



An
Bord
Pleanála

Inspector's Report ABP 312796-22

Development	Detached flat roof, two storey three bed house with north west facing balcony at side of existing house, pedestrian entrance and associated landscaping and site works.
Location	No 53 Merton Drive, Dublin 6.
Planning Authority	Dublin City Council
P.A. Reg. Ref.	WEB 5122/21.
Applicant	Gerry Burke Kennedy.
Type of Application	Permission.
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Stephen Best,
Date of Site Inspection	9 th April, 2022.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site which is that of No 53 Merton Drive has a stated area of 830 square metres with a triangular shaped side garden is located at the northern end of Merton Drive which is along the western boundary and Sandyford Close is along the eastern boundary extending from north to south east. There is a vehicular entrance on the Merton Drive frontage adjacent to the existing dwelling at which there is a timber gate.
- 1.2. The existing dwelling at No 53 Merton Drive which has a stated floor area of 179 square metres is a two-storey house with a flat designed in the modernist style with vehicular access off Merton Drive and front curtilage gardens and parking. There On the boundaries there are trees and hedging along the boundaries and a wall along part of the boundary.
- 1.3. To the east side is Sandyford Parish Church, a gate lodge on Sandford Road and the Rectory on the west side which overlooks gardens adjoining the boundary with the application site. Sandford Park National School is located on the opposite side of Sandyford Close to the east side of the application site.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for construction of a three-bedroom detached two storey house with a stated floor area of 140 square metres on the site along with a pedestrian gate. The proposal also includes provision for access via the existing vehicular entrance off Merton Drive and parking for two cars, one behind the other inside the entrance. A first-floor balcony off living space is shown on the north west elevation.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 20th January, 2022 the planning authority decided to grant permission subject to conditions of a standard nature.

3.2. Planning Authority Reports

- 3.2.1. The planning officer in his report notes the zoning objectives and policy objectives in the current extant CDP and including objective for development to accord with standards and recommendations with relevant statutory guidelines, and development management standards set out in chapter 16. He also notes the prior successful application (See section 4 – planning history below) which was not taken up the current proposal differs only in that it includes provision for a pedestrian gate.
- 3.2.2. No change is recommended with regard to the prior acceptability of the balcony at first floor level, an issue raised in third party objections to the prior and current proposal. A grant of permission is recommended by the planning officer.
- 3.2.3. The report of the Transportation Division indicates no objection to the proposed development, subject to standard conditions the similarity to the proposal in the previous application and the addition of a pedestrian entrance being noted.
- 3.2.4. The report of the Drainage Division indicates no objection to the proposed development subject to standard conditions.

3.3. Third Party Observations

- 3.3.1. Issues raised in submissions lodged at application stage included concerns as to overlooking from the proposed balcony and the footprint as being too close to the party boundary with the adjoining property.

4.0 Planning History

P. A. Reg. Ref. 2427/11: Permission was granted for a three bed two-bedroom house inclusive of a north west facing first floor balcony. The application was similar to the current proposal and the planning authority agreed to a grant of extension of the duration of permission to 21st October, 2021. Development was not commenced

5.0 Policy Context

5.1. Development Plan

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

For ‘Z2’ zoned lands, the indicative site coverage is 45% and the indicative plot ratio is 0.5-2.0 according to section 16.5

Policy Objective CHC4 and section 11.1.5.4 provide 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.

Policy objective QH 8 provides for favourably consideration of higher density development on vacant and underutilised sites which respects the urban design and established character of development in the area.

Development management standards are in chapter 16. Residential quality standards are in section 16.10.2 and 16.10.3, Standards for garden and corner sites are set out in section 16 10.9

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged by Stephen Best on his own behalf on 15th February, 2022, Glebe Warden. The Rectory is located to the rear, west side of Sandyford Parish Church. According to the appeal in which it is requested that permission be refused:

- The proposed development would overlook the Rectory gardens from a balcony at first floor level off the main living space at the proposed dwelling. In the absence of the balcony, overlooking over the garden from the interior first floor living space of the dwelling would also be possible. If permission is

granted a condition should be attached providing for omission of the balcony and the window.

- The proposed development is overdevelopment and contrary to section 16.6. of the CDP It would overshadow the garden at the Rectory which is also used for the school as an outdoor area.
- The proposed development would be incongruous and within the established streetscape and is at odds with the character, scale and pattern of the buildings on Merton Drive which have a unified urban pattern. It would fail to respect or enhance the surrounding environment. It would be at an obtuse angle and at the north west corner it would overhang the footpath. The proposed development is contrary to section 16 of the CDP.
- As the current proposal was assessed with reference to the Development plan which has been replaced, permission should be refused, the relevant plan being the Dublin City Development Plan, 2016-2022. An up-to-date arboriculture report should have been required. The submitted report prepared in 2011 so it is inadequate and appears not to have been prepared by a suitably qualified person. Section 16.3.3. of the CDP is therefore at issue.
- The site area is exaggerated in the application the site being approximately 280 square metres instead of 302 square metres in area. The maximum ratio of 2.0 is exceeded.
- The proposed dwelling is poor in quality and the site is more suitable for an extension to the existing house.
- There is insufficient space for installation of adequate drainage around the foundations due to proximity to the boundary with the Rectory. A greater separation distance is required, and this space should also be adequate to allow for access within the curtilage of the house for maintenance purposes.

6.2. Applicant Response

- 6.2.1. A submission was received from the applicant's agent on 21st march, 2022 which is accompanied by a statement by Manahan Planners. It is stated that the previously

permitted dwelling was not constructed due to reasons to with the recession and latterly the Covid restrictions. It is requested that permission be granted in that it is in accordance with the CDP and the proper planning and sustainable development of the area. According to the submission:

- Overlooking cannot occur because there are not windows that can overlook the gardens at the Rectory. Windows are at a ninety degrees angle and there are substantial trees and vegetation which provide screening. In addition, there are trees within the Rectory gardens which also provide screening.
- Overshadowing would not occur because trees within the Rectory garden overshadow these gardens. The proposed dwelling is to be surrounded by trees which are to be retained. The minimum standards *Site Layout Planning for Daylight and Sunlight – A guide to Good Practice* (BRE 2011) providing for at least half of amenity areas to receive a minimum of two hours sunlight, on 21st March is well exceeded. The proposed dwelling footprint is 49.4 metres from the rear of the Rectory.
- The dwelling design compliments and in design it references the white render, brick and flat roof features of the existing dwelling Merton House. which is in the 'art deco'/early modernist style. The approach was confirmed as appropriate in prior planning consultations for the previous application and this included the turning where there is a turning point on the road and the two metres distance from the roadside boundary.
- The tree survey report which was submitted for the previous application by an arboriculturist under BS 5837:2005. The applicant is willing by condition to arrange for preparation and submission of a revised report. Overhanging branches and roots can be cut back to the boundary if there is no compromise to the trees but there is no easement grantable for a tree.
- There have been no relevant substantive changes between the prior and current development plans.
- The site has been measured from CAD drawings and the area for the proposed house is 302 square metres in size, the house has an area of 142 square metres, so the plot ratio is 0.47 and the site coverage is 23.8% For

the overall site of 830 square metres the total floor area is 321 square metres giving a plot ratio of 0.38 and site coverage of 20.3%

- The proposed development and the dwelling itself are of high quality, the alignment was previously accepted by the planning authority and the existing entrance is to be used.
- Drainage is to be at the periphery of the house inside the boundary with the Rectory where there is space for construction of foundations. Replacement of the boundary treatment is in poor condition and comprises part railing and part fence with a two metres' high fence creating a proper boundary is proposed. The boundary wall will not be relocated.

6.2.2. In the accompanying statement by Manahan Planners, it is stated that:

- Permission has previously been granted for similar development.
- The proposed development accords with current national, regional and local policy for residential development.
- The site is sufficient in size for an additional dwelling with sufficient garden space for both existing and proposed dwellings and the internal accommodation complies with minimum standards with high quality of amenity for future residents.
- There is sufficient separation distance between boundaries and adjoining property. Dense vegetation between the property to the east and the proposed development ensure protection of amenities.
- The architectural treatment is consistent with that of the existing building and the proposed dwelling would integrate successfully into the streetscape.

6.3. **Planning Authority Response**

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

7.0 **Assessment**

7.1. The issues central to the determination of a decision can be considered below under the following subheadings.

Overdevelopment.

Dwelling Design and Visual Amenity

Arboriculture

Overlooking

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. Overdevelopment.

- 7.2.1. The application drawings are considered satisfactory for the purposes of assessment notwithstanding contentions that the site size is less than stated site size of 302 square metres is greater than the actual size of 280 square metres, the overall site size for existing and proposed dwellings being 830 square metres. The details in the applicant's submissions in connection with the application and the appeal are considered reliable for assessment purposes and no issues arise as to excessive site coverage or exceedance of the indicative plot ratio for the proposed dwelling, the indicative site coverage according to section 16.5 of the CDP being 45% and plot ratio of 0.5 – 2.0. It is noted that the stated floor area for the proposed dwelling is 142 square metres that of the existing dwelling is 179 square metres. The private open space (excluding the balcony) or garden area is circa ninety square metres in area and is considerable for a three bed house. There are no concerns a overdevelopment of substandard development in this regard.

7.3. Dwelling Design and Visual Amenity

- 7.3.1. There is no objection to the dwelling form, height and architectural treatment. Although the footprint differs from that established layout and plots along Merton Drive to the east, it follows and reflects the site configuration and is appropriate as an infill at the north western end of the street and at a considerable distance from the buildings at Sandyford Parish Church. The dwelling height, profile including the flat roof and section of materials compliment those of the existing building. The contentions as to substandard development in the appeal are not supported.

7.3.2. As in the case of the previous proposal, there is no objection to the proximity of the footprint, and correspondingly, foundations to the boundary. An setback would result in unusable space within a narrow gap which is not positive in terms of amenity. It is confirmed that the proposed footprint would not hinder construction and the proposals to erect a new fence provides for more definitive and quality treatment at the boundary. Construction at a boundary without requirement for access to third party property or undue risk of damage is a common practice. If permission is granted a note a to lack of entitlement to encroachment on third party property can be included. In the event of unresolved dispute between the parties, the matter could be referred to be addressed through e legal system.

7.4. Arboriculture.

7.4.1. In the case of the current proposal, which is essentially a repeat application, it is not considered essential that an up-to-date tree survey be prepared, notwithstanding the time lapse since the previously prepared tree survey was lodged in connection with the original application. There is no obvious evidence that would warrant rejection of the survey based on lack of involvement by a suitably qualified arboriculturist. It is noted that the applicant is willing to accept a condition for the survey to be revised, if necessary, should permission be granted.

7.5. Overlooking and Overshadowing

- 7.5.1. Given the considerable separation distance between the proposed dwelling, (at almost fifty metres) from the rear elevation windows of the Rectory to the east and the trees and vegetation on both sides of the boundary between the application site and appellant property's gardens there is no potential for undue overlooking from either the first floor north west facing balcony or the interior of the dwelling. Furthermore, the balcony and window do not directly face towards the windows at the Rectory. It is noted that a similar view was arrived at in the assessment of the previous proposal for which permission was granted without a requirement for any modification in this regard.
- 7.5.2. Similarly, it is considered, as was the case with the previous application, the proposed development would not give rise to undue overshadowing given the separation from the adjoining dwellings and given the shadow effect of the trees and

vegetation adjacent to both sides of the boundary with the adjoining property which give a shadow effect.

7.6. Access and Parking

- 7.6.1. The onsite parking layout in which two car spaces are shown inside the entrance one, is not ideal in that egress and access in forward gear onto Merton Drive is not feasible. The transportation division has accepted this arrangement which was also approved under the prior application. However, restriction to one space on site might be effective to reduce risk of hazard on the public road in the vicinity of the entrance. Such a measure, would be consistent with current policy for encouragement of sustainable means of transport and, pay and display parking is available in the vicinity.

7.7. Other issues.

- 7.7.1. No issues have been identified that would suggest that that the application was not satisfactorily assessed due to the contention that the Dublin City Development Plan 2011-2017 instead of the current extant CDP, the Dublin City Development Plan, 2016-2022 application is satisfactorily assessed. The proposed development is similar to the proposal for which permission was previously granted, in 2011 but which was not taken up and it is of note that there is little or no difference in relevant provisions in the current extant and prior development plans.

7.8. Environmental Impact Assessment Screening

- 7.8.1. Having regard to the nature of the proposed development and its location in a serviced inner suburban area 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.

7.9. Appropriate Assessment Screening.

- 7.9.1. 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.

8.0 Recommendation

- 8.1.1. It can be concluded that there are no material considerations with regard to the current proposal, the planning context, or to planning policy, that would warrant a reversal of the decision to grant permission arrived at in respect of the previous similar proposal. In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld based on the reasons and considerations and subject to the conditions which follow.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the planning history for the site and to 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 and in the site size and configuration and dwelling form and design, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the integrity and historic character and context of the existing dwelling on the site and adjoining properties, would not seriously injure the residential and visual amenities of the area by way of overlooking and overshadowing and, would be in accordance with the proper planning and sustainable development of the area.

10.0 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. 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.

3. 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. Sample panels shall be erected on site for inspection by the planning authority in this regard.

Reason: In the interest of visual amenity.

4. Prior to the commencement of the development, the applicant shall submit and agree with the planning authority, a fully detailed landscaping scheme to include full details of size, species and location for all existing trees and of trees to be planted along with details of the proposed arrangements for hard and soft landscaping and boundary treatment. The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the substantial completion of external construction works. Any trees and plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenities.

5. 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.

6. 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.

7. 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
9th April, 2022.

Notes:

The applicant is advised that:

A person is not entitled to carry out a development solely by reason of a grant of planning permission, and,

No element of a development shall oversail, overhang or otherwise encroach on or over third-party property without the permission of the adjoining property owner.