



An  
Bord  
Pleanála

## Inspector's Report ABP-313528-22

<b>Development</b>	Demolition of shed, construction of detached, two-storey, six-bedroom dwelling, detached garage and associated site works.
<b>Location</b>	Site at 110 Inchicore Road, Kilmainham, Dublin 8.
<b>Planning Authority</b>	Dublin City Council South.
<b>Planning Authority Reg. Ref.</b>	3843/21
<b>Applicant(s)</b>	Colm & Pauline Cannon.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission.
<b>Type of Appeal</b>	Third Parties.
<b>Appellant(s)</b>	Colum & Lorraine McDaid. David & Sheila Sherwin.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> November 2022.
<b>Inspector</b>	Michael Dillon

## **1.0 Site Location and Description**

- 1.1. The site, with a stated area of 0.1276ha, is located on the north side of Inchicore Road in Dublin 8. There are double yellow lines on the site side of this road, with pay-parking on the opposite (southern side). There is a single, unbroken, white line in the centre of the road. The road is heavily trafficked.
- 1.2. The site proper forms backlands to the rear of a terrace of 4 two-storey houses – 102-108 Inchicore Road. 110 Inchicore Road, which is an end-of-terrace, two-storey house, is outlined in blue on site location maps, as forming part of the lands in the control of the applicants. There is a narrow vehicular laneway between 110 and 108 which gives access to the rear gardens of 102-110. Access is controlled by electronic gate. There is vehicular access from this laneway to the front garden of 108, but not to 110. Where it is forward of the gate, the laneway is paved: to the rear of the gate, the laneway is hardcore.
- 1.3. The site itself is relatively flat grass lawn garden; dry under foot on the date of site inspection. The garden contains a single-storey, dilapidated, flat-roofed shed, of a stated 42sq.m. There is vehicular access to the site from the laneway – with one car parked within it on the date of site inspection. To the west, the site abuts the rear garden of 110 – the two being divided by a new concrete post and timber fence – approximately 2m high. There is vehicular access to the rear garden of 110 from the laneway. To the north, the site abuts the Dublin to Cork railway line, in deep cut (stated to be 6m below the level of the site) – the boundary with which is an old stone wall (1.5-2.0m high). To the east, the site abuts, two-storey commercial office development – the boundary with which is a mixture of old stone wall, steel post and chainlink fencing (surmounted by three strands of barbed wire), newish brick wall of a utility building (surmounted by 2.4m high palisade fencing), and a line of semi-mature deciduous trees on the site side. To the south, the site abuts the rear garden boundary of 102 (a large garage/shed), and the laneway serving as rear access to the terrace – the boundary with which is a 2.0m high concrete block wall.

## **2.0 Proposed Development**

- 2.1. Permission sought on 10<sup>th</sup> November 2021, to construct a two-storey house of 233sq.m and a detached garage of 38sq.m. The house is to be connected to the

public water supply and the public sewerage network. On-site parking is to be provided for one car.

- 2.2. Following a request for additional information, revised details were received on 24<sup>th</sup> March 2022, in relation to drainage, and included a Flood Risk Assessment Report – dated March 2022 (Revision 02).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By Order dated 20<sup>th</sup> April 2022, Dublin City Council issued a Notification of Decision to grant planning permission, subject to 10 conditions – the principal ones of which may be summarised as follows-

1. Development to be carried out in accordance with plans and particulars received with the application, as amended by additional information received on 24<sup>th</sup> March 2022.
2. Required payment of a Development Contribution of €22,863.36.
3. Related to submission of a Construction Management Plan.
4. Related to drainage.
5. Related to requirement for protection of the railway embankment and setback of 4m from the northern boundary.
9. Related to hours of construction.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

There are Planners Reports on the file – dated 13<sup>th</sup> January and 20<sup>th</sup> April 2022.

##### **3.2.2. Other Technical Reports**

- Reports from Engineering Department (Drainage Division) of DCC – dated 29<sup>th</sup> November 2021 and 1<sup>st</sup> April 2022.

- Report from Transportation Planning Division of DCC – dated 5<sup>th</sup> January 2022.

### **3.3. Prescribed Bodies**

There is an observation from Iarnród Éireann (Infrastructure Section) – dated 30<sup>th</sup> November 2021.

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

A number of objections were received by DCC, from local residents – the issues of note which were raised being restated in the 3<sup>rd</sup> party appeals to the Board.

## **4.0 Planning History**

**Ref. 2036/21:** Permission refused on 9<sup>th</sup> March 2021, for a terrace of 5 houses on this site – for one reason as follows-

Having regard to the substandard width of the laneway between no. 110 and 108 Inchicore Road, which cannot accommodate two way or one-way vehicular traffic as well as the pedestrian and cyclist movement simultaneously, it is considered that the development would give rise to serious conflicts between vehicles and pedestrians and cyclists. The applicant has not demonstrated adequate vehicle access arrangements for refuse collection, emergency vehicles and deliveries. The development is considered contrary to the Dublin City Development Plan Section 16.10.10. The development would, therefore, be contrary to the proper planning and sustainable development of the area, and would set an undesirable precedent for similar developments in the area.

## **5.0 Policy Context**

### **5.1. Development Plan**

The Dublin City Development Plan 2016-2022 is of relevance. The site is zoned 'Z1' – To protect, provide and improve residential amenities. Section 16.10.8 states-

Dublin City Council will allow for the provision of comprehensive backland development where the opportunity exists. Backland development is generally defined as development of land that lies to the rear of an existing property or building line. The development of individual backland sites can conflict with the established pattern and character of development in an area. Backland development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. By blocking access, it can constitute piecemeal development and inhibit the development of a larger backland area. Applications for backland development will be considered on their own merits.

The new Dublin City Development Plan 2022-2028 has been adopted by the elected members, and will come soon come into operation. The zoning of the site remains 'Z1' – Sustainable residential neighbourhoods.

## **5.2. Natural Heritage Designations**

There are no Natural Heritage Designations either within or immediately adjoining the appeal site. The development is to be connected to the public sewerage network. There are no watercourses linking the site with any such designated areas. Significant effects are not likely to arise, either alone or in combination with other plans or projects.

## **5.3. EIA Screening**

EIA Screening was carried. I am satisfied that, having regard to the limited scale of the development, within a built-up area, that it would not have any significant impact on the environment.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

There are two 3<sup>rd</sup> Party appeals; from David & Sheila Sherwin of 112 Inchicore Road (received by the Board on 16<sup>th</sup> May 2022), and from Colum & Lorraine McDaid of

108 Inchicore Road (received by the Board on 9<sup>th</sup> May 2022). The issues of note can be summarised in bullet point format, as follows-

- Access to the site is inadequate – the laneway being too narrow (2.43m at its narrowest pinch-point between 108 & 110). This will result in obstruction to other users of the laneway – for access to rear gardens of 102-108. Obstruction will be particularly bad during the construction phase and the excavation for the sewer and watermain in the laneway. It will also result in obstruction for access to parking in the front garden of 108. The laneway will not be large enough for emergency vehicles or refuse collection. Scrape marks on the gable render of 108, are a clear indication of damage caused by vehicles on this narrow access.
- Sight visibility for traffic exiting the laneway onto Inchicore Road, is particularly poor to the west.
- No swept-path analysis for traffic access was submitted with the application.
- The existing locked gate on the laneway has resulted in a reduction in burglaries. Additional access to this new house will result in anti-social behaviour and less security for existing residences.
- Construction traffic will not be able to use the laneway, and will have to unload on the pavement on Inchicore Road. There are double yellow lines on the north side of Inchicore Road at this location.
- A doorway from 110, opening directly onto the laneway has not been shown on drawings. The garage of 112 – directly to the north of the rear garden of 110, has not been clearly shown on drawings.
- House on this site may be sub-divided in the future. The design and size would lend itself to this. The design would appear to allow for additional houses either side. Living-rooms face north instead of south.
- Construction will result in noise and nuisance for existing residents.
- The laneway is shared, and should not have been indicated as being within the ownership of the applicants. It should have been highlighted in yellow.

- The Board has previously refused permission for backland development, where an access lane was too narrow.
- The design of the house does not make a positive contribution to the area, and does not respect the character of the terraced houses on Inchicore Road.

6.1.1. The appeals are accompanied by annotated photographs of the immediate area.

## 6.2. **Applicant Response to 3<sup>rd</sup> Party Appeals**

6.2.1. The response of Tom Phillips & Associates, agent on behalf of the applicants; received by the Board on 10<sup>th</sup> June 2022, can be summarised in bullet point format as follows-

- Permission has been granted for only one on-site parking space. There is one existing on-site parking space to the rear of 110. The area is well-served by public transport.
- A dry-riser is to be provided within the laneway to facilitate firefighting.
- DCC was satisfied that limited vehicular movements associated with one house would not result in traffic hazard at this location.
- Provision of swept-path analysis was not considered necessary for this application, as it relates to an existing access point off Inchicore Road.
- A family dwelling on this site will increase passive surveillance on the laneway.
- A Construction Management Plan will deal with issues arising with traffic. These impacts will be limited in time and extent.
- The property at 110 Inchicore Road does not form part of the application site.
- The narrowest point of the laneway is 2.43m, and this has been deemed acceptable by DCC.
- The house will not detract from its urban context.
- The existing gateway on the laneway will remain in place; with all existing residents continuing to have access and control over the gate.
- All mature vegetation on site will be retained.

- The proposed development is not a mews house on a mews laneway. The Council has granted permission for houses in rear gardens, elsewhere on Inchicore Road.
- Condition 1 of the Notification of decision to grant planning permission, requires that the development be carried out in accordance with plans and particulars submitted. Any proposal to increase the number of units would require planning permission.
- The laneway is in the ownership of the applicant. Right-of-way or formal wayleave does not exist for houses 102-108. Notwithstanding this, access will be maintained for those houses.
- The site is zoned for residential use. The development will help address the housing shortage within the city.

### 6.3. **Planning Authority Response**

None received.

### 6.4. **Observations**

None received.

## 7.0 **Assessment**

The principal issues relating to this proposed development can be addressed under the following headings.

### 7.1. General Comment

- 7.1.1. There is vehicular access to both the rear garden of 110 and to the site. The laneway also provides vehicular access to the rear of 4 other houses on Inchicore Road – garages existing for 102 & 108. These houses are stated to have right-of-way access over the laneway. There was one car parked in the laneway on the date of site inspection. All houses would appear to have control over the electronic gate.
- 7.1.2. The applicants state that they are the owners of the laneway, and that is why it is included in the site, as outlined in red. Whatever the ownership or access/right-of-



way arrangements for this laneway, I would be satisfied that the applicants have sufficient legal interest to permit access to the appeal site. Should it be established that the applicants do not have sufficient legal interest in the laneway, then the permission could not be carried out. However, this is a civil matter, outside the control of the planning system.

## 7.2. Planning History

- 7.2.1. Permission has previously been refused for 5 houses on this site – the issue of concern being the narrowness of the access, and pedestrian and cyclist safety. The current application seeks to overcome the previous reason for refusal through seeking permission for just one house.

## 7.3. Site Layout & Design

- 7.3.1. The site is a large one. A single, two-storey house will not have any significant impact on the residential amenities of adjoining houses on Inchicore Road – many of which have dormer attic windows. In particular, I would note the setback from those houses of more than 30m, and the fact that the site is to the north of the rear gardens, and will result in no overshadowing whatever. I note the concerns of the appellants that the house may be subdivided – and the design would seem to facilitate future sub-division. This, however, would require planning permission; as would the construction of any additional houses on the site. So, whilst the design of the house may allow for future sub-division and construction of adjoining houses – this would be a matter for adjudication on a future planning application(s). I would consider it appropriate to attach a condition stating that the house shall not be subdivided without prior specific grant of permission. In relation to the comment on the orientation of the living-rooms, I would note that for privacy purposes, such rooms are usually more desirable addressing the rear garden area. The sitting-room of the house does face full south (to the front). A detached garage is proposed, and such is acceptable on a large site. Again, a condition should be attached stating that the garage is to be used for purposes incidental to the enjoyment of the principal dwelling-house. Existing semi-mature deciduous trees along the eastern boundary are to be retained – and these will help to screen offices on the adjoining site.
- 7.3.2. The design of the house does not need to respect the character of houses on Inchicore Road. This is concealed backland site, and will not be readily visible.

- 7.3.3. The garage immediately to the north of the rear garden of 110 (which serves 112) is indicated on drawings submitted. This garage is accessed from a different laneway. The development will have no impact whatever on this structure.

#### 7.4. Railway Issues

- 7.4.1. Iarnród Éireann was consulted by DCC. The Dublin-Cork railway line is in deep cut along the northern boundary of the site – stated to be 6m. There is an old stone wall along this entire boundary – 1.5-2.0m high. There is concern that additional surface water flows onto the track would contribute to flooding on the line. Where the railway is in deep cut, flooding must be a problem, whether a house is constructed on this site or not. Pluvial percolation will naturally work its way to the low-lying railway line. The increase in impermeable surfaces, owing to the construction of the house, will not alter the amount of pluvial percolation to groundwater – although it might change the pattern over the site. This could be overcome through the construction of percolation areas or soakways – the site being more than large enough to contain such. However, DCC was satisfied to allow surface water from the site to be discharged to the combined sewer on Inchicore Road, to deal with the concerns of Iarnród Éireann. It was also requested that a condition be attached to the permission requiring that no construction work be carried out within 4m of the railway boundary. This would appear to be prudent – to reduce the likelihood of slippage onto the railway line. Condition 5 of the Notification of decision to grant permission reflected this requirement, and should be restated in any permission to issue from the Board.

#### 7.5. Water Supply & Drainage

- 7.5.1. The water supply to the house will come from the public mains in Inchicore Road. A horizontal dry-riser will be installed for firefighting purposes – as the laneway is too narrow to allow fire tender access. This is an acceptable arrangement.
- 7.5.2. Surface water is to be discharged to a combined sewer in Inchicore Road. A dead leg connection will be provided, against the time when a separate surface water pipe may be provided in Inchicore Road. Outflow from the site is to be restricted to 2l/s by means of a 'Hydrobrake' mechanism. Surface water drainage is to be provided for the laneway between the existing electronic gate and the proposed new gateway

to the house – where there is no surface water drainage at present. This must be regarded as an improvement.

- 7.5.3. Foul waste is to be discharged to the private sewer which serves 102-108 Inchicore Road. This sewer is located in rear gardens and debouches into the laneway; and discharges to the 300mm diameter public foul sewer on the opposite side of Inchicore Road. There is no manhole in the laneway where the sewer turns at right-angles. It is proposed to construct a new manhole at the right-angle point in the laneway – which will facilitate future maintenance of the sewer.
- 7.5.4. The additional information submission to DCC of 24<sup>th</sup> March 2022, included a Flood Risk Assessment Report. Due to the significant difference in levels between the site and the railway line – flooding, if it does occur, will be on the railway line. The site slopes very gently downhill towards Inchicore Road. The construction of the house will not result in any flooding of rear gardens to the south. As indicated above – new surface water drainage is to be provided on a section of the laneway – where none has existed in the past.
- 7.5.5. All of the above-described works were acceptable to the Engineering Department (Drainage Division) of DCC.

#### 7.6. Access & Parking

- 7.6.1. The access to the site is via a shared laneway. It is agreed by the parties to the appeal, that the pinch-point is 2.43m wide. There is evidence of scrape marks on the cement render on the gable of 108 Inchicore Road – clearly caused by vehicles. The laneway is used by vehicles accessing the rear of the properties at 102-110. On the date of site inspection there were two cars visible. There is parking for cars in the front garden area of 108 at present. The proposed development will not have any impact on such parking – as the laneway provides access to a number of rear garden areas. The electronic gateway is sufficiently set back from the footpath, to ensure that vehicles do not block the pavement whilst the gate is being opened. Obviously, the narrowness of the laneway means that if vehicles should meet, one will have to give way and reverse. Whilst sight visibility at the egress may be somewhat restricted to the west, this laneway is already in use for vehicular access and egress. There is no requirement for swept-path analysis, where the laneway is already in use for vehicular access: the proposed use is residential. DCC was

satisfied that the additional traffic movements associated with one additional house would be acceptable in terms of traffic safety and convenience.

- 7.6.2. There will be some level of disruption to residents during the construction of the house. However, such disruption will be of limited duration. Whilst drainage and watermains are being laid, the laneway will clearly not be available to vehicular traffic. I note the comments of the appellants in relation to deliveries of building materials. However, this is not an unusual situation. Where existing houses in an urban area are being significantly altered or extended, the sites do not generally permit of access by larger construction or delivery vehicles. Condition 3 of the Notification of decision to grant permission, required submission of a Construction Management Plan.
- 7.6.3. The access arrangements to the proposed house will not alter security in any way, as the electronic gate is to remain in place. I note the comment of the applicants in relation to increased surveillance of the laneway with additional movements to the new house.
- 7.6.4. There are doorways from 108 and 110, directly onto the laneway. These doorways are located behind the electronic gate. Those using the laneway are aware of the existence of these doorways. Traffic must, of necessity, be travelling at low speed on this section of laneway – arising from its narrowness at this point. The proposed development will not constitute a traffic hazard.
- 7.6.5. On-site parking will be provided for the development. It is not feasible to restrict the level of parking on any site.

#### 7.7. Development Contribution

- 7.7.1. Condition 2 of the Notification of decision to grant permission, required payment of a Development Contribution of €22,863.36. The requirement to pay a development contribution should be included in any permission to issue from the Board.

#### 7.8. Nuisance

- 7.8.1. There will be some level of nuisance and disturbance to others using the laneway during the construction phase of the development. However, this disturbance will be of limited duration. Other users of the laneway may have in the past, or may in the future, use the laneway for construction/delivery purposes. Condition 9 of the

Notification of decision to grant permission limits the hours of construction – and this would appear to be reasonable, and should be restated in any permission to issue from the Board.

## 8.0 Recommendation

I recommend that permission be granted for the Reasons and Considerations set out below, and subject to the attached Conditions.

## 9.0 Reasons and Considerations

Having regard to the residential zoning of the site and to the pattern of development in the vicinity, it is considered that, the proposed development, subject to compliance with the attached conditions, would not seriously injure the amenities of the area or of residential property in the vicinity, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 10<sup>th</sup> day of November 2021, as amended by the further plans and particulars submitted on the 24<sup>th</sup> day of March 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

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

2. Water supply and drainage arrangements shall comply with the requirements of the planning authority and Irish Water, for such works and services.

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

3. Prior to commencement of development, a Construction Management Plan shall be submitted to, and agreed in writing with, the Planning Authority.

**Reason:** In the interest of orderly development and traffic safety.

4. The developer shall comply with the following requirements of Iarnród Éireann-

a) The Railway Safety Act 2005, places an obligation on all persons carrying out any works on or near the railway, to ensure that there is no increase in risk to the railway as a consequence of these works. Because of the proximity of the site to the railway line to the north, the developer must take into account this obligation in design, construction and operation of the development.

b) No construction works or heavy materials storage shall be carried out within 4m of the stone wall which forms the northern boundary of the development site.

c) The developer shall not undermine the integrity of the railway embankment to the north of the site.

**Reason:** In ensure a satisfactory standard of development and in the interest of rail traffic safety.

5. Construction works shall be limited to the hours of 0700-1800 Mondays to Fridays and 0800-1400 on Saturdays. No construction work shall take place on Sundays or bank holidays. Deviations from these times will only be allowed where a written request, with compelling reasons for the proposed deviation, has been submitted to the planning authority, and written consent obtained.

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

6. The proposed house shall be occupied as a single dwelling unit. No part of the house shall be separated, sold, let or otherwise transferred or conveyed, save as part of one single dwelling unit. The detached garage structure shall be used for purposes incidental to the enjoyment of the dwelling house, and shall not be used for residential purposes.

**Reason:** In the interest of residential amenity and to restrict the potential level of vehicular movements on a laneway which is restricted in width and capacity, in the interest of traffic and pedestrian safety.

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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**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.

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**Michael Dillon,**  
**Inspectorate**

**28<sup>th</sup> November 2022.**