



An
Bord
Pleanála

Inspector's Report ABP309887-21

Development	Demolish wall, erect garage/games room, new rear door from house to garden
Location	'Willowdale', 24 Orwell Park, Rathgar, Dublin 6.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	WEB1019/21
Applicant(s)	Alan & Monica Holmes
Type of Application	Permission
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant(s)	Sheila Cooney
Observer(s)	None
Date of Site Inspection	7 th May 2021.
Inspector	Hugh Mannion

1.0 Site Location and Description

- 1.1. The site has a stated area of 807.4m² and is occupied by a detached house (Willowdale) at 24 Orwell Park, Rathgar, Dublin 6. There are separate pedestrian and vehicular entrances onto Orwell Park. The front garden provides a driveway and car parking. There is a screen wall between the front and rear gardens to the left of the house and the rear garden is landscaped. The area is predominantly residential in character.
- 1.2. Adjoining the southwestern side boundary is a gated pedestrian access to 'Minore' 23 St Kevin's Park.

2.0 Proposed Development

- 2.1. The proposed development comprises.
 - Demolition of existing screen wall and gate to the side of the house.
 - Construct a garden building of one and ½ storeys to the side of the house to accommodate cars at ground floor levels and games room at first floor level. This building will have 3 dormer windows facing northeast into the rear garden of the house.
 - Insert a new door from the existing house into the garden.
 - All associated works.

All at Willowdale, 24 Orwell Park, Rathgar, Dublin 6.

3.0 Planning Authority Decision

- 3.1. Decision – grant permission subject to 9 conditions.

Condition 7 required that trees to be retained should be adequately protected during construction works.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The planner's report recommended a grant of permission as set out in the manager's order.

3.2.2. Other Technical Reports

Drainage Division reported no objection to the proposed development.

4.0 Planning History

- 4.1. Permission was refused under ABP304542-19 for 1. Demolition of existing screen wall and gate to the side of the existing property; 2. Construction of a detached garden building of one and a half stories to the side of the property to accommodate motor vehicles at ground floor level and a games room at the upper level. The new structure will have three dormer windows facing north-east into rear garden of the existing house; 3. Insertion of a new external door from the rear of the existing house to the garden; 4. The development will include all associated drainage and site development works at Willowdale, 24 Orwell Park, Rathgar, Dublin for the reason that.

On the basis of the information submitted with the planning application and appeal and having regard also to the zoning of the site and environs, which is 'to protect and/or improve the amenities of residential conservation areas', and to the location of the proposed development immediately adjoining the boundary with a separate residential property, the Board is not satisfied that the proposed development would not have an adverse impact on trees located outside the subject site and within the curtilage of the separate residential property. In the absence of certainty as to the effect of the proposed development on the adjoining trees and/or the provision of a management or landscaping proposal relating to the area of the adjoining trees as part of the application documentation, it is considered that the proposed development would seriously injure the residential amenities of property in the vicinity of the subject site and would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

5.2. The Dublin City Development Plan 2016-2022 is the relevant development Plan for the area. The site is zoned Residential Neighbourhoods (Conservation Areas) Z2. The objective “*To protect and or improve the amenities of residential conservation areas.*”

5.3. Section 16.2.2.3 states that residential alterations and extensions should.

- Respect any existing uniformity of the street, together with significant patterns, rhythms or groupings of buildings
- Retain a significant proportion of the garden space, yard or other enclosure
- Not result in the loss of, obscure, or otherwise detract from, architectural features which contribute to the quality of the existing building
- Retain characteristic townscape spaces or gaps between buildings
- Not involve the infilling, enclosure or harmful alteration of front lightwells.
- Be confined to the rear in most cases
- Be clearly subordinate to the existing building in scale and design
- Incorporate a high standard of thermal performance and appropriate sustainable design features.

5.4. Section 16.10.12 states that extensions will be granted only where the planning authority is satisfied that the development will;

- Not have an adverse impact on the scale and character of the dwelling.
- Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.

5.5. Appendix 17 adds that domestic extensions should

- Not have an adverse impact on the scale and character of the dwelling.

- Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.
- Achieve a high quality of design.

5.6. Policy in relation to Conservation Areas CHC4:

To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting
2. Re-instatement of missing architectural detail or other important features
3. Improvement of open spaces and the wider public realm, and re-instatement of historic routes and characteristic plot patterns
4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area

The repair and retention of shop- and pub-fronts of architectural interest.

Development should not;

- Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area
- Involve the loss of traditional, historic or important building forms, features, and detailing including roofscapes, shop-fronts, doors, windows and other decorative detail
- Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors
- Harm the setting of a Conservation Area
- Constitute a visually obtrusive or dominant form. Changes of use will be acceptable where, in compliance with the zoning objective, they make a

positive contribution to the character, function and appearance of Conservation Areas and their settings.

- The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications and will promote compatible uses which ensure future long-term viability

5.7. **Natural Heritage Designations**

Not relevant.

5.8. **EIA Screening**

5.9. Having regard to the location of the site in an area zoned for residential development and the availability of public piped services to serve the proposed development I conclude that no significant environmental impacts will arise and the requirement for the submission of an EIAR may be discounted at a preliminary stage.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- The appellants property is 'Minore' 23 St Kevin's Park, Dartry, Dublin 6. The City Development Plan (GI28 and GI29) requires that the Dublin City Tree Strategy be implemented providing of the long-term protection and maintenance of trees.
- The appellant's property contains very significant trees which will be negatively impacted by the proposed development. The tree report/assessment submitted with the application is inadequate.
- The appellant has taken legal proceedings against the applicant in relation to damage to trees on the appellant's property.
- The applicant has not established where the roots from trees on neighbouring are located. The design elements of the proposed development meant to solve the problem of root damage are inadequate.

- Condition 7 of the grant of permission does not adequately address the issue of root damage.
- The drawings lodged with the application are inadequate.

6.2. Applicant Response

- The legal proceedings between the appellant and applicants in this case related to pruning of branches that over hanged from the appellant's property into the applicant's site. The detail of these proceedings are set out in the submission from A.C. Forde Solicitors.
- The application has incorporated the advice set out in BS5837:2012 Trees in relation to Design, Demolition and Construction: Recommendations. The advice in this document is that where appropriate root protection areas (RPAs) should be avoided. However, where a proposed development is necessary that technical solutions may be adopted to avoid root damage.
- The applicant has assessed the quality/health of the trees on the adjoining site considering the criteria set out in BS5837:2012 and concluded that the impacts on the RPAs can be mitigated (the most vulnerable good quality tree is T12 on the attached drawings).
- The technical solution adopted in the present case is to avoid cutting conventional foundations within the site and to substitute the foundations/floor slab with a concrete slab cantilevered over piles. The locations of the piles will be hand dug to ensure that no significant root systems are damaged, and the suspended floor/walls stand on these piles.
- The area under the building will not be compressed in a manner to damage root systems.

6.3. Planning Authority Response

- None

6.4. Observations

- None

7.0 Assessment

7.1. Development Plan Policy.

- 7.2. The proposed development is located in area zoned for the protection of residential amenity and comprises addition/amendment to an existing residential use.
- 7.3. The most significant change proposed in the application is the provision of a double garage with games room over in a currently undeveloped section of the rear garden. The new structure will stand along the boundary with the pedestrian entrance to 23 St Kevin's Park (the appellant's property). At present the wall/gate located between the rear wall of the house on site and the boundary wall screens the rear garden from views from the public realm.
- 7.4. The City Development Plan includes specific policies (see specifically Policy CHC4) in relation to new development in Conservation Areas and the essential point of this policy is that development within a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. The new garage/games room elevation as it will present to the public realm on Orwell Park is illustrated on drawing PA2_03-01 and on images 4 and 7 on drawing PA2_04-01. Having regard to the colour and texture of the materials and the overall design which reflects the colour, materials and overall design of the existing house on site I conclude that the proposed development will be in keeping with the general character and design within the application site and the wider area.
- 7.5. In relation to the proposed uses of the building I conclude that the parking of vehicles and entertainment are domestic scale activities which accord with the zoning objective for the area.
- 7.6. In relation to the residential amenity of adjoining residential property I note that the dormer windows will face into the rear garden of the applicant's house and I conclude that these windows do not have the capacity to seriously injure the amenity of adjoining property.

7.7. Impact on Trees.

- 7.8. In appeal reference ABP304542-19 the Board refused permission for a similar development on this site because the proposed development was located close to the site boundary had the capacity to adversely impact on trees on adjoining property and there was an absence on certainty in relation to such an impact. The appellant in that case and in the present case is the owner of 'Minore' 23 St Kevin's Park, whose major concern in impact on trees within that site.
- 7.9. The present application is accompanied by an arboriculture impact assessment. In the report (section 6) the author recognises that the construction of the garage/games room has the potential to impact on the root systems in the root protection areas (RPAs) of trees outside the site and within the curtilage of 23 St Kevin's Park. The measures proposed to mitigate this potential impact is to construct piles within the application site which will support a concrete slab which will in turn support the garage/games room. The locations for the piles will be hand dug to ensure that no significant root systems are disturbed and the slab which supports the building will be raised off the ground to avoid compression of the root systems of trees on the adjoining site.
- 7.10. The appeal makes the point that the application documentation is inadequate and the arboriculture report and engineering proposals do not adequately mitigate the potential impacts on the trees within the site at 23 St Kevin's Park.
- 7.11. The test in this case is will the proposed development seriously injure the amenity of the adjoining property. The adjoining property is home to a large number of trees which contribute to the amenity value of that property, the visual amenity of the wider area and are visible from the application site. However, the applicant has a reasonable expectation that a grant of permission should follow on a planning application which meets the standards set out in the City Development Plan. The application has sought to address the issue raised by the presence of trees on the adjoining site and has incorporated the advice of an professional arborist and engineering specialist in the design and execution of the new building. The principles of root protection set out in the application of identifying main root systems of the adjoining trees, protecting these through avoiding linear foundation trenches and maintaining the integrity of the root systems by limiting the compression that would

arise from a conventional building if no mitigation measures were adopted appear to me to be sound.

7.12. Having regard to the material submitted with the application and appeal I conclude that the application has reasonably addressed the issue of root protection and that the proposed development will not unreasonably impact on the residential amenity of adjoining property.

7.13. **Appropriate Assessment Screening**

7.14. Having regard to the nature and scale of the proposed development, the foreseeable emissions therefrom, and nature of the receiving environment, I am satisfied that 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 a grant of planning permission.

9.0 **Reasons and Considerations**

9.1. Having regard to the residential conservation zoning of the site in the Dublin City Development Plan 2016 – 2022, the modest scale and design of the proposed development and the measures set out in the application to mitigate potential damage to the root systems of trees on adjoining lands and subject to compliance with the conditions out below it is considered that the proposed development would not seriously injure the amenity of property in the vicinity, would accord with the zoning objective for the area and with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed garage/games room shall be used solely for purposes ancillary to the residential use of the main dwelling on the site. It shall not be used for any commercial purpose and shall not be let or sold independently of the main dwelling.</p> <p>Reason: To restrict the use of the building in the interest of residential amenity.</p>
3.	<p>The external finishes of the proposed building shall be the same as those of the existing dwelling in respect of colour and texture. Details of the proposed materials shall be submitted to and agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>Prior to commencement of development a construction management plan shall be submitted to and agreed in writing with the planning authority. This plan shall, <i>inter alia</i>, set out detailed measures for the protection of tree root systems within the application site under the control of the applicant.</p> <p>Reason: To facilitate the protection of trees in the interest of residential amenity.</p>
5.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the</p>

	<p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Hugh Mannion
Senior Planning Inspector

10th May 2021