



An
Bord
Pleanála

Inspector's Report 310956-21

Development	Demolition of dwelling and construction of 4-bedroom dwelling and widening vehicular gate.
Location	88, Kincora Road, Clontarf, Dublin 3
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2752/21
Applicant(s)	Martin Grehan & Tracey Murphy
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party vs. Conditions
Appellant(s)	Martin Grehan & Tracey Murphy
Observer(s)	None
Date of Site Inspection	28 th January 2022
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 708m² and is located at the junction of Kincora Road and Belgrove Road in Clontarf. The site accommodates an existing dwelling of 279m², which is mainly single storey but has a first-floor dormer element on its eastern side. The existing vehicular entrance is at the northeast corner of the site onto Kincora Road. It extends to a width of 2.9m and is defined by two pillars. A vehicle parking area adjoins the entrance on the northern (front) side of the dwelling. The existing dwelling closely adjoins the south and east site boundaries, and the main garden area is located in the western and northern portions of the site.
- 1.2. The surrounding area is comprised of residential properties of various scale and style. Along Kincora Road to the east and along Belgrove Road to the south, there are groups of older semi-detached and terraced dwellings of traditional character with brick finishes and bay windows. The western side of Belgrove Road and further west along Kincora Road is mainly comprised of large modern dwellings.

2.0 Proposed Development

In summary, the proposed development is comprised of the following:

- Demolition of the existing dwelling (279m²).
- Construction of new 2-storey 4-bedroom dwelling (285m²) with a maximum height of 9.05m. All living accommodation and the master bedroom would be at ground floor level. The first-floor level would include 3 bedrooms and an office.
- Alterations to existing vehicular entrance (increase width from 2.9m to 3.6m).
- Increased size of parking area to the front.
- Connections to services and all associated siteworks.

3.0 Planning Authority Decision

3.1. Decision

By order dated 6th July 2021, Dublin City Council (DCC) issued notification of the decision to Grant Permission subject to conditions. Of relevance to the current appeal, condition no.'s 5 and 10 state as follows:

5. The following requirements of the Transportation Planning Division of Dublin City Council shall be complied with:

- a) The existing vehicular entrance shall be retained at its current width of 2.9metres.*
- b) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.*
- c) The developer shall be obliged to comply with the requirements set out in the Code of Practice.*

Reason: To ensure an adequate standard of development.

10. The southern rear 1st floor windows shall be amended/placed so that their overlooking cones do not come within 11m of the rear garden serving no.49 Belgrove Road.

Reason: In the interests of residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The report of Dublin City Council's Planning Officer can be summarised as follows:

- The proposal in the Z1 zone is acceptable in principle.
- Significant alterations to the dwelling have eroded its character and the dwelling sits in isolation in terms of house types on this part of Kincora Road. While there is no net increase in number of dwellings, the proposed

replacement can be considered more suitable to modern standards and there is no significant objection to its demolition.

- The proposed dwelling is of a scale and design that is in keeping with the character of existing dwellings to the east and there is no significant objection.
- The proposed dwelling will not have significant daylight/sunlight or overbearing impacts on the neighbouring properties to the east or south.
- The Development Plan and the Ministerial 'Guidelines for Planning Authorities on Sustainable Development in Residential Areas (2009)' refer to normal requirements for 22m separation distances between opposing first floor windows. Generally, it is considered that 11m should be the setback to 3rd party boundaries from first floor openings as per the limitation for above ground-floor exempted development. While the DECLG's 2009 Urban Design Manual does not recommend setback distances, it suggests the use of obviating measures as long as adequate access to daylight is still provided. There is potential for excessive overlooking of private open space as the first floor windows (particularly the large window in Bedroom 3) will be within 10.2m from the boundary with No. 49 Belgrove Road. The Executive Planner (EP) concludes that the distance is marginally below the 11m distance and is unlikely to result in excessive overlooking of No. 49. The Senior Executive Planner (SEP) comments that the garden of No. 49 is relatively narrow, is not currently overlooked by the existing dwelling on No. 88, and is slightly downhill from the proposed dwelling.
- An adequate quantity and quality of private open space will be provided.
- The Development Plan encourages narrower entrance widths and states that maximum width of 3.6m will generally only be acceptable where exceptional circumstances exist. Excessively wide entrances impact on on-street parking, pedestrian safety, and streetscape character. Based on concerns raised by the Transportation Planning Division report, the retention of the existing vehicular entrance to ensure the protection of the large tree to the front of the site is appropriate.

- The proposed dwelling complies with the minimum floor area requirements set out in 'Quality Housing for Sustainable Communities' (DoEHLG, 2007). All living spaces and bedrooms will receive adequate levels of daylight.
- No Appropriate Assessment issues arise.
- It is recommended to grant permission, subject to the conditions outlined in the DCC decision.

3.2.3. Other Technical Reports

Engineering Department Drainage Division: No objection subject to conditions.

Transportation Planning Division: Concerns are raised regarding the excessive width of the proposed entrance and potential impacts on a street tree. It highlights the provisions of Section 16.3.3 of the Development Plan regarding the protection of trees and root systems etc., and highlights that the Parks, Biodiversity and Landscape Services section of DCC requires a minimum 2.5m buffer zone between the tree and the associated footpath dishing. Having regard to the buffer zone requirement, the proposed entrance widening is unacceptable. The existing width facilitates ease of access and shall be retained in the event of a grant of permission.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

P.A. Reg Ref. 2766/97: Permission granted (10th February 1998) for the retention of rear, 2 no. side and side dormer extensions also internal and roof alterations to bungalow.

5.0 Policy and Context

5.1. Dublin City Development Plan 2016-2022

5.1.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z1', the objective for which is '*To protect, provide and improve residential amenities*'.

5.1.2 Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity. Section 5.5.8 and policy QH23 generally discourage the demolition of habitable housing unless streetscape, environmental and amenity considerations are satisfied and a net increase in the number of dwellings is provided.

5.1.3 Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.2 "Design, Principles & Standards" provides design principles outlining that development should respect and enhance its context. Section 16.10.2 of the Plan sets out 'Residential Quality Standards' for houses relating to floor areas; aspect, natural light and ventilation; and private open space. Section 16.10.9 deals with 'Corner/Side Garden Sites'. Such sites are acknowledged as a means of making the most efficient use of serviced residential lands and will generally be allowed on suitable large sites. However, some corner/side gardens are restricted and would be more suitable for extending an existing home.

5.1.4 The road and footpath standards for residential development are contained in Appendix 5 of the development plan. Where driveways are provided, they shall be at least 2.5 m, or at most 3.6 m in width, and shall not have outward opening gates.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

This first party appeal relates to condition no.'s 5 (a) and 10 only and requests their removal altogether. The grounds of appeal for each condition can be summarised as follows:

Condition 5(a)

- The site size is capable of providing off-street parking for several vehicles and the proposed increase to the entrance width is required to facilitate ease of access and manoeuvrability.
- The Development Plan allows an increased width to 3.6m where circumstances allow.
- The Planner's Report states that the Transportation Planning Division has no objection to the proposed development. It then states that the Parks, Biodiversity and Landscape Services section require a minimum 2.5m buffer zone between the tree and associated footpath dishing. The closest tree is of considerable age and distance from the entrance gate and even after increasing the width to 3.6m there would remain a 3m distance between the tree trunk and the relocated pier.
- A number of similar proposals have been granted in the vicinity in recent years, including:
 - P.A. Reg. Ref 2374/20: Widening of entrance at 68 Kincora Road from 2.415m to 3.5m.
 - P.A. Reg. Ref WEB1018/18: Widening of entrance at 70 Kincora Road from 3.145m to 3.6m.

Condition 10

- Section 6.10 of 'Guidelines for Planning Authorities on Sustainable Development in Residential Areas (2009)' refers to normal requirements for 22m separation distances between opposing first floor windows and the need for flexibility in interpretation of standards. The Planner's report outlines that

while an 11m setback distance is generally sought, the proposed separation distance is only marginally below the 11m distance and is unlikely to result in excessive overlooking of No. 49. However, the Planning Authority chose to add condition no. 10 requiring amendments to achieve the 11m distance.

- The condition is unnecessary and should be removed. It affects only one rear-facing window (Bedroom 3). The window in Bedroom 4 faces a blank gable in No. 49 Belgrove Road and the remaining window serves the transitional stairwell space.
- The annotated separation distance of 10.15m does not reflect the actual viewing cone measurement from a standing position within the room. The appellant's drawing shows that the cone of vision would overlap a mere 0.55m at the maximum point but diminishes rapidly inside the boundary line.
- As stated in the Planner's report, the proposal is unlikely to result in excessive overlooking and the condition is unwarranted.
- It is the appellant's intention to plant the relevant boundary which will provide more privacy to both properties.
- There were no objections made to the application.
- The rear garden depth to No. 49 Belgrove Park (c. 7.5m) is far shorter than the quoted 11m requirement, resulting in the established overlooking of the rear garden space of No. 90 Kincora Road.

6.2. Planning Authority Response

None received.

6.3. Observations

None.

7.0 Assessment

Introduction

7.1. This appeal relates to condition no.'s 5(a) and 10 only. I am satisfied that the development is otherwise in accordance with the proper planning and sustainable development of the area, and that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. My assessment will therefore be limited to the matters raised in relation to the terms of the conditions, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended).

Condition 5(a)

- 7.2. This condition requires that '*The existing vehicular entrance shall be retained at its current width of 2.9 metres*', the stated reason being '*To ensure an adequate standard of development*'. The planning authority reports have elaborated on this reasoning and it is clear that the main intention in this case is to protect the existing tree to the front of the property.
- 7.3. I have considered the development plan policies and guidance regarding the design of vehicular entrances, including the DCC guidance on 'Parking Cars in Front Gardens'. I note that wider entrances are generally discouraged within an allowable range of 2.5m to 3.6m, and that maximum widths will generally only be acceptable where exceptional site conditions exist. Guidance also outlines that existing trees, on-street parking, streetscape character and traffic safety should be considered.
- 7.4. In this case it is proposed to relocate and reconstruct one of the existing pillars to match the existing details, resulting in an increased width of 700mm to 3.6m. The case does not concern a protected structure or a conservation area and the increased width would be minimal relative to the overall length of the site boundary (28.5m). Accordingly, I do not consider that the intervention would detract from the character or visual amenity of the area.
- 7.5. In relation to traffic and parking issues, I note that there is no provision for on-street parking opposite the entrance and, therefore, there will be no loss of on-street parking spaces. There is a wide space (c. 4m+) between the site boundary and the road edge which consists of a concrete driveway with footpaths and adjoining grass

and trees. I acknowledge the DCC policy concern that wider entrances can result in more hazardous vehicle movements. However, the proposed width is still within the recommended range of up to 3.6m. And while the increase of 700m will facilitate more convenient manoeuvres, I do not consider that this would be to the extent that it would encourage hazardous movements or excessive speed that would endanger the safety of vehicular, pedestrian or cyclist movements.

- 7.6. The DCC condition is largely based on a concern about the protection of an existing tree and the need to maintain a 2.5m buffer zone. In this regard I consider that the works associated with the entrance are relatively minor, involving just the relocation of the pier and minimal paving over the adjoining grass verge to tie-in with the existing driveway and footpath. From the plans and drawings submitted, it would not appear that any works are proposed within 2.5m of the tree trunk and the appeal submission confirms as much in writing. It would be appropriate that further details and drawings should clarify this, and I am satisfied that this could be satisfactorily dealt with by condition.
- 7.7. Having considered the policy basis for discouraging wide entrances, I do not consider that the current case raises any significant concerns that would warrant reasonable grounds for omission of the proposal. The proposed width would be within the recommended range of up to 3.6m and I consider that there are exceptional conditions to justify the maximum width in this case given the large size of the site and its extensive road frontage at a corner location. The site is quite different to, for example, the more mature properties along Kincora Road to the east, and accordingly can be considered in a different context. Accordingly, I consider that Condition No. 5(a) is unwarranted as stated and should be amended to allow the proposed width while ensuring protection of the tree.

Condition 10

- 7.8. This condition requires that *'The southern rear 1st floor windows shall be amended/placed so that their overlooking cones do not come within 11m of the rear garden serving no.49 Belgrove Road'*, the stated reason being *'In the interests of residential amenity'*.
- 7.9. The approach of the planning authority is largely based on general policy guidance regarding a 22m separation distance between opposing first-floor windows. This

does not apply in this case given that No. 49 Belgrove Road does not have any north-facing windows at first-floor level. However, I accept that the 22m requirement is commonly interpreted as a related requirement for an 11m separation between first-floor windows and the boundary of private open space.

7.10. I would agree with the grounds of the appeal insofar as the window serving Bedroom 3 should be the only window of concern. The window in Bedroom 4 would face a blank north-facing gable in No. 49 and an adjoining external circulation space of no real privacy or sensitivity. The other windows serve the internal stairwell, and I am satisfied that an internal circulation space such as this would not lead to significant overlooking concerns.

7.11. I acknowledge that the proposed distance from the Bedroom 3 window is stated on the drawings to be 10.15m and that this does not meet the general requirements of the planning authority for 11 metres. However, I consider that flexibility is required in the interpretation of these standards so that they do not become inflexible obstacles to the achievement of an attractive character in new development. In this case, the rear building of the proposed dwelling (above ground floor) is largely informed by the building lines of adjoining development to the east and south, which I consider to be a reasonable approach. The proposed distance of 10.15m is greater than some surrounding properties, including 47 & 49 Belgrove Road to the south, and is only marginally less than the Planning Authority requirement for 11m. I do not consider that this marginal shortfall could be reasonably deemed to result in any unacceptable overlooking impacts. Accordingly, I consider that condition no. 10 is not warranted and should be omitted.

8.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, the serviced nature of the site, and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

9.0 Environmental Impact Assessment – Screening

Having regard to the nature and scale of the proposed development and its location in a serviced urban area, I have concluded that the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form

10.0 Recommendation

I recommend that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and that assessment should be limited to the matters raised in relation to the terms of the conditions, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended). For the reasons and considerations set out below, I recommend that the Planning Authority should be directed as follows:

(a) to AMEND Condition number 5 as follows:

5. The following requirements of the Transportation Planning Division of Dublin City Council shall be complied with:

a) The developer shall ensure that the works associated with the entrance widening do not result in any damage to the existing street tree to the front of the site. Prior to the commencement of development, proposals showing the precise extent and methodology for the works and associated tree protection measures shall be submitted to and agreed in writing with the planning authority.

b) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.

c) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: To ensure an adequate standard of development.

AND

(b) to REMOVE Condition number 10.

11.0 Reasons and Considerations

Having regard to size and nature of the site, the pattern and character of development in the area, and the existing traffic conditions for vehicles, pedestrians and cyclist, it is considered that the proposed increase to the width of the entrance would not detract from the character or amenities of the area, would not interfere with the safety or convenience of the movements of vehicles or vulnerable road users, and would not damage existing trees subject to the agreement of detailed tree protection measures under Condition number 5(a) as modified in this order.

Furthermore, it is considered that an adequate separation distance would be provided between the south-facing first-floor windows and the rear garden serving No. 49 Belgrove Road, and that no unacceptable overlooking impacts would occur. Therefore, the planning authority's Condition No. 10 is not warranted.

Stephen Ward
Senior Planning Inspector

28th January 2022