where appropriate residential development should be encouraged.
- 8.3.4. I agree with the applicants contention that the northern part of the streetscape along Orwell Mews is ill defined by haphazard shed placement, poor boundary treatments and is no longer in keeping with the residential nature of the road/lane and the overall area. In this context appropriate development of the application site could encourage development either side to complete and improve the overall streetscape from Orwell Mews to the junction with Rathgar Park. It is appropriate that such development should take its design reference from the existing terrace of houses along Orwell Mews.
- 8.3.5. I partially agree with the Planning Authority's view that the proposed house would appear dominant on the road/lane in the context of existing structures either side. However, I consider this is because it would be a standalone two storey house with smaller shed like structures either side of it. If these sites are suitably developed in the future, the subject site will eventually form part of an overall streetscape along the road/lane and the subject house would not be visible or dominant in isolation. In this regard the subject application could be a catalyst for further development and it would have been helpful if the application was accompanied by an analysis or design brief of how the streetscape as whole could be developed including such consideration of heights, siting, building lines and layouts.
- 8.3.6. Notwithstanding this, the front ridge height of the proposed house is indicated as 8.484m. The road/lane to Orwell Mews rises gently from south to north and the

applicants indicate the proposed height will be c. 0.68m higher than the houses to Orwell Mews. Having visited the site and considered the contiguous elevation drawing (DWG No. 117) along Orwell Mews and the sites suburban context, I do not consider the proposed height of the house will be overly dominant or have a detrimental visual impact along Orwell Mews. Having considered the contiguous elevation drawing along Orwell Road (DWG No. 114) I note the roof of the proposed houses appears to protrude above the roof lines of Orwell Road by c. 0.4m. Having inspected the site from Orwell Road I consider views of the roof will be negligible or minimal at best.

- 8.3.7. The development of a two storey house on this site will be of a scale and mass that is visible from Orwell Mews in comparison to the adjoining structures. The drawings show the depth of the first floor of the building to be c. 15.2m with three ridge heights ranging from c. 8.48m, a mid-ridge level height of c. 6.967m and a rear ridge height of c. 6.8m. The full impact of the building will not be overly visible from many places along Orwell Mews (save for closer to the site) and in my opinion would not seriously injure the visual amenities of the road/lane. I also note the impact of the bulk or mass would be mitigated should appropriate development happen either side of the site.
- 8.3.8. Having considered all of the above and having particular regard to the fact that I do not consider Orwell Mews to be a 'Mews Laneway' in the context of built heritage, I do not agree with the Planning Authority's first refusal reason.
- 8.3.9. The Planning Authority's second refusal reason considers the scale mass and form of the development would have an overbearing effect on the amenity of neighbouring properties. In this regard it must be noted that properties either side of the application site are lands to the rear of No. 28 and 32 Orwell Road. The rear garden of No. 28 appears to run directly to the corrugated style fencing along Orwell Mews and there is a large existing garage at the rear of No. 32.
- 8.3.10. The application includes a proposed section/side elevation drawing from no. 28 Orwell Road (Dwg No.116). This shows the height and depth of the proposed house which is to be built along the sites northern boundary. The first floor bulk of the house stretches 15.212m with three roof pitches ranging from c. 8.291m to c. 6.1m. I also note levels on site appear to fall from west to east and the height of the development from within the garden of No. 28 would appear to be higher than the

dimensions stated. The proposed site plan (Dwg No.010) shows the rear of the proposed house to be 8.51m from the single storey rear return of No. 28. The proposed section/side elevation suggests that this will be less than 6m with the first floor element less than 7m. The site plan drawing also shows the rear elevation of the house generally in line with the rear elevation of the existing shed to the rear of No. 32 Orwell Road. From assessing these drawings it is clear the depth and bulk of the proposed house at first floor level will run directly along more than half of the rear garden of No. 28 Orwell Road. On balance, I consider the scale and extent of development on this boundary would be excessive, visually obtrusive and would overbear the private amenity space of No. 28 Orwell Road thereby detracting from existing residential amenity. In this regard I agree with the Planning Authority's second refusal reason and recommend this application should be **refused**.

#### 8.4. Refusal Reason 3 and Development Standards

- 8.4.1. The Planning Authority's third refusal reason refers specifically to the size of the proposed dwelling and to the position, layout and enclosure of the proposed 'external spaces'. It details the proposal fails to provide adequate private amenity space in accordance with Development Plan standards.
- 8.4.2. The applicants contend that the Planning Authority did not give appropriate consideration to the intended use of the second bedroom which could have been designed for one person. In this scenario only 30 sq.m of private amenity space is required.
- 8.4.3. Section 16.10.2 of the Development Plan sets out 'Residential Quality Standards' for houses. To determine the appeal, it is considered appropriate to consider these standards as set out below-

##### 8.4.3.1. Floor Areas

- a) Section 16.10.2 requires applications for houses to comply with the principles and standards outlined in Section 5.3: 'Internal Layout and Space provision' contained in the DEHLG 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007).

b) Section 5.3 of these guidelines deals with Internal Layout and Space Provision. The following table sets out the requirements versus the proposal-

Dwelling Type	Target Gross Floor Area*	Minimum Main Living Room*	Aggregate Living Room Area*	Living Room width	Main Bedroom/ Double Room Aggregate	Double bedroom width*	Storage*
Required- 2Bed/4P House (2 storey)	80	13	30	3.6	13 11.4 25	2.8	4
Proposed	102	15.6	35.6**	4.248	15.9 11.5 27.4	3.26 4.25	***

\* dimensions is sq.m    \*\* including kitchen/dining    \*\*\* considerable storage provided in hallway

The proposed development generally complies with floor area requirements.

#### 8.4.3.2. Aspect, Natural Light and Ventilation

- a) Section 16.10.2 also deals with 'Aspect, Natural Light and Ventilation' and details that living rooms and bedrooms shall not be lit solely by roof lights and all habitable rooms must be naturally ventilated and lit. It also requires glazing to all habitable rooms shall not be less than 20% of the floor area of the room.
- b) The kitchen/dining and first floor living room are both served with large areas of glazing and are in excess of 20% of each rooms floor area. Bedroom 1 is served by three glazed areas facing east, south and west. The east and south windows/doors appear to have an area of c. 0.72 sq.m and c. 2.21 sq.m giving a total of c. 2.93 sq.m. The area of the west facing window is unclear but its width is c. 0.9m. The area of bedroom 1 is shown as 15.9 sq.m and therefore requires glazed area of at least 3.18m. I am satisfied that glazing to this bedroom 1 would be at least 20% of the rooms floor area.
- c) Bedroom 2 at ground level is served by a window recessed c.5m from Orwell Mews, below the proposed car port. The area of the window appears to be c.

2.7 sq.m. The room is also served by a roof light in the first floor court yard area. In the appeal the applicants detail the rooflight is 3.08m by 0.8m. This has an area of 2.464 sq.m. The combined glazed area would be c. 5.16 sq.m. 20% of the floor area is 2.3 sq.m. I am satisfied bedroom 2 meets the requirement of section 16.10.2 of the Development Plan.

- d) Notwithstanding this, section 16.10.2 also requires development to be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011) i.e. BRE209. In this regard, I have significant concerns in relation to the quantum and quality of daylight provision due to obstructions from proposed walls, the impacts of overhanging roofs and deep room plans served by one wall of glazing. These matters will be given detailed consideration in section 8.5.

#### 8.4.3.3. Private Open Space

- a) Section 16.10.2 details a minimum standard of 10 sq.m of private open space per bedspace will normally be applied and a double bedroom represents two bedspaces. Private open space for houses is usually provided by way of private gardens to the rear or side of a house. It is specifically stated in section 16.10.2 that-

*“Rear gardens and similar private areas should be screened from public areas.....”*

- b) The application is for a two by double bedroom house. The site is located in the general Rathgar area and is not within the Inner City. The development requires a minimum of 40 sq.m of private open space. I interpret section 16.10.2 to require this generally to the rear or side of the house.
- c) The application proposes three areas of private open space- a 5.1 sq.m first floor terrace facing Orwell Mews, a 9.5 sq.m internal first floor courtyard and a 17.3 sq.m rear garden. In total the application provides 31.9 sq.m of private open space.
- d) The terrace to Orwell Mews is located at first floor level. As the application is for a 'house' I do not consider this area of space as 'private'. I note the development plan specially states *'private areas should: be screened from*



*public areas*'. I would not consider this area in the calculation of private amenity space and would have no objection to such a terrace in addition to the required private amenity space.

- e) The provision of a first floor internal courtyard is a design feature that contributes to private open space calculations and is suitably screened from public areas. I have some concerns as regards the quality of this space given its small area, its sense of enclosure with boundaries ranging in height from 2.85m, 2.25m, c. 3.8m and a varying height brick privacy wall to the southern boundary.
- f) The proximity of private open space at first floor level to the site's southern boundary is also a concern. The courtyard could compromise the development potential of the site to the south e.g. a house, which could then be restricted in its design e.g. height, to avoid overshadowing and overbearing of the proposed courtyard. It is appropriate that consideration of the proposed application should also protect the development potential of this adjoining site.
- g) The overall quality of the three proposed areas of private open space will be further considered in section 8.5 in the context of access to direct sunlight.
- h) In the appeal the applicants submit that the proposed development will provide for a retired couple who are downsizing. The second bedroom at ground floor level could have been designed as a single room where the required open space would only be 30 sq.m and the proposal would then comply with the requirements. A revised proposal has been submitted with the appeal, but it does not revise the size or occupancy of the bedroom.
- i) Notwithstanding the applicants possible intentions for the proposed house, the application is clearly for a two bedroom house with the size of both bedrooms able to provide for four people. Therefore the minimum requirement is 40 sq.m of private open space and this should generally be to the rear of the house and screened from public areas. Having regard to all of the above the proposed development does not comply with the Private Open Space requirement as set out in Section 16.10.2 of the Development Plan.

#### 8.4.3.4. Separation Distances

- a) Section 16.10.2 details at the rear of dwellings, there should be adequate separation between opposing first floor windows and traditionally, a separation of about 22 m was sought between the rear of 2-storey dwellings. The Plan details this may be relaxed if the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers.
- b) The rear elevation drawings (DWG No. 118) when considered with the first floor plan (DWG No. 200) shows one rear and east facing first floor window with frosted glass. Other features at this level shown on the elevation drawings are not windows.
- c) A south facing window is provided with a 2.1m high privacy wall opposite and a metal/timber screen c. 2m high perpendicular to the glazed area. DWG No. 118 appears to show spacing within the screen that could provide for overlooking.
- d) Should the Board decide to grant permission it is recommended that a condition should be attached ensuring-
  - The east facing first floor windows to bedroom shall be bottom hinged and permanently of obscure glazing.
  - The proposed east facing privacy screen be fully obscured and at least 1.8m high.
- e) Subject to these conditions I am satisfied the proposed development will not lead to undue overlooking of neighbouring residential properties.

#### 8.4.3.5. **Defensible Space**

- a) Section 16.10.2 details where houses have little or no front gardens, it is important that 'defensible space' is created behind the public footpath.
- b) The application proposes a footpath across the front of the site and to be taken in charge by DCC. The proposed house will have its first floor building line against the path and a recessed front entrance door, bin storage and car port beneath. The path will be bound by a pedestrian gate, a low wall and a vehicular gate. These features will provide appropriate defensible space.

#### 8.4.3.6. Plot Ratio and Site Coverage

- a) Section 16.5 and 16.6 of the Dublin City Development Plan identifies 'Plot Ratio' and 'Site Coverage' standards. Plot Ratio is described as *a tool to help control the bulk and mass of buildings*. Site Coverage is described as *a control for the purpose of preventing the adverse effects of overdevelopment, thereby safeguarding sunlight and daylight within or adjoining a proposed layout of buildings*. For Z1 zoned lands the development plan sets indicative requirements of 0.5-2.0 for plot ratio and 45-60% for site coverage.
- b) In question 10 of the application form the applicants propose a site area of 122 sq.m, a gross floor area of 102 sq.m, a plot ratio of 0.83 and a site coverage of 55%.
- c) Section 16.5 details 'Plot Ratio' expresses the amount of floorspace in relation (proportionally) to the site area, and is determined by the gross floor area of the building(s) divided by the site area. Having examined the file I calculate the plot ratio as 0.84 which is within the range of the Indicative Plot Ratio of 0.5-2.0.
- d) Section 16.6 details 'Site Coverage' is calculated as the percentage of the site covered by building structures, excluding the public roads and footpaths. Having examined the drawings I note the only parts of the site not covered by building structures are the 17.3 sq. m rear garden and the c. 6.67 sq.m proposed footpath to the front of the site. Based on these figures I calculate the proposed site coverage to be 80% and significantly in excess of the 'Indicative Site Coverage' range of the Development Plan i.e. between 45-60%. Section 16.6 makes provisions where higher site coverage may be permitted in certain circumstances such as:
- Adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed
  - To facilitate comprehensive redevelopment in areas in need of urban renewal
  - To maintain existing streetscape profiles
  - Where a site already has the benefit of a higher site coverage

- e) Having considered these provisions and referring to daylight and sunlight concerns set out in section 8.5 of this assessment and the failure of this proposal to provide the minimum required private amenity space (section 8.4.3.3), I consider the proposed site coverage of 80% would contribute to overdevelopment of the site.

#### 8.4.3.7. Car Parking

- a) The site is located within Area/Zone 3 as per Map J of the Development Plan where Table 16.1 states there is a maximum of 1.5 car parking spaces required for a residential unit.
- b) The Planning Authority have indicated in order to comply with section 16.10.16 ((h) of the Development Plan the existing permit parking scheme at Orwell Mews would be accessible to the residents of number 30 Orwell road.
- c) The application proposes a c. 15 sq.m car port accessed off Orwell Mews. The application indicates there is no existing car parking to No. 30 Orwell Road (despite the existing garage for demolition). The proposal is considered acceptable in this regard.

#### 8.4.3.8. Conclusion

- a) The application proposes 31.9 sq.m of private open space, 5.1 sq.m of which is a terrace located at first floor facing Orwell Mews and is not screened from public areas. The proposed development does not comply with the minimum 40 sq.m requirement to the rear or side of the house as set out in section 16.10.2 of the Development Plan.
- b) Section 16.6 of the Development Plan details an Indicative Site Coverage range of 45% to 60% for Z1 lands in order to prevent the adverse effects of overdevelopment, thereby safeguarding sunlight and daylight. The application proposes 80% site coverage.
- c) The Development Plan allows for some discretion and relaxation of development standards for certain development types as set out in-
- Sections 16.10.8- Backland Development '*applications for backland development will be considered on their own merits*'.

- Section 16.10.10 Infill Housing *'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.'*
  - Section 16.10.16 (j) Mews Housing details private open space shall be provided to the rear of the mews building. The depth of this space for the full width of the site will not generally be less than 7.5 m unless it is demonstrably impractical to achieve.
- d) In section 8.2 above I have considered the proposed application is not for 'Mews' housing and should be considered as an Infill Backland Development. However, having considered development standards for Mews Housing and note the applicants have not demonstrated a rear garden depth of 7.5m is 'impractical to achieve'.
- e) Having considered the application on its merits as per section 16.10.8, the applicants have not justified why all private amenity space cannot be provided to the rear of the house and in this context I see no justification for the standards to be relaxed as per section 16.10.10.
- f) An application for an 'Infill and Backland' house meeting floor area standards, but with no car parking space, would be reasonable having regard to the proximity of the site to bus stops on Orwell Road and the provisions of section 16.10.10 of the Development Plan. I also see no reason why the permit parking scheme at Orwell Mews would not be available to residents of the proposed house given the location of the site.
- g) Having regard to all of the above, it is the size of the house proposed and the provision of a car port that appears to compromise the provision of private amenity space and the required range of site coverage for Z1 lands. As such the proposal represents overdevelopment of the site. I do not consider it appropriate to apply discretion as per section 16.10.10 to a requirement that could be achieved and accordingly the proposed development should be **refused**.

h) I have given consideration to addressing these matters by way of condition, however, it is my view that such amendments would be significant and it would not be appropriate to specify such amendments by condition.

## 8.5. Residential Amenity- Daylight and Sunlight

8.5.1. The DCC planning report raises a number of residential amenity concerns relating to Daylight and Sunlight. However, the impacts of daylight, sunlight and overshadowing have not been included in any of the Planning Authority's three refusal reasons.

8.5.2. Despite the matters not being raised in the refusal reasons, the applicants contend in the grounds of the appeal that-

- Concerns in relation to Daylight of the two bedrooms are unfounded,
- Daylight to bedroom 2 at ground floor is supplemented via a large 3.8m by 0.8m rooflight from the courtyard above.
- Bedroom 1 at first floor has east, south and west facing windows the optimal orientation. A screened lightwell at the rear of the proposed mews ensures adequate light is provided
- Should the Board require a daylight study one will be commissioned upon request.

8.5.3. As set out in section 8.4.3.2 above, section 16.10.2 of the DCC Development Plan requires development to be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011) i.e. BRE209.

8.5.4. BRE209 provides a number of measures that contribute to assessing Daylight and Sunlight impacts. Having examined the contents of this application, the appeal and BRE209, I consider the following measures appropriate for the consideration of this application-

- Light from the Sky for New Development
- Average Daylight Factor
- Diffuse Daylight to the rear of No. 30 Orwell Road
- Sunlight to Proposed Private Amenity Spaces

- Sunlight to Amenity Spaces of Existing Neighbouring Property
- Sunlight to Interior of Existing Property

8.5.5. I note section 1.6 of BRE 209 specifically details that the advice given is not mandatory and should not be seen as an instrument of planning policy. However, it is appropriate that these measures are used for the consideration of related residential amenity concerns.

#### 8.5.5.1. **Light from the Sky for New Development**

- a) Section 2.16 of BRE209 identifies the type and size of window design required depending on the 'Visible Sky Angle'. This metric considers the angle of visible sky from the centre of the window relative to opposing obstructions to determine the size of windows required e.g. if the angle is less than 25 degrees BRE209 suggests it is often impossible to achieve reasonable daylight to a room.
- b) Bedroom 1 is served by three glazed areas. The nearest obstruction to the east facing window is the rear of No. 30 Orwell Road. This obstruction is sufficiently set back from the window and unlikely to have a material daylighting impact. The application proposes a 2.1m privacy wall directly opposite and c. 1.2m from the south facing glazing of Bedroom 1. This forms a significant obstruction to the visible sky angle. The rear eaves height of the main pitch roof opposite the west facing window of Bedroom 1 also forms a significant obstruction. I cannot determine the centre point of this window. In this regard, I have concerns in relation to the cumulative daylight provision to Bedroom 1 due to the proximity and height of the identified obstructions.
- c) The nearest obstruction from the west facing ground floor window to Bedroom 2 is likely to be the opposing roadside boundary which includes trees to Herzog Park. The extent of the overhanging roof of the car port is considered significant. In this regard it is unlikely that the sky would be visible from the centre point of this window in the context of BRE209. In my opinion Bedroom 2 would not achieve reasonable daylight from this window.
- d) The applicants have indicated Bedroom 2 will be mainly lit by a roof light to the courtyard at first floor level. The courtyard has dimensions of 3.034m and

2.885m and is bound on four sides with high boundaries ranging from 2.25m to in excess of c. 3.5m. The future development of the site to the south of the courtyard could have a significant impact on the height at the southern boundary and needs to be considered. Appendix C of BRE209 provides Interior Daylighting Recommendations and section C12 discusses where obstructions surround a roof light. In this scenario the 'Horizontal Sky Component (HSC) is required to calculate the angle of visible sky.

- e) I note the kitchen/dining room and first floor living rooms have very large, glazed areas. The nearest obstruction to the kitchen dining window would be the proposed rear boundary which is c. 3.1m away.
- f) Having visited the site I consider the opposing boundary of Herzog Park will not obstruct the angle of visible sky from the first floor living room. However a first floor terrace is located to the front of this room thereby providing a level of daylight obstruction that would impact deeper into the room. Section C13 of Appendix C of BRE209 deals with room depth and details if a room is daylit by windows in one wall only, the depth of the room should not exceed a calculable limiting value. The proposed living room is located behind the terrace and the combined depth appears to exceed 5.5m. There is some concern the rear half of this room may appear gloomy and supplementary lighting maybe required as per section C14 of BRE209.
- g) Based on the information on file including the scale of drawings and the absence of appropriate sections from the plane of glazed areas, I cannot accurately determine how the proposal complies with section 2.1.6 of BRE209. The Visible Sky Angles to the four habitable rooms are clearly restricted due to obstructions from proposed walls, the impacts of overhanging roofs and deep room plans served by one wall of glazing. In this context I am concerned the identified rooms in the proposed development would not achieve minimum daylighting in accordance with BRE209 and accordingly an examination of daylight provision using Average Daylight Factor is required.

#### 8.5.5.2. The Average Daylight Factor (ADF)



- a) The Average Daylight Factor (ADF) relates to the quality of light proposed houses receive. Appendix C of the BRE209 Guidelines sets out 'Interior Daylighting Recommendations' and details minimum standards of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms in proposed developments. Section 1.3 of BRE209 details that it is intended to be used in conjunction with BS 8206-2 which has now been superseded by BS EN 17037: 2018 'Daylight in buildings' (I am satisfied this replacement document does not have a material bearing on the outcome of this assessment). BRE209 therefore, provides that where rooms are used for combined purposes e.g. kitchen and living rooms, the appropriate standard is the ADF that is highest for any of the uses. Thus, insofar as kitchens are combined with living rooms the appropriate ADF standard would be 2%. In this application I note a combined kitchen/dining area is proposed and I consider a 2% value to be appropriate. I also note Section 5.3.4 of BRE209 details that *'frosted glass often has an overall transmittance similar to, or slightly less than clear glass'* and there is no objection to the frosted glass to the east facing window in bedroom 1.
- b) As identified in section 8.5.5.1, I have significant concerns relating to the proximity of obstructions to windows of habitable rooms including the rooflight to Bedroom 2. In this regard the quantum and quality of daylight accessing these rooms is considered necessary and the measure of this is the Average Daylight Factor as per BRE209. Section C5 of Appendix C details how ADF is to be calculated. Based on the information submitted with the application I can not accurately determine the ADF. I note a number of predetermined values are provided, however, other values would require estimates e.g. net glazed areas of windows, area of room surfaces, corrections for window reveals, a value for the horizontal sky component for the rooflight etc.
- c) Having regard to the above I am not satisfied the four main habitable rooms to the proposed development will benefit from adequate interior daylighting as per the requirements of BRE209 and section 16.10.2 of the DCC Development Plan.

#### 8.5.5.3. Diffuse Daylight to the rear of No. 30 Orwell Road

- a) Section 2.1.21 of BRE 209 details that obstructions (including the proposed development) can limit access to light from the sky to existing properties such as No. 30 Orwell Road. Figure 20 of BRE209 provides a 'Decision Chart' or flow chart for considering diffuse daylight in existing buildings and the impact of proposed developments.
- b) The first measure recommended is if the new development is more than three times its height above the lowest window. I note the presence of a window at ground level on the rear return of No. 30 which appears to be c. 9m from the first floor of the proposed house (see Proposed Site Plan DWG 010). This window is considered most at risk of loss of daylight. As per section 2.2.4 of BRE209 the height of the eaves of the proposed house is 5.558m and the rear window to No. 30 is considered 1.5m above the ground. The distance of the proposed development from the rear window of No. 30 is not more than three times its height above that window i.e. c. 9m is not more than c. 12.3m
- c) The next recommended measure requires a check if the development subtends more than 25 degrees at the lowest window as demonstrated in Figure 14 of BRE 209. To assess this, Figure 20 requires the angle from the centre of the window to the height of the proposed development to be calculated. This can be done using trigonometry (where I know the rear height of the development- 5.558m and the separation distance to the window- c. 9m). I do not know what the height of the centre of the window is. BRE209 recommends a height of 1.6m for a floor to ceiling window or patio door. In the absence of specific detail on this window I consider this to be a reasonable figure to use to calculate the angle. I estimate the angle 1.6 above ground to the rear height of the proposed development to be c. 23.7 degrees. The development therefore would not subtend by more than 25 degrees at the lower window of the rear elevation of No. 30 Orwell Road. DWG No. 115, a proposed section through the site and the property of No.30 suggests a lower ground level to No. 30. The finished floor level of No. 30 is indicated at 42.98m and the proposed floor level is indicated at 43.63m. Therefore, using a lower window height of 1.4m I calculate the angle from the window to be c. 25 degrees. Based on this and the Figure 20 Decision Chart of BRE209 it appears that the daylighting to the rear of No. 30 would be unlikely to be

significantly affected by the proposed development and further investigation is not required.

- d) However, given the level differences between the site and some reliance on estimates and assumptions, it is appropriate to consider the Figure 20 Decision Chart further. The next recommended measure is the level of skylight received to existing buildings. This is called the Vertical Sky Component or VSC. BRE209 recommends that existing neighbouring properties should retain a VSC of at least 27%, or where it is less, to not be reduced by more than 0.8 times the former value (i.e. 20% of the baseline figure). This is to ensure that there is no perceptible reduction in daylight levels and that electric lighting will not be needed more of the time. The application and appeal does not include an assessment of diffuse light or provided VSC values to No. 30.
- e) VSC values are clearly dependent on the angle from the centre of the window to the height of the proposed development. For the rear lower window of No. 30 I have calculated this to be c. 23.7 - 25 degrees. Having considered table F1, Figures F1 & F2 of BRE209 I am satisfied that the equivalent VSC to the lower floor window in No. 30 would be between 27% and 29%.
- f) Based on these VSC values, Figure 20 Decision Chart indicates that daylighting to the lowest and closest window at the rear of No. 30 Orwell Road is unlikely to be affected and I therefore consider no further daylight investigations are required to this property.

#### 8.5.5.4. Sunlight to Proposed Private Amenity Spaces

- a) Section 3.3.7 of BRE 209 recommends that at least half of open spaces should receive at least two hours of sunlight on March 21st (the Equinox).
- b) The application proposes three areas of private amenity space-
  - Area 1- One west facing first floor terrace to Orwell Mews, 5.1 sq.m
  - Area 2- One internal courtyard at first floor level towards southern boundary with dimensions of 2.71m by 3.14m giving a total area of 9.5 sq.m

- Area 3- A east facing 17.3 sq.m rear garden, 3.1m deep and 5.384m wide.
- c) The application is not accompanied by an assessment of sunlight to these spaces. Having considered the orientation and location of Area 1 at first floor level I consider this area is likely to achieve two hours of sunlight to at least half of the area on March 21<sup>st</sup>.
- d) I have considered the location, orientation and dimensions of the spaces to Area 2 and 3. I note the proximity of potential sunlight obstructions i.e. the house itself, the proposed rear boundary wall/fence, the height of the four boundaries surrounding the courtyard. I have also had due regard to the development potential of the site adjoining the courtyard to the south. In my opinion and in the absence of an accurate sunlight assessment, the proposed areas of private open space would not be likely to achieve two hours of sunlight to at least half of these areas on March 21<sup>st</sup>.
- e) I also consider the location of the first floor courtyard could compromise the potential development of lands to the immediate south of the application site and the comprehensive development of the streetscape as a whole. In this regard a two storey house would be likely to significantly overshadow and restrict sunlight to the proposed courtyard area.

#### **8.5.5.5. Sunlight to Amenity Spaces of Existing Neighbouring Property**

- a. Concerns relating to overshadowing and loss of light to the private amenity space of No. 28 Orwell Road have been identified in DCC's Planning Report and by an observer to the appeal. This space is the rear garden of No. 28 and runs all the way from the rear of the house along the northern boundary of the application site to the road/lane on Orwell Mews. Similar to the application site this garden is narrow at c.5-5.5m.
- b. As the application propose subdivision of the site from No. 30 Orwell Road and the construction of a building c. 3.1m from the proposed new rear garden of No. 30 it is also reasonable to consider the impact of the development on sunlight to the proposed garden of No.30.

- c. Section 3.3 of BRE 209 considers the impact of development on sunlight to existing amenity spaces such as private gardens. Section 3.3.7 recommends that at least half of the amenity space should receive at least two hours of sunlight on March 21st (the Equinox) and in scenarios where detailed calculations cannot be carried out it is suggested that the centre of the area should receive at least two hours of sunlight on March 21st.
- d. The application is not accompanied by an assessment of sunlight to this space. Having considered the location of the garden at No.28 to the north of the application site, its narrow width, the proposed varying heights and roof profile, the proposed first floor depth at 15.212m, the siting of the whole house on the boundary with No. 28, I consider, in the absence of an accurate sunlight assessment, the proposed development is likely to significantly overshadow the rear private amenity space. In this regard I am not satisfied that at least half of the rear garden to No. 28 would receive at least two hours of sunlight on March 21<sup>st</sup> or that the centre of the rear garden would receive at least two hours of sunlight on the same date.
- e. Having considered the location of the remaining garden space to No. 30 Orwell Road and the siting of the proposed house west of this, I consider the proposed development will not significantly obstruct sunlight to the rear of No. 30 until the evening of March 21<sup>st</sup>. As such at least half of the new rear garden to No. 30 would still receive at least two hours of sunlight on March 21<sup>st</sup> or the centre of the rear garden would receive at least two hours of sunlight on the same date.

#### 8.5.5.6. Sunlight to Interior of Existing Property

- a. Section 3.2 of BRE209 provides guidance in relation to safeguarding access of sunlight to interiors of existing dwellings. Summary box 3.2.11 states-

*'If a living room of an existing dwelling has a main window facing within 90 degrees of due south and any part of a new development subtends an angle of more than 25 degrees to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected.'*

- b. Having assessed the properties in the area I consider the only windows that facing within 90 degrees of due south directly towards the proposed development are those to the rear of No. 30 Orwell Road. As already determined in section 8.5.5.3 above, I am satisfied that no part of the new development subtends an angle of more than 25 degrees to the lowest window of No.30 Orwell Road. Accordingly I am satisfied that the proposed development will not adversely impact upon sunlight to the interiors of No. 30.

#### 8.5.5.7. **Conclusion**

Having examined-

- Section 16.10.2 of the DCC Development Plan
- The provisions of BRE209 including Section 2 'Light from the Sky', Section 3 'Sunlighting' and Appendix C Interior Daylighting Recommendations
- The location and extent of glazing to habitable rooms
- The visible sky angle from windows to proposed obstructions in close proximity to the glazing
- The height, roof profile, depth and extent of the development at first floor level
- The layout and siting of the proposed development having regard to existing neighbouring property, including the likely extent of overshadowing from the proposed development on the rear garden of No. 28 Orwell Road

It is considered that the proposed development would be likely to have a significant negative impact upon the residential amenity of future occupants of the proposed development by way of daylight and sunlight provision and would have an unacceptable impact on existing residential amenity of No. 28 Orwell Road in terms of overshadowing and direct sunlight provision to their private amenity spaces. It is recommended the application be **refused**.

The Board are advised that the concerns raised in this section have not been raised in the decision of the Planning Authority and accordingly are '**New Issues**'. The applicants have indicated in their grounds of appeal that a daylight study can be commissioned upon request. The Board may, therefore, wish to consider the provisions of section 131 of the Planning and Development Act 2000-21 (as

amended). However having regard to other substantive reasons for refusal as detailed throughout section 8 of this report and based on the information on file I recommend this application be **refused**.

## 8.6. The Revised Proposal submitted with the Appeal

8.6.1. In the grounds of the appeal, the board are requested to consider the application as lodged to DCC on its merits and should it not be acceptable, the applicants have put forward an additional revision to the design to further reduce the scale of the development at the rear. This proposal increases the separation distance by 0.9m at first floor level between the rear of the proposal and the existing house at No. 30 Orwell Road. It lowers the rear apex of the roof by 0.44m and the main bedroom is reduced in size to 14.1 sq.m. Revised drawings are submitted.

8.6.2. I have examined the revised proposals and consider-

- It would not significantly reduce the scale and extent of development from the private amenity space of No. 28 Orwell Park. The proposal would overbear and remain visually obtrusive from this space thereby detracting from the existing residential amenity of No. 28.
- The revised proposal makes no revisions to the areas of proposed private amenity space and therefore, the proposal still does not comply with the minimum requirements as set out in section 16.10.2 of the Development Plan. The reduction in floor space to Bedroom 1 by 1.8 sq.m would not bring about compliance with site coverage standards.
- The location of the east facing frosted window to Bedroom 1 has been revised and this location may benefit the amount of daylight to the room. However the proposal reduces the amount of glazing to the south facing window of Bedroom 1 and therefore would be likely to further reduce the amount of daylight to the room. It has not been demonstrated that Bedroom 1 would achieve a minimum 1% Average Daylight Factor given the proximity of proposed obstructions to the south and west facing windows.
- The design revisions would not significantly reduce the extent and impact of overshadowing on the rear garden of No. 28 Orwell Road. I am not satisfied

that at least half of the rear garden to No. 28 would receive at least two hours of sunlight on March 21st or that the centre of the rear garden would receive at least two hours of sunlight on the same date.

## 8.7. Other Matters

### *Loss of Views*

- 8.7.1. I note concerns raised by an observer to the appeal in relation to loss of views from No 28 Orwell Road to Herzog Park. I accept the proposed development will be visible from the rear of Orwell Road.
- 8.7.2. However, a right to a view or protection of a view from private properties such as those on Orwell Road, is not considered a reasonable planning objective or requirement. It should be expected that within suburban areas, that views from private residents can change, and that this type of change is generally acceptable where the design of the development is of a reasonable standard and where the development and associated view of same is not overbearing.
- 8.7.3. As discussed in section 8.3 of this assessment, I consider the proposed development would have an overbearing effect from the rear garden of No. 28 Orwell Road. Notwithstanding this, the lands of the subject site are zoned and suitable for development. An acceptably designed infill backland development e.g. a house, would be considered appropriate for the site and could thereby reasonably impact upon views to Herzog Park from Orwell Road.

### *Subsidence*

- 8.7.4. I note concerns raised by an observer to the appeal in relation to subsidence. The site is a location that is considered suitable for development and it would be expected that all developments would make provisions to protect against the risk of subsidence to adjoining property. Such measures can be managed through the provisions of a Construction Management Plan. Should the Board decide to grant permission I recommend condition be attached in this regard.



## 8.8. Appropriate Assessment

- 8.8.1. Having regard to the nature and scale of the proposed development and the 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 permission is refused for the followings reasons-

## 10.0 Reasons and Considerations

1. The proposed development, by reason of its inadequate provision of private amenity space and its excessive site coverage, would represent an inappropriate residential development at this location that would contribute to overdevelopment of the site. The proposed development would, therefore, fail to provide adequate residential amenity for future occupiers of the house, would be contrary to the Development Standards as set out in sections 16.6 and 16.10.2 of the Dublin City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that, by reason of its scale, bulk and depth, and its siting bounding the rear garden of No. 28 Orwell Road, the proposed development would be visually obtrusive and would have a significant overbearing effect on the private amenity space of No. 28. The proposal would, therefore, negatively detract from existing residential amenity and would be contrary to the proper planning and sustainable development of the area.
3. Based on the information submitted with the application and appeal, and having regard to the design, orientation, bulk and extent of the proposed development, and its proximity parallel to the private amenity space of neighbouring property it is considered that-

- The Angle of Visible Sky to all habitable rooms in the proposed development would be restricted due to obstructions from proposed high walls, the impacts of overhanging roofs and deep room plans served by one wall of glazing. Furthermore adequate daylight provision to each room has not been demonstrated.
- The location, size and dimensions of acceptable private amenity space to the rear of the property and screened from the public, are surrounded by obstructions. The provision of at least two hours of sunlight to at least half of these areas on March 21<sup>st</sup> has not been demonstrated and is not considered likely.
- The proposed development by reason of its scale, bulk depth and siting would significantly overshadow the private rear garden of No. 28 Orwell Road.
- The location of the first floor courtyard private amenity space has the potential to compromise the appropriate development of lands adjoining the site to the south of the application site and as a result the comprehensive development of the streetscape to Orwell Mews.

Therefore, the development as proposed would give rise to substandard residential amenity for future occupiers of the proposed development and would seriously injure the residential amenities and development potential of existing property in the area. The proposed development would be contrary to Section 16.10.2 of the Dublin City Development Plan 2016-22, BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' and the proper planning and sustainable development of the area.

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Adrian Ormsby  
Planning Inspector

03<sup>rd</sup> of November 2021