



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310973-21

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<b>Development</b>	Construction of a single storey detached dwelling.
<b>Location</b>	Site Fronting No. 2, Ailesbury Gardens, Dublin, 4
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	WEB1510/21
<b>Applicants</b>	Martin Deere & Eimear Vaughan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Martin Deere & Eimear Vaughan
<b>Observers</b>	Margaret Towers John Patrick and Ellen Sides
<b>Date of Site Inspection</b>	7 <sup>th</sup> February 2022
<b>Inspector</b>	Margaret Commane

## **1.0 Site Location and Description**

- 1.1. The area surrounding the subject site is a mature residential area featuring a mix of two storey detached and semi-detached dwellings in a variety of architectural styles. The subject site has an area of 138sqm and is located on the south-western side of Ailesbury Gardens on the opposite side of the road to No. 2 Ailesbury Gardens. It comprises part of No. 2 Ailesbury Garden's amenity space area. The site is partially laid out in gravel and features two large mature trees, one adjacent to the north-western boundary and one adjacent to the south-eastern boundary. The front boundary is currently open, devoid of fencing.
- 1.2. The subject site's south-western boundary is flanked by the dart railway line and Sydney Parade Railway Station with its platform directly adjoining the site. The granite stone wall adjoining the railway line is 3.5m high. To the north-western and south-eastern boundaries are flanked by similar additional amenity space areas associated with Nos. 1 and 3 Ailesbury Garden's, respectively. None of the lands on this side of Ailesbury Gardens adjoining the railway line have been developed and consist primarily of landscaped areas featuring trees and scrubs.

## **2.0 Proposed Development**

- 2.1. The proposal involves the construction of a new 60sqm infill single storey detached dwelling with a flat roof (to a maximum height of 3.15 metres). The dwelling will be used as ancillary accommodation to the main dwelling at 2 Ailesbury Gardens initial and as a downsizing unit in the longer term.
- 2.2. More specifically, the proposal will consist of a 1 bed dwelling, which has an open plan kitchen, living and dining area which connects to a 38sqm private garden area. The dwelling has a contemporary design and materials/finishes comprise brick cladding, stone cladding, powder coated windows and screens and a sedum roof. The dwelling is served by 1 car parking space, measuring 3 metres by 5.3m, accessible off Ailesbury Gardens via a sliding timber vehicular gate in the north-western corner of the site.

## 3.0 Planning Authority Decision

### 3.1. Decision

To Refuse Permission for the following reasons:

- 1. The provision of pedestrian and vehicular entrances on the southwest side of Aillesbury Gardens would result in potential conflict with road users due to the lack of footpath provision, the narrowness of the road and the creation of hazardous manoeuvres within the carriageway, reduced sightlines for exiting vehicles, and limited visibility and oversight of the entrances and its users for oncoming traffic. The development is considered contrary to the Development Plan Section 16.10.10 by failing to demonstrate safe means of pedestrian and vehicular access and egress which do not result in the creation of a traffic safety hazard. The development would endanger public safety by reason of a traffic hazard and would therefore, by itself and by reason of the undesirable precedent it would set for other similar development in the area, be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the location of the proposed a new dwelling, which directly abutts the railway line retaining wall whereby Iarnród Éireann state that the proposed building should not be built within 4m of the wall so as to allow it to be inspected and maintained requiring a safe separation between the structure and railway line, it is considered that the proposed development would directly interfere with the safety and operation of the railway line and as such the proposal is considered to be contrary to the proper planning and sustainable development of area.*
- 3. The proposal to develop this site for a 1 bed residential unit would negatively impact on the amenity of the area by virtue of the loss of the existing landscaping which helps to screen the railway line and the precedent it would set for further 'ad hoc' development of the adjoining sites. The proposal is therefore considered to seriously injure the amenity of the area, to be contrary to the Z1 zoning objective of the site which is 'to protect, provide and improve residential amenities' and to be contrary to the proper planning and sustainable development of the area.*

## 3.2. Planning Authority Reports

### 3.2.1. *Planning Report*

- A number of submissions have been received on the application noting a number of concerns regarding the proposal and the precedent it would set along the road. The Planning Authority in pre-planning consultation had noted a number of concerns regarding the proposal and the impact it would have in the area and the appropriateness of its location directly adjoining the railway line.
- The site is not a suitable infill site given its location adjoining the railway line and the encroachment, and as such would have a detrimental impact on the site and the area.
- It is further considered that the proposal would set a precedent for the development of the lands adjoining it whereby concern has been raised regarding the suitability of it and neighbouring sites, which directly adjoin the railway line where security issues have been raised in relation to maintenance works.
- There is concern also regarding the visual implications of the proposal and the removal of the existing landscaping on the site to accommodate the new dwelling, and the negative amenity it would have on the streetscape, regarding the removal of existing mature trees and vegetation. This would then also provide for a precedent for the other sites.
- The proposal for pedestrian and vehicular entrances on this side of the road is noted as a serious concern in relation to safety concerns which requires that developments require a safe means of access and egress from the site and would result in a traffic hazard.

### 3.2.2. *Other Technical Reports*

**Drainage Planning (10/05/2021):** No objection, subject to conditions.

**Roads Streets & Traffic Department (10/05/2021):** Recommends refusal for the following reason: - The provision of pedestrian and vehicular entrances on the south-

west side of Ailesbury Road would result in potential conflict with road users due to the lack of footpath provision, the narrowness of the road and the creation of hazardous manoeuvres within the carriageway, reduced sightlines for exiting vehicles, and limited visibility and oversight of the entrances and its users for oncoming traffic. The development is considered contrary to the development Plan Section 16.10.10 by failing to demonstrate safe means of pedestrian and vehicular access and egress which do not result in the creation of a traffic safety hazard. The development would endanger public safety by reason of a traffic hazard and would therefore, by itself and by reason of the undesirable precedent it would set for other similar development in the area, be contrary to the proper planning and sustainable development of the area.

### 3.3. Prescribed Bodies

**Irish Water:** None Received

**Iarnród Éireann (19/05/2021):** objects to the proposal, based on the proximity of the site to the railway line. The proposal encroached onto the Board's property which extends 9ft from the retaining wall. The Board's retaining wall should not be built within 4m of railway retaining wall. The proposed extension allows ease of trespass from the station platform/retaining wall onto the roof. Maintenance of the railway line operates 24 hours a day which has potential for noise and vibration impact.

### 3.4. Third Party Observations

8 third party observations were submitted to the Planning Authority. The main issues raised therein are as follows:

- Pre-planning advice expressed concerns about the principle of development at this location the impact on the streetscape and the proximity to the adjoining railway line.
- The architectural style proposed is inconsistent with dwellings featuring along Ailesbury Gardens.
- Undesirable planning precedent that development would create.
- Road is narrow, devoid of a cycle path, and should be widened. The proposed dwelling restricts future road widening.
- Road safety.

- It is inappropriate to develop directly adjoining Dart railway infrastructure.
- Negative impact on telecom infrastructure currently featuring on the subject site.
- The site was previously flooded, contrary to the information provided by the applicants. Any building in this area could negatively affect drainage and sewerage in the area and increase risk of flooding.
- Design out of character with immediate environs.
- Access door to dwelling is not safe.
- Negative impacts on existing landscaping and trees.
- Concern over anti-social behaviour not relevant as flat roof will have impacts.
- Existing lands on this side of the road provide screening to railway line with mature trees, shrubbery, and greenery.
- Concerns over access to rail line.
- There is mention of a precedent of a single store structure constructed adjacent to the railway line further up the road. This is a pumping station and not a dwelling as implied.
- Comments from the applicants about the gardens being used as a littering and dumping ground are inaccurate.
- The proposed development encroaches on neighbouring gardens as well as land associated with the railway.
- Architectural drawings inconsistent along with site dimensions.
- Ambulance and fire brigade access will be impeded by the proposed development.

## 4.0 Planning History

### 4.1. Subject Site

4.1.1. There have been no previous applications pertaining to the subject site.

## 4.2. Adjacent Sites

4.2.1. There have been one previous application pertaining to adjacent sites, details of which are provided below.

### ***PA Reference 2875/14***

Permission granted on 8<sup>th</sup> August 2014 for demolition of the rear single storey extension and garage to the side of the existing two storey semi-detached dwelling, construction of a new side single storey extension and part single storey, part two storey rear extension, relocation of the main entrance, alterations and additional windows on the existing side elevation, and associated site works. This application relates to 2 Ailesbury Gardens, Dublin 4, located immediately north-east of the current application.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016-2022

#### 5.1.1. ***Land Use Zoning***

The site is zoned 'Z1' - Sustainable Residential Neighbourhoods in the Dublin City Development Plan 2016-2022 with a stated objective '*to protect, provide and improve residential amenities.*'

The Development Plan details the following vision in this regard: - '*the vision for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.*'

#### 5.1.2. ***Other Relevant Sections/ Policies***

The following policies are considered relevant to the consideration of the subject proposal:

**Section 4.5.3.1 – Policy SC13:**

**Section 4.5.9 – Policy SC26**

**Section 5.5.2 – Policy QH5**

**Section 5.5.2 – Policy QH7**

**Section 5.5.2 – Policy QH8:**

*‘To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.’*

**Section 5.5.2 – Policy QH13**

**Section 16.2.2.2 - Infill Development:**

*‘It is particularly important that proposed development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape. As such Dublin City Council will seek:*

- *To ensure that infill development respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape*
- *In areas of varied cityscape of significant quality, infill development will demonstrate a positive response to context, including characteristic building plot widths, architectural form and the materials and detailing of existing buildings, where these contribute positively to the character and appearance of the area.’*

**Section 16.2.2.2 Infill Housing:**

*‘Having regard to policy on infill sites and to make the most sustainable use of land and existing urban infrastructure, the planning authority will allow for the development of infill housing on appropriate sites. In general, infill housing should comply with all relevant development plan standards for residential development; however, in certain limited circumstances, the planning authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land in the inner and outer city is developed.*

*Infill housing should:*



- *Have regard to the existing character of the street by paying attention to the established building line, proportion, heights, parapet levels and materials of surrounding buildings.*
- *Comply with the appropriate minimum habitable room sizes.*
- *Have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard.'*

## **Section 16.10.2 Residential Quality Standards – Houses**

## **Section 16.38 Car Parking Standards**

## **Section 16.39 Cycle Parking Standards**

## **Appendix 5 'Roads Standards for Various Classes of Development':**

## **Dublin City Development Plan 2016–2022 Strategic Flood Risk Assessment**

### **5.2. Dublin City Development Plan 2022-2028**

5.2.1. Dublin City Council has started the preparation of a new Dublin City Development Plan for the period 2022 to 2028. It is understood that Stage 2 of public consultation on the draft Development Plan is currently ongoing and due to finish on 14<sup>th</sup> February 2022.

### **5.3. Natural Heritage Designations**

5.3.1. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and South Dublin Bay SAC (Site Code 000210), both located c. 330 metres east.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development and its location in a serviced urban area 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

- In the context of the first refusal reason - the application does not propose the provision of on-curtilage parking due to proximity to the Dart Station and QBC stop, therefore the stated reasons for refusal based on vehicular entrances, resulting hazardous manoeuvres in carriageway, reduced sightlines for exiting vehicles are not relevant.
- In response to concerns raised in refusal reason 1, the applicants offer the following amendments to the proposal: - the introduction of a 1.2-1.5 metre wide footpath along the Ailesbury Gardens frontage and provision of a pedestrian crossing to the front of the site. It is submitted that these measures will enhance both the resident's and public safety beyond that which currently exists and set a positive precedent for any future development along the street.
- In the context of the second refusal reason – it is submitted that there are numerous precedents in the locality of built development on or closer to or close to the railway wall, closer to the railway tracks themselves and even under the railway. Notwithstanding this, in response to refusal reason 2, the applicants are proposing to introduce a 1-metre wide access passage between the existing wall associated with the railway platform and the proposed dwelling to facilitate occasional maintenance works if required by Iarnrod Eireann. Iarnrod Eireann require 4 metres to maintain typical railway bridge structures. The applicants don't believe a 4m maintenance strip which is circa 3.6m below the platform retaining wall, 4m away from the railway tracks, and with access impeded by the platform and wall, is appropriate in this instance. Therefore, an alternative 1m wide maintenance strip is instead proposed. The applicants contend that the proposed lightweight modern single storey development will not impact on the platform wall, with modern construction technologies and raft foundations proposed to avoid potential impact.
- The applicants contend that the subject application sets a precedent for enhanced rail safety. Currently, Sydney Parade Railway Station's eastern platform is insufficiently guarded and at present the risk of fall is a very prevalent

risk. The subject application proposes to introduce a security fence mounted on the wall abutting the railway wall and the addition of a single storey development will prevent a substantial and/or break a fall from the railway wall.

- In the context of the third refusal reason – the applicants contend that the refusal reason pertaining to loss of landscaping is not based in the facts of the application. No loss of landscaping is proposed. In fact, additional and enhanced landscaping is adopted by the subject proposal
- It is submitted that the proposed development is individual and detached and appropriate in its response to the nature of the site. The applicants also submit that this application sets a suitable precedent for enclosing private land currently open to public trespass from a public roadway.
- The proposal will not detract from the visual amenity of the area, and as part of this retains existing trees on site and augments the screen planting in and around the proposed dwelling.
- Public amenity is to be protected and enhances, persons traversing Ailesbury Gardens will be able to avail of a footpath that currently doesn't exist and unauthorised/unsafe access to/from the railway station will be curtailed.
- The applicants are exposed to potential liability should the public come to harm on their lands which are currently open to the public and incur regular public trespassers.

## 6.2. Planning Authority Response

- None.

## 6.3. Observations

Two observations have been submitted within the prescribed which can be summarised as follows:

- While the amendments to the subject application proposed by the applicants are acknowledged, the concerns raised in the observation to the Planning Authority remain.

- Concerns regarding persons jumping from the adjacent platform into the applicant's site should be addressed by way of additional fencing to the existing railway wall as opposed to construction of a house.
- Anti-social behaviour claimed to be occurring on the subject site could be addressed through the introduction of a fence/landscaping along the property boundary to restrict access. Construction of a dwelling is not a suitable way of addressing such an issue.
- The application site encroaches on the garden of Nos. 1 and 3 Ailesbury Gardens. There are discrepancies between the application plans and the Land Registry maps. A survey is required to accurately set out the boundary.
- The appellants legal boundary is approximately 3 metres from the face of the Sydney Parade retaining wall, as shown on the original Pembroke Estate lease maps from 1922.
- The Sydney Parade Station retaining wall is an important load bearing structure. A 1m strip would be insufficient to allow remedial works to be carried out. Also, any excavation works within 4 metres of the retaining wall has the potential to undermine the wall foundations.
- The proposed dwelling would be a potential fire hazard to the safe operation of the railway.
- The proposed development will damage the root systems of the two mature trees featuring on site, increasing risk of these trees falling and causing damage to life and adjacent dwellings.
- There is a continuing flood risk at St. Albans Park and Ailesbury Gardens. The subject proposal would add to this issue.
- The proposed dwelling will negatively impact on existing telecommunications infrastructure featuring on site.

#### 6.4. Further Responses

- None.

## 7.0 Assessment

As part of the grounds of appeal, the appellant submitted revised proposals in response to the Planning Authority's reasons for refusal of planning permission. These revised proposals included the following amendments:

- Provision of a 1 metre separation distance between the proposed dwelling and the boundary wall with Sydney Parade Railway Station.
- Omission of the proposed car parking space/vehicular access, instead replaced with additional amenity space area.
- Reconfiguration of the dwelling's internal layout.
- Introduction of a 1.2-1.5 metre wide footpath along the site's north-eastern boundary which can be supplemented with the installation of a pedestrian crossing on Ailesbury Gardens.

The applicants state that '*the proposed scheme has now been amended to address the concerns of the Planning Authority, where possible and the scheme now before the Board is a high quality, attractive infill residential scheme*'. Accordingly, this assessment is based on the plans received by Dublin City Council on 10<sup>th</sup> May 2021 as amended by further plans and particulars received by the Board on 28<sup>th</sup> July 2021.

I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Ownership Legal Issues
- Principle of Development
- Design and Visual Impact
- Residential Amenity
- Impact on Rail Infrastructure and Safety
- Traffic and Transport
- Flooding
- Other Matters
- Appropriate Assessment

## 7.1. Ownership Legal Issues

7.1.1. Iarnrod Eireann in their observation on the application state that the applicants have encroached on their property which extends 'nine feet' from the retaining wall associated with the Sydney Parade Railway Station. The 'nine feet' refers to the width of the drain that ran parallel with the retaining wall but has been infilled over time. In support of this claim, an excerpt from the Sydney Parade Railway Station land plan is included with their observation. I also note the contentions raised in the submissions of the third-party observers that the appeal site encompasses land associated with Nos. 1 and 3 Ailesbury Gardens as well as the adjacent railway station. In the case of the latter, to support this contention an excerpt from the original Pembroke Estate lease maps from 1922 is provided.

7.1.2. I note that the first party claims ownership of appeal site and indicates that it was acquired c. 9 years ago. In support of this claim, the first party appeal submission is accompanied by a Land Registry Map corresponding to Folio 194467F regarding 2 Ailesbury Gardens. I note that the plans submitted by the applicants do not demonstrate wayleaves as required by Article 23(1) a of the Planning and Development Regulations 2001, as amended.

7.1.3. The issue of ownership was not addressed in any great detail by the City Council. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Whilst the issue of site ownership is essentially a civil matter and I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: "*a person shall not be entitled solely by reason of a permission under this section to carry out any development.*"

7.1.4. I conclude that the legal ownership matters raised by observers and Iarnrod Eireann do not prevent the Board from proceeding to assess/determine the application in the normal manner.

## **7.2. Principle of Development**

7.2.1. As previously discussed, the development site lies within an area of suburban residentially zoned land. Under this land use zoning objective, residential development is generally acceptable in principle subject to the proposed development being acceptable in terms of its impact on the visual amenities of the area and the established residential amenities of properties in its vicinity. These matters are considered in turn below.

## **7.3. Design and Visual Impact**

7.3.1. The Planning Authority, in deciding to refuse permission, had regard to the proposed developments supposed negative impact on the amenity of the area. More specifically, they considered that the removal of the existing landscaping on the site to accommodate the new dwelling would have a negative impact on the amenity of the streetscape and would also provide for a precedent for other sites to the south-west of Ailesbury Gardens. Further to this, concerns were raised by the observers in relation to the proposed development damaging the root systems of the two mature trees featuring on site, resulting in their eventual loss.

7.3.2. The first party appellants submit that the proposed dwelling is appropriate in its response to the nature of the site and sets a suitable precedent for enclosing private land currently open to public trespass from a public roadway. They contend that the proposal will not detract from the visual amenity of the area, as existing trees are retained on site and augmented by the screen planting in and around the proposed dwelling.

7.3.3. The subject proposal looks to construct a new 48sqm infill single storey detached dwelling with a flat roof on the subject site. The proposed development will be contemporary in design, extend to a maximum height of 3.15 metres and adopts a setback of 1.2-1.5 metres from Ailesbury Gardens. The 48sqm floor area proposed would equate to site coverage of 34% and a plot ratio of 0.34. Although the proposed site coverage complies with the 45%–60% site coverage and 0.5–2.0 plot ratio specified for Z1 zoned land in Sections 16.6 and 16.5 of the Dublin City Development Plan 2016-2022, respectively, the proposed development is considered to be contrary

to the guidance set out in Section 16.2.2.2 and Policy QH8 of the current Development Plan in relation to infill dwellings needing to respect the existing character of the street. Further to this, the subject site is not considered to be of an appropriate size to establish its individual character within the streetscape. It is my view that the subject site is not a suitable site for infill development.

- 7.3.4. As previously discussed in Section 1.0, lands on the south-western side of Ailesbury Gardens adjoining the railway line have not been developed and consist primarily of landscaped areas featuring trees and scrubs. The subject site currently features two large mature trees, one adjacent to the north-western boundary and one adjacent to the south-eastern boundary, and the front boundary is currently open, devoid of fencing.
- 7.3.5. The proposed dwelling will be incongruous with the established landscaped areas featuring on the south-western side of Ailesbury Gardens and the open leafy setting/character of the existing streetscape. Further to this, given the confined nature of the subject site the proposed dwelling adopts a limited setback from its Ailesbury Gardens frontage. This further adds to its visual prominence, with little opportunity provided for meaningful planting to soften its impact/add to the landscaped setting of the immediately surrounding area.
- 7.3.6. Furthermore, in relation to the subject proposal's contribution to the areas landscaped setting, the amended drawings included with the appeal indicate that the two large mature trees currently featuring on site will be retained as part of the subject proposal and screen planting introduced along the street frontage. The trees being retained are contained within the private amenity spaces proposed to serve the dwelling and a separation distance of c. 2.5 metres and c. 3 metres is provided between the applicable trees and the proposed dwelling. Although the proposed dwelling is offset from the existing trees featuring on site, the applicants have provided no evidence to confirm that the separation distance adopted is sufficient to maintain the health or structural integrity of the applicable trees nor have they provided any indication of how the applicable trees will be protected during construction/how the structure has been designed having regard to the root systems of these existing trees. The trees in question are large and well established. They have very wide trunks and crowns which



would suggest an extensive root system associated with the trees featuring below ground. In light of this, and in the absence of evidence to the contrary, I am not confident that the proposed separation distances are sufficient to maintain the health or structural integrity of the applicable trees or that they will not be negatively impacted upon as a result of construction. It is considered that the anticipated loss of the existing trees on would also be injurious to the visual amenities of the area. Further to this, the screen planting proposed is limited and makes a negligible contribution to the landscape setting of the area.

- 7.3.7. Having regard to the foregoing, I would consider the proposed dwelling to be out of character with the existing leafy/landscaped streetscape and an incongruous form of development at this location. Further to this, by reason of its mass and proximity to its Ailesbury Road frontage, I consider the proposed development to constitute overdevelopment of the subject site which would negatively impact on the visual amenity of the area.

#### 7.4. Residential Amenity

##### Proposed House

- 7.4.1. The proposed dwelling has a total floor area of 48sqm across 1 floor which exceeds the minimum requirements set out in the Quality Housing for Sustainable Communities, 2007. Having reviewed the proposed floor plans, I am satisfied that the house is suitably designed and adequately sized internally to provide an adequate level of residential amenity to future residents. It is noted that the amended drawings submitted with the planning appeal, do not include side and rear elevations. It is recommended that if the Board is minded to grant permission, they include a condition requiring that amended side and rear elevations be prepared and agreed with the Planning Authority.
- 7.4.2. Section 16.10.2 of the Development Plan requires that a minimum standard of 10 sq.m of private open space per bedspace is applied in the context of new dwellings. The proposed dwelling is provided with 49sqm of private open space in the form of 2 side gardens. Although provided to the side of the proposed dwelling, as opposed to the rear, the proposed private open space areas are considered to be appropriately

screened to provide an adequate level of privacy to future residents. Upon review of the plans submitted with the appeal, it appears they do not include any access to the northern amenity space from the proposed dwelling. It is recommended that if the Board is minded to grant permission, they include a condition requiring that amended plans providing such an access be prepared and agreed with the Planning Authority.

### Adjacent Houses

7.4.3. The subject site's south-western boundary is flanked by the dart railway line and north-eastern boundary by Ailesbury Gardens (road). Additional amenity space areas associated with Nos. 1 and 3 Ailesbury Garden's, feature to the north-west and south-east of the subject site, respectively. Given the nature of the immediately abutting sites and the single storey/flat roofed design of the proposed dwelling, I do not consider the proposed development would result in any negative impacts on the residential amenity of adjacent properties by way of overlooking or overshadowing.

### **7.5. Impact on Rail Infrastructure and Safety**

7.5.1. As previously discussed, the subject site's north-western boundary is flanked by the dart railway line and the eastern platform serving Sydney Parade Railway Station, both of which sit at a higher level than the subject site, a c. 3.3 metre high stone retaining wall featuring along the common boundary between the subject site and the adjacent railway station. The Planning Authority's second reason for refusal relates to the proposed dwelling directly interfering with the safety and operation of the adjacent railway line. They conclude that the site is not a suitable infill site given its location adjoining the railway line and the proposed dwellings encroachment. Iarnród Éireann state that the proposed building should not be built within 4 metres of the wall so as to allow it to be constructed without interfering with their obligation to inspect/maintain the wall, to ensure the integrity of the retaining wall is not undermined as a result of dwelling construction and to ensure the structure can be maintained in future without risk to the railway or those undertaking such work due to limited separation between the structure and railway line.

7.5.2. The amended plans submitted with the appeal adopt a setback between the proposed dwelling and the wall on the common boundary of 1 metre. The applicants contend

that this is sufficient space to allow for inspection and maintenance of the applicable wall, particularly having regard to a number of precedents for building on or close to the railway wall set out in their appeal submission.

7.5.3. I am not satisfied that the 1 metre separation distance proposed is sufficient to allow adequate space for inspection and maintenance of the applicable wall as well as ensure that the structure integrity of the wall is maintained. The proposed separation distance is 3 metres less than the 4 metres specified by Iarnrod Eireann, who have extensive experience and knowledge of the machinery and space parameters required for such inspection/maintenance works. Further to this, the applicants include no discussion on the second aspect of Iarnrod Eireann's commentary on why a 4 metre separation distance is needed, i.e. to ensure the proposed dwelling doesn't undermine the integrity of the retaining wall, nor do they provide an assessment from a suitably qualified person regarding the proposal's potential impacts on the retaining wall's structural integrity. Instead, they rely on a number of precedents for building on or close to the railway wall.

7.5.4. Upon review of the precedents detailed, it would appear that the context/sites involved in a number of instances differ greatly from that involved in the subject application. For example, in the context of the dwelling approved at No. 6A Shaw Street (approved under Reg. Ref. 2533/14) a 3 metre setback was provided between the proposed dwelling and the retaining wall associated with the railway and Iarnrod Eireann were agreeable to the proposal subject to conditions; in the context of the shed approved at No. 60 Wilfield Road (under Reg. Ref. WEB1409/20) the proposed shed replaced an existing shed in the same location and there was no level difference between the adjacent railway line and the site in question; and in the context of No. 31 Sandymount Avenue there was no level difference between the adjacent railway line and the site in question and the wall featuring along the common boundary does not appear to be a retaining wall. Irrespective of this, each planning application is considered on its individual merits and the Planning Authority/Board are not bound by previous decisions pertaining to similar sites/situations. The subject application will be considered on its individual merits.

7.5.5. In my opinion, given the proposed dwelling's proximity to the railway line retaining wall and the objections raised by Iarnród Éireann regarding the proposal's impact on the maintenance, inspection and structural integrity of the wall, the proposed dwelling would interfere with the safety and operation of the railway line and as such should be refused on this basis.

7.5.6. Iarnród Éireann also raise concerns regarding the proposed dwelling allowing for ease of trespass from the station platform/retaining wall onto the dwelling's roof. The proposed development includes the addition of a mesh fence/climbing plants to a height of 1.25 metres above the top of the adjacent wall, similar to that currently featuring along the boundary between No. 1 Ailesbury Gardens and the railway station. I am satisfied that the introduction of such a fence/planting will appropriately deter trespass from the station platform/retaining wall onto the proposed dwelling's roof.

## **7.6. Traffic and Transport**

7.6.1. The Planning Authority's first reason for refusal relates to traffic and transport concerns, more specifically that the proposed pedestrian/vehicular entrances will create a traffic safety hazard due to potential conflict with road users arising from the lack of footpath provision, the narrowness of the road and the creation of hazardous manoeuvres within the carriageway, reduced sightlines for exiting vehicles, and limited visibility and oversight of the entrances and its users for oncoming traffic. This echoed the concerns raised by the Road Planning Division whose commentary was previously summarised in Section 3.2.2.

7.6.2. To address the traffic and transport concerns raised, the applicants have submitted amended plans with their appeal that omit the proposed car parking space/vehicular access and introduce a 1.2-1.5 metre wide footpath along the site's north-eastern boundary. They have also indicated that they would be willing to accept a condition requiring a pedestrian crossing located mid-way along the frontage with Ailesbury Gardens to be provided.

7.6.3. In terms of car parking provision, a 1-bed car free development is considered appropriate at this location given the proximity to Dart and Dublin Bus services and it

is considered that sufficient on-street car parking exists on Ailesbury Gardens to serve any car parking requirement generated by the proposed dwelling. While the proposed omission of the car parking space/vehicular access and introduction of a footpath goes some way in addressing the road safety concerns raised by the Planning Authority, I do not consider the issue to be obviated.

7.6.4. The 1.2-1.5 metre wide footpath is proposed for a distance of 13.36 metres, however, once residents of the proposed dwelling move beyond the subject properties frontage they are forced to cross the road to use the footpath featuring on the opposite side of Ailesbury Gardens or walk on the road as properties featuring to the north-west and south-east of the subject site do not feature footpaths. Ailesbury Gardens is a very narrow road which features on-street car parking spaces interspersed with vehicular entrances on the north-eastern side and a double yellow line on the south-western side. Given the narrowness of Ailesbury Gardens and the car parking spaces/vehicular accesses featuring to the north-east, the introduction of a section of pedestrian footpath on the south-western side of the road is considered an unwelcome distraction for motorists. Further to this, the landscaping and planting featuring on sites to the south-west of Ailesbury Gardens reduce visibility of pedestrians utilising the footpath proposed to the front of the subject site. The applicants have indicated that they would be willing to accept a condition requiring a pedestrian crossing to be provided mid-way along the frontage with Ailesbury Gardens. While the introduction of a pedestrian crossing would provide safer pedestrian access to the subject site, its introduction is not considered appropriate as it would further complicate matters for road users traversing Ailesbury Gardens and would result in a reduction in on-street car parking spaces.

7.7. Having regard to the forgoing, I contend that the proposed development should be refused on this basis that the proposed development will create a traffic hazard as a result of the potential conflict resulting between pedestrians and vehicles traversing Ailesbury Gardens.

## 7.8. **Flooding**

7.8.1. The third party observers on the appeal raise concerns regarding the potential for flooding in the area as a result of the proposed development and reference to past

flooding events. As part of the information submitted with the observations, Ailesbury Gardens is listed as one of the locations where serious flooding occurred in June 1963.

7.8.2. Having examined the OPW website ([www.floodinfo.ie](http://www.floodinfo.ie)), I note that the subject site is located within an area susceptible to a 10% AEP (1 in 10 year) coastal flood event on the National Coastal Flood Hazard Map 2021 and located within a within an area susceptible to a 0.1% AEP (1 in 1000 chance in any given year) fluvial flood event on the CFRAM Maps. Upon review of the Strategic Flood Risk Assessment associated with the Dublin City Development Plan 2016–2022 (DCDP SFRA), the subject site falls within a defended area in the composite flood map included at Appendix 5.

7.8.3. Dublin City Council's Engineering Department locates the subject site within Flood Zone B. They have raised no objection to the proposed development in relation to flooding subject to an appropriate Flood Risk Assessment, in accordance with the OPW Guidelines and the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment, being carried out for the proposed development.

7.8.4. I am satisfied that, given its small scale and location within an established residential area, the proposed infill dwelling would not give rise to an increased risk of flooding on the site or other properties in the vicinity subject to preparation of an appropriate Flood Risk Assessment and adoption of any required amendments outlined therein being required by way of condition should the Board be so minded to grant permission.

## 7.9. **Other Matters**

7.9.1. Development Contributions – I refer to the Dublin City Council Development Contribution Scheme 2020-2023. It is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

## 7.10. **Appropriate Assessment**

7.10.1. Having regard to the nature and scale of the proposed development (a single house within an established urban area), the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that

the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing, it is recommended that permission be refused for the proposed development for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

- 1. The proposed dwelling would negatively impact on the visual amenity of the area by virtue of the loss of the existing landscaping and trees which helps to screen the railway line and erosion of the streetscapes open/leafy character. The proposal is therefore considered to seriously injure the amenity of the area, to be contrary to Section 16.2.2.2 and Policy QH8 of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area. Further to this, it would set an undesirable precedent for further 'ad hoc' development of the adjoining sites.*
- 2. Having regard to its proximity to the retaining wall associated with the Sydney Parade Railway Station, the proposed new dwelling would inappropriately restrict Iarnród Éireann's ability to inspect and maintain the wall, would potentially undermine the integrity of the retaining wall and provides insufficient space to allow the dwelling to be maintained in future without risk to the railway or those undertaking such work. Therefore, it is considered that the proposed development would directly interfere with the safety and operation of the railway line and as such the proposal is considered to be contrary to the proper planning and sustainable development of area.*
- 3. The provision of a pedestrian entrance and footpath on the south-western side of Ailesbury Gardens would result in potential conflict between pedestrians and vehicles traversing Ailesbury Gardens due to the isolated nature of the proposed footpath, the narrowness of the road, the limited visibility and oversight of the entrance/footpath resulting from adjacent trees/vegetation and the presence of on-street parking interspersed with vehicular entrances. The development is considered contrary to Section 16.10.10 of the Dublin City Development Plan*

*2016-2022 as it fails to demonstrate safe means of pedestrian access which do not result in the creation of a traffic safety hazard. The development would endanger public safety and would therefore, by itself and by reason of the undesirable precedent it would set for other similar development in the area, be contrary to the proper planning and sustainable development of the area.*

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Margaret Commane  
Planning Inspector

17<sup>th</sup> February 2022