



An  
Bord  
Pleanála

## Inspector's Report ABP-310393-21.

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<b>Development</b>	Permission sought for the removal of existing walls/fence at rear of site and the construction of a two storey stand alone ancillary building of 62m <sup>2</sup> in the rear garden.
Location	Off Fortescue Lane located the rear of 35, Mountpleasant Avenue Lower, Rathmines, Dublin 6, D06 EP46.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3955/20.
<b>Applicant(s)</b>	John Tuomey & Sheila O'Donnell.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Eric Dunne
<b>Observer(s)</b>	Michael Kelly.
<b>Date of Site Inspection</b>	15/09/2021.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the rear of 35 Mountpleasant Avenue Lower, Rathmines in Dublin 6. The site comprises the two-storey over basement residential property, Protected Structure (RPS Ref. No. 5499) which fronts onto Mountpleasant Avenue Lower to the east, and which extends to Fortescue Lane to the west. The proposed building is to be located within the existing rear garden area of the house facing onto the Lane.
- 1.2. Fortescue Lane is a long and narrow cul-de-sac lane which runs to the rear of the existing properties on Mountpleasant Avenue Lower to the east, Rathmines Road Lower to the west and Bessborough Parade to the south. Access to the lane is via a single point to the northern end of Mountpleasant Avenue Lower, serving approximately 60 properties, both residential and commercial. The lane itself ranges in width from 3.2m to 5m along its approximate 200m length and several mews' dwellings have been constructed on both sides of the lane. The result is a very busy and congested laneway, which significant demand for parking, which occurs in a haphazard manner.
- 1.3. The site has a stated area of 0.036 hectares and the existing house on the site has a stated floor area of 183m<sup>2</sup>.

## 2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for development relating to a PROTECTED STRUCTURE which will consist of:
  - the removal of existing walls/fence at rear of site addressing Fortescue Lane,
  - construction of a two-storey stand-alone ancillary building of circa 62 sq.m. all located in the rear garden with access off Fortescue Lane,
  - all associated ancillary and landscape works necessary to facilitate the development.

all at a site located off Fortescue Lane located to the rear of 35, Mountpleasant Avenue Lower, Rathmines, Dublin 6, D06 EP46.

- 2.2. The application included a number of supporting documents including as follows;

- Plans, particulars and completed planning application form,
- Planning Report

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to grant planning permission for the proposed development, subject to 14 standard conditions.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the City Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The initial planning report notes the scale and layout of the proposed building and requires clarification regarding the proposed use of the building. Concerns were also raised regarding the potential impact of the development on adjoining properties given the proposed height and roof form proposed. Further concerns are raised in terms of the access to the building and the proposed access onto Fortescue Lane, given the concerns of the Transportation Planning Division of Dublin City Council. The Planning Officer concludes that further information is required.

Following the submission of a response to the further information request, the Planning Officer was satisfied that the proposed building would be ancillary to the existing dwelling. Amendments to the proposed design were deemed acceptable subject to compliance with the requirements of the Transportation Planning Division of Dublin City Council. The Planning Officer recommends that permission be granted for the proposed development subject to 14 conditions.

This Planning Report formed the basis of the Planning Authority's decision to issue a decision to grant planning permission.

##### **3.2.2. Other Technical Reports**

**Drainage Division:** No objection subject to compliance with conditions.

**Transportation Planning Division:** The report notes that the width of Fortescue Lane, and the lack of footpaths, is substandard at approximately 3.2m-5m. The proposed development, while noted as ancillary to the main house at 35 Mountpleasant Avenue Lower, proposes its main entrance via Fortescue Lane. There is currently no vehicular or pedestrian access at this location to the main house. The report submits that the lane is a Mews Lane and submits that the building should be set back to provide a 5.5m laneway width (currently approx. 3.2m).

Following the request for further information, the Transportation Planning Division noted the amendments made to the development to provide a 5.5m laneway width at the site. The proposals, which indicate a set back at ground floor level with landscaping, soakaway, and cycle parking to be provided within the setback, were not deemed acceptable to comply with the requirements of the Division or the provision of a 5.5m wide laneway. Revised floor plans are required to be conditioned as part of any grant of permission. Conditions are included in the report.

**Conservation Officer:** The report notes that the CO has reviewed the particulars associated with the planning application and recommends a grant of planning permission, subject to conditions.

### 3.2.3. **Prescribed Bodies**

None.

### 3.2.4. **Third Party Submissions**

There is 1 third party submission noted on the Planning Authority file from Mr. Eric Dunne. The issues raised are summarised as follows:

- The rear of the observer's property faces directly to the proposed development and the rear gate opens on sliders directly to Fortescue Lane. Access to the rear of the property is blocked due to cars.

- The lane is completely oversubscribed, and access is extremely limited. This has been a reason for previous refusals of developments in the lane.
- The scale of the proposed building is excessive for the purposes as indicated in the submitted application details – i.e., working from home space and storage area ancillary to the residential building – especially over two levels.
- From the first-floor window, the rear of the observer’s private amenity space will be overlooked.
- The design of the building and the orientation is laid out in favour of the applicants dwelling, with the highest section closest to the protected structures in Bessborough Parade.

## 4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

**PA ref: 0164/01:** Permission granted for alterations and addition to the existing two storey extension to the rear of no. 35. Mountpleasant Avenue Lower, Protected Structure. The extension comprised the addition of a second-floor room with an area of 5m<sup>2</sup>.

**PA ref: 2456/05:** Permission granted for alterations and addition to the existing two storey extension to the rear of no. 35. Mountpleasant Avenue Lower, Protected Structure. The extension comprised the addition of a ground floor room with an area of 17m<sup>2</sup>.

### **Adjacent properties on Fortescue Lane:**

#### **37 & 38 Mountpleasant Avenue Lower:**

**ABP ref: PL29S.247009 (PA ref: 2938/16):** Permission refused for the development of adjoining sites comprising the demolition of structures on site and the construction of 2 no. mews dwellings and associated site works all at the rear of 37 and 38 Mountpleasant Avenue Lower.

The proposed mews houses were proposed to front onto Fortescue Lane and the Board decided to refuse permission for the following reason:

Having regard to the siting of the proposed development to the rear of the protected structures at Number 37 and Number 38 Mountpleasant Avenue Lower, the layout of the proposed development which provides a 5.5m setback from the established building line to accommodate car parking and a turning circle, and the failure of the layout and design to reflect the mews location and proximity to the protected structures, it is considered that the proposed development would be detrimental to the character and setting of the protected structures and would seriously injure the visual amenities of Fortescue Lane and would be contrary to the provisions of Policy CHC2 of the Dublin City Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**PA ref: 3670/15:** Permission refused to rear of No 38 for construction of a two storey 3-bedroom dwelling with 2 no off street car parking spaces. The reason for refusal related to access.

**ABP ref: PL29S.245225 (PA Ref: 3195/14)** Permission granted at No 38 for the refurbishment and extension of basement apartment and 3 bed family unit on ground and first floor.

**PA ref: 6079/07:** Permission granted at No 38 for the refurbishment and rear extension of basement apartment and 3 bed family unit on ground and first floor.

**PA ref: 3084/04:** Permission refused at No 37 for the demolition of 2no semi-detached workshop/storage units and construction of 2 no two storey semi-detached mews houses and integrated parking. The reason related to access.

**ABP ref: PL29S.247009 (PA ref: 0182/94)** Permission refused at No 38 for demolition and relocation of existing workshop and extension to first floor level. The reason related to access and zoning.

**Other adjoining sites:**

**ABP ref: PL29S.209143 (PA ref: 3950/04):** Permission refused at No 44 Mountpleasant Ave for 2 storey dwelling to the rear and access from Fortescue Lane. The reason related to access.

**ABP ref: PL29S.246625 (PA ref: 3389/15):** Permission granted for demolition of no. 46 and refurbishment of 40, 42 and 44 Rathmines Road (Protected Structures) construction of 2 buildings for student accommodation and all associated works.

**ABP ref: PL29S.210037 (PA ref: 4775/04):** Permission refused at No 40 Mountpleasant Ave for demolition of rear boundary wall and construction of a mews dwelling with integrated parking. The reason related to access.

## 5.0 Policy and Context

### 5.1. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage, and the Gaeltacht 2011).

The subject site includes a protected structure, ref 5499 and is located within a residential conservation area. As such, the *'Architectural Heritage Protection, Guidelines for Planning Authorities'* are considered relevant. These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000. Under Section 52 (1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:

- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and
- b) for preserving the character of architectural conservation areas.

The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures. The guidelines seek to encourage the sympathetic maintenance, adaption, and re-use of buildings of architectural heritage.

Chapter 13 deals with Curtilage and Attendant Grounds and Section 13.5 relates to Development within the Curtilage of a Protected Structure and Section 13.8 of the Guidelines relate to Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation area.

## 5.2. Development Plan

- 5.2.1. The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. The site is zoned Z2 - Residential Conservation Area where it is the stated objective of the zoning 'To protect and/or improve the amenities of residential conservation areas.
- 5.2.2. The site includes, and is located proximate to several protected structures, and as such, the following policies and development plan sections are considered relevant:
- **Policy CHC2:** To ensure that the special interest of protected structures is protected.
  - **Section 11.1.5.3 Protected Structures:** The design, form, scale, height, proportions, siting, and materials of the new development should complement the special character of the protected structure. The traditional proportionate relationship in scale between buildings, returns, gardens and mews structures should be retained.
  - **Appendix 24:** Protected Structures and Buildings in Conservation Areas.

## 5.3. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay SAC (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which are located approximately 3.4km to the east of the site. The North Dublin Bay SAC (Site Code: 000206) and North Bull Island SPA (Site Code: 004006) is located approximately 6.5km to the east.

The Rockabill to Dalkey Island SAC (Site Code: 003000) is located approximately 11.6km to the east and the Dalkey Islands SPA (Site Code: 004172) is located approximately 12.5km to the southeast.

## 5.4. EIA Screening

- 5.4.1. The subject appeal does not relate to a class of development which requires mandatory EIA.



5.4.2. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required.

The proposed development is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.4.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.4.4. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development, although close to, but outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect the concerns as raised with the Planning Authority during its assessment of the proposed development and are summarised as follows:

- Access to the rear of the appellants property is restricted due to cars blocking the access.
- The lane is completely oversubscribed, and access is extremely limited. Any more development will only hinder access further and this has been the reason for a number of refusals for development on Fortescue Lane.
- The scale of the building for the purposes stated is excessive, especially spread over two levels.
- The development will overlook adjacent amenity space leading to loss of privacy.
- Issues regarding the orientation of the design in favour of the applicant's dwelling are raised.
- It is submitted that the development would have a negative impact on the enjoyment of adjacent protected structures on Bessborough Parade.
- The amended plans remain out of sync for this section of the Lane.
- There have been a series of fires in Fortescue Lane where access for the truck could only be gained through one of the houses on Bessborough Parade.
- The submitted plans and particulars have not represented with appellants kitchen extension (2020).

## 6.2. **Planning Authority Response**

None.

## 6.3. **First Party Response to Third Party Appeal**

The first party's architect has submitted a response to the third-party appeal seeking to address the issues raised as follows:

### Scale

- It is disagreed that the height and scale of the building is out of sync for the size of this particular section of the lane. It is submitted that the

building has been carefully designed to be sympathetic in scale with its neighbouring context.

- Two storey buildings line both sides for much of the length of Fortescue Lane, with some recent three storey developments.
- The proposed building measures 3m to eaves level, rising to 6.125m at a distance of 2.85m from the lane frontage. The mezzanine window measures 5.4m in height, set back 3.73m from the lane. The overall height of the building is 7.275 when the proposed chimney is considered.
- Notes previous permission for studio buildings for artists/architect neighbours at nos. 44 (PA ref: 4272/17) and 45 (PA ref: 2610/11) Mountpleasant Avenue Lower, both two storey buildings with ridge heights of 8.5m. The proposed floor area of the building is also significantly smaller than those permitted at 62m<sup>2</sup> - No. 44 is 109m<sup>2</sup> and No. 45 127m<sup>2</sup>.

#### Fire Access

- The applicant has consulted with BB& Fire Ltd who have advised that in the event of a fire in the studio, any such fire will be fought by the fire brigade with a 45-60mm hose which would be brought through the house from 35 Mountpleasant Avenue Lower.
- The proposed development adds no new or greater fire hazard to any houses on Bessborough Parade of Fortescue Lane.
- There is no intention of adding car parking or for additional vehicle access.
- The proposed development complies with the DCC requirement to provide a setback to facilitate a laneway width of 5.5m.

#### Overlooking:

- The design is intended to minimise overlooking the rear of any houses across the lane at Bessborough Parade.
- The windows have been recessed and set behind built in window planting boxes to provide visual screening. No window will overlook gardens or intrude on the privacy of houses.

- The mezzanine studio window has been designed to focus on its intended view to the skyline of Rathmines Church dome.
- The mezzanine window is set back 4.18m from the lane frontage following the PAs request for FI, the area of the window reduced, and a strip of obscure glazing introduced to prevent overlooking.
- The development does not significantly encroach on the extent of sky visible from the kitchen extension of 12 Bessborough Parade.

#### 6.4. Observations

One observation is noted in support of the proposed development from Mr. Michael Kelly, 49 Lower Mountpleasant Avenue. The Observation requests that the Board reject the third-party appeal and grant permission for the development as proposed. The following observations are presented:

- The houses on Bessborough Parade in the vicinity of the site do not have vehicular access or egress from/to Fortescue Lane.
- The disposition of Fortescue Lane at this end of the cul-de-sac did not prevent a business from operating in the shed at the rear of no. 33 Lower Mountpleasant Avenue.
- The most direct way the appellant can abate the nuisance caused by car parking at this end of the Lane would be to request Dublin City Council to paint double yellow lines along the road surface at the rear of the property.
- The proposed development does not include a car parking space and will not limit or hinder access.
- Fortescue Lane is not what is commonly understood as a Mews Lane, nor does it have the potential to be one.
- The PA mistakenly applied the DP standards of Mews Dwellings to the proposed development and was acting *ultra vires* in requiring the applicant to provide a setback to facilitate a laneway width of 5.5m. Legal implications of the PAs request in this regard raised.

- The proposed development is situated to the north-east of the appellants property and could only have minimal impact on eastern sunlight reaching the glazed elevation of the kitchen extension. The appellant has made substantial provision for light to enter their house with the use of roof lights.
- The primary private open space at the appellants property – the internal courtyard – cannot be overlooked by the development.
- With regard to the issue of overlooking of the appellants property, it is submitted that given the disposition of Fortescue Lane at an angle to Lower Mountpleasant Avenue, the window of the proposed mezzanine studio is not opposing the appellants first floor window or the kitchen extension at ground floor.
- The observation makes comments on the fires which took place on the Lane and discussions with the PA in relation to this.
- It is submitted that compliance with Building Regulation Part B: Fire is not a planning issue and the issue of how a fire in the proposed development might be fought is beyond the scope of the appeal.

It is requested that permission be granted for the development as revised to address the appellants concern about overlooking, with the original screen wall and courtyard.

#### **6.5. Appellants Response to Observation**

The appellant has responded to the observation submitted in support of the proposed development as follows:

- The references to previously permitted mews buildings and artist studios are examples facing onto Rathmines Road and houses with larger gardens lengths, with recent grants of permission for artist studios at nos. 44 and 45 Mountpleasant Avenue Lower.
- Applications for developments closer to the subject appeal site have been refused permission on the grounds of parking demand and the limited capacity of the lane to accommodate vehicular traffic including emergency

and service access, as well as impacts associated with the scale, massing, and form of proposed mews buildings.

- It is submitted that the reasons for refusal associated with PA ref: 2449/21 (application for 3 storey mews dwelling at the rear of no. 38 Mountpleasant Avenue Lower) are relevant as the future use of the subject building will remain an artist studio.
- It is submitted that this part of the lane is unsuitable for a mews building / commercial office space.
- In terms of fire access, it is submitted that the suggestion to run a hose through the house is precarious.
- The issues in relation to overlooking remain in question.
- It is further noted that while vehicle access to Fortescue Lane isn't required by the applicants, it cannot be guaranteed that this will be the case.

## 7.0 **Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Design & Visual Impacts
3. Roads & Traffic
4. Residential Amenity Issues
5. Other Issues
6. Appropriate Assessment

## **7.1. Principle of the development**

- 7.1.1. Permission sought for the removal of existing walls/fence at rear of site, which includes a protected structure, and the construction of a two-storey stand-alone ancillary building of 62m<sup>2</sup> in the rear garden. The subject site is located within an area which has the Z2 - Residential Neighbourhoods (Conservation Areas) zoning objective afforded to it and where the following objective is applicable; 'To protect and/or improve the amenities of residential conservation areas.'
- 7.1.2. The information submitted indicates that the building will be used as a workspace / studio for the applicants, who reside in the main house on the overall site and as such, will be ancillary to the enjoyment of the existing residential use. The Board will note that the building is accessible from the rear garden of the house, with a single access door to be located onto Fortescue Lane.
- 7.1.3. The applicants are architects / artists, who have their main business office on Camden Row in Dublin and have a need for a separate space for creative activities including painting, drawing, theoretical writing, academic activity, and artistic collaborations, away from the office. The proposed building will provide space for these activities in a home-based facility. The plans provide for WC and a small kitchen counter for coffee making facilities. The applicant has indicated that the proposed building will not be used as a business premises or comprise a commercial office.
- 7.1.4. I am satisfied that the proposed development is acceptable in principle at this location.

## **7.2. Design and Visual Impacts**

- 7.2.1. The proposed development comprises a modern design building specifically designed for the purposes of its intended use. The applicant has provided details of previously permitted developments along Fortescue Lane which include significantly higher buildings, while the appellant indicates that many proposed mews developments on the Lane have been refused due the pressures of parking and access.

7.2.2. In terms of the proposed development, I note that the floor area is indicated at 62m<sup>2</sup>, including a ground floor area of 44m<sup>2</sup> and a mezzanine area of 18m<sup>2</sup>. The building will rise to a maximum ridge height of 6.125m and will occupy the full width of the site. In terms of materials to be employed in the development, the applicant submits that the houses on Mountpleasant Avenue Lower are primarily masonry in construction, with cladding materials consisting of natural slate/tiles to the roofs, brick to the front and rear elevations with painted render to the lower sections of the front elevation and metal / iron railings. The proposed development seeks to be sympathetic to the original house and will include a brick external envelope to be laid in a traditional bond. The roof and windows will be formed in zinc and steel respectively. The Board will note that in response to the PAs FI request, the windows facing Fortescue Lane have been set into the building and planters have been included to improve screening.

7.2.3. Overall, and acknowledging the restricted site parameters, together with the densely developed nature of this urban laneway, I am satisfied that the proposed contemporary building complements the character of the wider Fortescue Lane and would not have a detrimental impact on the adjacent protected structures.

### **7.3. Roads & Traffic**

7.3.1. The Board will note that the issue of capacity for increased vehicular traffic on Fortescue Lane is raised as a primary concern of the appellant, whose home, located on Bessborough Parade, backs onto Fortescue Lane and across from the subject site. I acknowledge also, the initial concerns raised by the Transportation Planning Division of Dublin City Council in the context of the existing ad hoc parking and constrained manoeuvring on the Lane as well as the width of Fortescue Lane, particularly in the vicinity of the subject site. Following a request for further information by the Planning Authority, the development has been sited to ensure that the width of the laneway immediately adjacent is 5.5m in width.

7.3.2. In terms of the third-party appellants submission, I would note that parking on the lane is very restricted with minimal opportunities for turning within the cul-de-sac. I also note the issues raised in relation to the blocking of the appellants access to the Lane from his home due to ad hoc parking outside his access gate. Following my



site inspection, I would acknowledge that the lane is very busy with regard to parking and is restricted in places.

7.3.3. However, in the context of the subject application, I note that the proposal is for a building which will be ancillary to the residential use of the wider site. The applicant has clearly indicated that the building will not be used as a commercial office or for business purposes, and no provision for car parking is proposed. I also note that the previously proposed bicycle parking facility has been omitted from the amended proposals. Given the intended nature and use of the proposed building, I would agree that bicycle parking facilities should not be required on the Lane. Any bicycles associated with the residential use might reasonably be accommodated within the residential site.

7.3.4. I also note that many of the houses which front onto Mountpleasant Avenue Lower have access to their rear gardens/garages from Fortescue Lane. The proposed development will provide pedestrian access only. The Board will also note that the Transportation Planning Division of Dublin City Council has advised no objection to the proposed development, subject to compliance with conditions. I am generally satisfied that this matter can be appropriately dealt with by way of conditions restricting the use of the building to ancillary to the residential use and that no vehicular access is facilitated from the lane.

#### **7.4. Residential Amenity Issues**

7.4.1. The third-party appellant has raised concerns in terms of the potential impacts associated with the proposed development on their residential amenity with regard to overlooking of their rear amenity space and into the kitchen extension associated with their home at 12 Bessborough Parade. Having regard to the proposed layout of the building, I am satisfied that the ground floor window serving the WC and the half landing window at the location of the stairs do not give rise to any significant potential for overlooking of Fortescue Lane or adjacent properties. The potentially offending window in terms of overlooking potential, is located at mezzanine level and it is submitted that this window will give rise to overlooking of the appellants property.

7.4.2. This window will service a desk space at mezzanine level and will be located approximately 6.6m from the boundary of the appellants property. The area of

glazing was reduced following the PAs request for further information, with the area of glazing below the desk level omitted. Obscured glazing is proposed for an area of the window and an external built-in planting box is proposed, as well as 880mm flanking walls on either side, extending from the glazing. It is submitted that these measures provide further protection for the privacy of houses across the lane at Bessborough Parade.

- 7.4.3. While I acknowledge the issues raised in the appeal, I am inclined to agree that the overall design has considered the potential for overlooking and has offered adequate mitigation to minimise any potential for overlooking. I would also accept that given the proposed use of the ancillary building, together with the layout of the properties on Bessborough Parade – at an angle to Fortescue Lane, the proposed window does not amount to a directly opposing window. Overall, I am satisfied that there are no significant issues of residential amenity impacts arising.

#### **7.5. Other Issues**

#### **7.6. Water Services**

- 7.6.1. The proposed development will connect to existing public services connected with the residence on the site. There is no objection in this regard.

#### **7.6.1. Development Contribution**

The Board will note that, having regard to the Dublin City Council Section 48 Development Contribution Scheme, the development is liable to pay a contribution.

### **8.0 Appropriate Assessment**

#### **8.1. Introduction**

- 8.1.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

- 8.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. The applicant did not submit a Natura Impact Statement with the application but did include an Ecological Impact Statement.
- 8.1.3. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.
- 8.1.4. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:
- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
  - Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

## 8.2. Consultations

- 8.2.1. With regard to consultations, the Board will note that no party has made reference to matters relating to AA. I note that the planning application itself is silent on the matter and no AA Screening appears to have been undertaken by the applicant.

## 8.3. Screening for Appropriate Assessment

- 8.3.1. The applicant did not prepare an Appropriate Assessment Screening Report as part of the planning application documentation. I would note that the development is not directly connected or necessary to the management of a European Site. In terms of

the Natura 2000 Sites occurring within a 15km radius of the site, I would note that there are 15 sites identified. I have considered the qualifying interests / Special Conservation Interests for which each site is designated. Each site was examined in the context of location in terms of the zone of Influence of effect from the proposed development and is considered in terms of AA requirements.

8.3.2. The site is an urban brownfield site and is not located within any designated site. The site is not located within any designated site. The closest Natura 2000 sites, and those located within the likely zone of influence, are the South Dublin Bay SAC (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which are located approximately 3.4km to the east of the site. The North Dublin Bay SAC (Site Code: 000206) and North Bull Island SPA (Site Code: 004006) is located approximately 6.5km to the east.

8.3.3. In terms of AA Screening Assessment, I conclude that the following sites can be screened out in the first instance, as they are located outside the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, it is concluded that no significant impacts on the sites is reasonably foreseeable. I am satisfied that the potential for impacts on the following 11 Natura 2000 sites can be excluded at the preliminary stage:

Site Name	Site Code	Assessment
Baldoyle Bay SAC	000199	Site is located entirely outside the EU site and therefore there is no potential for direct effects.  No habitat loss arising from the proposed development.  No disturbance to species.  No pathways for direct or indirect effects.  <b>Screened Out</b>
Baldoyle Bay SPA	004016	Site is located entirely outside the EU site and therefore there is no potential for direct effects.  No habitat loss arising from the proposed development.

		<p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Howth Head SAC	000202	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Howth Head Coast SPA	004113	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Rockabill to Dalkey Island SAC	003000	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Dalkey Island SPA	004172	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Glenasmole Valley SAC	001209	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p>

		<p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Knocksink Wood SAC	000725	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Ballyman Glen SAC	000713	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Wicklow Mountains SAC	002122	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Wicklow Mountains SPA	004040	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>

8.3.4. This determined, I am satisfied that the following Natura 2000 sites lie within the zone of influence of the project, for the purposes of AA Screening, include as follows:

- North Dublin Bay SAC (Site Code: 000206)
- North Bull Island SPA (004006)
- South Dublin Bay SAC (000210)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- Poulaphuca Reservoir SPA (004063) - This SPA is considered to be within the zone of influence of the development as the Poulaphuca Reservoir is the source of drinking water for Dublin City, including the proposed development site.

#### 8.4. Qualifying Interests for Natura 2000 Sites within Zone of Influence

8.4.1. The subject development site is an urban residential site and is not located within any designated site. The site does not contain any of the intertidal habitats or species associated with any Natura 2000 site. The existing site is composed entirely of artificial surfaces within a built-up area of Dublin City. The closest Natura 2000 site is the South Dublin Bay SAC (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which are located approximately 3.4km to the east of the site. The North Dublin Bay SAC (Site Code: 000206) and North Bull Island SPA (Site Code: 004006) is located approximately 6.5km to the east.

8.4.2. The following table sets out the qualifying interests for each of these sites:

European Site	Qualifying Interests
<p><b>South Dublin Bay SAC</b> <b>(Site Code: 000210)</b></p> <p>Located approx. 3.4km to the east of the site</p>	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> </ul>
<p><b>South Dublin Bay &amp; River Tolka Estuary SPA</b> <b>(Site Code: 004024)</b></p>	<ul style="list-style-type: none"> <li>• Light-bellied Brent Goose (Branta bernicla hrota) [A046]</li> <li>• Oystercatcher (Haematopus ostralegus) [A130]</li> </ul>

<p>Located approx. 3.4km to the east of the site.</p>	<ul style="list-style-type: none"> <li>• Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Knot (<i>Calidris canutus</i>) [A143]</li> <li>• Sanderling (<i>Calidris alba</i>) [A144]</li> <li>• Dunlin (<i>Calidris alpina</i>) [A149]</li> <li>• Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Redshank (<i>Tringa totanus</i>) [A162]</li> <li>• Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• Roseate Tern (<i>Sterna dougallii</i>) [A192]</li> <li>• Common Tern (<i>Sterna hirundo</i>) [A193]</li> <li>• Arctic Tern (<i>Sterna paradisaea</i>) [A194]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>
<p><b>North Dublin Bay SAC</b> <b>(Site Code: 000206)</b></p> <p>Located approx. 6.5km to the north east of the site.</p>	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Annual vegetation of drift lines [1210]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> <li>• Embryonic shifting dunes [2110]</li> <li>• Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> <li>• Humid dune slacks [2190]</li> <li>• <i>Petalophyllum ralfsii</i> (Petalwort) [1395]</li> </ul>
<p><b>North Bull Island SPA</b> <b>(Site Code: 004006)</b></p>	<ul style="list-style-type: none"> <li>• Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</li> <li>• Shelduck (<i>Tadorna tadorna</i>) [A048]</li> <li>• Teal (<i>Anas crecca</i>) [A052]</li> </ul>



<p>Located approx. 6.5km to the north-east of the site.</p>	<ul style="list-style-type: none"> <li>• Pintail (<i>Anas acuta</i>) [A054]</li> <li>• Shoveler (<i>Anas clypeata</i>) [A056]</li> <li>• Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Knot (<i>Calidris canutus</i>) [A143]</li> <li>• Sanderling (<i>Calidris alba</i>) [A144]</li> <li>• Dunlin (<i>Calidris alpina</i>) [A149]</li> <li>• Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</li> <li>• Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Curlew (<i>Numenius arquata</i>) [A160]</li> <li>• Redshank (<i>Tringa totanus</i>) [A162]</li> <li>• Turnstone (<i>Arenaria interpres</i>) [A169]</li> <li>• Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>
<p><b>Poulaphouca Reservoir SPA (Site Code: 004063)</b></p> <p>Located approx. 22km to the south of the site</p>	<ul style="list-style-type: none"> <li>• Greylag Goose (<i>Anser anser</i>) [A043]</li> <li>• Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]</li> </ul>

8.4.3. It is noted that the subject development site is located outside all of the Natura 2000 sites identified above, and therefore there is no potential for direct effects to any designated site. The subject site is already developed, and is generally composed of buildings and artificial surfaces, with a garden comprising the area of the proposed building. It is noted that there are some trees on the site to be removed to accommodate the building and that these trees may provide some wildlife and natural value in an otherwise urbanised setting. No survey or assessment was undertaken by the applicant in this regard. Having regard to the nature of the subject proposed development, and the urban location of the site, previous assessments it is unlikely that habitats and species protected under the Natura 2000 sites identified above occur within the vicinity of the site.

8.4.4. There is no direct hydrological connection from the site to Dublin Bay, which includes a number of SAC and SPA designations. It is noted, however, that the development will connect to public services and therefore, there is a pathway to a number of Natura 2000 sites via the Ringsend WWTP. Therefore, there are hydrological links to the above-mentioned sites.

8.5. **Conservation Objectives:**

8.5.1. The Conservation Objectives for the relevant designated sites are as follows:

European Site	Conservation Objectives
<p><b>South Dublin Bay SAC</b> <b>(Site Code: 000210)</b> Located approx. 3.4km to the east of the site</p>	<ul style="list-style-type: none"> <li>• The NPWS has identified a site-specific conservation objective to <b>maintain</b> the favourable conservation condition of the Annex I habitat listed as a Qualifying Interest, as defined by a list of attributes and targets</li> </ul>
<p><b>South Dublin Bay &amp; River Tolka Estuary SPA</b> <b>(Site Code: 004024)</b> Located approx. 3.4km to the east of the site.</p>	<ul style="list-style-type: none"> <li>• The NPWS has identified site-specific conservation objectives to <b>maintain</b> the favourable conservation condition of the bird species listed as Qualifying Interests, as defined by a list of attributes and targets.</li> <li>• No site-specific objective has been set for the Grey Plover and it is proposed for removal from the list of Special Conservation Interest for the SPA.</li> </ul>
<p><b>North Dublin Bay SAC</b> <b>(Site Code: 000206)</b> Located approx. 6.5km to the north east of the site.</p>	<ul style="list-style-type: none"> <li>• The NPWS has identified a site-specific conservation objective to <b>maintain</b> the favourable conservation condition of the following Annex I habitat listed as a Qualifying Interest, as defined by a list of attributes and targets:               <ul style="list-style-type: none"> <li>○ Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>○ <i>Petalophyllum ralfsii</i> (Petalwort) [1395]</li> </ul> </li> <li>• The NPWS has identified a site-specific conservation objective to <b>restore</b> the favourable conservation condition of the following Annex I habitat listed as a Qualifying Interest, as defined by a list of attributes and targets:               <ul style="list-style-type: none"> <li>○ Annual vegetation of drift lines [1210]</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Salicornia and other annuals colonising mud and sand [1310]</li> <li>○ Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</li> <li>○ Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> <li>○ Embryonic shifting dunes [2110]</li> <li>○ Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>○ Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> <li>○ Humid dune slacks [2190]</li> </ul>
<p><b>North Bull Island SPA</b> <b>(Site Code: 004006)</b></p> <p>Located approx. 6.5km to the north-east of the site.</p>	<ul style="list-style-type: none"> <li>● The NPWS has identified site-specific conservation objectives to <b>maintain</b> the favourable conservation condition of the bird species listed as Qualifying Interests, as defined by a list of attributes and targets.</li> </ul>
<p><b>Poulaphouca Reservoir SPA (Site Code: 004063)</b></p> <p>Located approx. 22km to the south of the site</p>	<ul style="list-style-type: none"> <li>● There is a generic conservation objective to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the SPA: <ul style="list-style-type: none"> <li>○ Greylag Goose (<i>Anser anser</i>) [A043]</li> <li>○ Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]</li> </ul> </li> </ul>

## 8.6. Potential Significant Effects

- 8.6.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 3.4km from the boundary of any designated site. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within an urbanised environment. No qualifying species or habitats of interest, for which the designated sites are so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.

**Water Quality:** The existing house on the overall site is already connected to existing public water services and ultimately, the Ringsend Wastewater Treatment Plant. Having regard to the nominal nature of the proposed development, being for a building ancillary to the existing residential use, I am generally satisfied that the development, if permitted, is unlikely to impact on the capacity of the existing public water services or overall water quality within Dublin Bay.

## **8.7. In Combination / Cumulative Effects**

- 8.7.1. In relation to in-combination impacts, I would note the relevant policy framework which applies in the Greater Dublin Area, including the Water Framework Directive and the 2005 Greater Dublin Strategic Drainage Study policy document which gave direction for the design of future drainage infrastructure. In terms of in-combination with other 'brown-field' or infill sites, in Dublin City, and given the negligible contribution of the proposed development to the wastewater discharge from Ringsend, I consider that any potential for in-combination effects on water quality in Dublin Bay can be excluded. In addition, I would note that all other projects within the Dublin Area which may influence conditions in Dublin Bay via rivers and other surface water features are also subject to AA.

## 8.8. **Conclusion on Stage 1 Screening:**

I have considered the submitted information, the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available to me, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

## 9.0 **Recommendation**

I recommend that planning permission be Granted for the proposed development for the following stated reason and subject to the following stated conditions.

## 10.0 **Reasons and Considerations**

Having regard to the pattern of permitted development in the area, to the provisions of the Dublin City Development Plan 2016-2022, and to the layout and design as submitted, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of adjoining properties, would not seriously injure the residential amenities of future occupants and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 9<sup>th</sup> day of April 2021 and plans and

particulars submitted to An Bord Pleanála on the 25<sup>th</sup> day of June 2021, 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.

**Reason:** In the interest of clarity.

2. The proposed development shall not be used for human habitation, office or commercial / business purposes or for any use other than as a use incidental to the enjoyment of the dwelling house unless authorised by a prior grant of planning permission.

**Reason:** In the interest of clarity and residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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A. Considine

Planning Inspector

1<sup>st</sup> October 2021