



An
Bord
Pleanála

Inspector's Report ABP-310818-21

| | |
|-------------------------------------|---|
| Development | Subdivision of garden for the construction of new dwelling all associated site works. |
| Location | 33, Park Avenue, Sandymount, Dublin 4 |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | WEB1675/20 |
| Applicant(s) | Michael Duncan |
| Type of Application | Planning Permission |
| Planning Authority Decision | Grant with Conditions |
| Type of Appeal | Third Party Appeal |
| Appellant(s) | The Surge Limited Partnership |
| Observer(s) | None |
| Date of Site Inspection | 1 st March 2022 |
| Inspector | Susan Clarke |

Contents

| | |
|--|----|
| 1.0 Site Location and Description | 3 |
| 2.0 Proposed Development | 3 |
| 3.0 Planning Authority Decision | 4 |
| 3.1. Decision | 4 |
| 3.2. Planning Authority Reports | 4 |
| 3.3. Prescribed Bodies | 5 |
| 3.4. Third Party Observations | 5 |
| 4.0 Planning History..... | 5 |
| 5.0 Policy Context..... | 5 |
| 5.1. Development Plan..... | 5 |
| 5.2. Natural Heritage Designations | 6 |
| 5.3. EIA Screening | 7 |
| 6.0 The Appeal | 7 |
| 6.1. Applicant Response | 8 |
| 6.2. Planning Authority Response | 9 |
| 6.3. Observations | 9 |
| 7.0 Assessment..... | 9 |
| 8.0 Recommendation..... | 14 |
| 9.0 Reasons and Considerations..... | 15 |
| 10.0 Conditions | 15 |

1.0 Site Location and Description

1.1. The site is located in the rear garden of No. 33 Park Avenue, Sandymount, Dublin 4 and has a stated area of 1,358 sq m. It is located in a well-established residential area in the suburb of Sandymount, c4km southeast of the city centre. Pembroke Cricket Club is located opposite the site. The site fronts onto Park Lane (cul-de-sac) with Nos. 29 and 31 Park Avenue to the rear. It benefits from a pedestrian and vehicular entrance off Park Lane. At present, the site forms part of the rear garden of No. 33 Park Avenue and contains a number of trees. The area is characterised by a mix of architectural styles; Park Avenue primarily contains large detached and semi-detached period dwellings with rear modern extensions, while Park Lane forms part of an estate with detached and terraced houses that appears to date from the 1980s.

2.0 Proposed Development

2.1. The proposed development consists of the:

- Subdivision of the rear garden of No. 33 Park Avenue,
- Construction of a two storey detached dwelling,
- Modifications to the existing pedestrian and vehicular access/egress point on Park Lane,
- Plant room,
- Green roof,
- Boundary treatments, and
- Associated works.

The proposed four bed, contemporary, flat roof dwelling has a total floor area of 319 sq m and includes three first floor terraces with privacy screens.

Following a Request for Further Information (RFI), the Applicant proposed setting back the proposed dwelling 2m to 2.25m from the boundary with No. 9 Park Lane, from the originally proposed 1.68m separation distance. There were no other significant alterations made to the proposed development at RFI stage.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council issued a Notification of Decision to Grant Permission on 16th June 2021 subject to 12 no. conditions.

Condition No. 3 requires prior to the commencement of development the Applicant shall submit for the written agreement of the Planning Authority revised drawings which show:

(i) The building pulled in to allow for a separation distance of 2.25m from the boundary shared with No. 9 Park Lane.

(ii) The building shall not extend at first floor level including the terrace area, beyond the front building line at No. 9 Park Lane.

Reason: In the interest of the residential amenity of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports (30th November 2020 and 16th June 2021)

The Planning Officer considered that the principle of the development was acceptable having regard to the Z1 and Z2 zoning objective of the site. The Planning Officer recommended that a RFI be issued in relation to (1) the scale and positioning of the dwelling in relation to neighbouring properties, (2) the integration of the contemporary design proposal into the residential conservation area, (3) the requirement for first floor terraces having regard to the open space provision, (4) a shadow analysis, and (5) an arboricultural impact assessment. Subsequent to the RFI, the Planning Officer stated that the proposal to step the house forward on Park Lane causes some level of overshadowing and as such recommended that the proposed design be amended to respect the existing building line. Furthermore, the Planning Officer recommended that the separation distance between the proposed dwelling and No. 9 Park Lane be increased to 2.25m as proposed in the RFI Response. The Planning Officer considered the positioning and size of the First Floor terraces to be acceptable.

3.2.2. **Other Technical Reports**

Roads Planning Division (23rd November 2020): No objection subject to condition including the reduction of proposed vehicular entrance from 5.425m to 3m and works to the footpath along Park Lane.

Drainage Division: (27th October 2020): No objection subject to condition.

3.3. **Prescribed Bodies**

Irish Water: No comments received.

Irish Rail: No comments received.

3.4. **Third Party Observations**

Surge Limited Partnership submitted a third-party observation to the Local Authority in respect of the proposed development. The key points raised in Observation are set out in the Third-Party Appeal. See Section 6 below.

4.0 **Planning History**

No planning applications identified relating to the subject site.

Neighbouring Site (No. 29 Park Avenue) - DCC Reg. Ref. 2945/19: Planning permission granted in August 2019 for the construction of new part single storey / part two storey extensions to the rear and sides of existing dwelling. This Permission has been implemented on site.

5.0 **Policy Context**

5.1. **Development Plan**

The operative plan for the area is the Dublin City Development Plan 2016-2022. The site is split between land use zoning: Z1 Sustainable Residential Neighbourhoods where the objective is “to protect, provide and preserve residential amenities” and Z2 Residential Conservation Areas where the objective is “to protect and/or improve the amenities of residential conservation areas”. The proposed dwelling is positioned mostly

on the Z1 zoned part of the site. Residential development is permitted in principle under both zoning objectives.

Section 14.8.2 of the Development Plan in relation to 'Residential Neighbourhoods (Conservation Areas – Zone Z2)' states: *“the overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.”*

Section 16.10.2 of the Development Plan sets out residential quality standards for houses.

Section 16.10.9 of the Development Plan deals with the matter of 'Corner' and 'Side Garden Sites'. In relation to such developments the Development Plan indicates that these are a means of making the most efficient use of serviced lands that are residentially zoned. It also sets out criteria for the assessment of such developments.

Section 16.10.10 of the Development Plan deals with the matter of 'Infill' housing and similarly to corner and side garden sites it acknowledges that these are a means of making the most efficient use of serviced lands. It also sets out criteria for such developments.

Appendix 5 - Road and Footpath Standards for Residential Development states that where driveways are provided, they shall be at least 2.5m or, at most, 3.6m in width, and shall not have outward opening gates.

Policy QH21 seeks to ensure that new houses provide for the needs of family accommodation with a satisfactory level of residential amenity in accordance with the standards set out for residential development.

Policy QH22 seeks to ensure that new housing developments close to existing houses has regard to the character and scale of existing houses unless there are strong design reasons for doing otherwise.

5.2. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

5.3. EIA Screening

Having regard to the modest nature and scale of the proposed development and its location within a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination and a screening determination is not required.

6.0 The Appeal

Surge Limited Partnership submitted a Third-Party Appeal to An Bord Pleanála on 13th July 2021 opposing the Local Authority's decision. The grounds of appeal (similar to the points raised in the Observation to the Local Authority) can be summarised as follows:

- The site address is not accurately described on the statutory notices; the site is located to the rear of Nos. 29 and 31 Park Avenue, not No. 33 Park Avenue. In addition, the notices make no reference to the proposed PV panels.
- The Site Layout Plan does not illustrate the permitted development at No. 29 Park Avenue.
- Inaccuracies on the planning drawings including referenced distance to boundaries, site area, drawing title errors, and the north symbol positioning.
- Concerns regarding the integration of the contemporary design into the conservation area and the proposed break in the established building line along Park Lane. The break in building line is wholly inappropriate and would detract from the visual amenity of the streetscape.
- The scale and massing is incongruous with smaller type dwellings.
- No justification provided for the excessive height proposed.
- The self-coloured render finish does not take cue from the dominant red brick in the area and nor does the arched windows with rectangular windows in the area.
- The proposed development is overbearing on No. 29 Park Avenue.

- No CGI were submitted with the application.
- Overshadowing on No. 9 Park Lane and the rear garden of No. 29 Park Avenue likely to be significant.
- Concerns regarding the relocation of existing trees within the garden.
- No drainage drawings provided with the application.

6.1. Applicant Response

The Applicant submitted a response to An Bord Pleanála in respect to the Third Party Appeal. The key points can be summarised as follows:

- The site of the proposed house is in the rear garden of No. 33 Park Avenue.
- At the time of making the application, the drawings reflected the situation on the ground and the relevant Ordnance Survey maps. The shadow analysis takes account of the permitted works at No. 29 Park Avenue.
- The architectural design was informed by the area, including the ceiling heights which reflect the period houses in the area.
- Conditions on the decision to grant deal with impact on boundaries, notwithstanding this the Applicant would prefer no changes to the original design.
- The shadow analysis shows that there will be minimal impact on No. 29 Park Avenue. The Appellant has planted a 5m espaliered screen directly behind the shared boundary with the Applicant. The Applicant argues that this screen will create more extensive overshadowing.
- Comparisons with No. 9 Park Lane are not valid with respect to the building line.
- The Appellant has not consulted with the arboricultural report.
- Drainage drawings were submitted with the application. The Local Authority's engineers were satisfied with the submission.
- The solar and PV array are required to comply with Part L of the Building Regulations. It is normal practice to submit indicative proposal at planning stage

on the roof plan for a fixed domestic array which will be largely hidden behind the upstand parapet.

- There is no serious loss of amenity to any neighbouring properties.

6.2. Planning Authority Response

No response received.

6.3. Observations

None.

7.0 Assessment

Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Proposed Development
- Architectural Design
- Impact on Residential Amenity
- Tree Felling
- Flooding and Drainage
- Planning Application Validation, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. Principle of Proposed Development

- 7.1.1. Under the provisions of the Dublin City Development Plan 2016 to 2022, the site has a split land use zoning objective: Z1 Sustainable Residential Neighbourhoods where the objective is “*to protect, provide and preserve residential amenities*” and Z2 Residential Conservation Areas where the objective is “*to protect and/or improve the amenities of residential conservation areas*”. Residential development is a permissible

use under both land use zoning objectives. Accordingly, I consider that the principle of the development of a dwelling house on serviced land at this location is acceptable subject to compliance, with other relevant policies, standards and requirements set out in policy.

7.2. Architectural Design

- 7.2.1. The Appellant raises a number of concerns in relation to the architectural design of the proposed development. The proposed development involves the construction of a four bed contemporary style detached dwelling. The two-storey dwelling will have a parapet flat roof height of c7.1m and is marginally below the ridge height of the neighbouring dwelling at 7.9m (No. 9 Park Lane). The Applicant argued in the RFI Response that the proposed large floor-to-ceiling heights are in keeping with No. 33 Park Avenue and that they will facilitate the development of a high-quality space for the future residents. Having regard to the size of the site, the proximity of the proposed dwelling to the site boundaries, and the prevailing height in the area, I do not consider the height to be excessive.
- 7.2.2. For the same reasons I do not consider the overall scale and massing of the proposed development to be generally excessive. Notwithstanding this, having regard to the height and length of the southwest elevation, the increased separation distance from 1.69m to 2.25m between the proposed dwelling and No. 9 Park Lane will mitigate any potential for the development to be overbearing on the neighbouring property. At its closest point the dwelling is 2.8m from the northwest boundary. Having reviewed the drawings relating to the recently permitted development at No. 9 Park Avenue (Reg. Ref. 2945/19), I note that the rear extension which is near completion is 9.87m from the southwest boundary. Having regard to the separation distance, I am satisfied that the proposal will not have an overbearing impact on No. 29 Park Avenue.
- 7.2.3. The area comprises a mix of housing sizes, however I note there are a number of large dwellings on Park Avenue, including No. 9 which will have a floor area of 562.4 sqm on completion of the permitted extension (Reg. Ref. 2945/19). I do not consider that the proposed development which will have a floor area of 319 sq m, to be excessive nor will it be visually dominant in the vicinity.
- 7.2.4. The proposed dwelling has a strong solid to void ratio, particularly at First Floor Level which has limited fenestration detail on northwest and southeast elevations. This

reduces potential for overlooking of neighbouring sites. On the contrary the northeast elevation comprises a significant volume of glazing particularly at Ground Floor Level. The Appellant argues that the self-coloured render finish is not in keeping with redbrick in the area. In my view the proposed finish complements the contemporary style of the dwelling and avoids a pastiche.

7.2.5. In terms of the building line with Park Lane, the proposed dwelling at Ground Floor Level (including the porch) projects approximately 3.8m from the front elevation of No. 9 Park Lane. As outlined above, the Local Authority conditioned that the First Floor Level including the terrace area shall not extend beyond the front building line of No. 9 Park Lane. The First Floor is proposed to extend c1.8m beyond the building line. Whilst conventionally it is good urban design practice to respect established building lines, having regard to the site's position at the end of a cul-de-sac and the distinctive contemporary design proposal, in my view, the break in building line is acceptable and would add further architectural interest to the proposed development. As highlighted by the Applicant, the dwellings in Park Lane estate have a distinctive disjointed building line (see Photo 3 attached). The Local Authority's Planning Officer recommended that the First Floor be setback due to overshadowing reasons. However, as discussed in further detail below I do not consider this issue to be significant. As such, in my opinion Condition No. 3(ii) attached to the Local Authority's decision is not warranted. There was no First Party Appeal made by the Applicant in respect of Condition 3(ii) nor did the Applicant specifically request that this Condition be removed in the First Party Response to a Third Party Appeal. The Board may wish to give detailed consideration to this matter.

7.2.6. In summary, I am satisfied that the proposed development will integrate successfully into the area, providing a positive juxtaposition with both the earlier period dwellings and the 1980s housing in the vicinity. I do not consider the proposal to be excessive or overbearing on neighbouring properties. Furthermore, No. 33 Park Avenue will still benefit from a large rear garden. In conclusion, I consider that the proposed development will positively contribute to the area's visual amenity and will not negatively impact on the area's architectural conservation value.

7.3. Impact on Residential Amenity

- 7.3.1. In relation to loss of privacy, as stated above the proposed development's strong solid-to-void ratio limits the potential for significant overlooking on neighbouring properties. Privacy screens are provided on the First Floor terraces, which will further limit potential for overlooking. I note from my site visit that the two windows at First Floor level of No. 9 Park Lane facing the subject site are obscured. Similarly the proposed opposing window on the southwest elevation at First Floor level is obscured and setback 4.5m from the boundary. In terms of potential overlooking on No. 29 Park Avenue the high boundary wall (see Photo 9) will block any views at Ground Floor level. Furthermore, there are no directly opposing windows proposed at First Floor level on the northwest elevation. As such, I am satisfied that the proposed development will not result in overlooking or a loss of privacy for neighbouring residents. As the terraces connect to bedrooms as opposed to living spaces, I do not consider they will lead to significant noise disturbance by virtue of their elevated position and proximity to the boundary. As such, I do not consider that the proposal will reduce the area's residential amenity in terms of overlooking or noise.
- 7.3.2. With respect to overshadowing, the Applicant was requested to submit a shadow analysis at RFI stage. The analysis which takes account of the permitted extension to No. 29 Park Avenue covers the Spring Equinox, the Winter Solstice, and the Summer Solstice, but does include the recently planted espaliered screen between the boundary of the Applicant and Appellant. The Report notes that the Spring Equinox yields similar results to the Autumn Equinox and as such, the latter was not included. The analysis demonstrates that the proposed development will have a minimal impact in terms of overshadowing on the neighbouring properties. The impact on the front garden of No. 29 Park Lane is marginal and, in my view, not sufficient to solely justify the setback of the First Floor level. I am satisfied with the methodology and conclusions of the analysis and that the proposal will not cause undue overshadowing thereby reducing the area's residential amenity.
- 7.3.3. The proposed development includes for the relocation of the existing pedestrian access to the boundary between the site and No. 9 Park Lane. In addition, it is proposed to increase the vehicular access to 5.425m. Dublin City Council has clear and unambiguous guidelines that vehicular entrances serving residential dwellings should be at least 2.5m but no more than 3.6m in width. It is stated that narrower

widths are generally more desirable and that maximum widths will generally only be acceptable in exceptional circumstances. I note the Local Authority's Transportation Division's recommendation to reduce the entrance to 3m. Having regard to the Development Plan policy and the site's location at the end of a cul-de-sac, I consider a 3.6m wide entrance would be sufficient at this location. The proposed development includes for a sliding gate and as such, I do not consider this proposal will result in a traffic hazard.

7.4. Tree Felling

- 7.4.1. The site comprises a landscaped garden with a number of trees. An arboricultural assessment was submitted at RFI stage, which confirmed that there is one Category U tree, no Category A trees, three Category B trees, 13 Category C trees and one scrub border. The proposed development includes for the removal of two Category B trees, nine Category C trees and the scrub border. I concur with the Applicant that the loss of the trees will have minimal impact on the treescape of the area due to their size. I consider that the felling is acceptable to facilitate the construction of the dwelling on residentially zoned land subject to the implementation of the mitigation measures outlined in the arboricultural method statement/tree protection strategy.

7.5. Flooding and Drainage

Part of the site is located within the 0.1% of Tidal AEP Flood Depth (1 in 1000 year). The site is at risk of 0.1m to 0.2 flood depth. However, there are no historical records of flooding in the immediate area. The finished floor level (2.15mOD) will be set 50mm above the existing ground level of 1.65mOD to allow for a 300mm to 400mm freeboard from pluvial flooding.

The proposed development includes a green roof (134.4 sq m) and all surface water will be collected on site for rain harvesting. A new soakaway is proposed in the garden and will be designed in accordance with BRE Digest 365. As such there will be no requirement to discharge surface water into the existing combined sewer located along Park Lane.

I note that the Local Authority's Drainage Department had no objection to the proposed development subject to the attachment of conditions. I am satisfied that the proposed development does not represent a flooding hazard and that it would not be prejudicial to public health.

7.6. Planning Application Validation

- 7.6.1. As outlined above, the Appellant raises a number of concerns in relation to the validity of the planning application. In terms of the site address, I am satisfied that the address adequately describes the location, as the site currently forms part of the rear garden of No. 33 Park Avenue. Furthermore, I am satisfied that the statutory notices provide a brief description of the nature and extent of the proposed development as per the requirements of the *Planning and Development Regulations 2001 (as amended)*, notwithstanding that PV panels were not specifically referenced. The location for the proposed PV panels is illustrated on Dwg. No. 20.02.P 202.
- 7.6.2. In relation to the illustration of the permitted extension to No. 29 Park Avenue on the subject drawings, I note the Applicant's statement that submitted plans and maps illustrated the situation on the ground at the time of lodgement. As stated above, the shadow analysis submitted in response to the RFI takes account of the permitted extension to the neighbouring dwelling. I am satisfied that the planning application includes sufficient detail for the Board to determine the appeal case.
- 7.6.3. In relation to the discrepancies on the drawings, I consider these to be minor typographical errors that do not hinder third parties from being informed of the full extent of the development or restrict the Board for determining the case. Furthermore, there is no statutory requirement to submit CGIs for this development proposal.

7.7. Appropriate Assessment

The site does not form part of or is it located near to any Natura 2000 site. It lies within an established suburban area that is fully serviced. Accordingly, no Appropriate Assessment issues arise. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and serviced location, 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

I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the Z1 and Z2 zoning objectives pertaining to the site in the Dublin City Development Plan 2016-2022, and to the nature, scale and contemporary architectural design of the proposed development, it is considered that, subject to compliance with the following conditions, the proposed development would not seriously injure the residential amenities of the area due to overbearing, overlooking or overshadowing impacts, and would not be prejudicial to public health, or give rise to a traffic hazard. The proposed development would, therefore, be in accordance 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, as amended by the further plans and particulars submitted on the 20th day of May, 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.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>Prior to the commencement of development the applicant shall submit for the written agreement of the Planning Authority revised drawings which show a separation distance of 2.25m from the boundary shared with No. 9 Park Lane.</p> <p>Reason: In the interest of the residential amenity of the area.</p> |
| 3. | <p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, tree protection</p> |

| | |
|----|---|
| | <p>measures, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p> |
| 4. | <p>Site development and building works shall be carried out only between the hours of 0700 to 1800 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p> |
| 5. | <p>The mitigation measures outlined in the Arboricultural Assessment submitted as part of the RFI Response, shall be carried out in full, except where otherwise required by conditions of this permission.</p> <p>Reason: To protect trees and planting during the construction period in the interest of visual amenity.</p> |
| 6. | <p>The following requirements shall be incorporated and where required, revised drawings / reports showing compliance with these requirements, shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development:</p> <ol style="list-style-type: none"> I. The proposed vehicular entrance shall not exceed 3.6 metres in width and shall not have outward opening gates. II. The footpath and kerb shall be dished at the road junction in accordance with the requirements of the planning authority. III. The proposed store/plant shall not have outward opening gates. <p>Reason: In the interests of clarity, and pedestrian and traffic safety.</p> |
| 7. | <p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: In the interest of public health.</p> |

| | |
|----|---|
| 8. | <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 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.</p> |
|----|---|

Susan Clarke
Planning Inspector

9th March 2021