



An  
Bord  
Pleanála

## Inspector's Report ABP-312075-21

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<b>Development</b>	House
<b>Location</b>	21a Lullymore Terrace, Dublin D08 C2H7
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3468/21
<b>Applicant</b>	Tzu-Ern Yu
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Party vs. Grant
<b>Appellants</b>	Edward Donnelly, Frank Donnelly, Yvonne Judge, Ray Tighe, Peter O'Loughlin and Gillian Todd
<b>Observers</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> March 2022
<b>Inspector</b>	Stephen J. O'Sullivan

## 1.0 Site Location and Description

- 1.1. The site is in an inner-suburban area c2.5km south of Dublin's city centre that is largely occupied by late Victorian and Edwardian houses. It consists of a L-shaped backland plot occupied by a vacant shed and ancillary structures. It has a stated area of 250m<sup>2</sup>. The structures on the site have a stated floor area of 221m<sup>2</sup>. The site includes an access strip from Lullymore Terrace to the south. That street runs parallel to the Grand Canal. The site also has access to a laneway that runs to the east towards Donore Avenue. The main part of the site adjoins along the back of the curtilage of terraced houses along Lullymore Terrace to the south, St. Anne's Road to the west and the South Circular Road to the north. The access within the site runs between the side of the end-of-terrace house at 21 Lullymore Terrace and a detached domestic garage.

## 2.0 Proposed Development

- 2.1. It is proposed to demolish the existing structures on the site and build a 2-storey house of modern design with a stated floor area of 309m<sup>2</sup>. This would include a garage and covered walkway along the part of the site that is currently an access lane from Lullymore Terrace. A pedestrian access would be provided to the laneway to the east of the site.

## 3.0 Planning Authority Decision

### 3.1. Decision

The council decided to grant permission subject to 10 conditions, none of which significantly altered the proposed development.

### 3.2. Planning Authority Reports

### 3.3. Planning Reports

The proposed development is in keeping with the Z1 residential zoning of the site. A bat survey found no bats in the existing structure, so its demolition is acceptable. The proposed plot ratio and site coverage would be acceptable. The house would

have adequate natural light and habitable space. A submitted assessment demonstrates that the proposed development would not result in the open spaces of adjoining properties falling below the standard of 50% of the space having at least 2 hours potential sunlight on 21<sup>st</sup> March set out in the BRE guidance. It is therefore accepted that the proposed development would not unduly overshadow other properties. While the open space for the proposed house may not meet this standard, its overall standard of amenity is acceptable. The access from Lullymore Terrace to the site is private and in the applicant's control. It would provide sufficient in-curtilage parking width and depth. The access to Donore Avenue is only 1.7m wide and so would be for pedestrian use only. The heights of the proposed structures and their separation distances from adjoining properties are reviewed. These details mean that it is unlikely that the proposed development would have a negative impact on the amenities of adjoining property in terms of overshadowing, overlooking or overbearing. The gate on Lullymore Terrace is the only interaction with the streetscape and it is unlikely that the proposed development would injure the character of the area or the conservation area along the Grand Canal. The proposed house is an appropriate resolution of the previous industrial use of the site. A grant of permission was recommended.

#### 3.3.1. Other Technical Reports

The Roads Division stated that it had no objection subject to conditions.

The Drainage Division stated that it had no objection subject to conditions.

#### 3.4. **Third Party submissions**

Nine submissions was made that objected to the proposed development on grounds similar to those raised in the subsequent appeal.

### 4.0 **Planning History**

There is no relevant recent planning history on the site.

## 5.0 Development Plan

5.1. **Dublin City Development Plan 2016-2022** –The site is zoned for to protect and improve residential amenity under objective Z1. The curtilages of the houses to the north along the South Circular Road as zoned for residential conservation under objective Z2. The part of the site that provides access to Lullymore Terrace is within the non-statutory conservation area designated by the development plan along the Grand Canal.

Section 16.2.2.2 of the plan refers to infill development, section 16.10.8 refers to backland development while section 16.10.10 refers to infill housing. They set out the potential for such development while recognising the need to protect existing amenities.

## 5.2. Natural Heritage Designations

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal was submitted by the occupants of the houses at Nos. 18 to 21 Lullymore Terrace to the south of the site and no. 2 St. Anne's Road to its west. The grounds of the appeal can be summarised as follows-

- The proposed development is excessive in scale, design and mass. It would seriously injure the amenities and depreciate the value of the appellants' properties. It would be out of keeping with the character of the area which includes the conservation area along the Grand Canal. As such it would contravene the provisions of the development plan including the zoning of the site and section 16.10 regarding infill housing. The council were wrong to consider the previous use of the site.
- The boundary of the site with the appellants' properties along Lullymore Terrace is currently marked by a wall 2.515m high. The proposed

development would replace this with a wall 2.96m high along the ground floor of the house and 2.7m high along the proposed covered walkway. The wall of the proposed house at first floor level would be only 1.6m from the appellants' property and would have a variable height of up to 8.28m above the level of their gardens. This element of the development would be visually obtrusive and would overbear the appellants' properties unduly diminishing their enjoyment of their houses and gardens. As such it would seriously injure their residential amenities. The covered walkway would overbear and overshadow the courtyard at 21 Lullymore Terrace and unduly diminish the light that it would provide to that house. The proposed development would overlook properties to the west of the site. The proposed visual screen along the east and west of the house would not be effective. The proposed development would therefore be contrary to the Z1 zoning objective that applies to the site. The council were wrong to conclude that the development seeks to reduce its overall scale and height, which are excessive and contrary to the designation of a conservation area along the Grand Canal.

- The proposed development would result in serious traffic hazard. The vehicular access would be from a narrow lane opening onto Lullymore Terrace that would require cars to reverse. The road network in the area is narrow. No traffic assessment or autotrack drawings were submitted with the application. Neither was a construction management plan. Given the threat to the appellants' properties' amenity, it is not acceptable to leave construction details to be agreed under a condition.
- The application did not adequately consider daylight and sunlight. It is not acceptable that the open space for the proposed house does not meet the requisite standard. The impact on the daylight at the courtyard and the house at No. 21 Lullymore Terrace was not properly considered. The appellants do not accept the submitted results for their back gardens.
- The failure to provide a safe access or to respect the character of the area and amenities of other properties means that the proposed development would contravene section 16.10.8 of the development plan.

- The site was previously used for motor repairs. The application did not include sufficient information regarding possible contaminants on the site or the potential impact on the structural integrity of the appellants' properties.
- There are numerous bats along the Grand Canal including Leisler's Bat. The submitted bat surveys are inadequate.

## 6.2. Planning Authority's Response

None received.

## 6.3. Applicant's Response

The response can be summarised as follows-

- The proposed development would be in keeping with various national policies and the provisions of the development plan, including the Z1 zoning of the site and sections 16.2.2.2, 16.10.8 and 16.10.10. Adequate open space of 79m<sup>2</sup> would be provided for the house. It would not be prominent from the Grand Canal and would not affect the conservation area there. A report from a conservation architect to this effect is appended. Various previous permissions for infill houses in the city are referenced.
- The scale of the proposed house and its distance from neighbouring houses mean that it will not have a significant negative impact upon them. The assertions to the contrary in the appeal are misconstrued. The proposed house would not be visually obtrusive and would not overbear adjacent properties. There are no first floor windows in the southern elevation, and the one on the western elevation is a high level window to prevent overlooking.
- The proposed development would not give rise to traffic hazard. There was no objection from the council's road department. A two-bedroom house with one car parking space will give rise to very little extra traffic. The applicant does not intend to use the car parking space anyway, but it was included in the proposal to meet the council's standards. The construction phase will be carried out in accordance with best practice in line with a plan agreed with the council. A preliminary plan is submitted with the response to the appeal.

- The proposed house would not have an undue impact on the daylight and sunlight available to other properties. It would be to the north of 21 Lullymore Terrace and so would not cast a shadow on that property. The proposed development would provide a good quality of open space for its occupants.
- The proposed development meets the criteria for infill development set out in sections 16.10. of the development plan regarding scale, design and character, as well as access and the amenities of neighbouring properties.
- The proposed use is in keeping with the zoning of the site. It should not be constrained by any previous use of the site. The preliminary construction management plan sets out how any contaminated material might be dealt with.
- A second bat survey is submitted.

#### 6.4. Further Response

The appellants response to the applicant's response can be summarised as follows-

- The appellants maintain all their original grounds of appeal and nothing in the applicant's response has altered their position. The grounds of appeal are reiterated on various topics.
- None of the previous permissions cited in the applicant's response reflect the circumstances of the current site or justify granting permission for the proposed development. It is spurious to suggest that any exceptional design merit in the current proposal justifies a grant of permission in a conservation area.
- The proposed development will seriously injure the amenities of the appellants' properties. Figure 25 in the response is misleading. The distances to the appellants' properties are re-stated. The development would have a very negative impact on the courtyard at 21 Lullymore Terrace. The proposed development should be refused on the basis that its open space would not have adequate daylight.
- The board should not accept the applicant's proposal for a car free development.

## 7.0 **Assessment**

7.1. The planning issues arising from the proposed development can be addressed under the following headings –

- Policy
- Impact on the character of the area
- Impact on the amenities of adjacent properties
- Standard of amenity for proposed occupants
- Access and parking
- Other issues

### 7.2. **Policy**

7.2.1. The site is zoned for residential use, as are the adjoining sites. The established use of the site, for motor repairs, does not conform to that zoning. The proposed development of a house would conform with the zoning. The proposed development is therefore in keeping with the zoning of the site, and would contribute to the achievement of the Z1 objective applied to the site by the development plan. It is therefore supported by applicable planning policy .

7.2.2. Sections 11.2.2.2, 16.10.8 and 16.10.10 of the development plan recognise the potential for sites in previously built-up urban areas with limited street frontage to accommodate new residential development. These provisions support the principle of the proposed development. They require that such new development does not injure the character and amenities or the safety of road users in the area in which they would be located. These criteria are considered below.

### 7.3. **Impact on the character of the area**

7.3.1. The established character of the area is established by the Victorian and Edwardian housing there, and by the water and vegetated banks of the canal. The proposed development would be of modern design and so would be different from the structures around it. However its scale and position mean that it would not be visually prominent from the surrounding streets or the canal. It would not have a significant effect on the historic character of the area, therefore. In particular it would



not have any negative effect on the conservation area designated under the development plan along the Grand Canal or the residential conservation area in the Z2 zone along the South Circular Road. The assertions to the contrary in the submitted appeal are unfounded.

- 7.3.2. The proposed development would replace an unsightly and vacant functional structure with a house designed to a reasonable architectural standard. Although the new house would be higher than the existing structure, its scale, design and massing are appropriate. The assertions to the contrary in the submitted appeal are not accepted. The development would therefore improve the appearance of the site in the close views from the surrounding properties and laneway in which the proposed house would appear.
- 7.3.3. It is therefore considered that the proposed development would have a positive impact on the character of the area.

#### **7.4. Impact on the amenities of adjoining properties.**

- 7.4.1. The submitted appeal argues that the proposed house would be overbearing and visually obtrusive in views from the appellants' properties due to its scale, design and massing. The proposed house would certainly give rise to a significant change in the outlook from those properties. This ground of appeal has a reasonable basis and should be given due consideration by the board. The drawings and other particulars submitted with the application are adequate to allow such consideration, contrary to the assertions in the appeal. After consideration of the submissions and other material relevant to the applicant and appeal, I would agree with the position of the planning authority and the applicant. Given the scale and design of the proposed development and its position relative to the boundaries of the site and adjacent properties, I do not consider that it would be visually obtrusive or overbearing when viewed from other properties.
- 7.4.2. The proposed development would not unduly overlook or other properties and would not seriously injure their privacy. The assertion to the contrary in the appeal is not well founded and is not accepted.
- 7.4.3. The proposed house would be located to the north of the residential properties along Lullymore Terrace. It would not overshadow those properties or unduly deprive them on natural light. The extent of the house on the north-south axis is limited, and so

the proposed house would not unduly overshadow the properties to the east or west of the site either. The proposed house would maintain a reasonable separation distance from the houses to the north along South Circular Road for a structure of its size and so would not unduly overshadow those properties. The application was accompanied by a daylight and sunlight analysis which provides useful data and technical analysis to assist in the consideration of the issues relating to natural light. The appellants did not provide equivalent data or analysis that would support their contrary assertions on the matter.

7.4.4. The house at No. 21 Lullymore Terrace has a short section of low wall along the boundary with the part of the site that provides access to the main part of the site. The structures at No. 21 Lullymore Terrace on either side of that short section of low wall are higher. The proposed development would include a roof structure covering the walkway from the proposed garage to the main house adjacent to that part of the low wall on the shared site boundary at a height of 2.4m over the level of the walkway. This structure could have some impact on the light reaching the adjoining courtyard at No. 21 Lullymore Terrace and the outlook from it. However given the low height of the cover over the walkway and the short extent of the boundary where it could possibly have an impact, I am satisfied that it would not seriously injure the amenities of the neighbouring property. The board may wish to consider omitting the cover over the walkway. However I would not consider this to be a necessary intervention in the proposed development given that the cover would be lower than the rest of the walls erected on the shared boundary on the property at No. 21 Lullymore Terrace including those to the rear of the original terrace.

7.4.5. Having regard to the foregoing, it is concluded that the proposed development would not seriously injure the amenities of property in the vicinity of the site. As such it would not tend to depreciate their value either.

## 7.5. **Standard of amenity for occupants**

7.5.1. The proposed development would provide a reasonable standard of amenity for its proposed occupants in relation to internal accommodation and private open space. It would be unreasonable and disproportionate to refuse permission on the basis that the position of the open space to the north and east of the house reduces the amount of direct sunlight it would receive. Contrary to the assertions in the appeal,

such a refusal would not be in keeping with the material considerations for the current application and appeal set out in national planning policy and the city development plan, nor would be in keeping with the proper planning and sustainable development of the area.

## **7.6. Access and parking**

- 7.6.1. The site has a vehicular access from Lullymore Terrace that serves its established and authorised use for the repair of motor vehicles. The proposed development of a house on the site would lead to a significant reduction in the use of that access by traffic. Given these circumstances the assertion in the appeal that the proposed development would give rise traffic hazard or obstruction is without foundation. There would be no reasonable basis to refuse permission or significantly amend the proposed development due to its impact on road safety or traffic movements. The existing accesses to the site would also be adequate to allow the proposed house to be constructed without unduly injuring the amenities of adjoining properties. The draft construction management plan submitted with the applicant was adequate in this regard and may be cited in the conditions attached to a grant of permission.

## **7.7. Other issues**

- 7.7.1. The structures on the site are functional commercial structures similar to sheds. The circumstances of the site do not give grounds to support a conclusion that the carrying out of the proposed development poses any particular or exceptional threat to the integrity of any structure on adjacent sites greater than that which would arise for any development in an urban area. The established use of the site for motor repairs may have resulted in residues of hydrocarbons on the site. However the applicant has submitted reasonable proposals to deal with this matter. The site is a vacant repair garage in an urban area. It is not designated for the protection of natural heritage. It has been surveyed and found not to contain bat roosts. None of the assertions made in relation to these issues in the submitted appeal would support a conclusion that the proposed development was contrary to the proper planning and sustainable development of the area or justify a refusing permission, seeking further information or making significant amendments to the proposed development. The proposed development does not raise any appropriate

assessment issues, and the potential for any significant effect on the environment can be excluded at preliminary examination stage.

## 8.0 Recommendation

8.1. I recommend that permission be granted subject to the conditions set out below.

## 9.0 Reasons and Considerations

Having regard to the policies and objectives of the Dublin City Development Plan, 2016-2022, including the Z1 residential zoning objective that applies to the site and the provisions regarding infill and backland development in sections 16.2.2.2, 16.10.8 and 16.10.10 of the plan, as well as to the pattern of development in the area, it is considered that the proposed development would be in keeping with the established character of the area, would provide a suitable standard of amenity for its occupants, would not seriously injure the amenities of property in the vicinity of the site, would not injure the architectural or natural heritage of the area and would not give rise to traffic hazard. Therefore, subject to compliance with the conditions set out below, the proposed development would be in keeping 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 commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity

2. The construction of the development shall be managed in accordance with a final Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The final plan shall be based in the preliminary plan submitted to the board on 5<sup>th</sup> January 2022 and shall provide details of intended construction practice for the development, including access and parking for vehicles, noise management measures and off-site disposal of construction/demolition waste. The hours of working shall be between 0700 and 1900 Monday to Friday and 0800 and 1400 on Saturday, unless the prior written agreement of the planning authority to works outside these hours has been obtained. The footpath across the entrance to the proposed development from Lullymore Terrace shall be repaired and reinstated to the satisfaction fo the planning authority upon completion of the proposed development.

**Reason:** In the interests of public safety and residential amenity

3. Prior to the commencement of development the developer shall submit for the written agreement of the planning authority details of the external materials and finishes of the permitted structures and of the landscaping and boundary treatment of the site.

**Reason:** In the interests of visual amenity

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health

- 5 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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 the 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.

**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.

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Stephen J. O'Sullivan

Planning Inspector

19<sup>th</sup> March 2022