



An
Bord
Pleanála

Inspector's Report 311939-21

Development

Demolition of existing detached dwelling, construction of new detached dwelling, new pedestrian access, widening/realignment of vehicular access and all associated works.

Location

211 Mount Prospect Avenue, Dublin 3.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3383/21

Applicant(s)

Aine & Martin Commins

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party v. Decision

Appellant(s)

Observer(s)

John McDonagh & Caitriona Gahan

Date of Site Inspection

5th September 2022

Inspector

Louise Treacy

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1,100 m² and is located at No. 211 Mount Prospect Avenue, Dublin 3. The site is located on the southern side of Mount Prospect Avenue and faces towards St. Anne's Park to the north. The street is characterised by a variety of dwelling types and styles, including bungalows, dormer bungalows and 2-storey dwellings, which are set back from the public road, with off-street car parking to the front.
- 1.2. The existing development on the site is a detached, 2-storey dwelling with a single-storey rear extension / return. The dwelling is finished in pebble-dash render to the front and rear. Off-street car parking is in place to the front, with the site boundary adjacent to the public footpath comprising a pebble-dash wall with rendered plinth and capping, with a combined vehicular/pedestrian entrance defined by pillars on either side. Mature trees and shrubs extend to the rear of the front boundary within the subject site. A public footpath and a grass verge with intermittent mature trees extend along Mount Prospect Avenue, with 1 no. mature tree located directly to the north-east of the subject site. The property has a large rear garden of approx. 42 m in length.
- 1.3. The neighbouring dwellings to the east at No. 213 Mount Prospect Avenue and to the west at No. 209 Mount Prospect Avenue are also detached, 2-storey dwellings.

2.0 Proposed Development

- 2.1. The proposed development will consist of:
 - (i) Demolition of existing detached, 5-bedroom dwelling.
 - (ii) Construction of a new 2-storey, detached 5-bedroom dwelling with attic accommodation.
 - (iii) Attic level to have associated dormers to front and rear of dwelling.
 - (iv) New pedestrian access, realignment and widening of existing vehicular access to front of dwelling.
 - (v) All associated windows, landscaping, drainage and all associated site works necessary to facilitate the development.

- 2.2. The proposed dwelling has a stated floor area of 556 m² and will accommodate 2 no. sitting rooms, a playroom, utility room, cloakroom / bathroom and an open plan kitchen/living/dining room at ground floor level, 4 no. double bedrooms with ensuites at 1st floor level and 1 no. double bedroom with ensuite and a gym with w.c. and sauna at attic level to the front of the proposed dwelling.
- 2.3. The proposed development generally extends across the full width of the site to the front, with a pedestrian access of c. 1.3 m proposed at either side. The 2-storey return steps further in, being set back from the boundary with No. 209 Mount Prospect Avenue by approx. 2.8 m and from the boundary with No. 213 Mount Prospect Avenue by between approx. 2.2 m and 2.8 m. The proposed development has an overall depth of 25.8 m within the site.
- 2.4. All of the building façades are proposed to be finished in brick. The roof has a hipped profile, with centrally located flat components to the front and rear. The roof profile is characterised by 2 no. dormer windows to the front and a larger single dormer to the rear serving the proposed double bedroom at attic level.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission for the proposed development subject to 12 no. conditions issued on 18th October 2021.
- 3.1.2. Condition no. 5 states that no flat roofed area shall be used or accessed as a roof garden whether or not it would be exempted development.
- 3.1.3. Condition no. 6 requires the side elevation windows above ground floor to be permanently glazed with obscure glass.
- 3.1.4. Condition no. 11 states that the attic shall not be used for human habitation unless it complies with Building Regulations.
- 3.1.5. All other conditions are generally standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. Basis of Planning Authority's decision.

3.2.3. Other Technical Reports

3.2.4. **Engineering Department – Drainage Division:** No objection to the proposed development subject to conditions.

3.3. Prescribed Bodies

3.4. **Irish Water:** None received.

3.5. Third Party Observations

3.5.1. One observation was made on the application by Jim Brogan Planning and Development Consultant on behalf of John McDonagh and Caitriona Gahan of No. 213 Mount Prospect Avenue, Clontarf, Dublin 3. The observer's property adjoins the subject site to the east.

3.5.2. The issues which are raised can be summarised as follows: (1) existing and proposed site plan drawings do not comply with Planning Regulation requirements, (2) the development does not comply with the Z1 land use zoning objective, (3) no case presented for building demolition, with no net increase in housing stock arising, (4) proposed dwelling would conflict with existing streetscape character and established pattern of development, (5) impact on rear patio of the observers' property, (6) sunlight impacts, (7) overlooking, (8) boundary treatments unclear, (9) no construction and demolition management plan.

4.0 Planning History

4.1. No relevant recent history.

5.0 Policy and Context

5.1. Dublin City Development Plan 2016-2022

5.2. Land Use Zoning

- 5.2.1. The site is subject to land use zoning 'Z1' (Sustainable Residential Neighbourhoods) which has the objective "to protect, provide and improve residential amenities". Residential land uses are permissible under this zoning.

5.3. Housing

- 5.3.1. **Policy QH21:** To ensure that new houses provide for the needs of family accommodation with a satisfactory level of residential amenity, in accordance with the standards for residential accommodation.
- 5.3.2. **Policy QH22:** To ensure that new housing development close to existing houses has regard to the character and scale of the existing houses unless there are strong design reasons for doing otherwise.

5.4. Demolition and Re-use of Housing

- 5.4.1. The demolition of existing housing is generally discouraged on sustainability grounds as it may lead to a loss of residential accommodation and streetscape character.
- 5.4.2. **Policy QH23:** To discourage the demolition of habitable housing unless streetscape, environmental and amenity considerations are satisfied, and a net increase in the number of dwelling units is provided in order to promote sustainable development by making efficient use of scarce urban land.

5.5. Sustainable Design

- 5.5.1. Section 16.2.1.2 of the development plan states that the re-use of existing buildings should always be considered as a first option in preference to demolition and new-build to minimise the waste embodied energy in existing structures.

5.6. Infill Development

- 5.6.1. It is particularly important that proposed development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape. Dublin City Council will seek, inter alia, to ensure that infill development

respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape

5.7. Road and Footpath Standards for Residential Development (Appendix 5)

- 5.7.1. Where driveways are provided, they shall be at least 2.5 m or, at most, 3.6 m in width, and shall not have outward opening gates.

5.8. Natural Heritage Designations

- 5.8.1. None.

5.9. EIA Screening

- 5.9.1. Having regard to the nature and scale of the proposed development, comprising 1 no. replacement residential dwelling on zoned urban land, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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 third-party appeal against the Planning Authority's Notification of the Decision to Grant Permission for the proposed development has been lodged by Jim Brogan Planning and Development Consultant on behalf of John McDonagh and Caitriona Gahan, No. 213 Mount Prospect Avenue. The appellants' property adjoins the subject site to the east. The grounds of appeal can be summarised as follows:
- The proposed development will cause serious injury to the residential amenities of the appellants' property and will result in the depreciation in the value of their home.
 - The planning application should be declared invalid as the existing and proposed site plans are unclear.
 - The principal private amenity space within the appellants' garden comprises a patio space adjacent to the proposed development site. The existing

development adjoining this space is a single-storey, hipped roof structure. The replacement development which is proposed at this location is 2-storeys in height and will extend for almost the full length of the appellants' rear garden.

- The proposed 2.5 m glazed openings to the ground floor, south-eastern elevation of the house face onto the appellants' property, with no detail provided regarding the demarcation of the party boundary to avoid overlooking.
- In the event planning permission is granted for the proposed development, the 1st floor windows in the south-eastern elevation of the house should be permanently obscured, high level or non-opening in the interests of protecting the appellants' privacy.
- Condition no. 5 prohibiting the use of any flat roof area as a roof garden should be re-imposed by the Board.
- The proposed development will have a visually oppressive and overbearing impact on the appellants' property due to its excessive height, depth and limited clearance from the shared boundary.
- The proposed development will have a serious adverse impact on the amenity of the appellants' patio / rear garden and habitable rooms at ground floor level.
- The proposed development, by reason of its excessive mass, height and depth, will seriously diminish the amount of sunshine received from the south / south-west to the rear of the appellants' home / garden.
- The proposed development will conflict with the site's Z1 land use zoning objective.
- Planning permission should not be granted in the absence of a Construction / Demolition Management Plan.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted by Hughes Planning & Development Consultants on behalf of the applicants on 13th December 2021 which can be summarised as follows:

- The proposed development will have a minimal impact on surrounding dwellings as the design is consistent with the pattern of development in the area and respects residential and visual amenities.
- A number of precedents exist for similar proposals in the Clontarf area as granted by Dublin City Council and An Bord Pleanála (7 no. cases identified).
- The existing dwelling is not a Protected Structure, and the site is not located in an Architectural Conservation Area.
- The development is consistent with development plan standards.
- The planning application drawings and accompanying information complies with Building Regulation requirements and was deemed to comprise a valid application by Dublin City Council.
- The height and scale of the proposed development is acceptable given the site location and surrounding context.
- The proposed development would not detrimentally impact on the amenity of No. 213 Mount Prospect Avenue as a result of sunlight, given that the dwelling is north-south facing.
- The existing hedge along the eastern site boundary, together with the building set-back and off-set 2-storey element, will screen the development from the appellants' property.
- The development as proposed would not give rise to overlooking or loss of privacy to any extent. However, should the Board decide to grant planning permission in this instance, the applicants are willing to accept condition no. 6 as attached by the Planning Authority regarding the provision of obscure glazing at 1st floor level.

- The submission of a Construction Management Plan is not required but this matter can be addressed by planning condition if deemed appropriate by An Bord Pleanála.

6.3. **Planning Authority Response**

6.3.1. None received.

6.4. **Observations**

6.4.1. None.

7.0 **Assessment**

7.1. The main issues for consideration in this case include:

- Impact on Residential Amenities
- Vehicular Entrance
- Compliance with Planning Regulations
- Appropriate Assessment

7.2. Each of these issues is considered in turn below.

7.3. **Impact on Residential Amenities**

7.3.1. The appellants' primary concerns in relation to the proposed development relate to its bulk, height and scale and the potential for overbearing, overshadowing and overlooking impacts to arise to their property.

7.3.2. In considering the foregoing, I note that the proposed development has a stated floor area of 556 m² and will replace the existing dwelling of 290 m². The proposed dwelling is 2-storeys in height and extends across the front of the site to a width of approx. 16 m, with a pedestrian access of approx. 1.3 m proposed on either side. The proposed 2-storey returns steps further in from the site boundaries, being set back from the boundary with No. 209 Mount Prospect Avenue by approx. 2.8 m and from the boundary with No. 213 Mount Prospect Avenue by between approx. 2.2 m and 2.8 m. The overall depth of the proposed dwelling within the site is 25.8 m.

- Overlooking

- 7.3.3. In considering the potential for overlooking impacts to arise, I note that the appellants are concerned that overlooking of their property will arise from the proposed 2.5 m high glazed openings at ground floor level of the south-eastern elevation of the proposed dwelling. The appellants submit that no details have been provided in relation to the proposed demarcation of the party boundary. In the event planning permission is granted in this instance, the appellants also submit that the proposed 1st floor windows should be permanently obscured, high level or non-opening in the interests of protecting their privacy.
- 7.3.4. In my opinion, no overlooking will occur from the proposed ground floor glazing panels in the south-eastern elevation of the proposed dwelling. The shared boundary between the applicants' and appellants' property is characterised by a timber fence, which is divided by a section of mature hedging directly adjacent to the single-storey return of the existing dwelling. The applicants' agent has confirmed that this hedge will be retained for the purposes of visual screening. In my opinion, no overlooking can occur in this context.
- 7.3.5. The 3 no. proposed 1st floor windows to the south-eastern elevation of the dwelling serve walk-in wardrobes, while the 3 no. 1st floor windows on the north-western elevation serve bathrooms. Condition no. 6 of the Planning Authority's Notification of the Decision to Grant Planning Permission requires that these windows be permanently glazed with obscure glass, and I consider that this requirement is reasonable to avoid overlooking of the neighbouring properties. This matter can be addressed by planning condition in the event the Board grants planning permission for the proposed development.
- 7.3.6. While I note that condition no. 5 of the Planning Authority's decision states that no flat roof area shall be used or accessed as a roof garden, I note that planning permission has not been sought for the use of these areas as amenity spaces. I further note that these areas are not directly accessed from within the dwelling, and as such, I consider that the reattachment of this condition as requested by the appellants is unnecessary in this instance.

- Overbearing Impacts

7.3.7. In considering the potential for overbearing impacts to arise to the appellants' property, I acknowledge that the proposed dwelling has a larger building footprint and depth compared to the existing. The site plan drawing which accompanies the planning application confirms that the overall depth of the existing dwelling adjacent to the appellants' property is 18.5 m, compared with a proposed depth of 25.8 m. The height of the development as it extends beyond the rear building line of the existing dwelling will also increase from 1 to 2-storeys adjacent to the shared boundary. However, I also note that the existing single-storey structure on the site is located directly adjacent to the shared boundary with the appellants' property, while the 2-storey return of the proposed dwelling steps back by between 2.2 m and 2.8 m. I also note that the proposed dwelling has a hipped roof profile fronting onto the shared boundary and that the existing hedge will offer some screening to the proposed development.

7.3.8. On balance, while I acknowledge that the proposed building height and depth will increase compared to the existing context, I consider that this scale of development can be accommodated on the subject site having regard to the size site and context and that of the appellants' property. As such, I am satisfied that no undue overbearing impacts would arise to the appellants' property which would warrant a refusal of planning permission in this instance.

- Overshadowing Impacts

7.3.9. The appellants submit that the proposed development would seriously diminish the amount of sunshine received from the south / south-west to the rear of their home and garden by reason of its excessive mass, height and depth. In response to the foregoing, the applicants' agent submits that the proposed development would not detrimentally impact on the amenity of the appellants' property given that the proposed dwelling is north-south facing.

7.3.10. I note that a shadow analysis has not been submitted with the planning application. I also note that the appellants' property is located to the east / south-east of the appeal site, and as such, will continue to receive uninterrupted sunshine in the morning and early afternoon. While I acknowledge that some overshadowing impacts may arise to the appellants' property in the late afternoon / evening as the

sun moves around to the west, I consider that the extent of impact which would arise would not be unacceptable having regard to the proposed set-back of the 2-storey return of the proposed dwelling from the shared boundary and the extent of the rear amenity space within the appellants' property.

7.4. Vehicular Entrance

- 7.4.1. The proposed development also includes the widening of the existing combined vehicular/pedestrian entrance to the front of the subject site and the provision of a vehicular entrance of 3.4 m with a sliding automatic gate and a separate, inward opening pedestrian entrance of 1.27 m.
- 7.4.2. The Transportation Planning Division of Dublin City Council recommended that the width of the vehicular entrance be reduced to 3 m and considered that the applicants had not demonstrated that exceptional site conditions exist to warrant the widening of the entrance. Based on the foregoing, and the presence of a nearby street tree, it was recommended that the width of the vehicular entrance be reduced as reflected in condition no. 3 (a) of the Planning Authority's Notification of the Decision to Grant Permission.
- 7.4.3. In my opinion, it would be unreasonable to restrict the width of the proposed vehicular entrance to 3 m given that development plan standards permit a maximum width of 3.6 m. While I note the concerns of the Transportation Planning Division regarding the nearby street tree, I note that this tree is located just beyond the property boundary, to the front of the neighbouring dwelling at No. 213 Mount Prospect Avenue. I also note that there are vehicular entrances more proximate to street trees to the east of the subject site, including to the front of Nos. 213 and 215 Mount Prospect Avenue and a laneway extending between these 2 no. properties. In my opinion, measures to protect the tree adjacent to the appeal site could reasonably be agreed with the Planning Authority prior to the commencement of development. This matter can be addressed by planning condition.

7.5. Compliance with Planning Regulations

- 7.5.1. The appellants' comments regarding the compliance of the application with the requirements of the Planning and Development Regulations, 2001 (as amended) have been considered. Having undertaken an inspection of the site, I am satisfied

that the information which has been provided with the application is adequate for the purposes of undertaking this planning assessment.

7.6. Appropriate Assessment

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

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the proposed development.

9.0 Reasons and Considerations

- 9.1. Having regard to the Z1 residential land use zoning of the site, the site size, and the variety in the design and type of the existing residential developments in the vicinity of the subject site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
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	Reason: In the interest of clarity.
2.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.</p>
3.	<p>(a) The roof of the proposed dwelling shall be blue-black or slate-grey in colour throughout.</p> <p>(b) A sample of the brick finish to be used on the external walls, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>The developer shall liaise with the Planning Authority (Transportation Planning Division) prior to the commencement of development regarding any measures which may required to protect the street tree on the grass verge to the north-east of the application site for the proposed widening of the vehicular entrance.</p> <p>Reason: In the interest of proper planning and sustainable development.</p>

5.	<p>The proposed 1st floor windows to the side elevations of the proposed development shall be permanently maintained in obscure glazing.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<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>
7.	<p>Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 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>

Louise Treacy
Senior Planning Inspector

8th September 2022