



An  
Bord  
Pleanála

## Inspector's Report ABP 312560-22

### Development

Option A: Two storey detached pitch roof mews dwelling, or

Option B: - Two- storey detached flat roof mews dwelling.

For both options: Replacement timber fence with boundary wall at Palmerston Court and pedestrian access and associated works

### Location

1 Palmerston Road, Rathmines, Dublin 6.

### Planning Authority

Dublin City Council

### Reg. Ref.

3773/21.

### Applicant

Sinead and Conor Crowley.

### Type of Application

Permission

### Decision

Grant Permission

### Type of Appeal

First / Third Party

### Appellant

Tom and Catherine Kelly

### Date of Site Inspection

17th March, 2022

### Inspector

Jane Dennehy.

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## **1.0 Site Location and Description**

- 1.1. The application site is that of No 1 Palmerston Road which is an end of terrace nineteenth century two storey over garden level house located at the corner of the west side of Palmerston Road and the south side of Palmerston Court a lane extending from the rear of Church of Ireland House to the west and Palmerston Road to the east. The north side boundary extends along the front and side of the house and the rear garden on the southern frontage onto Palmerston Court.
- 1.2. At the lower end of the frontage adjacent to the end of the rear garden there is a garage and an up and over garage door which forms part of the property at No 2 Palmerston Road which is in the ownership of the Appellant Party. Four two storey houses with parking to the front are located to the rear/west side of the application site and the adjoining properties at No 2 – 6 Palmerston Road are located to the west.
- 1.3. Mews dwellings with front curtilages and vehicular entrances are located along the north side of Palmerston Court frontage. These properties are on plots subdivided from the rear gardens of most of the properties along Belgrave Road of the north.

## **2.0 Proposed Development**

- 2.1. The application lodged with the planning authority indicates proposals for construction of a two storey two bedroom detached mews house with a stated floor area of ninety-one square metres for which there are two design options for consideration. Option 1 is for a dwelling with a pitched roof which is the preferred option of the applicant and Option 2 is for a dwelling with a flat roof. Also included in the application is a proposal for removal of a timber fence on part of the north facing boundary onto Palmerston Court and its replacement with a new boundary wall incorporating a pedestrian entrance gate. Private open space is formed from space to the side of the dwelling which as a depth of six metres and a total stated area of forty-six square metres.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. By order dated, 7<sup>th</sup> December, 2022 the planning authority decided to grant permission subject to conditions. Of note in addition to conditions of a standard nature are conditions with the following requirements:

Condition No 3: the Grant of permission is restricted to Option A – the dwelling with the pitch roof option.

Condition No 4:

- (a) Omission of two windows at first floor level in the rear/west elevation.
- (b) 'Primary' facing material to be in brick or stone.

A compliance submission is required, and the reasoning provided is that of the interests of "neighbouring amenity and visual amenity"

Condition No 5. Employment of a specialist in in appropriate conservation expertise for design, management monitoring and implementation of the works and for the works to be in accordance with best conservation practice and the recommendation within the *Architectural Heritage - Guidelines for Planning Authorities* (statutory guidance) and the accompanying Advice series.

Condition No 13. removes exempt development entitlements.

### 3.2. Planning Authority Reports

- 3.2.1. The report of the Transportation Planning Division contains references to the CDP regarding mews lane development, mews lane carriageway width which should be 5.5 metres. In this instance the five metres width is deemed acceptable and carparking standards whereby one space per dwelling is required and no on-site parking is proposed although facilities for cycle parking and refuse storage in the private open space are to be provided. It is noted that overspill parking that could be generated is unlikely to occur along the laneway due to the narrow width. There is no objection.

- 3.2.2. The report of the conservation officer indicates concerns as to potential adverse impact on historic fabric in the form of the boundary walls. There is a recommendation for a request for additional information in respect of survey and methodology for the boundary walls – in that such historic fabric which should be retained and for detailing for the foundations of the historic boundary walls and those of the garage to be provided.
- 3.2.3. The report of the Drainage Division indicates no objection subject to conditions.
- 3.2.4. The report of the Planning Officer indicates acceptance of the proposal, in principle as a mews lane development, the design and a preference for Option 'A' with the pitched roof is indicated as preferable and appropriate to the area and in the context of surrounding buildings. The standards in quantum and quality for the proposed dwelling and for private open space provision, at the side of the dwelling are stated to be satisfactory.

Omission, by condition, of two west elevation windows at first floor level is recommended for reasons of protection of amenity potential at the adjoining property. All other fenestration is deemed to be acceptable in terms of protection of residential amenity and overshadowing is stated not to be at issue. The observations of the Transportation Division were noted, and the proposed development is deemed to be acceptable in this regard.

### 3.3. **Third Party Observations**

Several third-party objections were lodged with the planning authority in which concerns raised include that of overlooking, overdevelopment and visual obtrusiveness and overbearing impact, structural stability of existing fabric and on traffic safety and parking.

## 4.0 **Planning History**

There is no record of planning history for the application site or that of the adjoining property at No 2 Palmerston Road.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative development plan is the Dublin City Development Plan 2016-2022 according to which site is within an area subject to the zoning objective Z2: “To protect, provide and / or improve the amenities of residential conservation areas.”

5.1.2. Nos 1 and 2 Palmerston Road are included on the record of protected structures.

5.1.3. According to Policy Objective CHC2 there are requirements:

*“To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:*

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest.*
- b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances*
- c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.*
- c) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the unusual character of the protected structure.”*

5.1.4. Policy Objective CHC4 provides for protection of the special interests and character of all Conservation Areas with new development being required to contribute positively and to enhance the character, appearance and setting of the area where possible.

5.1.5. Development management standards are set out in chapter 16 in which mews development is provided for in section 16.10.16. According to section 16.2.2.4 it is the policy of the planning authority to ensure that no loss or insensitive alteration to boundary wall or railings take place and where appropriate that boundary features be reinstated.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An appeal was lodged on behalf of Catherine and Tom Kelly of NO 2 Palmerston Road on 21<sup>st</sup> January, 2022 attached to which is a copy of the observation lodged at application stage. It is stated that there is no objection in principle to the proposed development. Instead, the appellant party seeks clarification and certainty regarding issues of concern in that the proposed development is to be located very close to the garage at the rear of No 2 Palmerston Road.

6.1.2. According to the appeal:

- Rainwater from the proposed development may fall onto the roof of the garage. The application submission lacks details of the interface between the proposed dwelling and the garage inclusive of the means of drainage of the roof of the garage. There is an overhang from the garage roof. It is requested that a condition be attached for the details for the garage roof drawing to be submitted and agreed with the planning authority prior to the commencement of development.
- With regard to the external finishes for the proposed development, the inclusion of Condition No 4 (b) by the planning authority is welcome. However, it is requested that an amendment be included because of concerns about the finishes on the elevations that would face No 2 Palmerston Road. It is unclear in the condition which elevations are to be finished in brick or stone. The condition fails to address difficulties associated with painted render finishes which were proposed. It is requested that the condition be revised to a requirement for the entire facades to be finished in brick or stone and that the term “primary” be omitted.

6.1.3. In the submission lodged with the planning authority at application stage in which the issues as to rainwater overspill and as to the external finishes are raised it is also submitted that: -

- The private amenity space adjacent to the garage within the property at No 2 Palmerston Road is valued, this space being used. It an intention at a future date to build or possibly replace the garage with an artist's studio.
- The accuracy of the details of the garage and boundaries on the application drawings are also questionable according to the submission.
- Concern is expressed as to potential undermining of structural stability of the garage and the granite boundary wall which is in the applicant's ownership during construction and subsequent potential for water ingress.
- Concern is expressed as to potential for overlooking of the secluded area of the rear garden of No 2 Palmerston Road from first floor rear and front windows and it is requested that they be omitted.

## 6.2. Applicant Response

6.2.1. There is no submission on file from or on behalf of the applicant

## 6.3. Planning Authority Response

6.3.1. There is no submission on file from the planning authority

## 7.0 Assessment

7.1. With regard to the concerns as to overspill if rainwater from the development onto the garage roof raised in the appeal, it should be noted that there is no entitlement to encroachment on or overhanging and oversailing an adjoining property irrespective of a grant of permission. As provided for in section 34 (13) of the Planning and Development Act, 2000 as amended, a grant of planning permission does not provide for entitlement to implement a grant of permission and issues of the nature raised regarding sufficiency of legal interest can, in the event of dispute, be resolved through the legal system, such matters being outside the scope of the planning remit.



- 7.2. However, the proposed arrangements for collection and disposal of surface water could be designed so that the system installed addresses such concerns such as the overhang of the garage structure so to avoid any potential risk of overspill onto the garage in the adjoining property.
- 7.3. With regard to the proposed external materials and finishes it is agreed with the appellant party that the terminology in Condition No 4 (b) attached to the planning authority decision would benefit from revisions and clarity in the terminology. Bearing in mind the historic context of the surrounding built environment, and the inclusion of the properties on Palmerston Road on the record of protected structures, it is considered reasonable that there be a requirement for a stone or brick finish for the entirety for the east and south elevations with the applicant having the option to use a similar finish to the north elevation instead of the proposed painted render finish. A mandatory requirement for the north facing elevation is unwarranted although a stone finish would be preferable.
- 7.4. The submitted application drawings are considered adequate for the purposes of a planning assessment and determination of a decision on the proposed development.
- 8.0 It is considered that issues as to overlooking were satisfactorily addressed at application stage. It is also agreed with the planning officer that Option A with the pitched roof is more appropriate to the surrounding context. It noted that the applicant has indicated that this option is preferred.
- 8.1. With regard to concerns as to structural stability of the boundary walling, it is noted that conservation officer has indicated some concerns as well as, at application stage, the appellant in relation to the garage structure. It is recommended that a condition be included, in conjunction with requirements relating to historic building conservation for a survey and proposed methodology to be prepared by a competent person for agreement with the planning authority prior to commencement of the development. However, it should be noted that the issues raised in connection with the garage structure would be a matter for resolution between the parties, and option for resort to the legal system would be open to the parties.
- 8.2. **Environmental Impact Assessment Screening.**
- 8.2.1. Having regard to the nature of the proposed development and its location in a serviced inner suburban area in the city, removed from any sensitive locations or

features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **8.3. Appropriate Assessment Screening.**

8.4. Having regard to the location and to the nature of the proposed development in a serviced inner suburban area in the city, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

In view of the foregoing, it is recommended that the planning authority decision to grant permission, (for Option A) be upheld based on the reasons and considerations and conditions which follow.

## **10.0 Reasons and Considerations**

Having regard to the Dublin City Development Plan, 2016-2022 according to which the site location is within an area subject to the zoning objective Z2 *“To protect and or improve the amenities of residential conservation areas.”* (Residential neighbourhoods / Conservation Areas) it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the residential and visual amenities and historic character and context of the houses on Palmerston Road, which are included on the record of protected structures within and located within a residential conservation area, would not be prejudicial to public health, would be acceptable in terms of vehicular and pedestrian safety and, would be in accordance with the proper planning and sustainable development of the area.

## **11.0 Conditions.**

1. The development shall be completed and retained 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. All demolition and construction works shall be carried under the direction of a competent person with specialist expertise in historic building conservation in accordance best practice and the recommendations within: *Architectural Heritage Protection: Guidelines for Planning Authorities* issued by The Department of the Environment, Heritage and Local Government in 2005 and the accompanying Advice Series. In this regard, for the existing stone boundary walls a structural survey for the foundations and fabric shall be carried out by a competent person with specialist expertise in historic building fabric who shall prepare report to include proposed protective measures which shall be submitted and agreed with the planning authority prior to commencement of works.

**Reason.** In the interest of clarity, and to ensure the protection of the integrity and special interest of the existing historic fabric within the curtilage of a protected structure, the visual amenities and established architectural character of the residential conservation area.

3. The west and south elevations shall be finished in entirety either in stone or brickwork. Full details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

4. The upper floor windows in the west facing elevation shall be omitted in entirety. Revised drawings shall be submitted to and agreed with the planning authority in writing prior to the commencement of the development.

**Reason:** In the interests of the protection of the residential amenities of the adjoining property.

5. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of any of the proposed houses without a prior grant of planning permission.

**Reason:** In the interest of residential amenity, having regard to the restricted configuration and size of the site.

6. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water and mitigation measures against flood risk including in the basement area, shall comply with the requirements of the planning authority for such works and services.

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

8. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

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

9. 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.

**Jane Dennehy**

Senior Planning Inspector  
18th March, 2022.

**Note.**

*The applicant is advised that according to section 34 (13) of the Planning and Development Act, 2000 as amended, a grant of planning permission does not provide for entitlement of an applicant to implement a grant of permission for development.*