



An  
Bord  
Pleanála

## Inspector's Report ABP-311357-21

### Development

The construction of a new, 127sqm, two-storey, detached, pitched roof dwelling with 4 no. bedrooms and rooflights to the front (west) and rear (south), together with new vehicular entrance, ancillary services, public utility and connections, and associated works all in the existing side garden (north).

### Location

No. 194 Roebuck Castle, Clonskeagh, Dublin 14, D14 PW53.

### Planning Authority

Dún Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

D21A/0088

### Applicant(s)

Thomas & Mary O'Grady

### Type of Application

Permission

### Planning Authority Decision

Grant subject to conditions

### Type of Appeal

Third Party v. Decision

### Appellant(s)

Tom & Susan Sheridan

	Rosemary White
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	22 <sup>nd</sup> November, 2021
<b>Inspector</b>	Robert Speer

## **1.0 Site Location and Description**

- 1.1. The proposed development site is located at No. 194 Roebuck Castle, Clonskeagh, Dublin, approximately 800m southwest of the R138 Stillorgan Road, in an established residential area characterised by conventional two-storey, detached and semi-detached housing, within the former grounds of Roebuck Castle. It has a stated site area of 0.0225 hectares, is irregularly shaped, and comprises the side garden area of an existing semi-detached dwelling which is bounded to the rear (east) by the grounds of University College Dublin (Belfield) and several mature trees.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of the subdivision of an existing housing plot and the construction of a detached, two-storey, 4-bedroom dwelling house within the side garden area of No. 194 Roebuck Castle. The proposed dwelling is of a conventional design with a stated floor area of 127m<sup>2</sup> and an overall height of 7.545m. It is based on an 'L'-shaped plan with an asymmetrical front elevation incorporating a two-storey gable feature and will follow a building line staggered between those of the neighbouring properties to the immediate north and south. Associated site development works include the provision of a new independent vehicular entrance from the adjacent public road, car parking, boundary treatment, and landscaping. Water and sewerage services are available via connection to the public mains.
- 2.2. Amended proposals were subsequently submitted in response to a request for further information which revised the proposed house design to provide for increased private open space. These amended particulars also included a revised site layout plan which detailed an existing shed to the rear of No. 194 Roebuck Castle. It was further asserted that adequate private open space would be retained to serve the existing dwelling house having regard to the provisions of the exempted development regulations.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 17<sup>th</sup> August, 2021 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 9 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, surface water drainage, and development contributions.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

An initial report stated that while the principal of the development was acceptable, concerns arose as regards the adequacy of the private open space provision for both the existing and proposed dwellings, with particular reference being made to the failure to detail an existing shed which serves to reduce the open space available to the existing residence. It was further stated that the proposal would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity. In terms of traffic safety, it was considered that the width of the proposed vehicular access was excessive and should be reduced to 3.5m in line with Section 8.2.4.9 of the Development Plan.

Following the receipt of a response to the request for additional information, a further report was prepared which recommended a grant of permission, subject to conditions.

#### 3.2.2. *Other Technical Reports*

*Municipal Services Dept., Drainage Planning:* No objection, subject to conditions.

*Transportation Planning:* No objection, subject to conditions.

### 3.3. Prescribed Bodies

*Irish Water:* No objection, subject to conditions.

### **3.4. Third Party Observations**

3.4.1. A total of 4 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern contained therein can be summarised as follows:

- The overall design, scale, layout and positioning of the proposed dwelling is out of character with the established pattern of development.
- Inadequate cognisance has been taken of the terms and conditions of the grant of permission issued in respect of PA Ref. No. D05A/0010 / ABP Ref. No. PL06D.211559.
- The proposed development would be detrimental to the residential amenity of neighbouring properties (including by reason of overlooking, overshadowing / loss of light, and an excessively bulky / overbearing appearance).
- There is a restrictive covenant attached to the deeds of each housing plot in the Roebuck Castle estate prohibiting their use for any purpose other than as a single private or professional dwelling house with the usual out-offices.
- Devaluation of property.
- Concerns as regards the adequacy of the submitted plans and particulars and the validity of the planning application.
- The existing dwelling house will be left with inadequate private open space.
- The setting of an undesirable precedent for similar development.
- The siting of the proposed vehicular access will pose a traffic hazard.

## **4.0 Planning History**

### **4.1. On Site:**

4.1.1. PA Ref. No. D05A/0010 / ABP Ref. No. PL06D.211559. Was granted on appeal on 28<sup>th</sup> July, 2005 permitting Thomas and Mary O'Grady permission for the construction of a new two-storey dwelling, boundary wall and vehicular driveway entrance with associated site works and drainage in existing side garden to north side of house.

## 5.0 Policy and Context

### 5.1. National and Regional Policy:

- 5.1.1. The ‘*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*’ note that in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

### 5.2. Development Plan:

- 5.2.1. ***Dún Laoghaire Rathdown County Development Plan, 2016-2022:***

*Land Use Zoning:*

The proposed development site is zoned as ‘A’ with the stated land use zoning objective ‘*To protect and-or improve residential amenity*’.

*Other Relevant Sections / Policies:*

*Chapter 2: Sustainable Communities Strategy:*

*Section 2.1: Residential Development:*

*Policy RES3: Residential Density:*

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In

promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009)
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009)
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007)
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013)
- ‘National Climate Change Adaptation Framework
- Building Resilience to Climate Change’ (DoECLG, 2013)

*Policy RES4: Existing Housing Stock and Densification:*

It is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

*Chapter 6: Built Heritage Strategy:*

*Section 6.1.2: Archaeological Heritage*

*Chapter 8: Principles of Development:*

*Section 8.2.3: Residential Development:*

*Section 8.2.3.1: Quality Residential Design*

*Section 8.2.3.2: Quantitative Standards*

*Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas:*

*(v) Corner/Side Garden Sites:*

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing

built up areas. In these cases the Planning Authority will have regard to the following parameters (Refer also to Section 8.2.3.4(vii)):

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Accommodation standards for occupiers.
- Development Plan standards for existing and proposed dwellings.
- Building lines followed where appropriate.
- Car parking for existing and proposed dwellings.
- Side/gable and rear access/maintenance space.
- Private open space for existing and proposed dwellings.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.

It is also recognised that these sites may offer the potential for the development of elderly persons accommodation of more than one unit. This would allow the elderly to remain in their community in secure and safe accommodation. At the discretion of the Planning Authority there may be some relaxation in private open space and car parking standards for this type of proposal.

Section 8.2.3.5: *Residential Development – General Requirements*

Section 8.2.4.9: *Vehicular Entrances and Hardstanding Areas*



Section 8.2.8.4: *Private Open Space – Quantity*

Section 8.2.11.1: *Archaeological Heritage*

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

5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Booterstown Marsh Proposed Natural Heritage Area (Site Code: 001205), approximately 1.8km northeast of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 1.8km northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 2.0km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 2.0km northeast of the site.

### **5.4. EIA Screening**

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location in an established built-up area outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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. *Tom & Susan Sheridan (No. 193 Roebuck Castle):*

- The proposed dwelling should be refused permission on the grounds that it is disproportionate to the site context and would result in inadequate residual private open space for the existing residence at No. 194 Roebuck Castle in contravention of the Development Plan and contrary to the proper planning and sustainable development of the area
- The proposed dwelling is positioned too close to the neighbouring dwelling of No. 193 Roebuck Castle contrary to the Board's previous determination of ABP Ref. No. PL06D.211559.
- There has been no acknowledgement of the significant change in the planning context of the application site since the Board's determination of ABP Ref. No. PL06D.211559. During the interim period, a substantial extension and shed have been erected to the rear of No. 194 Roebuck Castle which have significantly reduced the development potential of that property's garden area. The consequences of failing to take cognisance of this change are that:
  - By not adhering to the set back from No. 193 Roebuck Castle required by ABP Ref. No. PL06D.211559, the overall height and depth of the proposed construction will have a visually overbearing impact on the neighbouring dwelling and garden area.
  - The positioning of the proposed dwelling forward of No. 193 Roebuck Castle, when taken in combination with the failure to achieve the setback required from the shared boundary, will have a detrimental impact on the residential amenity of the neighbouring property by reason of its excessively overbearing and visually dominant appearance. The proposal would be out of character with the form, massing, scale & layout of the surrounding pattern of development.
  - There has been no assessment of the daylight and overshadowing impacts on the appellants' property (including its front garden area)

consequent on the proposed development. Moreover, in light of the changed planning context, no reliance can be placed on the previous decision to grant permission as regards any potential impacts on residential amenity. The issue of daylight / sunlight analysis must be reviewed from first principles.

- In failing to comply with the setback specified by ABP Ref. No. PL06D.211559, the proposal does not satisfy the criteria previously deemed necessary for the development of a small infill dwelling on site. It further undermines any reliance on the earlier grant of permission in terms of precedent.
- The proposed development will reduce the private open space available to the existing house at No. 194 Roebuck Castle to 26m<sup>2</sup> (with only 16m<sup>2</sup> seemingly useable) in contravention of the Development Plan. In this respect, while the reporting inspector in their assessment of ABP Ref. No. PL06D.211559 stated that *'the existing house at no. 194 would continue to have an acceptable level of residential amenity and the rear garden would exceed the development plan requirements'*, the circumstances of the site have changed substantially with its development potential having been obviated through the construction of a large extension and shed with the result that the side garden is required as private open space for the existing dwelling.
- The proposed development will result in substandard private open space provision for the existing dwelling.
- The decision to grant permission is fundamentally flawed given the clear breach of the open space standards set out in the Development Plan.
- No rationale has been provided as to how the Planning Authority determined that the substandard provision of a residual area of 26m<sup>2</sup> of private open space could be deemed acceptable to serve the existing dwelling house.
- The proposed development does not comply with the land use zoning which aims *'To protect and or improve residential amenity'* nor does it satisfy the minimum development standards as regards private open space provision for No. 194 Roebuck Castle.

- The scale of the proposal is disproportionate to the existing dwelling and will result in a substandard form of development with inadequate open space.
- The proposed subdivision of No. 194 Roebuck Castle would undermine the original arcadian layout / 'Garden City' vision upon which the wider estate is predicated and amounts to the ad hoc insertion of an infill dwelling which would detract from the coherence and setting of the area.
- There is a restrictive covenant in the title deeds for each house in the estate prohibiting the subdivision of property and, therefore, the applicants do not have sufficient legal interest to carry out the development.
- The proposed development would result in a significant loss of sunlight and overshadowing of the front garden of No. 193 Roebuck Castle and would seriously injure the amenities and depreciate the value of property in the vicinity.

6.1.2. *Rosemary White (The Lodge, Roebuck Road):*

- The proposed development has not been properly assessed against the requirements of Section 8.2.3.4(v): '*Corner / Side Garden Sites*' of the Development Plan.
- Inadequate consideration has been given to the detrimental impact arising from the overall design, size, scale and layout of the proposed development on the wider estate, with particular reference to No. 193 Roebuck Castle.
- The proposed development will result in the existing dwelling at No. 194 Roebuck Castle being left with inadequate private open space / garden area in contravention of Sections 8.2.3.4(v) & 8.2.3.4(i) of the Development Plan.
- The Planning Authority has not properly considered the positioning of the proposed dwelling forward of No. 193 Roebuck Castle and the associated potential for overlooking of that property.
- The proposed development will have a seriously injurious impact on the residential amenity of No. 193 Roebuck Castle by reason of overlooking, overshadowing, and its overall bulk & overbearing appearance.

- The proposal is out of character with the existing streetscape and the established pattern of development.
- The application site is believed to be subject to a restrictive covenant (similar to other properties in the estate) whereby subdivision of the property is not permitted. Any breach of this covenant would diminish the value of adjoining properties which were purchased with the legitimate expectation that there would be no plot subdivisions.

The purpose of the covenant is to ensure that no party can interfere with any other party's express and implied right to light. It also ensures that no party can vary the housing scheme, its layout, or the use of space in such a manner as to deprive its residents of the reasonable enjoyment of the rights set out in their title documents. Therefore, the Planning Authority is precluded from granting permission as the site cannot be subdivided as a point of law.

## 6.2. Applicant Response

### 6.2.1. *Response to the Third Party Appeal of Tom & Susan Sheridan:*

- Given that No. 193 Roebuck Castle is a semi-detached property, it is difficult to sustain the argument that the development of a detached dwelling would be visually overbearing.
- In relation to the positioning of the proposed dwelling and the assertion that it will be visually overbearing and out of character with the established pattern of development, considering that the layout of the Roebuck Castle estate is based around a series of curved roads which means that every dwelling is located forward of the building line of the adjacent house, this aspect of appeal is of no merit.
- The Board is referred to the accompanying shadow study / modelling which demonstrates that there will be no significant impact on daylight or any overshadowing consequent on the proposed development.
- Concerns as regards adherence to a condition imposed as part of a previous grant of permission are irrelevant as the subject proposal is a standalone application which should be assessed on its merits.

- With respect to the adequacy of the open space serving No. 194 Roebuck Castle consequent on the proposed development, it should be noted that a private garden area can be reduced to 25m<sup>2</sup> by way of exempted development. In any event, it is the applicants' intention to remove an existing garden shed so as to increase the open garden space to the rear of No. 194 Roebuck Castle over the required minimum.

### 6.3. Planning Authority Response

- States that no new information has been provided which would warrant a change to the decision to grant permission.
- In assessing the acceptability of the private open space remaining for No. 194 Roebuck Castle, regard was had to the overall amenity space available for that property and the voluntary reductions attributable to works undertaken by way of exempted development pursuant to the Planning and Development Regulations, 2001, as amended. While it is noted that the current amenity space would be below the standards set out in Section 8.2.8.4(i) of the Development Plan, those standards apply primarily to new dwellings. In summary, it is considered that the overall property – excluding the segregated site to provide the new dwelling – still retains the potential to provide for a satisfactory level of residential amenity.

### 6.4. Observations

None.

### 6.5. Further Responses

#### 6.5.1. *Response of Rosemary White to the Third Party Appeal of Tom & Susan Sheridan:*

- Fully supports the grounds of appeal.
- Particular consideration should be given to the change in circumstances since the Board's determination of ABP Ref. No. PL06D.211559 as the construction of a large extension and shed to the rear of the existing house has used up the development potential of that property. Moreover, the limited garden area

remaining at No. 194 Roebuck Castle is needed as private open space for that dwelling.

**6.5.2. *Response of Tom & Susan Sheridan to the Circulation of the Applicants'***

***Submission:***

- The proposed dwelling will be visually overbearing by reason of its positioning to the front and directly alongside the southern boundary of the appellants' dwelling.
- The original layout of Roebuck Castle provided for a staggered building line within a spacious landscape context and setting. The existing house at No. 194 Roebuck Castle is set back in excess of 11m from the appellants' dwelling and the objective of the original layout was to allow for the transition and staggered nature of the building line so that No. 194 did not visually dominate or have an overbearing impact on No. 193. The insertion of the proposed development undermines the original landscape context, the design of which is critical to the residential amenity of the appellants' dwelling. The existing pattern of development does not justify a significant departure from the established building line of Nos. 193 & 194 Roebuck Castle.
- The shadow impact study provided in response to the grounds of appeal is inadequate and misleading. It does not show the 'worst-case' scenario and seeks to distract from the actual impact that will occur. Furthermore, no proper comparison has been made between the existing and proposed scenarios while the analysis itself does not appear to account for the extension constructed to the rear of No. 194 Roebuck Castle. There are further concerns as regards the ability to interpret the analysis supplied and its wider reliability.
- The appellants previously submitted a shadow study (extracts attached) in 2005 in respect of PA Ref. No. D05A/0010 / ABP Ref. No. PL06D.211559 in which it is clear that between 12:00 and 15:00 hours during the autumn / winter months there will be substantive overshadowing of their property as a result of the proposed development.

- The reference to the acceptability of 25m<sup>2</sup> of private open space in the context of exempted development is an admission that the proposed development does not satisfy the mandatory standards for open space provision.
- The applicants' intention to remove the garden shed (which is a substantial concrete block structure) does not form part of the application and, therefore, the Board is not in a position to consider any such proposal. Even with the shed removed, the proposed development cannot satisfy the open space standards of the Development Plan.
- The issue remains that the scale of the existing extension and shed on site has undermined the development potential of the garden area attached to No. 194 Roebuck Castle.

#### 6.5.3. *Response of Rosemary White to the Circulation of the Applicants' Submission:*

- It is reiterated that the proposed dwelling will be visually overbearing due to its siting, scale, size, bulk and proximity to No. 193 Roebuck Castle.
- The building line between Nos. 193 & 194 Roebuck Castle is not staggered in a manner similar to the remainder to the estate. The reason No. 194 was designed with a larger side garden was because its rear wall is positioned slightly forward of No. 193 and, therefore, in order to ensure no overlooking, it was necessary to provide greater distance between the two houses.
- The suggestion that the proposed development will not have a significant overshadowing impact on No. 193 Roebuck Castle is rejected.
- The applicants' agent has confirmed that there will be insufficient open space remaining to serve the existing dwelling house.

## 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity



- Other issues
- Appropriate assessment

These are assessed as follows:

## **7.2. The Principle of the Proposed Development:**

- 7.2.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'. In addition, the surrounding area is residential in character while the prevailing pattern of development is dominated by conventional housing construction. In this respect, I would suggest that the proposed development site comprises a potential infill site / plot subdivision situated within an established residential area where public services are available and that the development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Such an approach would correlate with the wider strategic outcomes set out in the National Planning Framework 'Project Ireland: 2040', including the securing of more compact and sustainable urban growth such as is expressed in National Policy Objective 35 which aims to '*increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights*'.
- 7.2.2. Further support is lent to the proposal by reference to Policy RES4: '*Existing Housing Stock and Densification*' of the Development Plan, which aims to increase housing densities within existing built-up areas having due regard to the amenities of established residential communities, wherein it is stated that the Planning Authority will encourage the densification of existing suburbs in order to help retain population levels by way of 'infill' housing that respects or complements the established dwelling types. These policy provisions are further supplemented by the guidance set out in Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas*' of the Plan which details the criteria to be used in the assessment of proposals that involve the subdivision of an existing house curtilage and / or an appropriately zoned brownfield site to provide an additional dwelling. The '*Sustainable Residential Development in*

*Urban Areas, Guidelines for Planning Authorities, 2009* similarly acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

7.2.3. In addition to the foregoing, I am cognisant that permission was previously granted on appeal under ABP Ref. No. PL06D.211559 (PA Ref. No. D05A/0010) for the subdivision of No. 194 Roebuck Castle and the construction of a broadly comparable dwelling house.

7.2.4. Therefore, having considered the available information, including the site context and land use zoning, and noting the infill nature of the site itself, I am satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the overall character of the wider area.

### **7.3. Overall Design and Layout:**

7.3.1. The broader design, height, dimensions and layout of the proposed dwelling, as initially lodged with the Planning Authority, are effectively identical to that previously considered by the Board on appeal under PA Ref. No. D05A/0010 / ABP Ref. No. PL06D.211559, although the house itself is positioned further forward relative to the building lines established by the front elevations of the neighbouring properties of Nos. 193 & 194 Roebuck Castle to the immediate north and south respectively. The amended proposal submitted in response to the request for further information has retained the overall aesthetics of the house design as originally proposed while the building line has been revised to reflect more closely that previously approved on site. In this regard, I would suggest that the findings of the reporting inspector in their assessment of ABP Ref. No. PL06D.211559 remain applicable and that the subject proposal, given the wider context and the existing layout and pattern of development in the estate, would be in keeping with the character of the streetscape and would not seriously injure the visual amenities of the area.

#### **7.4. Impact on Residential Amenity:**

7.4.1. In terms of assessing the relationship between the proposed dwelling and existing housing on adjoining lands, I would have a number of concerns as regards the accuracy of the submitted drawings, with particular reference to the depiction of the neighbouring properties and the extent of the applicants' landholding. In this respect, it is of relevance at the outset to note that none of the site layout plans submitted with the planning application or in response to the request for further information accurately depict the existing dwelling house at No. 193 Roebuck Castle and, therefore, difficulties arise in assessing its relationship with the proposed development. For example, that property includes a two-storey front projection set back from the southern gable wall which has not been shown on the submitted plans and thus it is not possible in the absence of more representative drawings to definitively gauge the separation between the respective dwellings. A further point of concern is the inconsistency in the extent of the applicants' landholding (as outlined in blue) shown on the initial site layout plan when compared to that submitted in response to the request for further information. Despite the matching delineation of the application site in both layout plans, and although the stated site areas of the existing (House 'A') and proposed (House 'B') sites remain unchanged, the width of Site 'A' would appear to have been narrowed by c. 400mm in the amended proposal. While such a discrepancy would not normally give rise to difficulty, due to the limited size and configuration of the sites in question, there is a need to accurately establish the relationship between the proposed development and neighbouring properties (despite the site boundary being unaltered in response to the further information request and the unchanged positioning of the gable elevation of House 'B' immediately alongside that boundary, the separation distance between the proposed dwelling and the existing residence has been noticeably narrowed).

#### **7.4.2. *The Relationship with No. 194 Roebuck Castle:***

In specific reference to the adjoining property to the south (i.e. the applicants' dwelling house), the amended positioning / building line of the proposed dwelling relative to the southern site boundary is comparable to that previously approved under ABP Ref. No. PL06D.211559.

- 7.4.3. With respect to the separation of 1.57m between the opposing gable walls, while this is less than the 2.3m wide passageway originally permitted, it will allow for essential maintenance and access to the rear of the existing property. However, any works to the southern gable of the proposed dwelling will be reliant on access through No. 194 Roebuck Castle which is not ideal. Furthermore, the roof eaves and chimney breast of the proposed dwelling are shown to extend over the site boundary into the new curtilage of the existing house. Although the Board may wish to address these matters by way of condition in the event of a grant of permission (as was the case for ABP Ref. No. PL06D.211559), I would reiterate my concerns as regards the accuracy of the submitted particulars.
- 7.4.4. Similar to ABP Ref. No. PL06D.211559, the proposed dwelling will be sited to the north of the existing house and will extend eastwards for a distance of c. 7m beyond the rear wall of the two-storey element of that property. While the scale and proximity of the construction will likely result in some reduction in the levels of daylight received by windows within the northern elevation of the single storey extension constructed to the rear of the existing house, I am cognisant that No. 194 Roebuck Castle is the applicants' own dwelling house and that the extension in question is also served by a series of rooflights. Furthermore, having regard to its positioning and orientation, I am satisfied that the proposed house will not overshadow the adjoining property to the south to any significant extent.
- 7.4.5. The absence of any windows within the south-facing elevation of the proposed dwelling will ensure that there is no undue overlooking of the existing house.
- 7.4.6. *The Relationship with No. 193 Roebuck Castle:*

Having reviewed the planning history of the application site, it is apparent that a key consideration in the assessment of ABP Ref. No. PL06D.211559 was the positioning of the proposed dwelling in its entirety forward of the existing house to the north and the potential to adversely impact on the amenity of that property which faces west. In that instance, specific reference was made to the proximity of the northern gable of the proposed dwelling to the site boundary and the (5m) diagonal separation between the rear north-eastern corner of the proposed house and the front south-western corner of No. 193. Following consideration of the characteristic mix of linear and stepped development within the estate, the previous reporting inspector

determined that the separation distance between the northern gable of the proposed dwelling and the adjoining house was inadequate, having particular regard to the orientation of the proposed house to the south of the existing house. This culminated in the attachment of a condition to the grant of permission which required the entire northern elevation of the proposed dwelling to be set back an additional one metre from the site boundary shared with No. 193 Roebuck Castle thereby ensuring that the front and rear corners of the northern gable would be located 3.6m and 2.6m respectively from the site boundary (as per a compliance submission ultimately approved by the Local Authority).

7.4.7. Parallels can be drawn between ABP Ref. No. PL06D.211559 and the subject proposal in that the proposed dwelling will be set entirely forward of the adjoining house to the north, however, it is somewhat surprising that the application as initially lodged with the Planning Authority sought to position the proposed dwelling closer to the northern site boundary than was previously proposed (and rejected) under ABP Ref. No. PL06D.211559. Moreover, while the amended proposal submitted in response to the request for further information reduced the overall size and scale of the proposed dwelling, with the revised house design also including for a smaller gable profile thereby increasing the diagonal separation (c. 7m) between it and the south-western corner of No. 193 Roebuck Castle, it is of note that the separation between the proposed dwelling and the northern site boundary continues to be less than was previously required under ABP Ref. No. PL06D.211559. For comparison purposes, the front and rear corners of the northern gable elevation of the proposed dwelling (as amended) will be 2.439m and 1.848m respectively from the site boundary whereas ABP Ref. No. PL06D.211559 required corresponding set back distances of 3.6m and 2.6m.

7.4.8. While it is to be acknowledged that the size and scale of the proposed dwelling (as amended) will have a lesser impact than either the initial planning proposal or that originally sought under ABP Ref. No. PL06D.211559, I am inclined to conclude that its proximity to the northern site boundary and the adjacent dwelling house remains unacceptable due to the inadequate separation provided. Indeed, the amended design provides for less separation between the proposed dwelling and those properties to the north and south than was approved under ABP Ref. No. PL06D.211559. Although it would be possible to increase these separation distances

by way of condition in a manner similar to that employed in the approval of ABP Ref. No. PL06D.211559, given the discrepancies in the submitted layout plans I would have concerns as regards the benchmark against which any specified dimensions would be measured.

7.4.9. With respect to the potential for overshadowing of No. 193 Roebuck Castle given its positioning to the northeast of the proposed dwelling, having reviewed the shadow impact analysis submitted by the applicants in response to the grounds of appeal (and noting the appellants' reference to an overshadowing study previously undertaken on site with respect to ABP Ref. No. PL06D.211559), I would accept that the proposed development will result in some additional overshadowing of the front facade / rooms and front garden area of that property at different times of the day and year (most particularly during early & mid-afternoon in the winter months). However, given the site context within a built-up urban area where some degree of overshadowing / shading is not to be unexpected, the overall levels of sunlight / daylight received by the existing property (noting that the main area of private amenity space to the rear of No. 193 will not be overshadowed by the proposal), and as the proposal will only give rise to limited additional overshadowing, it is my opinion that the subject proposal will not unduly impact on the residential amenity of the adjacent dwelling by reason of overshadowing to such an extent as to warrant a refusal of permission.

7.4.10. With the exception of a single first floor bathroom window, which will be set back from the northern gable elevation, is positioned to only allow for views over the front garden of the adjacent house, and can be fitted with obscure glazing, no other windows are proposed in the north-facing elevation of the dwelling and, therefore, the proposal will not result in any significant overlooking of the adjoining property.

7.4.11. *Private Open Space Provision:*

In assessing proposals for infill development on corner / side garden sites, Section 8.2.3.4(v) of the Development Plan references the need to consider private open space provision for both the existing and proposed dwellings. Accordingly, I would refer the Board to Section 8.2.8.4: '*Private Open Space – Quantity*' of the Plan which states that all three and four bedroom dwelling houses should be provided with at least 60m<sup>2</sup> and 75m<sup>2</sup> of private open space respectively behind the front building line

(with any open space to the side of dwellings only considered as part of the overall private open space calculation where it comprises useable, good quality space), although in instances where an innovative design response is proposed, a relaxation in the quantum of private open space may be considered on a case-by-case basis.

7.4.12. From a review of the amended proposals submitted in response to the request further information, the proposed four-bedroom dwelling house will be provided with 75.5m<sup>2</sup> of usable private open space and thus satisfies the minimum requirements of the Development Plan.

7.4.13. With respect to the existing dwelling house (i.e. the applicants' own residence at No. 194 Roebuck Castle), the remainder of the rear garden area serving that property (excluding the narrow strip of space along the northern gable) will only extend to approximately 26.3m<sup>2</sup> and thus falls significantly short of the minimum requirements of Section 8.2.8.4 of the Development Plan. However, it is my opinion that the quantitative standards set out in Section 8.2.8.4 of the Development Plan are perhaps more relevant to 'new-build' residential development. In this regard, I would suggest that cognisance should be taken of an individual property owners' preference as regards the particular use towards which the private open space associated with their home may be put or whether they would place a greater emphasis on the redevelopment of any such space as additional accommodation or possibly for the provision of other structures ancillary to the enjoyment of their dwelling house. This is of particular relevance given the changes to the site context since the Board's determination of ABP Ref. No. PL06D.211559. Although the existing dwelling house was originally to benefit from a rear garden area in excess of the minimum standard when ABP Ref. No. PL06D.211559 was determined, during the intervening period between that decision and the subject application, the applicants constructed an extension and a detached shed by way of exempted development to the rear of their dwelling which had the effect of significantly reducing the available garden space. It is as a direct consequence of the construction of these structures that the plot subdivision as proposed will result in the existing dwelling being left with a comparatively small rear garden area. While it would be preferable if the existing house were to be provided with a greater area of private open space following the proposed development, I am cognisant that if the extension and shed were to have been constructed after completion of the

subdivision presently under consideration, then they would have been permissible as exempted development in any event (pursuant to Classes 1 & 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended). In effect, the applicants would then be choosing to reduce the open space provision serving their own home.

- 7.4.14. Therefore, on the basis of the foregoing, I am amenable in principle to the reduction in the amount of open space serving No. 194 Roebuck Castle, although I would have concerns that the discrepancies previously identified as regards the accuracy of the site layout plans could serve to misrepresent the open space provision (for both the existing and proposed dwellings).

#### **7.5. Other Issues:**

- 7.5.1. With respect to the assertion that the subdivision of No. 194 Roebuck Castle would breach a restrictive covenant attached to the deeds of that property and thus the applicants may not have sufficient legal interest to execute any grant of permission, it is not the function of the Board to adjudicate on matters such as contract law. The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that *'A person shall not be entitled solely by reason of a permission under this section to carry out any development'* and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property interests. It is not the function of the Board to adjudicate on property disputes and should a party consider that any grant of permission cannot be implemented because of landownership or title issues, then Section 34(13) of Act is relevant.

#### **7.6. Appropriate Assessment:**

- 7.6.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, 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 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, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

## **9.0 Reasons and Considerations**

1. Having regard to the established pattern of development in the area, and the size and configuration of the site and its relationship with adjoining properties, it is considered that the proposed development, by reason of its overall design and proximity to the site boundaries, would represent overdevelopment of a restricted site; would be contrary to the guidance set out in the Dún Laoghaire Rathdown County Development Plan, 2016-2022 under section 8.2.3.4(v) in relation to the development of corner / side garden sites as regards its relationship with neighbouring dwellings and the absence of side gable access / maintenance space, and would result in an unacceptable reduction in the established levels of residential amenity of the neighbouring property to the immediate north by reason of its overbearing appearance. The proposed development would, therefore, seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

5<sup>th</sup> January, 2022