



An  
Bord  
Pleanála

## Inspector's Report ABP 312369 - 22.

<b>Development</b>	Retention for alterations to house from previous application 3316/19, construction of a retaining wall and all ancillary site development works and services.
<b>Location</b>	Immediately adjacent to and south of No. 122 Rathfarnham Road, Terenure, Dublin 6w.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3632/21
<b>Applicant(s)</b>	Padraig and Ciara Corrigan.
<b>Type of Application</b>	Retention and permission
<b>Planning Authority Decision</b>	Split Decision.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	1. David Graham 2. Eimear and Michael O'Doherty
<b>Observer(s)</b>	1. Mark and Nikki Kane 2. Brian O'Rourke

**Date of Site Inspection**

03/06/22.

**Inspector**

Fiona Fair.

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## 1.0 Site Location and Description

- 1.1. The subject site formerly formed part of and is located immediately adjacent to and south of No. 122 Rathfarnham Road, Terenure, Dublin 6w. Permission was granted on foot of ABP-306149 (DCC3316/19) on the 09/06/2020 for alterations to No. 122, demolition of the detached garage and construction of a three-storey detached dwelling to the immediate south of No. 122 Rathfarnham Road.
- 1.2. The appeal site is located on the east side of the Regional Route R112 between the urban villages of Terenure and Rathfarnham approximately 6 kilometres south of Dublin City Centre. The subject site is located to the immediate north of the Dodder River. The R112 is a relatively busy radial route linking the outer suburbs of South County Dublin with Dublin City. The site is located between the junction of Rathfarnham Road and Westbourne Road and the River Dodder.
- 1.3. The subject site accommodates a three storey detached house with a side garden to the south of the house which slopes down, to the riparian woodland on the northern bank of the River Dodder. There is a pronounced slope, of some 7m, down to the northern banks of the River Dodder. The lands between the slope and the northern banks of the river accommodate a riparian mature woodland.
- 1.4. No. 122 Rathfarnham Road, the host dwelling, to the north of the subject appeal site, is a 1930s style detached structure with two-storey high circular bay windows. The house is on a higher ground level than the subject site.
- 1.5. The dwelling to be retained as part of the subject appeal application is of modern idiom architectural design 3 storey in height, finished in brown brickwork with a pitched slated roof, incorporating a number of blind windows to the front elevation. The gable facing south to the Dodder and Saint Agnes Terrace has windows at ground, first and third floor level in addition to a large expanse of glazing at ground floor.

## 2.0 Proposed Development

- 2.1. The development consists of/will consist of:

1. Retention permission for alterations and amendments to house in so far as is constructed which differs from that previously approved on foot of planning registry file reference 3316/19 (Site B) and including:

(i) "as built" minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm and

(ii) for the construction of a retaining wall consisting of gabion cages on sloping bank to south of house under construction on Lands zoned Z9 in Dublin City Councils Development Plan.

3. Permission is also sought to complete the development and all ancillary site development works and services.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Split decision.

Permission was granted for the retention of the previously granted alterations and amendments to the house in so far as it is constructed which differs from that previously approved on foot of planning registry file reference 3316/19 (Site B) and including:

(i) "as built" minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm.

Permission was refused for the retention of the construction of a retaining wall consisting of gabion cages on sloping bank to south of house under construction on Lands zoned Z9 in Dublin City Councils Development Plan in addition to permission to complete the development and all ancillary site development works and services.

Subject to 3 Conditions relating to:

- (i) standard first condition,
- (ii) development contribution condition and

- (iii) that the terms and conditions of the permission for the original development which was issued under Reg. Ref. 3316/19 shall be fully complied with, except where modified by this permission.

Permission refused for:

1. The retention of the retaining wall consisting of gabion cages and for the completion of these works is considered to have significantly impacted on the special character of this riparian strip adjoining the banks of the River Dodder due to the clearance and cutting back of existing trees, and the destruction of the understorey plants without the required arborist or ecological report and as such the works are considered to be contrary to the Z9 zoning objective of the site which is 'to preserve, provide and improve recreational amenity and open space and green networks' and would seriously impact on the amenity of the lands setting an unacceptable precedent for works of a similar nature.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The Planners report recommended a split decision with permission to be granted for the increase in height of the dwelling but that permission is refused for the retention of a retaining wall consisting of gabion cages on sloping bank to south of house under construction on lands zoned Z9 in Dublin City Councils Development Plan. Permission should also be refused to complete the development which was not previously granted under Ref. 3316/19 and all ancillary site development works and services.

#### 3.2.2. Other Technical Reports

- Drainage: - Drainage Division recommends seeking Additional Information. Permission should be withheld until satisfactory information is submitted and approved. The following shall be addressed:
  - An appropriate Flood Risk Assessment (FRA), in accordance with the OPW Guidelines and the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment, shall be submitted for the proposed development.

-The development is located adjacent to River Dodder, within Flood Zone A / B. There is a concern that the proposed reprofiling of site levels and provision of gabion walls may have an adverse impact on the river's floodplain and its storage capacity. Detailed assessment of the impact of proposed works shall be carried out and where required appropriate mitigation measures to be proposed (e.g. provision of compensatory storage etc.)

- A comprehensive engineering services report shall be submitted for the proposed development. This shall detail how foul and surface water from the development is proposed to be managed including:

- Full design details of the proposed soakaways shall be provided including details of overflow arrangements into public surface water network, if any overflows are proposed.

- Full details shall be provided on how the development intends to connect to IW sewer network / dispose foul water, as according to public drainage records there is no mains foul or combined sewer in the vicinity of the development.

- The Applicant shall consult with the Drainage Division of Dublin City Council prior to the submission of Additional Information to ensure all concerns are addressed.

### 3.3. Prescribed Bodies

- Irish Water: None Received
- Dept of Housing, Local Government and Heritage:

They make a submission to the application which recommends that the application be refused permission.

They note their previous submission to the parent permission Ref. 3316/19 and the concerns raised in relation to the riparian woodland strip and that the proposed development might encroach on it and have potential detrimental impacts on the protected species.

It is further noted that out of the 12 mature trees in the section zoned Z9, 10 were cut down to approx. half of their original size, as were the branches. 7 or more of the

trees 10 trees cut were in excess of some 100 years old and 50 or more feet high. The construction of the gabions has also resulted in the destruction of the bulk of the understorey plants which had survived beneath the truncated trees, and shows limited signs of regrowth. It is also noted that any re-growth would act to screen the adjacent river at night from any future shine from the windows in the side wall of the new house facing the river.

They consider that the application should be refused and that the gabions should be removed within the Z9 lands and to replant with suitable understorey plants which can be agreed. The issue of the condition of the remaining trees is also a concern and for an independent arborist should be engaged to assess their current condition.

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

A number of submissions (approx.19) have been received to this application; they range from local residents to Councillor Carolyn Moore of the Green Party, residents' associations and a representative of Native Woodland Trust.

The issues raised are summarised in the planning authority report as follows:

- Issues over the height and pitch of roof do not comply with the plans and particulars,
- Gable of development is oppressive and dominating.
- Third party considers works to trees are gratuitous and strategic butchery of the mature trees, and significantly impacts on the unique section of the north bank of the River Dodder.
- Works to river banks will and have significant impact on the habitat.
- Trees were meant to act as a natural barrier between the development and Pearse Bridge and the River Dodder.
- Bat survey originally not carried out as works were confined to level area with no trees or structures.
- AA screening incomplete given it did not include the Z9 lands.
- Development in breach of its planning permission.



- Concerns over archaeological monitoring which did not take into account the Z9 Riparian Woodland.
- The original fears over this development and its impact and potential destruction of the Riparian Woodland which are one of the rarest native woodland types and the destruction of the ancient landscape and the damage to the local ecology have materialised.
- Failure to comply with condition 7 of the Bord's decision which required tree protection measures, along with building debris and topsoil dumped on the sloping site which could cause further damage to the trees and putting the ecology of the River Dodder at risk.
- Statement that gabion cages are necessary due to nature and topography of the ground to the side of the house, was not previously stated during the original application process.
- All previous reports submitted with the original application did not include these works.
- Applicant should be required to conduct full remediation of the woodland to an equivalent ecological value.
- If permission was required prior to works it would have required as EIA, a determination as to whether an EIA is required or an AA.

## 4.0 Planning History

ABP306149-19 (DCC ref. 3316/19) Permission Granted to Padraig and Ciara Corrigan for alterations to house, demolition of detached garage and the construction of a 3-storey detached dwelling at 122 Rathfarnham Road, Terenure, County Dublin.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016-2022.

- 5.1.2. The lands on which the house to be retained is located are governed by the zoning objective Z1 with the objective to “protect, provide and improve residential amenities”. Residential development is permitted in principle under this zoning objective.
- 5.1.3. The contiguous lands to the immediate south of the subject site, on which the retaining wall is located, are governed by the zoning objective Z9 to preserve, provide and improve recreational amenity and open space and green networks. The Z9 riparian woodland between the subject site and the Dodder River is also a designated Conservation Area. Pearse Bridge is also listed on the RMP (DU022-0444-002).

## 5.2. Natural Heritage Designations

- South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) – approximately 5.4 Km distant at its closest point.
- Rockabill to Dalkey Island Special Area of Conservation (SAC) approximately 12.9 Km distant at its closest point.
- North Bull Island SPA – approximately 8.9 Km distant.
- South Dublin Bay Proposed Natural Heritage Area (PNHA) – approximately 5.4 Km distant.
- North Dublin Bay PNHA – approximately 8.3 Km distant.
- Grand Canal PNHA – approximately 2.8 Km distant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The decision was appealed by the owners of 24 Westbourne Road and 120 Rathfarnham Road, Dublin 6 (the dwelling to the immediate north of no. 122 Terenure Road).

- 6.1.1. The appeal received from Eimear and Michael O’Doherty of No. 120 Rathfarnham Road is summarised as follows:

- Red line boundary is revised and excludes the existing dwelling.
- Concern with regard to the conditions of the parent permission being adhered to.
- Split decision but no screening for AA. No reason is apparent as to why the increase in scale and height of the roof, was differentiated as not requiring AA screening, from that part of the development which was not previously granted.
- Possibility of significant effects by the development on the south Dublin Bay SAC, because the development site has now, as a result of the destruction of the riparian forest and the habitat the trees, created a direct hydrological pathway to the South Dublin Bay SAC.
- DCC Engineering Department Drainage Division Report, dated 19<sup>th</sup> October 2021 recommended seeking additional information.
- No consideration in the planners report of any consideration haven been given to the ecological pathway between the application site and the South Dublin Bay SAC
- No consideration has been given to section 34(12) of the Planning and Development Act, 2000, as amended.
- The projected height of the roof adds to the unusual commercial look of the house which does not integrate with the residential nature of the area and the character of the street in which it is located.
- The woodland riparian strip has been destroyed.
- Query how two planners reports are uploaded to the PA web site.
- Request that the development be refused in its entirety.

6.1.2. The appeal by David Graham, 24 Westbourne Road is summarised as follows:

- All the facts were not given due consideration by the PA.
- The increased height of the roof dominates the skyline and makes the dwelling more prominent and overbearing on dwellings in St. Agnes Terrace

- Due consideration has not been given to the points raised in respect of the increased roof height.
- The ridge height does not match the ridge height of the existing adjoining property.
- Evidence points to the fact there was nothing accidental / unintentional about the increased roof height.
- In the event that the Board are not minded to refuse the application to retain the raised ridge height as built, it is requested that an alteration / reconfiguration to the gable end of the new house is required to mitigate the visual effects of this part of the building and provide a degree of masking.
- Visuals included.

## 6.2. Applicant Response

6.2.1. A first party response was received from ABBD on behalf of the applicants O'Doherty and Graham. It is summarised as follows:

- The subject permission was designed to address the DCC issues enforcement notice dated 27<sup>th</sup> August 2021 and therefore the red line was marked to encompass these elements.
- The applicant is entitled to vary the red line boundary for subsequent applications in accordance with what is being applied for.
- It is submitted that the roof structure and in turn the mass and volume of the building were already screened for AA in the original application.
- It is questioned whether the gabion cages require AA screening as the site was previously screened taking into account the Sustainable Urban Drainage System installed on the site which will contain the majority of the surface water.
- It is submitted that the applicant acted in the correct professional manner by engaging an Arborist to advise on and a tree surgeon to carry out pruning / trimming on the trees. The applicant also kept the DCC representative informed of his actions and responded to any queries that they issued.

- Extensive trimming of trees doesn't automatically create a hydro-corridor.
- The hydro-corridor risk could have been assessed in the AA report that was submitted with the original application. It is concluded that this forms a rationale for why the planning officer did not raise this issue in the current application.
- There is no danger of potential adverse impact from the proposed development to the South Dublin Bay SAC via a hydro-corridor from the subject site, as the engineered and installed surface water network will deal with the majority of the volume of surface water generated on site.
- The applicant submits that an AA determination should have been made in the absence of a screening report.
- EIS is normally only related to large projects. This would only be required when the development thresholds set out in Schedule 5 of the Planning and Development Regulations 2001 – 2015 may be exceeded or this issue is unclear.
- An AA report had already been carried out for the original application that was granted planning permission with no major issues or risks flagged.
- The change in the height of the roof was an unintended mistake. It does not result in a significant impact of the integration of the house with the houses on Rathfarnham roads or from Westbourne or the Cottages.
- It is submitted that it is modern engineering techniques that have facilitated the development of this site with the foundation being specified as a reinforced concrete slab with gabions.
- There is precedent for a similar engineering solution approx. 650m from the subject site in relation to land stabilisation. The location of these structures in close proximity to the River Dodder demonstrates that the Council accept their use in other similar sensitive environments along the riverbank.
- When a building is being constructed on site unforeseen conditions can arise that require construction professionals to think on their feet and install an alternative that will carry out the same function as the measures specified at planning and construction drawing stage.

- The slope on this site is pronounced and while, a retaining wall was originally specified at planning stage, the site engineer concluded that this was inadequate and specified Gabions.
- Appeal to the Board to take into account the on-site difficulties relating to a sloped site such as this. The proposed house has been completed and integrates well into the surrounding streetscape. Its foundations are robust and has been signed off by the Engineer.
- It is anticipated that the riparian corridor will re-establish itself in time allowing the new house to further integrate with its surroundings.

### 6.3. Planning Authority Response

- None received.

### 6.4. Observations

6.4.1. An Observation was received from Mark and Nikki Kane residents immediately adjacent to the south of no. 122, Rathfarnham Road, Terenure. It is summarised as follows:

- Request an in-depth review of the proposal and its history.
- Concerns raised with respect to the elevated nature of the site, steep slope adjacent to the mature riparian woodland strip, protected structure, Dodder River and both archaeological and architectural heritage, were completely ignored in the parent permission.
- The development as constructed does not comply with the granted planning permission, makes no attempt to blend in with the local landscape.
- The riparian woodland has been destroyed.
- The building dominates views from all directions, it has seriously injured local private and public amenities.
- Serious negative impact to Saint Agnes Terrace.
- Inc. publicly available information with regards the destruction of the riparian woodland and the altered landscape.

- Noted that DCC have not made available the original appeal or indeed this appeal online as they are duty bound to do so.
- Photos included.

6.4.2. An Observation was received from Brian O'Rourke resident of no. 118, Rathfarnham Road, Terenure. It is summarised as follows:

- The height and pitch of the roof do not match with the height and pitch of the roofs of the neighbouring houses.
- Detrimental and oppressive visual impact of the dwelling to be retained.
- Blatant contravention of DCC planning reg. ref. 3316/19
- Ridge height is substantially above the neighbouring properties.
- Deliberate strategic plot to gain a fourth floor / more attic space.

## 6.5. Further Responses

None received.

## 7.0 Environmental Impact Assessment

7.1.1. The development (either construction of or retention of alteration to a dwelling and a gabion wall consisting of gabion cages) does not involve a class of development set out in Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). Accordingly, there is no requirement for the applicant to submit an Environmental Impact Assessment Report in this instance.

7.1.2. Applicability of Section 34(12) of the Planning and Development Act, 2000, as amended, given retention nature of the application and determination as to whether an EIA is required. Having regard to the nature of development comprising of retention permission for alterations and amendments to house in so far as is constructed which differs from that previously approved on foot of planning registry file reference 3316/19, in an urban area and or the construction of a gabion wall, it is considered that regard being had to Schedule 7, 'criteria for determining whether a development would or would not be likely to have significant effects on the environment', in particular (1) characteristics of proposed development, (2) location

of proposed development and (3) characteristics of potential impacts, that there is no real likelihood of significant effects on the environment arising from the proposed development.

- 7.1.3. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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.

## **8.0 Appropriate Assessment**

- 8.1.1. I note no AA screening report accompanied the application.

- 8.1.2. The planning authority report states:

“The “Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities” state in section 2.6 that ‘it is the competent authority’s i.e. Dublin City Councils, responsibility to obtain (normally from the proponent of a plan or project) the information to enable it to screen a plan or project for AA and, if required, obtain from the proponent of the plan or project the NIS’. The applicant has not provided the Planning Authority with the information to enable it to screen the project for AA and given that the recommendation is to refuse permission for the retention and completion of the works it is not being sought in this instance”.

- 8.1.3. Compliance with Article 6(3) of the Habitats Directive as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section. As set out in section 5.2 of this report above the closest Natural Heritage Designation is South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) located approximately 5.4 Km distant at its closest point.

- 8.1.4. Submissions on file highlight concern with respect to inadequate procedure in relation to screening for AA. It is contended that there is potential for impact from the development on South Dublin Bay SAC. The appellant submits that a new direct hydrological pathway has been created on the site by virtue of the pruning/trimming of the mature trees and the changes to the Z9 zoned area.



- 8.1.5. The Z9 riparian woodland between the subject dwelling and the Dodder River is a designated Conservation Area. The objective of which is 'To preserve, provide and improve recreational amenity and open space and green networks.' Cognisance is had to the special character of this riparian strip adjoining the banks of the Dodder and to the clearance and cutting back of existing trees and removal of understorey plants to accommodate the Gabion cages.
- 8.1.6. The matter of AA screening, however, is a separate matter to impact upon a designated conservation area, providing a habitat to protected species. The AA determination or screening process seeks to establish whether the development proposed and proposed to be retained may have a significant effect, individually or in combination with other plans or projects, on a European site, i.e. South Dublin Bay SAC.
- 8.1.7. Overall, it is my opinion that the nature of the gabion walls and the ground works are localised, not directly on the bank of the Dodder River, the hydrological pathway via the River Dodder is weak given the nature of the works and separation distance some 5.4 Km to the South Dublin Bay SAC, and therefore, that it is in itself, not likely, to have a significant effect, individually or in combination with other plans or projects, on a European site.

## 9.0 **Assessment**

9.1. I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the issues raised in the grounds of appeal and the observation as well as the applicants' response to the grounds of appeal. I consider the principal issues pertaining to the application before the Board are as follows:

- Background
- Red Line Boundary
- Gabion walls
- Nature Conservation
- Height of the Roof
- Procedural Matters

**Background:**

- 9.1.1. This planning application is largely in relation to the retention of works carried out in connection with the construction of a house given planning permission in 2020 (ABP 306149 – 19 / PA Ref. 3316/19). It concerns a site situated immediately adjacent to the Pearse Brothers or Rathfarnham Bridge over the Dodder, on the Dublin City bank of the river and downstream side of the bridge. Part of the development site is zoned for residential purposes and consists of an area previously comprising the garden of No 122 Rathfarham Road. The new house occupies almost the entire roadside section of the old garden of No. 122 to the south of the original house, and to the top of the steep break in slope which formerly marked the boundary of the garden with a riparian strip running down to a low wall and fence almost at the edge of the river. This riparian strip is zoned Z9 “To preserve, provide and improve recreational amenity and open space and green networks” under the current Dublin city Development Plan and large mature trees with an understory of shrubs were present on it at the time of the granting of planning permission in 2020.

**Red Line Boundary:**

- 9.1.2. Third party concerns have been raised that the redline boundary is different to the original application, albeit this application is for retention and completion of the 306149 – 19 / PA Ref. 3316/19 application.
- 9.1.3. I note the applicant’s response that the subject application was designed to address the DCC issued Enforcement Notice dated 27<sup>th</sup> August 2021 and therefore the redline was marked to encompass these elements.
- 9.1.4. I am of the opinion that the redline boundary pertaining to the subject application is clear and that the applicant is entitled to vary the red line boundary for subsequent applications in accordance with what is being applied for. The subject application relates to the new dwelling permitted to the south of 122 and the riparian strip to the south of the new dwelling. No amendments or alterations are proposed to 122 Rathfarnham Road now excluded from the application site, but included within the blue line ownership boundary.

**Gabion Walls**

- 9.1.5. On foot of planning Enforcement Notice, dated 26<sup>th</sup> August 2021, permission and retention was sought to address the noncompliance with Condition 1 of PA Ref:

3316/19 on lands (Zoned Z9 in the Dublin City Council Development Plan 2016 – 2022) located to the side of the house under construction on foot of approved planning application 3316/9.

- 9.1.6. The placing of the Gabion walls was not subject to planning approval and therefore do not comply with the plans and particulars lodged with 3316/19 application. The applicant is now seeking retention permission for the construction of a retaining wall consisting of gabion cages on sloping bank to south of house under construction on Lands zoned Z9 in Dublin City Councils Development Plan.
- 9.1.7. Third party appeals, observations and submissions on file highlight concern for the designated conservation area and zoned Z9 riparian strip. The report from the Department of Housing, Local Government and Heritage, referred to in section 3.3 of this report above, highlights concern for tree cutting, removal of habitat, trimming and lighting etc and notes it could impact protected species. Impact upon hydrological pathway via the River Dodder to the South Dublin Bay SAC is also raised as a concern. The Drainage report from the PA highlights there is a concern that the proposed reprofiling of site levels and provision of gabion walls may have an adverse impact on the river's floodplain and its storage capacity. Detailed assessment of the impact of proposed works are requested to be carried out and where required appropriate mitigation measures to be proposed (e.g. provision of compensatory storage etc.)
- 9.1.8. I note the submission from the Department of Culture, Heritage and the Gaeltacht, which recommends that permission be refused for the installation of Gabions filled with stone in the Zone 9 lands and that the zone should be replanted with suitable understorey plants which should be agreed with the planning authority. I also note that in the parent permission (ABP 306149 / PA Ref. 3316-19) it was recommended that a condition be attached: "That any future alteration within the part of the site zoned Z9, including the removal of trees, shrubs or other vegetation, should only occur with the express permission of Dublin City Council. Reason: To protect the wildlife corridor along the river Dodder." This recommendation was made out of concern that the riparian strip which could be described as corridor or 'stepping stone' in the terms of Article 10 of the Habitats Directive (92/43/EEC) might be encroached on as a result of the proposed development, with potential detrimental

impacts on the protected species known to utilise it and the adjacent river to at least some extent, such as badger, otter and Daubenton's bat.

9.1.9. Neither Dublin City Council, or on appeal Bord Pleanála (ABP-306149-19), chose to attach a condition as suggested by the Department to the permissions they granted in response to PA ref. 3316-19. The Department's report goes on to state that "In October of last year, of 12 mature trees in the section of the development site zoned Z 9, 10 were cut down to approximately half or less of their original size. 7 of the latter 10 were least a hundred years old and fifty or more feet high. The branches on these trees were also cut back to their trunks. The NPWS was in contact with Dublin City Council in relation to this tree clearance at the time. Subsequently (it is understood in July of this year) metal gabions filled with large stones were installed around the bases of many of the trees which had been cut back and stepped up against the steep slope south of and under the new house. This placement of gabions within Zone 9 has also resulted in the destruction of the bulk of the understorey plants which had survived beneath the truncated trees. Despite the fashion in which they have been treated, all of the cut trees, including two large beeches, at present show limited signs of regrowth, with new short leaved branches emerging from the tops of the old trunks. It seems unlikely though the trees around and against which gabions have been placed will survive in the long or even the medium term. Any regrowth by the old trees, or new cover which could be established in Zone 9 by planting appropriate new understorey plants would be beneficial, as they would act to screen the adjacent river at night to some extent from the light which will in future shine from the windows in the side wall of the new house facing the river, and therefore limit this development's impact on nocturnal species foraging in or over the river such as otter and bat species".

9.1.10. The applicant submits that they acted in the correct professional manner by engaging an Arborist to advise and a tree surgeon to carry out pruning / trimming on the trees. The applicant also submit that they kept the DCC representative informed of his actions and responded to any queries that they issued. It is contended that due to the nature and topography of the ground that a retaining wall was a necessity and that gabion cages were the most sensible, practical and natural solution in solving the gradient issue, providing a safe and accessible garden. The slope on this site is

pronounced and while, a retaining wall was originally specified at planning stage, the site engineer concluded that this was inadequate and specified Gabions.

- 9.1.11. It is submitted that the stone filled gabion cages may appear stark and grey but it is the owners intention to landscape the gabion surfaces but there will be a certain amount of exposed gabion. They submit that the landscaping will include both grassed areas and a variety of planting and landscaping.
- 9.1.12. It is submitted that modern engineering techniques have facilitated the development of this site with the foundation being specified as a reinforced concrete slab with gabions. The applicant contends that there is precedent for a similar engineering solution approx. 650m from the subject site in relation to land stabilisation. It is argued that when a building is being constructed on site unforeseen conditions can arise that require construction professionals to think on their feet and install an alternative that will carry out the same function as the measures specified at planning and construction drawing stage. It is anticipated that the riparian corridor will re-establish itself in time allowing the new house to further integrate with its surroundings.
- 9.1.13. EIA and AA issues are dealt with separately, in this report, see sections 7.0 and 8.0 respectively above. Altering the natural profile of the river bank would be undesirable from many perspectives and would be contrary to the zoning objective.
- 9.1.14. I note that the trees are not protected by way of TPO. The Z9 riparian woodland between the subject site and the Dodder River is, however, a designated Conservation Area. The objective of which is 'To preserve, provide and improve recreational amenity and open space and **green networks**.'
- 9.1.15. The conservation, amenity or buffer space, **corridor/belt**. landscape protection (G3) sub-category is intended for zones where the main aim is to provide some level of conservation.
- 9.1.16. Cognisance is had to the special character of this riparian strip adjoining the banks of the Dodder and to the clearance and cutting back of existing trees and destruction of understorey plants to accommodate the Gabion cages. I agree with the city council and the objections from neighbours in the vicinity in particular dwellings in Saint Agnes' Terrace, on the opposing side of the Tolka bank. It is regrettable in that the works carried out without the benefit of planning have taken place from a

conservation perspective and also from a visual amenity perspective and would in all likelihood would not have been granted had the works been proposed in the first instance.

- 9.1.17. It is notable that while there may have been concerns regarding the stability of the lands, the original application did not identify this and stated that the new dwelling could be built, with construction of a low retaining wall and without any works to the Z9 lands.
- 9.1.18. I am of the opinion that the retention of the retaining wall consisting of gabion cages and for the completion of these works is considered to have significantly impacted on the special character of this riparian strip adjoining the banks of the River Dodder due to clearance and cutting back of existing trees and the destruction of understorey plants without the required arborist or ecological reports. Incompetent and blatant disregard for the sensitivity of a designated conservation area and green network should not be rewarded or ignored. Given such the works are considered contrary to the Z9 zoning objective of the site which is 'to preserve, provide and improve recreational amenity and open space and green networks' and would seriously impact the amenity of the lands setting an unacceptable precedent for works of a similar nature I recommend that permission be refused for the gabion cages filled with stone.

### **Nature Conservation**

- 9.1.19. Submissions on file highlight concern for the riparian strip which as described by the submission from the Department of Housing, Local Government and Heritage as: 'a corridor or stepping stone' in terms of Article 10 of the Habitats Directive (92/43/EEC) might be encroached on as part of the proposed development, with potential detrimental impacts on the protected species known to utilise it and the adjacent river to at least some extent, such as badger, otter and Daubenton's bat.'
- 9.1.20. It is noted on file that of 12 mature trees in the section of the development site zoned Z9, 10 were cut to approximately half or less than their original size. 7 of the latter 10 were at least a hundred years old and fifty or more feet high. The branches of these trees were also cut back to their trunks.

- 9.1.21. Metal Gabions filled with large stones were installed around the bases of many of the trees which had been cut back and stepped up against the steep slope south of and under the new house.
- 9.1.22. Concern is expressly expressed by the Department with respect to destruction of the riparian zone of the River Dodder contained within Zone 9 within the development site as a wildlife corridor and to screening of the biota of the river from artificial light pollution and other disturbances.
- 9.1.23. Again, I note that the trees are not protected. The applicants submits that they acted in the correct professional manner by engaging an Arborist to advise on and a tree surgeon to carry out pruning / trimming on the trees. The applicant also submit that they kept the DCC representative informed of his actions and responded to any queries that they issued.
- 9.1.24. The Z9 riparian woodland between the subject dwelling and the Dodder River is a designated Conservation Area. The objective of which is 'To preserve, provide and improve recreational amenity and open space and green networks.' Cognisance is had to the special character of this riparian strip adjoining the banks of the Dodder and to the clearance and cutting back of existing trees and removal of understorey plants to accommodate the Gabion cages.
- 9.1.25. Impact upon a designated conservation area, providing a habitat to protected species is of concern, while the nature of the gabion wall, is in itself, not likely to impact upon the hydrological pathway to the SAC, tree cutting, removal of habitat, lighting etc and trimming could impact protected species. I note the Department Dept of Housing, Local Government and Heritage report, see section 3.3 above, raises concern. The Drainage Department have indicated that the development is located adjacent to River Dodder, within Flood Zone A / B. There is a concern that the proposed reprofiling of site levels and provision of gabion walls may have an adverse impact on the river's floodplain and its storage capacity. It recommends that detailed assessment of the impact of proposed works should be carried out and where required appropriate mitigation measures to be proposed (e.g. provision of compensatory storage etc.). There is a lack of information on file with respect to field surveys or investigation works and assessment of impact upon ecology, biodiversity, landscape and hydrology.

- 9.1.26. Species listed on IV of the EU Habitats Directive are afforded a system of strict protection wherever they occur. The Habitats Directive is transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations, 2011-2021.
- 9.1.27. Of relevance to the River Dodder are protected species including Otter and Bat species, in addition Kingfisher is present (Annex I of Birds directive). The Dodder is also of importance for brown trout and sea trout in lower reaches. Potential impacts not assessed could include, disturbance to otter movements/disturbance of otter resting place/ holt or couch if located nearby works area.
- 9.1.28. Loss of tree roost for bat species, reduction in tree cover and linear corridor provided by trees for foraging bats.
- 9.1.29. Infiltration of soil/silt/construction related pollutants into the River Dodder if unmanaged could result in temporary localised increased sediment load with implications for river habitat and fish.
- 9.1.30. Given the foregoing, I agree with the refusal reason of the planning authority that “the retention of the retaining wall consisting of gabion cages and for the completion of these works is considered to have significantly impacted on the special character of this riparian strip adjoining the banks of the River Dodder due to the clearance and cutting back of existing trees, and the destruction of the understorey plants without the required arborist or ecological report and as such the works are considered to be contrary to the Z9 zoning objective of the site which is ‘to preserve, provide and improve recreational amenity and open space and green networks’ and would seriously impact on the amenity of the lands setting an unacceptable precedent for works of a similar nature”. I recommend that permission be refused for this element of the proposal.
- 9.1.31. The applicant should be required to restore as far as possible the riparian zone of the River Dodder contained in Zone 9 within the development site as a wildlife corridor and to screen the protected species and wildlife of the River from artificial light pollution and other disturbances.

### **Height of the Roof**

- 9.1.32. Retention permission is sought to retain the "as built" minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm.



- 9.1.33. The height of the house and the roof profile as constructed on site do not comply with the plans and particulars lodged with the application as required by condition no. 1 of PA Ref. 3316/19 / ABP. 306149-19.
- 9.1.34. I note the considerable concerns raised by third parties and observers with respect to impact of the dwelling, as constructed, both from a visual amenity perspective and from a residential amenity perspective, notably, overbearing, overlooking and visually incongruous and out of character with the surrounding area.
- 9.1.35. I have sympathy that the dwelling is incongruous in its setting. It is set on high rising ground on the bank of the Tolka River with adjoining modest single storey cottages of Saint Agnes' Terrace to the south. When viewed from the surrounding area it is bold and formidable, given its modern idiom architectural style, substantial depth of the gable, massing and height. This being said the dwelling has been substantially constructed in accordance with the approved plans and had the mature screening comprising century old trees to the south not been removed its bulk, scale and prominence would have been sufficiently screened. This is supported by images from google maps and photographic evidence on the file, of the site itself and the surrounding area.
- 9.1.36. The issue of contention is, in the main, the height of the house and the roof profile. It is submitted by the first party that "when surveyed and using 53.536 as a bench mark, being the ridge height of No. 122, the ridge height was found to be 54.007 some 471mm above No. 122. Ground floor level of the house subject to retention at 41.657 some 471mm above No. 122. Ground floor level of the house subject to retention permission at 41.657 is in compliance with that proposed under planning ref. 3316/19 at just 16mm below that proposed 41.673".
- 9.1.37. It is contended that the change in the height of the roof was an unintended mistake, no conscious decision was taken to increase the height of the roof and it occurred by accident. It is submitted that the variance in height has arisen due to the fact that the roof was constructed with timber roof trusses which are at an angle of 35 degrees. The proposal under 3316/19 provided for a pitched roof at an angle of 30 degrees with a matching ridge height to No. 122. The first party contends that it does not result in a significant impact of the integration of the house with the houses on Rathfarnham Road or from Westbourne or the Cottages.

- 9.1.38. It is clear from the plans and drawings submitted that minor elevational changes to the ridge height, fenestration and width of the house subject to retention has been carried out, from that granted planning permission on foot of Reg. Ref. 3316/19, of particular concern is the southern gable, and its now exposed nature devoid of screening that had been in place at the time planning permission was granted.
- 9.1.39. I note the city councils view that the slightly altered pitch is unfortunate in that it was obviously intended to match in with the neighbouring property and not above it. However, it is not so significant an alteration as to warrant a refusal for this aspect of the application, and as such permission for the retention is considered to be acceptable.
- 9.1.40. I have concern with respect to sanctioning disregard for the planning process and bad behaviour in terms of construction of a dwelling larger than that permitted in the first instance, loss of screening and reduction in tree cover, for numerous reasons. However, my test is whether the Board would have decided differently the subject proposal under 3316/19 / ABP 306149-19 and refused permission had the dwelling as constructed, and now subject to retention planning permission, been sought in the first instance. It is my opinion that they would not have and therefore I recommend that planning permission be granted in this instance for retention of the "as built" minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm.
- 9.1.41. The issues of overlooking, overbearing, scale and massing have been considered in the parent permission and considered to be acceptable in this urban setting. Therefore, I do not intend to reassess the merit or principle of same. The southern gable as constructed, is largely in compliance with what was granted and actually has one less window, at first floor, that that permitted under 3316/19 / ABP 306149-19.

### **Procedural Matters**

- 9.1.42. An issue has been raised by a third party with respect to two reports on the planning authorities web site. This I consider is solely a matter for the planning authority and not the Board. I am confident that the plans, drawings, reports and information on file is correct and sufficiently detailed for the Board to make an informed decision on the case.

9.1.43. I highlight the fact that permission is also sought “to complete the development and all ancillary site development works and services”. For which, I note, that the planning authority refused retention permission. It is clear from information on file, google maps and my site visit that at the time the enforcement action was made and subsequently a planning application for permission and retention was sought that the works to the house, subject to this permission and the Z9 zoned lands, i.e the construction of a retaining wall consisting of Gabion cages on sloping bank to the south side of the house were continued to be carried out. I note that a considerable amount of time has lapsed since the planning application was submitted but having regard to the nature of the application for retention permission and the concerns of neighbours that such actions should not be rewarded or condoned. Therefore, I consider that a split decision in this instance is fair and just and the applicant should remove the gabions from the Z9 Zoned lands under the supervision of Dublin City Council. That an independent arborist be employed to inspect the trees present in Zone 9 so as to allow an assessment of their current condition and the manner in which the gabions can be removed from the ground with least damage to the trees’ trunks and root systems.

## 10.0 Recommendation

10.1. I recommend a split decision with permission granted for alterations and amendments to house in so far as is constructed which differs from that previously approved on foot of planning registry file reference 3316/19 (Site B) and including: "as built" minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm for the reasons and considerations set out under Schedule 1 below together with the conditions thereunder and that planning permission for the construction of a retaining wall consisting of gabion cages on sloping bank to south of house under construction on Lands zoned Z9, in addition to permission to complete the development and all ancillary site development works and services, be refused for the reasons and considerations set out under Schedule 2 below.

## Schedule 1

### Reasons and Considerations

Having regard to the design, nature, scale, and extent of the dimensional adjustments and altered roof pitch and profile, to the Z1 zoning objective pertaining to the site, and subject to compliance with conditions, the development to be retained would be satisfactory in the context of the visual amenities of the area and would not seriously injure the residential amenities of the area or of property in the vicinity. The proposal would also be acceptable in the context of surrounding ecology and would, therefore, be satisfactory in the context of the proper planning and sustainable development of the area.

#### Conditions:

1. The development shall be retained, 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 terms and conditions of the permission for the original development which was issued under ABP 306149-19 / Reg. Ref. 3316/19 shall be fully complied with, except, where modified by this permission.

**Reason:** In the interest of clarity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within

Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

**Reason:** In the interest of the amenities of the area.

4. The gabion walls filled with stone shall be removed within 3 months from the date of the final grant, in accordance with a methodology to be agreed in writing with the planning authority. And the area shall be replanted with suitable understorey plants, also to be agreed in writing with the planning authority, before the growing season of 2023.

**Reason:** In the interest of visual amenity and proper planning and sustainable development.

5. The methodology for removal of the gabions from Zone 9 within the development site shall be agreed in writing between the developer and the planning authority. An independent arborist shall be employed to inspect the trees present in zone 9 so as to allow an assessment of their current condition and the manner in which the gabions can be removed from around and against them with the least damage to the trees' trunks and root systems.

**Reason:** In the interest of residential and visual amenity.

6. Within 2 months from the date of the final grant being issued, the developer shall pay the sum of (460.50 euro) 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

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

## **Schedule 2**

### **Reasons and Considerations**

1. The retention of the retaining wall consisting of gabion cages and for the completion of these works is considered to have significantly impacted on the special character of this riparian strip adjoining the banks of the River Dodder due to the clearance and cutting back of existing trees, and the destruction of the understorey plants without the required arborist or ecological report and as such the works are considered to be contrary to the Z9 zoning objective of the site which is 'to preserve, provide and improve recreational amenity and open space and green networks' and would seriously impact on the amenity of the lands setting an unacceptable precedent for works of a similar nature.

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Fiona Fair  
Senior Planning Inspector  
29.06.2022