



An
Bord
Pleanála

Inspector's Report ABP-310834-21.

Development

1. Retention of the division of existing house into 2 flats.
2. Permission for alterations to the side annex.
3. Permission for lower ground floor extension.
4. Permission for the widening of the vehicular entrance
5. and all associated site works

Location

No. 8, Garville Road, Dublin 6.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

WEB1066/21.

Applicant(s)

John Kennedy & Una Kelly.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellant(s)

Godfrey & Elaine Hogan

Observer(s)

None.

Date of Site Inspection

15/09/2021.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located to the south of Garville Road which lies to the east of Rathgar Road and to the west of Frankfort Avenue and Rathmines Road Upper, in Rathgar, Dublin 6. There is some uniformity to the design of the houses on the southern side of Garville Road with the houses to the west comprising two storey houses with the front door located at upper ground floor level and accessed via a set of steps. The houses to the west form a terrace of 4 houses of similar style to the subject site and have a plastered finish to the ground floor level and a brick finish to the first-floor level.
- 1.2. Houses to the north of Garville Road generally comprise a terrace of two storey houses with front gardens and on-street parking. The area comprises primarily residential uses, and I note that while many of the houses have been extended and altered the houses retain a level of uniformity which supports the Z2: Residential Neighbourhood (Conservation Areas) zoning afforded to the street.
- 1.3. The site has a stated area of 0.0558 hectares and No. 8, Garville Road, Dublin 6, is one of a pair of semi-detached houses which originally were three bay, two storey houses with the front door located at upper ground floor level. The attached house to the east has been extended over both the ground floor and first floor level, attaching to the red bricked two storey house to the east. The house the subject of this appeal has also been extended to the side to the western boundary, but only at ground floor level. The house includes a large rear garden extending and provides for car parking to the front.
- 1.4. I could not gain access to the rear of the property on the date of my inspection. The Board will note that a number of photographs have been submitted by both the first and third parties of the rear of the site.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the following:
 - Retention Permission - The retention of the division of the existing property into two dwelling flats and the retention of a 38m² single storey side annex to the lower ground floor dwelling flat;

- Permission - The construction of alterations to this side annex including; the reconstruction of the roof, front entrance and internal layout and two new rooflights;
- Permission - The construction of a 45.5m² single storey extension to the rear of the lower ground floor dwelling flat and linked to the annex including; one new roof light; a balcony to the rear of the upper ground floor dwelling flat;
- the widening of existing vehicular entrance, new vehicular entrance gate and associated landscaping works,

all at No. 8, Garville Road, Dublin 6.

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

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

2.2.1. Following the submission of the response to the PAs further information request, the applicant submitted a schedule of floor areas confirming compliance with the Apartment Guidelines. In addition, the upper ground floor apartment was redesigned to comprise 2 no. bedrooms with a Winter Garden space and screening to protect the residential amenity of adjoining dwellings. The revised proposal also included the reinstatement of the stairs to provide direct access to an area of open space within the rear garden, which will be designated specifically to the upper ground floor apartment. The redesign of the lower ground floor apartment includes the annex as ancillary accommodation.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant planning permission for the proposed development subject to 11 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

The planning report notes the rationale for the annex as set out in the applicants cover letter, submitted with the application, and notes that it does not comply with Section 16.10.14 Ancillary Family Accommodation of Dublin City Development Plan, given that the submitted layout provides for a self-contained unit (by reason of the facilities and amenities proposed). The report notes the proposed ground floor extension and considers this element to be acceptable. In terms of the upper ground floor, it is noted that the proposed 2.7m balcony proposed to serve as amenity space is significantly below the 9m² required in the Apartment Guidelines. The report notes that there are areas of compliance with the Apartment Guidelines which are not demonstrated, ie. room width, storage etc, and concludes that these matters are required to be addressed. The report does not consider that the development will negatively impact on the residential conservation area.

In terms of access and parking, the report notes the requirements of the CDP and the Road Planning Division report. The report concludes that further information is required in relation to 3 issues.

Following the submission of a response to the PAs FI request, the final planning officers report noted acceptance of the response in relation to issue 1 of the FI request (compliance with Section 6.0 of the Apartment Guidelines). With regard to issue 2 (provision of appropriate amenity space to the upper ground floor apartment) the Planning Officer accepted the proposal to provide an 8m² winter garden to the rearm south-eastern side of the site and direct access to the 72m² private rear garden. An opaque screen to the garden area along the staircase is noted as preventing overlooking into adjoining third party gardens. The response was deemed acceptable.

With regard to the use of the Annex, I note that the Planning Officer did not consider that the applicant has justified same. As such, it is recommended that conditions be

attached to direct the applicant to incorporate the annex into the main dwelling by removing the independent front access which would result in the annex being accessed via the main dwelling only. Ultimately, the Planning Officer recommends that permission be granted subject to 11 conditions.

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

3.2.2. Other Technical Reports

Drainage Division: No objection subject to compliance with conditions.

Transportation Planning Division: The report notes the Development Plan standards for vehicle entrances noting that the creation of excessively wide vehicular entrances creates issues in terms of loss of on-street parking, pedestrian safety and impacting on streetscape character. The existing entrance is 3.095m in width with the proposal to increase it to 3.6 to accommodate in-curtilage parking for 2 cars.

The report considers that the proposed car parking area and including the widening of the vehicular entrance does not facilitate sufficient space for the parking and manoeuvring of two cars safely. It is considered that the existing width of the entrance is adequate to facilitate one car parking space and the widening of the entrance should be omitted.

The site is located within Parking Zone 3 and as such, 1 car parking space is acceptable. sheltered and secure cycle parking, a minimum of 2 per unit, should be conditioned. Bin storage is noted.

The report concludes advising no objection to the proposed development subject to compliance with conditions.

3.2.3. Prescribed Bodies

None.

3.2.4. **Third Party Submissions**

There are 5 third party submission on the Planning Authority file in relation to the proposed development from the following persons:

- Denis Williams Design Services
- Godfrey & Elaine Hogan
- Rathgar Residents Association.
- Joanna Schaffalitzky
- Philip O'Reilly

3.2.5. The issues raised are summarised as follows:

- The drawings do not reflect the proposed development.
- The entire first floor apartment is unauthorised and should be highlighted in the plans as proposed for retention.
- Issues raised in relation statutory notices raised as they do not accurately reflect the level of retention permission required to regularise the development.
- It is indicated that the property was being used as 3 units by previous owner and the plans clearly indicate that the applicant intends to keep this sub-division with the annex a self-contained flat with its own front door, kitchen and living room and bathroom facilities.
- The development is for 2 no. 1 bed apartments and 1 no. 3 bed apartment.
- The sheds to be retained in the rear of the property are not noted to be retained. As the site includes unauthorised development, there is no exemption for the sheds.
- The development does not appear to comply with the CDP requirements or development standards in terms of inclusive design, roads and services, potential for overlooking and issues in relation to parking.
- The proposed development does not appear to comply with the requirements of the Apartment Guidelines.

- Other design issues include non-compliance with NSBE and the sound and fire issues associated with the intermediate floor which would not comply with Parts B or E of the TGDs.
- It is noted that as it is an existing building, it may not be practical to comply with all regulations governing new apartments, but as there are a number of deviations and deficiencies the legitimacy of the approach / design needs to be questioned and the suitability of the sub-division of the period house in the Conservation Area.
- Issues raised in relation to the proposed first floor balcony which is to be accessed from the kitchen constitutes a gross invasion of privacy of neighbouring properties and would impact on existing residential amenity in terms of noise.
- There is a general objective for the conservation area to protect the buildings from unsuitable development that would have a negative impact on the amenity or architectural quality of the area. Concern is raised in relation to the sub-division of the house into 3 properties.
- Car parking issues raised. The front garden area is not large enough to accommodate any off-street parking without overwhelming the setting of the house and its environs.
- No provision of access to the rear open space is provided to the upper floor apartment and no allocation of private amenity space is provided for the two ground floor units.
- The raising of the height of the roof on the annex to provide roof lights will be clearly visible from the public road and will be visually intrusive in the conservation.
- The building should be on the list of protected structures.

4.0 Planning History

- 4.1. The submitted information indicates that the side annex was constructed in the 1970s/1980s by a previous owner and that the space had been used as a flat up to the point where the current applicants purchased the property. It is further noted that

the original house has been converted into two flats by way of the removal of the internal staircase. It is submitted that this alteration also occurred in the 1970s/1980s. The applicant notes that there is no evidence that planning permission was sought for these changes and that the property had been used as three separate units by one family.

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

PA ref: 2396/72(2278): Permission granted for the construction of an upper ground floor extension of 22m² to the rear of the building.

The footprint beneath the permitted upper ground floor extension was subsequently developed as an extension to the lower ground floor, without the benefit of planning permission.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

The NPF includes a Chapter, No. 6 entitled ‘People, Homes and Communities’. It sets out that place is intrinsic to achieving good quality of life. A number of key policy objectives are noted as follows:

- National Policy Objective 33 seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.
- National Policy Objective 35 seeks “to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

National Planning Objective 13 provides that “in urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated

outcomes, provided public safety is not compromised and the environment is suitably protected”.

5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments:

- quality homes and neighbourhoods,
- places where people actually want to live, to work and to raise families, and
- places that work – and will continue to work - and not just for us, but for our children and for our children’s children.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

5.2.3. Section 5.6 of the guidelines suggest that there should be no upper limit on the number dwellings permitted that may be provided within any town or city centre site, subject to the following safeguards:

- compliance with the policies and standards of public and private open space adopted by development plans;
- avoidance of undue adverse impact on the amenities of existing or future adjoining neighbours;
- good internal space standards of development;
- conformity with any vision of the urban form of the town or city as expressed in development plans, particularly in relation to height or massing;
- recognition of the desirability of preserving protected buildings and their settings and of preserving or enhancing the character or appearance of an Architectural Conservation Area; and

- compliance with plot ratio and site coverage standards adopted in development plans.

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

The subject site includes a protected structure, ref 4864 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 13.8 of the Guidelines relate to Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation area and the following sections are relevant:

- Section 13.8.1
- Section 13.8.2
- Section 13.8.3

5.4. Development Plan

- 5.4.1. 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.

5.4.2. Chapter 16 of the CDP deals with Development Standards and section 16.10 deals standards for residential accommodation. Section 16.10.0 deals with Residential Quality Standards for apartments. This section deals with floor areas, mix of units, aspect, natural light, ventilation and sunlight penetration and internal configuration. In addition, this section of the CDP sets out the requirements for the provision of storage, private and communal open space and cycle parking.

5.4.3. Section 16.10.13 specifically deals with Sub-Division of Dwellings and the following is relevant:

Large areas of suburban residential development in Dublin City have retained a pattern of use as single family dwelling units. The sub-division of large dwelling houses may be permitted in highly accessible areas to provide for the demographic changes in the city, subject to the residential amenity standards set out in Chapter 16, including minimum floor space, etc. This may involve the sub-division of such dwellings into individual distinct units on each floor.

Where sub-division is being considered, factors such as the extent of open space within the site boundaries, landscaping schemes including the retention and planting of trees, the provision of on-site parking, the retention of existing railings and gates, and screened refuse storage areas will be evaluated as part of the assessment.

When sub-divisions are allowed, they should be compatible with the architectural character of the building. An appropriate mix of accommodation in particular areas will be determined by Dublin City Council, taking account of the mix of residential accommodation in an area. Dublin City Council may accept parking provision of less than one space per dwelling unit to encourage occupation of the dwellings by households owning fewer cars.

5.4.4. Section 16.10.14 specifically deals with Ancillary Family Accommodation and the following is relevant:

Dublin City Council will, in principle, favourably consider applications for such sub-division provided the planning authority is satisfied that:

- A valid case is made, including details of the relationship between the occupant(s) of the main dwelling house and the proposed occupant(s) of the ancillary family accommodation
- The proposed accommodation is not a separate detached dwelling unit, and direct access is provided to the rest of the house
- The accommodation being integral with the original family house shall remain as such when no longer occupied by a member of the family.

5.4.5. In addition to the above, the following sections of the CDP are also noted as being relevant:

- 16.10.3: Residential Quality Standards – Apartments & Houses
- 16.10.10: Infill housing
- 16.10.12: Extensions and Alterations to Dwellings

5.5. 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 4.2km to the east of the site. The North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000203) is located approximately 8km to the north-east.

The Rockabill to Dalkey Island SAC (Site Code: 003000) is located approximately 11.9km to the east and the Dalkey Islands SPA (Site Code: 004172) is located approximately 12.2km to the southeast.

5.6. EIA Screening

5.6.1. The subject appeal does not relate to a class of development which requires mandatory EIA. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units

- Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.6.2. The proposed development works to an existing residential building on a site of 0.0585ha. The site is located in a residential area of Dublin City and in an area that is more akin to ‘other parts of a built-up area’, rather than that of a ‘business district’. The site zoned for residential purposes. As such, I am satisfied that the site area is substantially below the 10ha threshold for ‘other parts of a built-up area’. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

5.6.3. 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.

5.6.1. Having regard to:

- (a) the nature and scale of the development,
- (b) the built nature and urban location of the site,
- (c) the location of the development 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 those as raised by the third-party during the PAs assessment of the proposed development and are summarised as follows:

- Procedural issues including the description of the development and the description did not include for the retention of the sheds.
- To achieve the change of use and maintain the minimum planning and building regulation standards is very difficult and more analysis is required.
- The applicant failed to fully and properly state their legal interest in the lands and the PA erred and acted contrary to Section 34(4) of the P&D Act, 2000 as amended. The development impacts on the adjacent property without consent.
- The appeal includes details of perceived non-compliances with the Development Plan in terms of climate change, development standards, inclusive design, roads and services, the quality of residential amenity and the provision of public open space and cycle parking.
- Concerns were also raised with regard to impacts on adjoining properties in terms of overlooking.
- The development does not comply with building regulations, including issues raised in relation to the winter garden and the intermediate floor in terms of sound and fire.
- The proposed winter garden at first floor level represents a significant invasion of privacy to No. 9 Garville Road as it directly looks into the private garden and into the first-floor bedroom / study.
- There are legal concerns about the design for the foul and surface water systems.

- Concerns raised in terms of the precedent of a grant of permission to regularise apartments that cannot be constructed in compliance with the design submitted.

It is requested that permission be refused.

6.2. First Party Response to Third Party Appeal

6.2.1. The applicant, through their agent, submitted a response to the third-party appeal which includes an introduction, a description of the site context and the proposed development. The response notes the Dublin City Council Notification of Decision to Grant Permission subject to conditions. The conditions are acceptable to the applicant. In terms of the grounds of appeal, the following is submitted:

- The appellants contention of legal interest is not stated, and it is submitted that the applicants are the freehold owners of the site.
- The proposed development is within the lands in their ownership.
- The development was accurately described in the public notices.
- The Planning Authority gave detailed consideration to all relevant and appropriate sections of the Development Plan and the proposed development complies with the zoning of the site.
- The applicant notes the requirements of Condition 6 in relation to car and cycle parking and is happy to accept modifications to the condition if required by the Board.
- The applicant notes the requirements of Condition 9 in relation to drainage and is happy to comply with same.
- Concern raised in relation to sunlight and daylight to the lower ground floor bedroom and kitchen is noted. It is submitted that the rooms are south facing and will receive good quality light.
- The issue of open space has been addressed.
- Concerns are noted with regard to the proposed screen aligned with the party wall with No. 9 Garville Road and the proposed Winter Garden generating

overlooking. It is submitted that the design is in response to the PAs FI request.

- In terms of the corner window to Bedroom 2, it is noted that this is an existing window which was previously permitted under Reg Ref: 2396/72. Should the Board have concerns in relation to this corner window, the applicant is willing to accept a condition requiring it be glazed with opaque glass.
- In terms of the design standards, it is submitted that the proposed development is acceptable.
- The issue of compliance with Building Regulations should be dismissed as grounds for refusal as they relate to a separate code.

It is requested that the Board uphold the decision of the Planning Authority and grant planning permission for the development.

6.3. Planning Authority Response

None.

6.4. Observations

None.

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. Residential Amenity Issues
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the development

- 7.1.1. The subject appeal seeks to retain the division of the existing house into two flats, and the retention of the single storey annex to the side of lower ground floor. I note that the division of the building occurred in the 1970s, and that the building was occupied as 3 separate residential units until the current applicant purchased the property. As such, the subject application seeks to regularise the works undertaken at the site. In addition, permission is sought to alter the side annex, to construct a ground floor extension to the rear and amend the existing vehicular entrance. The appeal site is located to the south of Garville Road which lies to the east of Rathgar Road and to the west of Frankfort Avenue and Rathmines Road Upper, in Rathgar, Dublin 6.
- 7.1.2. I note that key objectives of the National Planning Framework, including NPO 33 and 35 seek to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location and to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights. In addition to the NPF, the Sustainable Residential Development in Urban Areas 2009 Guidelines also seek to promote the principle of higher densities in urban areas while

recognising the desirability of preserving protected buildings and their settings and of preserving or enhancing the character or appearance of an Architectural Conservation Area.

7.1.3. In terms of local policy, the Board will note that the site is zoned Z2 - Residential Conservation Area in the Dublin City Council Development Plan 2016-2022, where it is the stated objective of the zoning 'To protect and/or improve the amenities of residential conservation areas.' Section 16.10.13 of the Dublin City Development Plan specifically deals with Sub-Division of Dwellings and states as follows:

Large areas of suburban residential development in Dublin City have retained a pattern of use as single family dwelling units. The sub-division of large dwelling houses may be permitted in highly accessible areas to provide for the demographic changes in the city, subject to the residential amenity standards set out in Chapter 16, including minimum floor space, etc. This may involve the sub-division of such dwellings into individual distinct units on each floor.

7.1.4. I propose to address specific matters with regard to residential amenity standards further below in Section 7.2 of this report, however, I consider that the principle of the proposed sub-division of the building is acceptable in principle and in accordance with the general thrust of the above requirements.

7.1.5. In addition to the above, I note that the proposed works to the side annex, also the subject of the retention element of the overall development, seek to integrate this area into the lower ground floor residential unit as ancillary family accommodation. Section 16.10.14 of the Development Plan deals with such proposals. The CDP states that Dublin City Council will, in principle, favourably consider applications for such sub-division provided the planning authority is satisfied that:

- A valid case is made, including details of the relationship between the occupant(s) of the main dwelling house and the proposed occupant(s) of the ancillary family accommodation
- The proposed accommodation is not a separate detached dwelling unit, and direct access is provided to the rest of the house
- The accommodation being integral with the original family house shall remain as such when no longer occupied by a member of the family.

- 7.1.6. The Board will note the concerns raised by both the third-party appellant, and the Planning Authority in relation to the annex. While I acknowledge the applicants' submission in this regard, I would agree that if the proposed separate front and rear access to this section of the overall lower ground floor area is permitted, the unit might reasonably be functional as a separate and independent residential unit. Having regard to the information submitted, therefore, I am not satisfied that a valid case has been made for the use of the annex as ancillary family accommodation and would suggest that the annex does not appear to be, as originally presented, integral to the main family home. I note the response to the further information request and accept that the annex will be incorporated into the ground floor unit. In order to ensure this, I would agree with the inclusion of the Planning Authority's condition 5.
- 7.1.7. In terms of the above, I am satisfied that the proposed development, which seeks the retention of the previously sub-division of the house, adequately accords with the above requirements in principle. While I acknowledge the third-party submission that the PA failed to apply the correct zoning provisions to the application and erred in their application of Section 16.10.14, I would disagree that this is in fact the case. The PA clearly applied the Z2 zoning afforded to the site, and having regard to the description of the development, I would suggest that Section 16.10.13 of the Dublin City Development Plan is also relevant to the overall development.
- 7.1.8. I am satisfied that the principle of the proposed development adequately accords with the thrust of the NPF and national guidelines as they relate to the promotion of higher residential density in urban areas. In addition, I am further satisfied that the principle of the proposed development can be reasonably considered acceptable and in accordance with the zoning objective afforded to the site.

7.2. Residential Amenity Issues

- 7.2.1. The third-party appellant has raised a number of concerns in terms of residential amenity associated with the proposed development, as well as the potential impact of the development on adjoining properties and existing residential amenity.

Proposed Residential Amenity

- 7.2.2. The Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities suggest that there should be no upper limit to density on City Centre sites

subject to qualitative safeguards. In areas close to public transport corridors minimum densities of 50 units per hectare should be applied subject to those safeguards. The objective of the Sustainable Residential Development in Urban Areas 2009 Guidelines, and its companion design manual, is to produce high quality, and crucially, sustainable developments and communities through the reduction, as far as possible, of the need to travel, particularly by private car, and promoting the efficient use of land. Having regard to the above, I consider that it is reasonable to support the development potential of the subject site in accordance with said guidelines.

7.2.3. Chapter 3 of the Guidelines provide for Apartment Design Standards, and I proposed to consider the proposed development against these requirements. Having regard to the development before the Board, I consider it reasonable to deal with the amended proposals presented to the Planning Authority following the request for further information. The proposed development seeks to retain the sub-division of the property into two residential units. In terms of the guidelines, the following is relevant:

a) *Apartment floor area:*

The Guidelines, Specific Planning Policy Requirement 3, require that the minimum floor areas be applied to apartment developments. The Board will note that the subject proposed development relates to a sub-division of an existing house. The development, if permitted, will result in two no. 2 bedroom apartments as follows:

- Lower Ground Floor unit will have a floor area of 157m².
- Upper Ground Floor unit will have a floor area of 96m².
- I note that all of the rooms within the two units, including their widths accord with the requirements of the guidelines.

I am fully satisfied that the proposed floor areas of both units exceed the minimum floor area for such residential units as required in the guidelines.

b) *Safeguarding Higher Standards*

Given the nature of the development, and the proposed floor areas of the units, I am satisfied that the development is acceptable.

c) *Dual aspect ratios:*

I am satisfied that the proposed two units are dual aspect with the primary amenity spaces located to the south of the building.

d) *Floor to Ceiling Height:*

It is a specific policy requirement, SPPR 5, that ground level apartment floor to ceiling heights shall be a minimum of 2.7m, and 3m should be considered for multi-storey buildings. The Board will note that the upper ground floor unit fully accords with the stated requirement of the guidelines. However, as the proposal relates to the subdivision of an existing building, the lower ground floor unit does not achieve the 2.7m floor to ceiling height stipulated. The existing floor to ceiling height is 2.38m within the historic structure, and 2.4m is proposed within the new extension.

The Board will note that the third-party appellant has raised concerns in relation to the floor to ceiling height. I refer to Section 6 of the Apartment Guidelines which deals with Apartments and the Development Management Process and note that provision is made in terms of departures from the requirements of the guidelines. In particular, section 6.9 provides that planning authorities are requested to 'practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings..... where property owners must work with existing building fabric and dimensions.'

I am satisfied that the retention of the sub-division of the property as detailed in the submitted plans is acceptable in this regard and is in accordance with the requirements of the guidelines.

e) *Lift & Stair Cores:*

Not applicable.

f) *Internal Storage:*

The proposed development provides for storage within the proposed two apartments. Minimum storage requirements are indicated in the guidelines, and it is noted that said storage 'should be additional to kitchen presses and bedroom furniture but may be provided in these rooms. A hot press or boiler

space will not count as general storage and no individual storage room within an apartment shall exceed 3.5m².'

The Guidelines also advise that storage for bulky items outside the individual units should also be provided, apart from bicycle parking requirements. The Board will note that the development proposes external bike storage facilities to serve the development. The minimum storage space requirements for the two-bedroom units is noted at 6m²: In the context of the subject development, I am satisfied that the two units are of an adequate size to fully comply with the above minimum storage requirements. I have no objections to the proposed development in this regard.

g) Private Amenity Space:

It is a specific planning policy requirement that private amenity space shall be provided in the form of gardens or patios/terraces for ground floor apartments and balconies at upper levels. The guidelines require a minimum private amenity space area of 7m² for two-bedroom (4 person) apartments.

The Board will note that the ground floor apartment is provided with a private amenity space of 190m² in the form of the part of the rear garden while the upper ground floor apartment is to be provided with a 72m² garden area, which will be directly accessed via a stair to the rear of the building. I also note that the area to the front of the building, and behind the front boundary wall, will be accessible to both units, and has an area of 85m². The Guidelines indicate that balconies should adjoin and have a functional relationship with the main living areas of the apartments. In certain circumstances, glass-screened 'winter gardens' may be provided.

The Board will note that the original proposal for the upper ground floor apartment was the provision of a small balcony off the kitchen in lieu of the existing covered porch with an area of approximately 3.75m². In response to the PAs further information request, the applicant submitted proposals to provide a 'winter garden', with an area of 8m² at first floor level (and above the proposed lower ground floor kitchen extension) to serve the private amenity requirements of the upper ground floor unit. Access to this area is proposed

via the kitchen and will include an external access door to the stairs which will lead to the private garden space.

Given that the amended proposals for the upper ground floor unit now includes an area of private garden space, I do not consider that that the full depth of the winter garden as proposed is necessary to serve the upper ground floor apartment. In addition, I would have concerns that the extent of the first-floor glazed element, albeit with obscure glazing proposed, would represent an impact on the residential amenity of the adjacent property by reason of overbearance and potential overlooking of the private amenity space. I will address this issued further below but should the Board be minded to grant permission, I consider that the garden room should not extend beyond 2m from the wall of the first floor kitchen, a sufficient depth to facilitate the access to the external stairs to the garden.

While I acknowledge the third-party submission in relation to the provision of open space for the proposed development, and in particular the upper floor unit, I have no objections to the scheme in this regard. I am satisfied that the development is acceptable in terms of the provision of private amenity space.

h) Security Considerations

Not applicable.

7.2.4. Chapter 4 of the Guidelines seeks to deal with communal facilities in apartments and deals with access & services, communal facilities, refuse storage, communal amenity space, children's play, bicycle parking and storage and car parking. Given the nominal scale of the proposed apartment development, I am satisfied that the communal areas proposed are adequately sized, as are refuse storage and bicycle parking areas.

7.2.5. Overall, and while I acknowledge the third-party concerns raised, I am generally satisfied that the principle of the proposed development is acceptable in terms of the location of the site within Dublin City and the zoning objective afforded to the site. In terms of the general thrust of the Sustainable Urban Housing: Design Standards for New Apartments, DoHPLG December 2020, I consider the scheme proposed to be in compliance and if developed as proposed, will afford a high standard of residential amenity for future residents.

Existing Residential Amenity

- 7.2.6. In terms of the proposed works to the building, I do not consider that any significant visual impacts arise. I consider that the scale of the extensions and works to the annex are not so significant as to give rise to concerns in terms of visual amenities of the area or any impacts on the quality of the residential conservation area.

Overlooking & Overbearance

- 7.2.7. The proposed works to the existing building do not include any additional building works at first floor level which might result in any significant additional overlooking of adjacent properties. I further note that the first-floor windows are located more than the general 22 metres from the adjacent residential properties, a standard applied to directly opposing above ground floor windows in order to maintain privacy. I have no objection therefore, to the principle of the proposed works to the building, or the retention of the sub-division of the building into two residential units.
- 7.2.8. In terms of overbearance, I do not consider that the provision of the ground floor extension as proposed will give rise to any significant issues. The works will generally follow the extent and scale of the extension to the adjacent property, and in principle I do not consider that any significant visual impacts arise. I consider the scale of the works proposed to be appropriate to the existing building on the site.
- 7.2.9. The Board will note that in response to the PAs further information request, the applicant submitted proposals to provide a 'winter garden', with an area of 8m² at first floor level (and above the proposed lower ground floor kitchen extension), to serve the private amenity requirements of the upper ground floor unit. Access to this area is proposed via the kitchen and will include an external access door to the stairs which will lead to the private garden space. The stairs will run along the boundary wall with the property to the east and I note the proposals to provide a screen along this boundary in order to prevent overlooking from the stairs. I note that the appellant has indicated that the development includes works to the shared boundary, and for which no permission has been given. I note that the applicant submits that the works will be carried out fully within the application site. I accept the details of the proposed development as submitted and would have no objection in this regard.
- 7.2.10. I do not consider, however, that that the full depth of the winter garden as proposed is necessary to serve the amenity requirements of the upper ground floor apartment

given the proposal to provide a 72m² private garden to the rear. In addition, I would have concerns that the extent of the first-floor glazed element, albeit with obscure glazing proposed, would represent an impact on the residential amenity of the adjacent property by reason of overbearance and potential overlooking of the private amenity space. Should the Board be minded to grant permission, I consider that the garden room should not extend beyond 2m from the wall of the first floor kitchen, a sufficient depth to facilitate the access to the external stairs to the garden.

Daylight/Sunlight/Overshadowing

- 7.2.11. I note that the third-party appellant has raised concerns in terms of the quality of light and natural ventilation of the main bedroom of the house, at ground floor level. The Board will note that the layout of the lower ground floor unit includes an internal open courtyard which will be accessed from the master bedroom, the kitchen and the utility room within the annex space. Concern is also raised in terms of the proposed kitchen window to be located under the external stairs.
- 7.2.12. In response to this issue, I note the first-party advises that the bedroom window is south facing and as such, will receive good quality light throughout the afternoon and evening through the courtyard area and the glazed link to the garden. I would concur with this assessment, and I note that the southern aspect mitigates any potential reduction in the quality of light reaching the ground floor bedroom. In addition, I note the proposal to include 2.5m wide, floor to ceiling, glass sliding doors to serve the kitchen / dining area. A high-level strip window is also proposed on the eastern elevation which will provide some light. Overall, I do not consider that the quality of light within the ground floor rooms is of a sub-standard quality which would warrant a refusal of planning permission. I have no objections in this regard.
- 7.2.13. With regard to the loss of light within existing homes, I note that the BRE guidance for daylight and sunlight is intended to advise on site layout to provide good natural lighting within a new development, safeguarding daylight and sunlight within existing buildings nearby and protecting daylight of adjoining properties. Section 2 of the document deals with Light from the Sky and Section 2.2 of the guidelines set out the criteria for considering the impact of new development on existing buildings. The guidance in this regard is intended for rooms in adjoining dwellings where daylight is

required, including living rooms, kitchens, and bedrooms. The Guidelines suggest that the noted considerations need to be applied sensibly and flexibly.

7.2.14. Having regard to the orientation of the site, together with the existing level of development on adjacent sites and the proposed development on the subject site, I consider that the potential for undue impacts on the amenities of the neighbouring residential properties can be reasonably discounted and that the discretion offered by Section 3.2 of the Sustainable Urban Development and Building Height Guidelines and Section 6.6 of the Sustainable Urban Housing Design Standards for New Apartments Guidelines (2020) is such that, a refusal of permission is not warranted with regard to Sunlight to Amenity Spaces / Overshadowing of existing properties. Overall, I am generally satisfied that the level of residential amenity is acceptable.

Conclusion

7.2.15. While I acknowledge the submission of the third party, I would consider that given the small-scale nature of the development, together with the existing use of the building as three independent residential units, albeit without the benefit of planning permission for nearly 50 years, I would note that the principle of the sub-division of the dwelling into two independent residential units is reasonably justified in accordance with the NPF and Government Policy to ramp up delivery of housing from its current undersupply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016. National policy supports denser residential development on public transport corridors within the built-up area of Dublin City and its suburbs. In this regard, I note the proximity of the subject site to the Cowper Luas Stop, which lies approximately 1km to the east of the site.

7.2.16. Having regard to the information presented on the file, I am generally satisfied that the proposed development will result in the provision of two residential units which provide adequate residential amenity for future occupants. Subject to compliance with stated conditions, I am satisfied that the proposed development is acceptable and will not give rise to any significant impacts on existing residential amenities for adjoining properties.

7.3. Other Issues

7.3.1. Procedural Issues

Interest in Application Site

The Board will note that the third-party has suggested that the applicant does not have full title to carry out the proposed works. I note that the applicant has indicated in the application form that they are the owners of the site (as outlined in red on the submitted plans and particulars). I have no reason to doubt this assertion and I would accept that the full site has been delineated as required. I would also accept that no works appear to be proposed outside the red line boundary.

Description of Development

The third-party submits that the description of the development does not accurately reflect the level of retention permission required to regularise the development. I also note the contention that the submitted plans suggest that the applicant proposes to retain the use of the building as 3 units.

In terms of the description of the development, I am satisfied that the nature of the works proposed, and the elements for retention have been adequately described in the public notices. I have dealt with the issue of the layout of the lower ground floor unit above.

7.3.2. Water Services

The third-party has raised concerns in terms of water services and the accessing of potentially private sewers to the rear of the house. I note that the existing building on the site has existing connections to the public services in this area of Dublin City. I further acknowledge the inclusion of condition 9 in the PAs notification if intention to grant planning permission which requires the application to comply with a number of drainage requirements. I am satisfied that this matter can be appropriately dealt with by way of condition of permission.

7.3.3. Other Third-Party Issues

I note the concerns of the third-party with regard to building regulation compliance. Such matters are to be addressed under a separate code.

7.3.4. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.3.5. **Roads & Traffic Issues**

I am satisfied that the proposed development will not result in any significant impacts to the existing roads and traffic conditions in the area. The Board will note that the proposed development sought to widen the existing entrance in order to accommodate two car parking spaces within the front garden area of the site. I would agree with the Planning Authority, that this element of the development is inappropriate and should be omitted. To this end, I note the PAs condition 6, whereby part (a) omits the widening of the vehicular entrance. I consider this reasonable and should permission be granted this condition should be retained.

7.3.6. **Appropriate Assessment**

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 4.2km to the east of the site. The North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000203) is located approximately 8km to the north-east.

Having regard to the nature of the proposed works, together with the fact that the development is already connected to public services, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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 for the proposed development be granted, for the following stated reason and subject to the following stated conditions:

9.0 Reasons and Considerations

Having regard to the Objectives of the National Planning Framework, Government policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, Objective 13 of the National Planning Framework, which supports denser residential development on public transport corridors within the built-up area of Dublin city and its suburbs, as is proposed in this case, and the zoning provisions of the Dublin City Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development, including the retention of the subdivision of the existing property, 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 and would be acceptable in terms of pedestrian and cyclist safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 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.

Reason: In the interest of clarity.

2. The developer shall comply with the following requirements:
- (a) The existing dwelling shall be subdivided into two permanent residential units only and the units shall not be used for any short-term residential lettings.
 - (b) No permission is granted for the widening of the existing vehicular entrance and on-site parking shall be restricted to one (1) vehicle only.
 - (c) The entrance shall not include outward opening gates.
 - (d) Cycle parking shall be provided in accordance with the requirements of Dublin City Council.

Reason: In the interests of proper planning and sustainable development of the area.

3. The developer shall comply with the following requirements:
- (a) The annex shall be subsumed entirely into the lower ground floor apartment which shall be jointly occupied as a single-family residential unit.
 - (b) No element of the lower ground floor unit hereby permitted shall be sold, let or otherwise transferred or conveyed to a third-party, save as part of the entire lower ground floor unit, unless otherwise authorised by a prior grant of planning permission.
 - (c) The existing front door serving the annex shall be removed and replaced with a window.
 - (d) The proposed pedestrian path serving the Annex shall be omitted.
 - (e) The depth of the 'Winter Garden' shall not exceed 2m from the kitchen wall.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To restrict the use of the annex, and the provide access to the rear garden, in the interest of residential amenity and orderly development.

4. 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.

5. 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.

6. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

7. 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, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

8. 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.

9. 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.

A. Considine
Planning Inspector
19th December 2021