



An  
Bord  
Pleanála

## Inspector's Report ABP-310242-21.

<b>Development</b>	Development of a single residential unit to the rear of 2 terraced properties (protected structure)
<b>Location</b>	Rear of no. 7 and 8 Mullingar Terrace, Chapelizod, Dublin 20.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	2271/21.
<b>Applicant</b>	Emmet Bergin.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Emmet Bergin.
<b>Observers</b>	Philip Dowling & Grainne Dunne Pedro Quintero & Nicola Ryan
<b>Date of Site Inspection</b>	30 <sup>th</sup> October 2021
<b>Inspector</b>	Philip Davis.

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## **1.0 Introduction**

This appeal is against decision of the planning authority to refuse permission for the construction of a dwelling to the rear of two 19<sup>th</sup> century houses (one is a protected structure) in Chapelizod village, just south of the Phoenix Park. The site is within the Chapelizod Architectural Conservation Area. The two reasons for refusal relate to the pattern of development and the impact on a protected structure. Two observations have been submitted in support of the decision to refuse.

## **2.0 Site Location and Description**

### **2.1. Chapelizod**

Chapelizod village is a settlement of medieval origin on a crossing point of the River Liffey, south of what is now the Phoenix Park, but at the time would have been an open area of commonage. The village clusters around a mill race on the northside of the Liffey which was part of a Huguenot flax mill complex dating to the 17<sup>th</sup> Century. The village Main Street is north of the mill race, just south of the Phoenix Park – access to the park is via a pedestrian link from Main Street. It has been absorbed into the western suburbs of Dublin since around the mid 20<sup>th</sup> Century, but still retains much of its original fabric and ambience. The appeal site is on a terrace of mostly 19<sup>th</sup> century buildings on the north side of the main road (Chapelizod Road) running east to Dublin City centre.

### **2.2. Appeal site.**

The appeal site is located to the rear of no's 7 to 8 Mullingar Terrace on the R109 Chapelizod Road connecting the village to the city. The site is roughly rectangular and includes a narrow passage running through an arch to the road between the two dwellings. The land is currently part of the rear gardens of these houses. Site area is given as 275.8 sqm.

The protected structure is a recently restored 4-bay 2 storey terraced house (one of a pair) from the early 19<sup>th</sup> Century or possibly earlier. A continuing terrace runs east, while to the west is the Mullingar House public house. There is a small area of open land to the rear, with the main deer wall of the Phoenix Park to the north.

### **3.0 Proposed Development**

The proposed development is for a single residential unit, 2 storeys in height, with an access through the existing laneway between 7 and 8 Mullingar Terrace.

### **4.0 Planning Authority Decision**

#### **4.1. Decision**

The planning authority decided to refuse permission for two stated reasons, summarised as follows:

Having regard to the zoning designation and its location in the rear gardens of a Protected Structure, it is considered to constitute piecemeal development and would have a serious impact on adjoining residential amenities.

It is considered that it severs the protected structure and the house at no.8 from its original medieval building plots and would cause serious injury to the historic urban grain of the site. The design, form, scale and siting does not relate to, or complement the special character of the protected structure.

#### **4.2. Planning Authority Reports**

##### **4.2.1. Planning Reports**

- The planning history and policy context are summarised.
- Notes that the plot ratio and site coverage are within the indicative range of standards.
- Third party observations and objections are noted.
- A number of errors are noticed in the submitted floor areas.
- It is considered that a daylight and sunlight assessment is not required due to the aspect and location.
- A number of issues are noted with regard to private open space.
- Concerns raised by the Transportation Division about access, both during and after construction are noted.

- Notes that the proposed development effectively separates the protected structure from their historic rear gardens.
- Report from the conservation officer noted, in particular the issue of the relationship of the plot and old burgage plots and the Phoenix Park Deer Wall.
- Notes location in Flood Zone C (no objection)
- Screened out for AA.
- Recommends refusal.

#### 4.2.2. Other Technical Reports

**Conservation officer:** Notes the main house (no.7) seems to date from 1830 according to the NIAH and is of considerable importance for the village – it is also noted that some evidence suggests that the house has a much earlier origin – c.17<sup>th</sup> century. Notes that the site of the 17<sup>th</sup> Century residence of the Duke of Ormond is nearby, and the burgage plots are medieval in origin. It is considered that conservation information submitted is ‘minimal’. Refusal is recommended.

**City Archaeologist:** Notes that it is within the Zone of Archaeological Constraints for DU018-027 (Chapelizod settlement). Conditions recommended.

**Transportation:** Notes uncertainty over a secondary access to the rear of the site. Concerns expressed at the very narrow access through the passage. The absence of curtilage parking is considered acceptable. Additional information requested.

**Drainage:** No objections subject to condition.

#### 4.3. Prescribed Bodies

None on file.

#### 4.4. Third Party Observations

A number of observations from neighbours and local residents were submitted, mostly outlining concerns about the previous permitted works and the proposed works.

## 5.0 Planning History

Permission granted for works to the protected structure (**3713/17**). Subsequent enforcement Action regarding breach of condition 6 (**EO432/20**)

Permission was granted in 2016 for the demolition of a rear extension with the construction of a new 2 storey extension to no.7 Mullingar Terrace, with internal works to no. 8 (**4628/16**). Enforcement Action was taken regarding condition 6 of this (**EO433/20**).

Two backland developments on either side of the terrace were granted by the Board on appeal – **ABP-301189-18** and **ABP-305797-19**. The first of these was for the demolition of a small factory and its replacement with 3 dwellings (Hibernian gardens), the second was for a single dwelling.

## 6.0 Policy Context

### 6.1. Development Plan

The site is within a **Z1** (protection of residential amenities) area of the Dublin City Development Plan 2016-2022, within the Chapelizod ACA, and within the curtilage of a Protected Structure (RPS No.5789). It is within the Zone of Architectural Constraint for a national monument.

Relevant policies are Section 11.1.5.1 (Record of Protected Structures), 11.1.5.4 (ACA's), Chapter 5 on sustainable urban areas, Section 16.2.1 on Design Principles, and Section 16.10.2. Also, 16.10.8 (Backland Development) and Policy 6.3 on ACAs.

The reason for refusal refers to a contravention of CHC2(d) of the DCDP (in addition to related policy objectives):

*CHC2: To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:*

*(a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest;*

*(b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances;*

*(c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials;*

*(d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure;*

*(e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works;*

*(f) Have regard to ecological considerations for example, protection of species such as bats.*

*Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.*

## **6.2. Natural Heritage Designations**

The nearest EU designated habitats are the SAC's and SPA's of Dublin Bay. Part of the Liffey upriver of the site is a proposed NHA.

## **7.0 The Appeal**

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

Additional plans and drawings are submitted with the appeal in support of the arguments appended. In summary these are:

- It is argued that the planning authority did not fully understand that the previously permitted grants of permission for no's 7 and 8 already provides for the subdivision of the rear gardens, and the rear of no.7 was actually purchased quite recently from the owners of the site to the north of the

Terrace. It is further noticed that the lands to the rear are in the ownership of the Mullingar House public house, and so there is no 'severance' involved in the application.

- It is argued that the planning authority did not fully appreciate the nature of the proposed development with regard to previously permitted works. In particular, the works to no. 7a and the reduction in levels to the rear ensure that the proposed development would not have any impact on those structures. It is submitted that there would be no overshadowing or overlooking, and would not be visible from the Phoenix Park or adjoining public lands.
- The Boards attention is drawn to a number of examples of houses accessed by way of a similar pedestrian laneway in Chapelizod and in Palmerston. It is stated that at its narrowest it is 1.1 metre.
- It is further stated that there would be any impact on access rights to any neighbouring sties or buildings, including the site to the north of 7a.
- A number of alterations and corrections are made to the original drawings to address some errors noted in the planning report.
- In other respects, it is stated that a number of accusations and statements made by Observers are unfair and untrue.

## **7.2. Planning Authority Response**

The planning authority did not respond to the grounds of appeal.

## **7.3. Observations**

### Pedro Quintero and Nicola Ryan of 3 Hibernian Gardens

- It is argued that while the applicant does not own the lands to the north, the curtilage of a protected structure can be considered to go beyond the current ownership (refers to 13.1.2 of the Architectural Heritage Protection Guidelines).



- It is submitted that the proposed development is contrary to the above guidelines, with particular regard to the impact on character of the protected structure, the absence of an assessment of an impact on the plots to the rear, the relationship with historic land holdings, and the overall scale and massing of the proposed building.
- It is argued that the proposed design is contrary to development plan policy on protected structures, in particular policies outlined in 11.2.5.3 and 16.2.1.1 of the CDP.
- It is argued that it is piecemeal development as defined in 16.10.8 of the CDP.
- It is argued that it significantly reduces the rear land available for no.7.
- It is argued that the proposed access is substandard and accessible. Part M of the Building Regulations 3.2.2 is quoted to say that there should be a clear level area at least 1200mm wide and 1200mm deep in front of every accessible entrance and that there should be a minimum of 900mm in at least one point of access for wheelchairs.
- It is argued that while the applicant states that the narrowest section is 1100mm, there would be a requirement for a handrail which would reduce it to below 900mm.
- It is stated that they are part owners of private laneway providing access to lands to the north, and that it does not extend to the land which formed the rear gardens of 7 & 8 Mullingar Terrace.

Dr. Philip Dowling & Gráinne Dunne of 3 Hibernian Gardens.

- The planning authority conclusion that it represents piecemeal development is supported.
- It is argued that it would seriously damage the historic urban grain and fabric of the area.
- It is stated (as with the observers above), that the access to the rear of their property does not extend to the rear gardens/burage plots of 7 & 8 Mullingar Terrace.

## 8.0 Assessment

Having inspected the site and reviewed the file documentation, I consider that the proposed development can be addressed under the following general headings:

- Principle of development
- Pattern of Development
- Conservation issues
- Residential amenity
- Other planning issues
- Appropriate Assessment

### 8.1. Principle of development

The site is in backland within a Z1 residentially zoned area in an established urban village. The proposed development is for a new dwelling. National and Regional planning guidance is generally favourable towards any new dwelling in such serviced, established backland sites, subject to general planning considerations and the policies of the Development Plan, in this case the Dublin City Development Plan 2016-2022. The site is also within the Chapelizod Architectural Conservation Area and is within the curtilage of a protected structure (RPS No.5789). It is also within the Zone of Architectural Constraint for a national monument.

Policies of relevance to such backland development within the Development Plan include Chapter 5 on sustainable urban areas, Section 16.2.1 on Design Principles, and Section 16.10.2. Also, 16.10.8 (Backland Development).

Relevant policies are Section 11.1.5.1 (Record of Protected Structures), 11.1.5.4 (ACA's), within the Chapelizod ACA, and within the curtilage of a Protected Structure (RPS No.5789). The Architectural Heritage Protection Guidelines for Planning Authorities' (2011) are of particular relevance.

I conclude that such developments should be viewed favourably subject to the detailed design, amenity and conservation requirements set out in the Development Plan and related national guidance.

## 8.2. Pattern of Development

The site is just to the east of the original village of Chapelizod, on lands that have been developed in some form since the medieval period. The terrace along this stretch of the Chapelizod Road dates to at least the first half of the 19<sup>th</sup> Century, and probably significantly earlier. There are a number of larger more modern developments in the area, including the Mullingar House public house on the west end of the terrace, and car sales showroom to the east. Three modern houses are located behind the pub, accessed via a private gated lane running west of the pub. The oldest OS maps show rear gardens and some open land between the site and the Deer Wall of the Phoenix Park. This part of the Phoenix Park was part of an older sand pit and is overgrown and rarely accessed. There is no clear view from the Phoenix Park to the rears of these properties, and there is no direct view from public areas around Chapelizod Road to the rear of the terrace. There have been a number of backland developments to the rear of the terrace on either side, although in general the land is undeveloped. There is a laneway at either side of the terrace, but both are gated and are not accessible to the public. One dwelling – granted on appeal by the Board (**ABP-305797-19**) – is located behind the main building line on the eastern side, next to the car showroom. The only confirmed access to the site appears to be via the lane between the two main dwellings.

The two reasons for refusal concluded that the proposed development represents piecemeal development and that it is injurious to the historic grain of the area. The evidence of burgage plots and historic pattern to the rear is not entirely clear from file evidence, but it is clear that the original gardens of the two dwellings (just one of which is a protected structure) extends to the Phoenix Park wall, and that granting permission for a self-standing dwelling would sever this link. I note that the issue of burgage plots was not raised in the previous two Board appeals for backland dwellings in the vicinity.

With regard to such backland developments, the DCDP states:

Dublin City Council will allow for the provision of comprehensive backland development where the opportunity exists. Backland development is generally defined as development of land that lies to the rear of an existing property or building line. The development of individual backland sites can conflict with the established pattern and character of development in an area. Backland

development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. By blocking access, it can constitute piecemeal development and inhibit the development of a larger backland area. Applications for backland development will be considered on their own merit.

It is therefore somewhat of a subjective judgement as to whether this represents an unacceptable type of development on the site. While I would note that it would not be visible from public areas and that there are precedents nearby for developments to the rear of the main building line, having regard to the historic pattern of the immediate area and the proximity of the protected structure, I would concur with the general principle in the two reasons for refusal that in severing the existing two dwellings from their plots it would represent piecemeal development and an unacceptable overall standard of development.

### 8.3. Conservation issues

The site is part of the structure of no.7 Mullingar Terrace and is considered to be part of the curtilage of the protected structure.

The protected structure is described as follows in the NPWS:

*Terraced two-storey four-bay house, built c.1830, with rear return. Roof is pitched natural slate with angled clay ridge tiles, cement verges and replacement uPVC gutters. Brown brick chimneystack shared with house to west, and red brick chimneystack evident to rear pitch. Walling is ruled-and-lined rendered, painted grey, with contrasting straight-channelled quoins. Windows are six-over-six pane horned timber sliding sashes with original float glass, set in plain reveals and having painted masonry sills. Four panelled timber door with brass door furniture, surmounted by simple fanlight, embraced by later nineteenth-century gabled timber porch with sheeted side walls, slate roof, plain timber brace and finial and accessed via five granite steps (one replaced with cement). House set slightly back from Main Street with grassed front plot raised above road level, enclosed by rendered retaining walls surmounted by simple wrought-iron railings and gate. Boarded*

*entrance at street level shared with adjoining terrace, leading to rear of property.*

*A neatly proportioned early nineteenth-century terraced house, set within a terrace of seven similarly scaled buildings on the eastern approach to Chapelizod village. It retains its original aspect with original sashes and later nineteenth-century open porch, while others have lost their historic detailing.*

*The house contributes to the eclectic architectural heritage of Chapelizod and is a good example of domestic scaled early nineteenth-century architecture.*

It is noted on the file that in the previous application relating to no.7 it was considered likely that the dwelling is significantly older than is stated in the NIAH. There is no further information available on file, but from my observations the house appears to be at least 18<sup>th</sup> Century in form and layout, and possibly older, although it has been much altered over the years. There seems a reasonable possibility that it is associated with Huguenot settlement in the area in the late 17<sup>th</sup> Century onwards.

The site is to the rear of this and the near identical no. 8 (there is no explanation given as to why only one of these has PS status). It is within the Zone of Archaeological Constraints for Recorded Monument DU018-027) and adjacent to DU018-028 and as such is subject to statutory protection under S.12 of the National Monuments (Amendment) Act of 1994.

There is relatively little information on file about the overall site and surroundings. The lands to the rear of the houses are considered to be part of the burgage plots which ran behind the houses to the deer wall surrounding the Phoenix Park. I note that in the oldest OS maps there are no obvious burgage plots shown, although all the houses are indicated with rear gardens roughly the same dimensions as at present, although there have been many changes to the backlands over the centuries.

A key issue – and this overlaps with residential amenity discussed below, is that the proposed development is a stand-alone dwelling that would significantly reduce the rear gardens of the existing dwellings (to 111sqm and 73 sqm respectively) and sever them from the original long gardens. While allowing for the merits of using urban land sustainably and ensuring the long term survival of the protected structure, I would concur with the conclusion of the planning authority that the proposed development represents an unacceptable permanent alteration to the

historic grain of development in the area and would negatively impact on the curtilage of the protected structure.

#### **8.4. Residential amenity**

The planning authority note that the proposed dwelling is acceptable in terms of minimum standards for daylight and the provision of private open space. It would directly overlook the small rear gardens of the two terraced houses, although the location to the north would ensure minimal overshadowing. Access to the site is likely to be seriously restricted – the observers claim that it would be in breach of the Building Regulations, although the applicant has argued that at 1.1 metre in width it would be sufficient. The planning authority raised concerns about the width and whether it would be possible to walk a bike into the dwelling (there is no curtilage parking) – the Transportation section requested additional information on this point. While it is an open question as to whether the dwelling could be built in line with minimum requirements for wheelchair or bike access, as this is proposed to be a separate unit I do not consider that the access and location relative to the protected structure is acceptable in overall amenity terms, and in this regard I concur with the planning authority in their reason for refusal.

#### **8.5. Other planning issues**

The site would be accessed only via a narrow pedestrian access through the passageway between the two terraced houses. It is unclear as to how construction access will be facilitated. The planning authority state that having regard to its location close to a village, there is no requirement for a curtilage parking space. It seems that even bike access would be quite difficult through such a narrow passageway, and the observers have raised concerns as to whether it would satisfy Building Regulation requirements for wheelchair access. It is unclear as to how emergency access would be established. I would recommend that if the Board is minded to grant permission that clarification on all access issues is sought from the applicant.

The site is not subject to flooding and no specific drainage or flooding requirements apply.

## 8.6. Appropriate Assessment and EIAR

There are no EU designated habitats in the vicinity of the site. It lies approximately 6km west of the closest Natura 2000 site, the South Dublin Bay and River Tolka Estuary SPA, site code 004024. It is within the catchment of the Liffey, which flows to the South Dublin Bay and River Tolka Estuary SPA and SAC, side codes 004024 and 000210. Some waterbirds listed in the conservation objectives may occasionally use the Liffey at Chapelizod for feeding or roosting, but there are no functional connections and so would not have any potential link or benefit to those species or related habitats. The site is fully served by the public sewer and water system, and so there are no pathways for pollution or any other possible direct or indirect impact on the conservation interests of those designated sites.

I therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 004024 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

Having regard to the small scale of the proposed development and the absence of any sensitive receptors, the development would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

## 9.0 Recommendation

I recommend that the Board uphold the decision of the planning authority to refuse permission for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

Having regard to the Z1 zoning designation in the Dublin City Development Plan 20, the location of the site within the Chapelizod and environs Architectural Conservation Area and within the curtilage of a Protected Structure, the siting and access arrangements, it is considered that the proposed dwelling unit constitutes piecemeal backland development and would cause serious injury to the historic urban grant of the site. The proposed development would, therefore, be contrary to Policy CHC2(d) of the development plan and would have a serious negative impact on the residential amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Philip Davis  
Planning Inspector

31<sup>st</sup> October 2021