



An
Bord
Pleanála

Inspector's Report ABP 311340-21

Development

PROTECTED STRUCTURE: Planning permission for modifications to a previous grant of permission Reg. Ref. 2649/20 (for a new three-storey, 4-bedroom, semi-detached dwelling), to include balcony.

Location

63, Highfield Road, Rathgar, Dublin 6.
D06 T9D0.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3030/21

Applicant(s)

Enda Woods

Type of Application

Permission.

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Enda Woods.

Observer(s)

Phillip O'Reilly.

Date of Site Inspection

09th September 2022.

Inspector

Brendan Coyne.

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1.0 Site Location and Description

- 1.1. The site (0.02 ha) is located on the northern side of Highfield Road at a junction with Templemore Avenue in Rathgar, Dublin 6. The site contains a two-storey over basement level, semi-detached 4-bedroom dwelling with a single-storey extension to its rear. The house is a Protected Structure (Ref. No. 3861), dating from the 1870s. The roof profile of the dwelling is hip-ended, with a parapet elevation presenting to the front. Its elevations have a pebble dash finish, and its front elevation has sash windows and granite steps leading to a front door with a fanlight over it. The front garden is planted with tall, mature trees. The surrounding area's character is predominantly residential and comprises a mixture of house styles dating from different periods.

2.0 Proposed Development

- 2.1. Permission sought for modifications to a 3-storey, 4-bedroom, semi-detached dwelling, previously permitted under P.A. Ref. 2649/20 and not yet built.

Proposed modifications include the following:

- Provision of a first-floor screened balcony/terrace (stated area 30 sq.m.) over the flat roof of a single-story rear extension.
- Internal modifications to a w.c., circulation area and habitable room.
- Associated works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council REFUSED permission for the proposed development. The reason for refusal was as follows;

1. The proposed development would seriously injure the amenities of the immediate adjacent residential properties by way of overlooking and noise generation, would fail to comply with the Z2 Zoning Objective which seeks "to protect and/or improve the amenities of residential conservation areas" and

would set an undesirable precedent for similar development. The proposed development would therefore, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

3.2.2. The basis for the Planning Authority's decision includes the following:

- Under P.A. Ref. 2649/20, permission was granted for the construction of a three-storey, 4-bed semi-detached dwelling to the side of No. 63 Highfield Road (Protected Structure).
- Construction has not yet commenced to the approved dwelling.
- The Applicant is seeking permission to use the flat roof of the ground floor single-storey return as a terrace.
- The terrace would adjoin a first-floor 'den' and be accessed via double doors.
- The proposal provides frosted glass on all sides of the terrace, which would accommodate a lounge area, table and BBQ area.
- No alterations are proposed to the front of the building.
- The site adjoins the private amenity space of a dwelling permitted under P.A. Ref.1156/08 & ABP Ref. P.L. 29S.228591.
- There is no planning history relating to the provision of roof terraces within the wider locality.
- The provision of privacy screens around the proposed terrace would reduce the degree of overlooking over adjoining rear gardens. However, arising from the orientation of the terrace and the location of adjoining amenity space, there is significant potential for increased noise nuisance and general disturbance with impacts on the established residential amenity of the adjoining properties.
- The development, if permitted, would create a precedent for similar development.

3.2.3. Other Technical Reports

Drainage Division: No objections

Conservation Officer: No conservation review undertaken.

4.0 Planning History

4.1.1. Subject Site

P.A. Ref. 2649/20 Permission GRANTED in February 2021 to construct a new three-storey, 4-bedroom, 172sqm, semi-detached dwelling to the side (east) of the existing dwelling at 63 Highfield Road (Protected Structure).

P.A. Ref. 5972/07 and ABP Ref. PL29S.227461 - SPLIT DECISION in 2008, as follows;

GRANT permission for the conservation and restoration of the existing two-storey dwelling.

REFUSE permission for the erection of a new two-storey dwelling to the side of the existing two-storey dwelling. The reasons for refusal were as follows;

The proposed new dwelling, by reason of its significant projection forward of the established front building lines and its proximity to the roadside boundaries, would adversely affect the setting of the protected structure and would appear overbearing and visually obtrusive on this prominent corner location. This element of the proposed development would, thereby, seriously injure the visual and residential amenities of this residential conservation area and would, therefore, be contrary to the proper planning and sustainable development of the area.

P.A. Ref. 2352/07 Permission REFUSED in 2007 for proposed works comprising the full conservation and restoration of the existing 2 storey over lower ground floor semi-detached dwelling, a protected structure and reversion to use as a single family dwelling. Also, a single-storey annex at the rear is to be demolished and a new vehicular access gateway is proposed onto Highfield Road. In addition, it is proposed to erect a new 2-storey over lower ground floor dwelling to the side of the existing house with a relocated access gateway on Templemore Avenue and provide all

associated site development works, ancillary works and landscaped open space for each dwelling.

P.A. Ref. 6515/06 & ABP Ref. PL29S222372 Permission REFUSED in 2007 for a house with a new entrance off Templemore Avenue and all associated site works to the rear of 63 Highfield Road, Rathgar (Protected Structure).

P.A. Ref. 1444/05 Permission REFUSED in 2005 for the proposed construction of a new two-storey detached dwelling with attic accommodation and associated site works, all at the site to the rear of the existing Protected Structure No. 63, Highfield Road, Fronting Templemore Avenue, Rathgar, Dublin 6.

4.1.2. **Adjoining site to the north**

P.A. Ref. 2987/17 RETENTION PERMISSION GRANTED for proposed works comprising internal and external modification to dwelling permitted P.A. Ref. 1156/08 and ABP Ref. 29S.228591. Modifications include (a) modification to the basement to provide an additional 40 sq. m for storage and boiler use; (b) minor modifications to the ground and first floor plans, including an enlarged kitchen/utility area in a single-storey projection at the rear (additional 4 sq. m.) and (c) external modifications to front elevation including 2 no. ground floor bay windows replacing the single bay window with terrace at first-floor level over as previously approved: modified roof profile and associated elevation alterations.

P.A. Ref. 1156/08 & ABP Ref. P.L. 29S.228591 PERMISSION GRANTED ON APPEAL for the construction of new two-storey over basement detached dwelling to include entrance hall, kitchen, utility room, w.c., lounge/dining area at ground floor, 4 no. bedrooms, bathroom and terrace at first-floor level, playroom and ancillary storage at basement level, new entrance off Templemore avenue and associated site and landscaping works on the independent site at the rear of 63 Highfield Road, a Protected Structure fronting Templemore Avenue, Rathgar, Dublin 6.

5.0 Policy and Context

5.1. Development Plan

Dublin City Council Development Plan 2016-2022 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is located in an area zoned 'Z2: Residential Neighbourhoods (Conservation Areas)', with the objective 'to protect and/or improve the amenities of residential conservation areas'.

Protected Structure: The site is listed in the Record of Protected Structures (Ref. No. 3861).

Policy CHC2 - To ensure that the special interest of protected structures is protected.

Policy CHC5: To protect Protected Structures and preserve the character and the setting of Architectural Conservation Areas.

Section 16.2.2.3 - Alternations and Extensions,

Section 16.10.12 - Extensions and Alterations to Dwellings

Appendix 17 - Guidelines for Residential Extensions.

Appendix 24 - Protected Structures and Buildings in Conservation Areas

5.2. Other Relevant Government Policy / Guidelines

Architectural Heritage Protection – Guidelines for Planning Authorities (2011)

5.3. Natural Heritage Designations

None

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

6.1.1. A first-party appeal was received from SSA Architects representing the Applicant Enda Woods against the decision made by the Planning Authority to refuse permission for the proposed development. The following is a summary of the grounds of appeal:

- The approved dwelling on the site, as permitted under P.A. Ref. 2649/20, has not yet been built.
- The Applicant is now seeking permission to use the flat roof of the ground floor single-storey return as a terrace.
- The roof terrace would adjoin a first-floor den and be accessed via double doors.
- The proposal would provide frosted glass on all sides of the terrace, accommodating a large lounge area, table and BBQ area.
- No alterations are proposed to the front of the building.
- The proposal would provide additional amenity in the form of private open space for the new dwelling.
- The Planning Authority is concerned about the potential for increased noise nuisance and general disturbance to the established residential amenity of adjoining properties.
- The risk of noise nuisance would be reduced as the dwelling will be a single-family unit.
- The potential for disturbance already exists through the ground-level private open garden area. Accordingly, the proposal does not increase the potential for nuisance.

- The proposal is screened by frosted glass panels, which would prevent any overlooking and contain any conversation/voices associated with outdoor dining.
- The Planning Authority accepts the privacy screens around the proposed terrace would reduce the degree of overlooking of adjoining rear gardens.
- Approximately 300 meters east of the Applicant's property, there is a 3-storey apartment complex (Woodleigh) with balconies facing Rathmines Road Upper and Highfield Road. These do not injure the residential amenity of the area.
- Overlooking neighbouring property is not an issue. The terrace edges are bound by frosted glazing to a height of 1.8m. Anyone standing adjacent to the glazed screening cannot see over the top of the screens.
- The screens create a containment for noise and nuisance
- Given the house is a single-family dwelling, the propensity for noise is limited.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

- 6.3.1. A third-party observation was received from Philip O'Reilly of No. 11 Grosvenor Place, Rathmines. The issues raised are summarised as follows;
- The Planning Authority's reason for refusal is correct.
 - The proposed development would seriously injure the amenities of adjacent and distant properties on Templemore Avenue by way of overlooking and noise nuisance.
 - The proposal would be at variance with the zoning objective and contrary to the proper planning and sustainable development of the area.

7.0 Assessment

7.1.1. I have reviewed the proposed development and the correspondence on the file. I am satisfied that the proposed development is acceptable in principle, in accordance with the zoning objective of the site. The main issue for consideration is the reason for refusal, as cited by the Planning Authority. This can be addressed under the heading 'Impact on Residential Amenity'. I am satisfied that all other issues were fully addressed by the Planning Authority and that no other substantive issues arise. The issue for consideration is addressed below.

7.1.2. Impact on Residential Amenity

7.1.3. The Planning Authority refused permission for the proposed development on the grounds that it would seriously injure the amenities of adjacent residential property by way of overlooking and noise nuisance. The Planning Authority reasoned that such development would be contrary to the Z2 zoning objective of the site and would set an undesirable precedent for similar development. The Applicant contests the reason for refusal, as detailed in Section 6.1 above.

7.1.4. The proposed development comprises modifications to the 3-storey, 4-bedroom, semi-detached dwelling permitted under P.A. Ref. 2649/20. Construction on this dwelling has not commenced. The proposed modifications comprise, inter alia, the provision of a first-floor screened balcony/terrace (stated area 30 sq.m.) over the flat roof of a single-story rear extension. The site is zoned 'Z2: Residential Neighbourhoods (Conservation Areas)', with the objective 'to protect and/or improve the amenities of residential conservation areas'. The use class 'residential' is permissible under Z2 zoned lands. Given that the proposed balcony/terrace would be ancillary to a residential dwelling, as permitted under P.A. Ref. 2649/20, the proposal is acceptable in principle under the zoning objective of the site.

7.1.5. The proposed balcony/terrace would be accessed through sliding doors from a 'den' room within the house. It has a depth of 3.8m and an overall width of 7.3m. The balcony/terrace would be bounded to the rear (north) and side (east) by 1.8m high frosted glass screen panels. The Applicant has submitted 3D visualisation drawings illustrating the proposal. A separation distance of 7.6m would be maintained between the proposal and the rear / northern boundary of the site and c. 21m from the opposing

side elevation of the neighbouring dwelling to the north. Having regard to the 1.8m height and continuous frosted glass design of the screen panels enclosing the proposed balcony/terrace, it is my view that the proposal would not result in overlooking or overbearing impact of neighbouring property to the north. Regarding the Planning Authority's concerns regarding noise, it is my view that this reasoning is without basis. Appendix 17 of the Dublin City Council Development Plan 2016-2022 sets out 'Guidelines for Residential Extensions' whereunder Section 17.4 refers to balconies, stating that '*Balconies will only be allowed where they are well screened and do not adversely overlook adjoining properties. The use of the roofs of flat-roof extensions as balconies can often lead to problems of overlooking*'. The Guidelines for Residential Extensions provide no guidance or reference to noise nuisance or general disturbance from balconies, as referred to by the Planning Authority. Given that the proposal would be ancillary to a single dwelling unit, I consider that the proposal would not significantly increase or exacerbate noise levels from the permitted dwelling to such an extent that it would adversely impact the residential amenity of the surrounding area. The 1.8m high enclosing screen panels would provide acoustic containment and provide a noise barrier. The noise from this space would be no greater than if at ground level. Given its location along the side elevation of the adjoining dwelling No. 63, I do not consider the proposal would impact the residential amenity of No. 63 (Protected Structure). Anti-social behaviour in households causing significant or persistent impairment of residential amenities is dealt with under the Criminal Justice Act 2006 (as amended). Civil proceedings in relation to anti-social behaviour in households causing significant or persistent impairment of residential amenities are dealt with under the Criminal Justice Act 2006 (as amended).

- 7.1.6. The Applicant refers to precedent in the surrounding area, whereby balconies are provided to the front of 'Woodleigh', a 3-storey apartment complex located c. 300m to the east of the site facing onto Rathmines Road Upper and Highfield Road. It is my view that the context of such development is different to the subject proposal, given that they serve apartment units and are integral to the design of the apartment complex. I note, however, that the Board granted permission for a first-floor terrace to the side/rear of a dwelling permitted under ABP Ref. PL29S.245857, on a site to the rear of No. 73 Highfield Road (fronting Neville Road). Notwithstanding this, I consider the proposed development complies with the Dublin City Council Development Plan

guidelines regarding balconies, as provided under Appendix 17, Section 17.4 and thereby would not create an undesirable precedent for similar development. On this basis, I recommend that the proposed development should not be refused permission based on the Planning Authority's reason for refusal and that the Board grant permission for the proposed development, subject to the imposition of appropriate conditions.

7.1.7. Appropriate Assessment

7.1.8. Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

9.0 Reasons and Considerations

9.1.1. Having regard to the scale, form and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not adversely impact the residential amenity of neighbouring property or the character and visual amenity of the surrounding streetscape and residential conservation area in which it is located. The proposal would not materially affect the character of the adjoining Protected Structure No. 63 Highfield Road or any element of the structure that contributes to its special architectural, historical or archaeological interest. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
4.	<p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>

Brendan Coyne
Planning Inspector

12th September 2022

