



An  
Bord  
Pleanála

## Inspector's Report ABP-314989-22

### Development

Subdivision of the site into two separate sites construction of a two-storey dwelling formation of a vehicular entrance onto Charleville and all associated ancillary works necessary to facilitate the development.

### Location

'Glenholme', No. 115 Churchtown Road Lower, Churchtown, Dublin 14.

### Planning Authority

Dun Laoghaire Rathdown County Council.

### Planning Authority Reg. Ref.

D22A/0489.

### Applicant(s)

Stephen & Brigitta Lannen.

### Type of Application

Planning Permission.

### Planning Authority Decision

Grant.

### Type of Appeal

Third Party.

### Appellant(s)

1. Mary Gilligan & Tony Kirwan.
2. Nigel Brennan & Others.

### Observer(s)

None.

**Date of Site Inspection**

14<sup>th</sup> February, 2023.

**Inspector**

Patricia-Marie Young.

**DECISION QUASHED**

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## 1.0 Site Location and Description

- 1.1. 'Glenholme' No. 115 Churchtown Road Lower, the appeal site has a stated site area of 0.03ha accommodates a detached dwelling with attic level, that is situated on the southern corner of Churchtown Road Lower's intersection with a residential cul-de-sac known as Churchtown Avenue, c250m to the north of Braemor Road (R112), in the south Dublin city suburb of Churchtown, in County Dublin. The subject development relates to the rear of this property that is predominantly in maintained grass and mature landscaped boundaries. The site is bound by No. 117 Churchtown Road Lower on its southern side and the western side boundary of No. 2 Flemingstown Park. There is mature hedging located inside the site boundary alongside these adjoining properties. The surrounding area is residential in character, with semi-detached two storey houses with front and rear gardens dominant along either side of Churchtown Road Lower in the vicinity of the site. In addition, Charleville is characterised by two storey detached dwellings whereas Flemingstown Park has more of a mix of house styles.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the subdivision of the appeal site into two separate sites together with:
- The set back of north boundary wall of the proposed subdivided site.
  - Construction of a two storey, infill dwelling with rooflights, to the rear of the site. This dwelling has a given height of 5.9m, a gross floor area of 162m<sup>2</sup> and internally accommodates three bedrooms.
  - Provision of a vehicular entrance on Charleville.
  - Removal of existing trees and hedges adjacent to the northern boundary and replanting at a setback location from the revised northern boundary.
  - Provision of 2 no. on-curtilage car parking spaces; private amenity space, boundary treatment, landscaping, and SuDS drainage measures.
  - All ancillary works necessary to facilitate the development.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. By order dated 13<sup>th</sup> day of October, 2022, the Planning Authority issued notification of the decision grant permission subject to 18 mainly standard in nature conditions. I note the requirements of the following conditions:

Condition No. 2:	Requires the opaque glazing for the ensuite ground floor window.
Condition No. 3:	Requires a 2m high rendered wall with granite capping on the eastern boundary.
Condition No. 6:	Sets out a number of landscaping requirements for agreement.
Condition No. 7:	Requires reinstatement of the verge and its maintenance in good condition
Condition No. 10:	Limits the width of the vehicular entrance to a maximum of 3.9m.

This order includes a number of advisory notes including one setting out Section 34(13) of the PDA, 2000, as amended.

- 3.1.2. On the 26<sup>th</sup> day of August, 2022, the Planning Authority requested further information on the following matters.

Item 1:	Demonstration that the proposed development accords with Policy Objective CA5 of the Development Plan. Of note this policy supports high levels of energy conservation, energy efficiency and use of renewable energy sources in new buildings.
Item 2:	Relates to recharging point for EVs.
Item 3:	Seeks clarity on planting.
Item 4:	Clarity on boundary treatment with Glenholme.
Item 5:	Revised vehicle entrance width sought.

Item 6: Clarity on the status of the grass verge to the north sought.

3.1.3. On the 20<sup>th</sup> day of September, 2022, the applicant submitted their response to the Planning Authority's further information request.

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

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

The final Planning Officers report is the basis of the Planning Authority's decision and includes the following points:

- The further information response is deemed to be generally acceptable.
- No undue residential and/or visual amenities would arise.
- No undue traffic hazard would arise.
- It is accepted that part of the site forms part of the public road network which the Council is responsible for.
- This development is consistent with relevant planning policy provisions.
- No AA issues arise.

The initial Planning Officer's report concluded with a further information recommendation.

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

**Transportation:** No objection, subject to safeguards.

**Drainage:** No objection, subject to safeguards.

**Parks:** No objection, subject to safeguards.

**Environmental:** No objection, subject to safeguards.

### **3.3. Prescribed Bodies**

3.3.1. None.

### 3.4. Third Party Observations

- 3.4.1. During the course of the Planning Authority's consideration of this application they received 18 no. Third Party observations objecting to the proposed development. I consider that the key issues raised in these observations correlate with those raised by Third Parties appeal submissions received by the Board in this appeal case.

## 4.0 Planning History

### 4.1. Site

- **ABP-248377 (P.A. Ref. No. D17B/0063):** On appeal to the Board retention permission **granted** for a 39sqm single storey extension with consequential attic space generated to the rear of the existing house. Decision date: 19.07.2017.
- **P. A. Reg. Ref D15A/0263:** Permission was **granted** for demolition of the garage, alterations to the front and side and rear, extension of the hipped roof over a conservatory utility area at the rear, realignment of the vehicular entrance and a replacement 2.4 metres high boundary wall of the boundary wall on the northern site frontage at the side and rear. Decision date: 18.08.2015.
- **ABP Ref. No. PL06D.106166 (P. A. Reg. Ref. D97A/758):** On appeal to the Board permission was **refused** for a dwelling at the rear of Nos. 115 and 117 Churchtown Road Lower for the following reason: *"it is considered that the proposed development by reason of the means of vehicular access across a planted landscaped strip which is an important feature in the layout of Charleville, would seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and development of the area"*. Decision date: 03.05.1998.

### 4.2. Vicinity

- **ABP 311118-21 (P.A. Ref. No. D21A/0523)**

**Rear of 123 Churchtown Road Lower, fronting to and accessed from Flemingstown Park, Dublin 14 (Note: c51m to the south of the appeal site).**

On appeal to the Board outline planning permission was **refused** for a two-storey dwelling house for reasons and considerations relating to residential amenity and materially contravening the County Development Plan.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Dún Laoghaire Rathdown County Development Plan, 2022-2028, is the operational plan for the purposes of the Board decision under which the site is zoned as 'Objective A'. The stated land use zoning objective for such land is: '*to provide residential development and improve residential amenity while protecting the existing residential amenities*' and Table 13.1.2 confirms that residential uses are 'permitted in principle' in this zone.
- 5.1.2. Chapter 4 'Neighbourhood – People, Homes and Place' of the Development Plan sets out that the Council aims to increase delivery of housing subject to alignment with the NPF and RSES; the Core Strategy, Housing Strategy, and Housing Need Demand Assessments; and embedding the concept of neighbourhood and community into spatial planning.
- 5.1.3. Section 4.3 of the Development Plan deals with 'Homes' and relevant policies/objectives can be summarised as follows.
- PHP18: Promotes increased density on suitable sites subject to suitable design which respects the character and amenities of the surrounding area.
  - PHP20: Seeks to protect the residential amenity of existing properties.
- 5.1.4. Section 4.4 of the Development Plan promotes quality design and healthy placemaking in accordance with national policy and guidance.
- 5.1.5. Chapter 12 of the Development Plan deals with Development Management.

### 5.2. Natural Heritage Designations

- 5.2.1. None within the zone of influence.

### 5.3. EIA Screening

- 5.3.1. See completed Form 2 on file. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood significant

effects on the environment arising from the proposed development. EIA, therefore, is not required.

## **6.0 The Appeal**

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

6.1.1. On the 1st day of November, 2022, a Third-Party Appeal was submitted on behalf of Mary Gilligan and Tony Kirwan, with an address of No. 117 Churchtown Road Lower, which can be summarised as follows:

- The proposed two storey building resembles a cargo container and would have an unsettling impact on its residential setting.
- This development would result in the splitting in two of amenity space outside of the applicant's control and would effectively result in the alienation and destruction of public open space.
- This development would be overbearing and would result in undue overshadowing of their property in turn diminishing its residential amenities as well as devaluing it.
- Previous similar developments have failed at this property.
- This proposal would interrupt a mature planted roadside boundary diminishing the visual amenities of the streetscape scene.
- The proposed dwelling would effectively consume the rear garden area of Glenholme.
- Question 24 of the planning application form, on the matter of Taking in Charge is not responded to.
- The applicant seeks to take public open space bordering their site into their private ownership.
- This development is out of character with the pattern of development that characterises this area.
- The loss of mature trees and hedges would impact on visual amenity as well as reduce the privacy they provide.

- This proposal would seriously damage the amenities of residential properties in its vicinity.
- This proposal represents overdevelopment of the site.
- Applicant has not demonstrated adequate legal estate or interest in the parcel of land concerned to carry out this development.

6.1.2. On the 9<sup>th</sup> day of November, 2022, a Third-Party Appeal was submitted on behalf of Charleville Residents Association, which can be summarised as follows:

- The applicant has not demonstrated that they have sufficient interest to carry out the proposed development.
- No. 115 Churchtown Road Lower has been extended and includes a substantial attic floor area. The original dwelling on this site was a modest bungalow.
- Charleville residential development dates to the 1970s and includes a rectangular open space to the north of the residential road and a linear landscaped strip running along its southern boundary. These open spaces have been maintained by the residents and the Council over the years.
- In recent years, the original planting along the boundary with Glenholme has been replaced by acer trees and laurel by the Council at considerable cost.
- The site area includes a linear strip of open space which is not in the applicant's ownership or the Councils.
- Reference is made to the planning history of the site which included a refusal of permission by the Board under PL06D.106166 for a dwelling house to the rear of No.s 115 and 117 Churchtown Road Lower.
- A Circuit Order was obtained compelling the Council to remove the trees from the landscaped strip adjoining Glenholme because of the impact on the light to the back garden of Glenholme with the Court ordering the Council to replant this strip and the owners of Glenholme to rebuild the boundary wall.
- The Councils Property Management Section in a letter dated the 9<sup>th</sup> day of September, 2022, sets out that the Council are not in ownership of the land that the applicants have included outside of their legal interest and which they require for providing access to serve the proposed development.

- The proposed development is incompatible with the established pattern of development.
- The visual amenity of the properties in Charleville would be diminished by the insertion of the proposed dwelling.
- The new planting proposed by the applicant would not compensate for the loss of natural features that would arise.
- This proposal would result in overdevelopment of the site and would give rise to overlooking of properties in its vicinity.
- The auto track analysis represents an unlikely reality.
- This proposal would result in additional on-street car parking in Charleville.
- The Board is asked to refuse permission for the proposed development.

## 6.2. Applicant Response

6.2.1. The First Party's response to the grounds of the two Third Party appeals was received on the 29<sup>th</sup> day of November, 2022, and can be summarised as follows:

- The concerns of the Third party have already been addressed by the Planning Authority in their consideration of this application and under previous applications made in relation to providing a dwelling at this location.
- The zoning objective for the site permits residential development.
- There is only one window facing into No. 117 Churchtown Road Lower. This window would be fitted with opaque glazing and this window does not serve a primary living space. There is also a proposal for a 2m boundary between this property.
- The Planning Authority are satisfied with the vehicular access proposal.
- The proposed house is intended for their daughter for her future use.
- Planning provisions have changed since the previous applications was made.
- Consultation was had with the Planning Authority's Councils Parks Department in the making of this application.

- This proposal is consistent with the Development Plans provisions for infill development and for corner/side garden sites.
- It is not accepted that the space upon which access onto Charleville is proposed is useable open space and its only value is its various trees and planted laurel hedge. The Council is responsible for maintaining this space.
- They are within their legal right to proceed with this development if granted.
- In relation to Question 24 the applicant intends on managing their own private open space bordering the site.
- In 2016 they had to engage with the Council in relation to overgrown trees along this landscape buffer because the Council were identified as being legally responsible. At this point in time the residents of Charleville did not identify as owners of this space.
- This proposal includes 4 replacement trees and laurel planting to compensate for the removal of 4 trees and part of a laurel hedge. The only long-term change is the vehicular access.
- No adverse visual and/or residential amenity impacts arise.
- The Planning Authority accepted the auto track analysis provided.

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

- 6.3.1. On the 8<sup>th</sup> and 15<sup>th</sup> day of November, 2022, the Board received the Planning Authority's responses to the two separate Third Party grounds of appeal. Both seek that the Board have regard to their Planning Officer's report. They also set out that the grounds of appeal do not raise any new matters that would justify a change of attitude to the proposed development.

### **6.4. Observations**

- 6.4.1. None received.

### **6.5. Further Responses**

- 6.5.1. On the 17<sup>th</sup> day of November, 2022, a response was received from Mary Gilligan and Tony Kirwan. I consider that no new issues are raised in this submission.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. I have had regard to all the documentation attached to this file including, the two Third Party appeal submissions received by the Board, the Planning Authority reports, and responses received by the Board including the First Party. In addition, I have inspected the site and had regard to relevant planning policy provisions and guidance for the proposed development which essentially consists of the subdivision of an existing suburban residential plot that accommodates a detached dwelling and the provision to the rear of this dwelling a separate detached dwelling with access onto the public road network via Charleville on the northern boundary of the site. Given that the site and its setting are situated on residentially zoned and serviced land with local through to national planning policy provisions and guidance supporting increased densities at such locations I consider that the general principle of the development sought under this application, subject to standard planning criteria being satisfied, to be acceptable.
- 7.1.2. The key planning issues, as I consider them, are (i) the provision of an entrance and access from the northern boundary of the site to serve the proposed dwelling together with associated works on land outside of the First Party's legal interest including modification of boundaries; (ii) the impact of the proposed development on the visual and residential amenities of the area; and (iii) overspill of car parking onto the Charleville cul-de-sac. I also consider that the Development Plan is favourable to the provision of dwelling units at appropriate infill locations including those that form part of the existing curtilage of a residential plot, with the proposed development satisfactorily demonstrating compliance with the development management standards and criteria set out under Section 12.3.7 of the Development Plan. Together with giving rise to no drainage or transportation issues that can not be addressed by way of standard conditions. I therefore consider that no other substantive planning issues arise that require examination by the Board in its determination of this appeal case outside of the matter of 'Appropriate Assessment' which I propose to examine at the end of this assessment.
- 7.1.3. For clarity purposes, this assessment is based on the proposed development as revised by the applicant's further information response received by the Planning Authority on the 20<sup>th</sup> day of September, 2022.

## **7.2. Impact of the Proposed Development on Adjoining Land to the North**

- 7.2.1. The Third-Party Appellants raised concern that the proposed development is dependent on land that is outside of the First Party's legal interest and the Council indicates is not in their ownership but that they maintain it. The First Party together with the fact that the Council do not object to any modifications of the land adjoining the northern boundary of the site to accommodate the proposed access onto the public road network and revised boundaries as well as planting to accommodate sightlines is they assert sufficient for them to be able to proceed with the implementation of the proposed development subject to a grant of permission.
- 7.2.2. Whilst I am cognisant the matter of access, the creation of a right of way to serve the proposed site onto the Charleville access road through to the carrying out of works on land outside of the applicant's legal interest to be a civil matter outside the remit of this planning appeal. Notwithstanding, I am not satisfied, based on the information provided that the applicant has demonstrated sufficient legal interest to make any modifications to the land outside of their legal title. Land that is not within the legal interest of the Council to give consent for irrespective of whether they undertake part of its maintenance through to have replanted this space in the recent past. It would also appear that this linear space is also maintained by residents of the Charleville residential scheme as a soft landscaped linear strip. In addition, a space upon which the proposed subdivided residential plot located to the rear of the appeal site would be solely dependent upon for access and egress. With the latter also requiring removal of landscaping features, including four trees, and hedging together with the realignment of the boundary wall to accommodate sightlines.
- 7.2.3. Whilst I am cognisant that new landscaping is proposed to in part compensate for the loss of natural features and I am also cognisant that Section 34(13) of the Planning and Development Act 2000, as amended, stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development and I note that the Planning Authority as part of their grant of permission attached a note setting out the provisions of Section 34(13) of the Planning and Development Act 2000. The Board previously refused an application to the rear of No.s 115 and 117 Churchtown Road Lower (Note: ABP Ref. No. PL06D.106166) on the basis that it considered the means of vehicular access across a planted landscaped strip which it described as

"an important feature in the layout of Charleville" would seriously injure the amenities of property in the vicinity.

- 7.2.4. I note the provisions of Section 5.13 of the Guidelines for Planning Authorities, Development Management, 2007, in regard to issues relating to title to land. It states in a manner that accords with the Planning Regulations, as amended, that: *"a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated."* Further, whilst this section of the guidelines recognises that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land stating that: *"these are ultimately matters for resolution in the Courts."*
- 7.2.5. It also notes that: *"if, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis" and "if notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission."*
- 7.2.6. The Planning Authority as part of their further information request sought clarity on the status of the land outside of the applicant's legal interest along the northern boundary of the site.
- 7.2.7. As part of the further information response the applicant submitted a letter dated the 9<sup>th</sup> day of September, 2023, from the Property Management Section of the Council. This sets out that the *"hatched yellow and red on Drawing No. LOC001 is not in Dún Laoghaire-Rathdown Council ownership, the area forms part of the public road network and the Council is responsible for maintaining it"*. It also sets out the Council's consent for the works to the grass verge to install a driveway access, incorporating

necessary right of way and the complete works in the red hatched area which include removal and replacement of trees and hedgerows to obtain required sightlines.

- 7.2.8. Having regard to the proposed development being dependent on land that is not in the applicants legal interest, may form part of the public road network but this is not fully clear that the network extends to incorporate this linear strip of soft planted open space that forms part of the formally designed and laid out Charleville residential scheme, I raise concern that the ownership of this linear strip of land has not been established by the applicant with the establishment of ownership necessary to create a right of way over it alongside carrying out any works and modifications to it. Further, there is no documentation indicating that the applicant has commenced the formalisation of a right of way with the land registry on foot of an agreement reached with an actual landowner. It is also of note that the Roads Act, 1993, Section 2 defines 'public road' as a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority. It also sets out that a 'road' includes:

*"(a) any street, lane, footpath, square, court, alley or passage.*

*(b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway.*

*(c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road.*

*(d) any other structure or thing forming part of the road and –*

*(i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or*

*(ii) prescribed by the Minister."*

- 7.2.9. The impacted stretch of land in this case does not contain a footpath over it and it is not necessary for the safety, convenience, or amenity of the road users nor for the maintenance, operation or management of the road. It is a linear strip of soft

landscaping that forms part of the open space of this residential cul-de-sac that bounds the side of rear gardens of No. 115 Churchtown Road Lower and the rear boundaries or properties located on the northern side of Flemingstown Park. It also adds to the visual amenities of the Charleville residential scheme and together with the linear strip that continues in an easterly direction provides an important coherent screening buffer between the Charleville and Flemingstown Park residential schemes.

- 7.2.10. The linear strip of land is not subject to any land use zoning objective under the Development Plan. Notwithstanding, it is of note that the Development Plan defines 'streetscape character' as: *"the visual elements of a street, including the road, adjoining buildings, sidewalks, street furniture, trees, and open spaces, etc., that combine to form the street's character"* and open space as a parcel of land in a predominantly open and undeveloped condition that is suitable for a number of things including but not limited to *"amenity green space - often around housing"* through to *"green corridors"* and that these spaces are predominantly open and in an undeveloped condition.
- 7.2.11. On the basis of the above considerations, I do not concur with the Planning Authority in this case that the inclusion of Section 34(15) alone to deal with the matter of lack of demonstration of legal consent of the landowner of the linear strip of green space that this development is dependent upon for serving future occupants' connectivity to the public road network is sufficient. I also raise a concern that given that this linear strip was not formally designed to contain any footpaths but was solely provided as a soft landscaped strip between Charleville and Flemingstown Park that setting aside the need to provide consent over what is effectively a residual open space area within residential scheme would give rise to other similar development which cumulative could diminish visual amenities of such open spaces within residential schemes by eroding their hierarchy of associated planned green spaces.
- 7.2.12. Further, the proposed dwelling would effectively establish a precedent for other similar developments to the east of the site and to the rear of Flemingstown Park properties that bound the subject linear strip of open space that runs along the southern side of the Charleville cul-de-sac road.
- 7.2.13. In the absence of a coherent planned approach for such development the proposed development in itself would give rise to ad hoc, uncoordinated, and piecemeal

development in the context of Charleville residential scheme which is a planned and highly uniform mature residential scheme.

### **7.3. Overspill of Car Parking and Traffic Related Matters**

- 7.3.1. Given the limited scale of the proposed development, i.e., one three-bedroom dwelling which would be served by two on street car parking spaces, a provision that accords with the Development Plan standards, I would not anticipate that the proposed development would result in significant volumes of traffic when completed.
- 7.3.2. There is notwithstanding an existing issue with car parking overspilling onto the carriageway of Charleville's access road, particularly along its northern side.
- 7.3.3. This does result in obstruction to the free flow of vehicles along this road and at the junction with Churchtown Road Lower. With Churchtown Road containing no on-street car parking provision.
- 7.3.4. There is a yellow line running alongside the southern roadside edge. This means that parking is not permitted except on Sundays or outside of business hours along it.
- 7.3.5. Whilst I am of the opinion given that the proposed development includes the required off-street car parking provision for a dwelling house of this size and at this location there is potential for the construction phase of the development, if permitted, to give rise to nuisances despite the fact that there is a large rear garden which in its current state does not contain any vehicle access to it but rather a pedestrian sized opening to the northern side of the existing dwelling.
- 7.3.6. The front garden area is mainly gravelled and could potentially accommodate some of the traffic demands that the construction phase would give rise to prior to the provision of an access to the rear of the site from Charleville.
- 7.3.7. A detailed traffic management measures during the construction phase would normally form part of a Construction Management Plan and should the Board be minded to grant permission for the development sought under this application I advise that this be required by way of condition.
- 7.3.8. In relation to the sightlines from the proposed new vehicle entrance I raise concern that sightlines to the west would be restricted due to existing obstructions. In particular natural features and the boundary which includes a tall wall and hedge. I note however that the adjoining verge to the west of the entrance, like that to the east, does not

contain any footpath and this limits its potential for conflict to occur from vehicles egressing from the proposed entrance onto the Charleville cul-de-sac road, a road which has a restricted speed limit of 30/kmph. In addition, the Planning Authority's Transportation Department raised no concerns in relation to the provision of this entrance onto Charleville's access road.

#### **7.4. Amenity Impact - Residential**

- 7.4.1. In terms of impacts on residential amenity, the Third-Party Appellants raise concerns that the proposed development, if permitted, would give rise to a diminishment of their residential amenities. I am cognisant of the relationship of the proposed development to adjoining and neighbouring properties in its vicinity. In my opinion, separation distances typical of what would normally be anticipated within such an established, urban area that has in itself undergone changes to its housing stock by way of alterations and additions.
- 7.4.2. The proposal also includes measures such as opaque glazing at first floor level where windows face onto properties that are sensitive to adverse amenity impact arising from them by way of overlooking.
- 7.4.3. The Planning Authority also includes a condition requiring the ensuite window on the ground floor level serving the ensuite to be maintained permanently with opaque or frosted glass and also requires the provision of appropriate in height boundaries to the east and west to safeguard the residential amenities of these adjoining properties.
- 7.4.4. I consider that the impacts that would arise from the proposed development, if permitted, are in line with what might be expected in a suburban area such as this with the proposed house being of its time, not unduly overbearing or a built form that would give rise to any significant overshadowing issues for properties in its vicinity. I am satisfied that the proposed development would give rise to any residential amenity impacts so great as to warrant a refusal of permission.

#### **7.5. Visual Amenity Impact**

- 7.5.1. The Third-Party Appellants raise concerns that the proposed development would give rise to diminishment of the visual amenity of the area, notwithstanding, I am of the view that the proposed contemporary building would not be visually incongruous or dominant in this context subject to qualitative palette of materials, finishes and

treatments together with qualitative landscaping and boundary treatments, particularly as viewed from the public domain. Whilst the design is more contemporary in its architectural expression to the 1970s Charleville properties that it would form part of a streetscape scene with, I do not consider the proposal to be out of character with existing development in the vicinity nor does it represent over-development of the site given the housing styles, the palette of materials through to the pattern of development that characterise its setting. Moreover, the replacement landscape and boundary treatments along the northern portion of the site and that proposed for the adjoining linear strip of land is not out of character with what is existing. I am therefore satisfied that the proposed development would not give rise to any visual amenity impacts so great as to warrant a refusal of permission.

#### **7.6. Other Matters Arising**

- 7.6.1. **Depreciation of Property Values:** A concern is raised by one of the Third-Party Appellants that the proposed development would give rise to a depreciation in their property value. This concern is not supported by any expert opinion, and I am cognisant that the site forms part of a changing suburban context where densification of serviced land at appropriate locations is supported, subject to safeguards.

#### **8.0 Appropriate Assessment Screening**

- 8.1.1. Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

#### **9.0 Recommendation**

- 9.1. I recommend that permission be **refused**.

## 10.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the applicant has been made by a person who has demonstrated sufficient approval of the person who has such sufficient legal estate or interest to carry out the works associated with the provision of an entrance onto Charleville residential scheme together with associated landscaping and boundary works. The Board is also not satisfied that the applicant has demonstrated the approval of the person who has such sufficient legal estate to consent to the establishment of a right of way for the access serving the proposed dwelling onto the public road network over soft landscaped open space land that forms part of the Charleville residential scheme. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission of the development subject of this application.
2. It is considered that the proposed development by reason of the means of vehicular access across a planted landscaped strip which is an important feature in the layout of Charleville, would seriously injure the amenities of property in the vicinity, and would be contrary to the proper planning and development of the area.

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Patricia-Marie Young  
Planning Inspector

6<sup>th</sup> day of September, 2023.

DECISION QUASHED