



An  
Bord  
Pleanála

## Inspector's Report ABP315890-23

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<b>Development</b>	Construction of a two-storey infill dwelling with private amenity space and 1 no. on curtilage parking space, provision of 2 no. replacement parking spaces and ancillary works and services.
<b>Location</b>	Rear of The Copper Kettle, Main Street, Rathcoole. Co Dublin.
<b>Planning Authority</b>	South Dublin Co. Council.
<b>Planning Authority Reg. Ref.</b>	SD22A/0023.
<b>Applicant(s)</b>	Garocal Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To refuse permission.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Garocal Ltd.
<b>Observer(s)</b>	Michael & Catherine Mc Auley
<b>Date of Site Inspection</b>	July 12 <sup>th</sup> , 2023.
<b>Inspector</b>	Breda Gannon.

## 1.0 Site Location and Description

- 1.1. The site is located to the rear of The Copper Kettle Café on the northern side of Main Street. Rathcoole. Co. Dublin. It forms an enclosed backland area that is bordered on all sides by the rear and side gardens of adjacent property. The site is bounded to the north by the rear garden of a two-storey house at No 7 The Square, Aubrey Manor and to the south by the outdoor dining area associated with the café. To the west the site abuts two-storey residential units in Aubrey Manor and is adjoined to the east by Barrack Court which comprises two-storey terraced residential units.
- 1.2. The Copper Kettle is a Protected Structure and the site lies within Rathcoole Village Architectural Conservation Area (ACA).

## 2.0 Proposed Development

- 2.1. The proposal is to construct infill residential development on the site which has a stated area of 0.03 ha. The house, which would be part single-storey (flat roof) and part two-storey (pitched roof), would have a floor area of 100.8 sq.m. Private amenity space (50 sq.m) would be provided to the rear of the dwelling and on-site parking space for one car would be provided to the front.
- 2.2. The site would be accessed via Barrack Court and result in the loss of 2 no. car parking spaces. As part of the proposal 2 no. replacement spaces would be provided to the south of the site adjacent to the rear yard of the Copper Kettle Café, for use by residents of Barrack Court.
- 2.3. Ancillary works would include SuDS surface water drainage, site works, boundary treatments and landscaping.
- 2.4. The application is supported by the following documents:
  - Planning Report (Hugh Planning and Development Consultants, January 2022).
  - Engineering Services Report (D.C Turley & Associates) January 2022.
  - Shadow Analysis (Sketchrender) September 2021.

### 3.0 Further Information

3.1. The planning authority requested further information on March 24<sup>th</sup>, 2022 on the following matters:

- Amended drawings showing lands in applicants ownership outlined in blue.
- Revised drawings demonstrating compliance with the minimum standards for private amenity space as set out in Table 11.20 of the development plan.
- Detailed Daylight, Sunlight and Shadow Assessment Report having regard to BRE Guidelines.
- Specified information to facilitate a complete assessment of the access and parking arrangements for the proposed development.
- Report and drawings on percolation tests carried out on the site.
- A Confirmation of Feasibility letter from Irish Water.

3.2. A response to the further information request was received by the planning authority on December 21<sup>st</sup> 2022, and included the following documents:

- Land ownership details.
- Revised house design with reduced floor area and 55 sq. of private open space.
- Soil Filtration Test for Design of Soakaway (Trinity Green Environmental Consultants).
- Daylight Analysis and Overshadowing (H3D).
- Outline Construction Management Plan (Donnachadh O'Brien Consulting Engineers).

### 4.0 Submissions

4.1. Two submissions on the application were received and the main issues raised relate to the following:

- Overbearing and dominant nature of the development.
- Impacts on privacy, loss of amenity and security.

- Overshadowing.
- Devaluation of property.
- Site access, parking and traffic hazard.
- Construction impacts on residents.
- Flooding risk from proposed soakaway

## 5.0 Planning Authority Decision

### 5.1. Decision

The planning authority decided to refuse permission for the development for the following reason:

*Having regard to the content of the South Dublin County Development Plan 2022-2028, namely Policy SM7 Objective 10, Policy SM7 Objective 11 and the content of Section 12.6.8, it is considered that the applicant has not sufficiently demonstrated legal interest or appropriate consent to utilise the indicated right of way through Barrack Court and has failed to demonstrate the successful deliverability of the revised car parking arrangements for the existing and proposed residential units without compromising the comfort and safety of pedestrians, cyclists and residents within Barrack Court. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

### 5.2. Planning Authority Reports

#### 5.2.1. Planning Reports

The Planning Officer's report of 26/1/23 considers that the proposal on residential zoned lands is acceptable in principle, subject to visual and residential amenity considerations. It is considered that the proposed dwelling would generally sit well within the surrounding context without having a significant impact on the streetscape. Having regard to the nature of the development proposed, it is not considered that the proposal would impact negatively on the Protected Structure or the ACA.

The applicant has made attempts to address previous reasons for refusal and reduce the impact of the proposal on adjoining properties. The footprint of the dwelling has been reduced, along with the overall height and profile of the roof. The reduction in the ground floor area increases the setback distances to properties to the north and west of the site. The footprint of the first floor has also been reduced and obscure glazing introduced to minimise overlooking. The design of the proposed development was revised in response to further information resulting in at least 55 m<sup>2</sup> of private amenity space to the rear of the proposed dwelling in compliance with development plan standards.

The Daylight, Sunlight, Shadow Assessment Report indicates some level of overshadowing of adjacent properties will occur and no significant impact on the vertical sky component of windows to adjacent properties and sunlight to rear amenity spaces.

Issues remain regarding applicant's legal right/consent to amend the existing carpark and road layout to facilitate the development and the matters raised by the Road's Department regarding access and parking arrangements. Refusal is recommended.

#### 5.2.2. **Other Technical Reports**

Drainage and Water Services: No objection subject to conditions.

Roads Department: Refusal recommended.

Uisce Eireann: No objection subject to conditions.

Parks and Landscape Services/Public Realm Department: No objection subject to conditions.

#### 5.3. **Prescribed Bodies**

Transport Infrastructure Ireland: No objection to the development.

An Taisce: Application should be assessed with regard to the impact on the amenity of the area and the relevant provisions of the development plan.

## 6.0 **Planning History**

**SD19A/0128**: Planning permission refused for the construction of a two-storey detached dwelling with 1 no. off street parking space, relocation of 2 no. parking

spaces from Barrack Court, access roadway, footpath and all associated ancillary works on the site. The decision was upheld by the Board (307316-20). The reason for refusal relates to overdevelopment of a restricted site with unacceptable impacts on the amenity of adjacent residential property.

**SD18A/0138:** Planning permission refused on the site for 2 no. two-storey detached dwellings with 2 no. parking spaces, relocation of 2 no. parking spaces from Barrack Court and ancillary works. The decision was upheld by the Board (302075-18). The Board decided to refuse permission for three reasons relating to overdevelopment of a restricted site with impacts on residential amenity of adjoining property; loss of residential amenity associated with the relocation of parking spaces from Barrack Court and flooding risk.

**SD03A/0286** – Planning permission granted on 10<sup>th</sup> March 2004, for a two-storey house at the north end of the appeal site. This permission was not implemented.

## 7.0 Policy and Context

### 7.1. Development Plan

The operative development plan is the **South Dublin County Council Development Plan 2022-2028**. Rathcoole is identified as a Self-Sustaining Growth Town within the Core Strategy with the following policy/objectives:

**Policy CS10: Rathcoole:** Support the sustainable long-term growth of Rathcoole by focusing development growth along the main street based on local demand and the ability of local services to cater for sustainable growth levels.

**CS10 Objective 2:** To support well designed infill development along the main street and core village area of Rathcoole.

**Section 6.8** of the development plan (Residential Consolidation in Urban Areas) recognises that in established residential areas sustainable intensification can be achieved through infill development and backland development. It includes the following objectives:

**H13 Objective 2:** To maintain and consolidate the County's existing housing stock through the consideration of applications for housing subdivision, backland

development and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 12: *Implementation and Monitoring*.

**H13 Objective 5:** To ensure that new development in established areas does not unduly impact on the amenities or character of the area.

**Section 12.6: Housing – Residential Development:** sets out the standards for residential development

The site is zoned Objective RES (Existing Residential) on Map 8, with an objective 'To protect and/or improve residential amenity'. Residential development is 'permitted in principle' in these areas.

The site is located to the rear of Protected Structure (Ref 317) and within an Architectural Conservation Area. Chapter 3 of the development plan (Natural, Cultural & Built Heritage) seeks to protect key heritage assets including Protected Structures (Policy NCBH19 Objective 1 and Objective 2) and Architectural Conservation Areas (NCBH20 Objective 3 and Objective 5).

## 7.2. **Natural Heritage Designations**

The site is not located within or adjacent to any designated European site.

## 7.3. **EIA Screening**

7.4. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 8.0 **The Appeal**

### 8.1. **Grounds of Appeal**

The grounds of appeal are summarised as follows:

- The proposed development is consistent with the zoning objective of the development plan and does not have an adverse impact on adjoining residential amenities.
- The development represents a more efficient and sustainable use of centrally located, zoned and serviced land that provides an appropriate response to the use of an infill/backland development site, while also providing a high standard of residential accommodation for future residents.
- The proposal will significantly enhance the streetscape along Main Street and Barrack Court by providing a sympathetic design solution that relates well to its surroundings.
- The proposed dwelling has been designed to avoid overbearing impacts and to protect the residential amenity of adjacent properties. In this context the height of the proposed dwelling is purposely below the ridge height of the existing dwelling at No 8 Barrack Court and presents as an appropriate modern expression when viewed from Barrack Court.
- The proposal sufficiently addresses the previous reasons for refusal by providing a high-quality and appropriately scaled, part single, part two-storey dwelling which meets the quantitative residential standards as set out in the development plan and relevant guidelines.
- The development accords with the key objectives in the Regional Spatial and Economic Strategy for the Eastern and Midlands Region (2019-2031) in that it contributes to its compact growth targets.
- The development accords with Objective 35 of the NPF and the target in relation to new homes to be provided within existing built up areas on infill and/or brown field sites.
- The development accords with the housing provisions of the development plan and development standards.
- The development accords with the Urban Development and Building Height Guidelines for Planning Authorities (2018) and the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009) which support the development of infill, unused or derelict land and backland areas.



- The planning authority's decision to refuse permission on what is essentially a 'landlocked site' will have detrimental consequences for its future development. The decision could effectively sterilise the land, resulting in the creation of a ransom strip which would be in contravention of the proper planning and sustainable development of the area.
- The site is surrounded by third party lands and access can only be provided by the proposed entrance into Barrack Court. The site's strategic location on Main Street and in close proximity to high quality bus stops is a prime location for sustainable infill residential development.
- The development has been prepared having regard to the reasons for refusal cited in previous refusals. The current reason for refusal has not been mentioned in previous refusals. An agreement can be made with the Planning Authority in relation to access arrangements following a grant of planning permission.
- The autotrack drawings submitted indicates that the site can accommodate domestic, fire and refuse vehicle movements. The 3 no. parking spaces proposed are safe and provide adequate space for manoeuvre. Requests that should the Board be minded to grant permission for the development that it attach a condition requiring the provision of a yellow box to allow for manoeuvring of the domestic vehicle egressing from the proposed development (Fig 21.0 and Fig 22.0).

## 8.2. Planning Authority Response

The planning authority state that the issues raised in the appeal are covered in the Planning Officer's report.

## 8.3. Observations

The observation received from Michael & Catherine Mc Cauley, whose property adjoins the northern boundary of the site, supports the planning authority's decision to refuse permission. It raises similar issues to those raised in the submissions regarding overdevelopment of the site and the impacts on their residential amenity

associated with overshadowing, overlooking, relocation of car parking spaces and the potential flooding risk associated with the proposed soakaway.

## 9.0 **Assessment**

### 9.1. **Introduction**

I consider that the main issues that arise for determination by the Board in relation to this appeal relate to the following:

- Principle of the development.
- Impacts on residential and visual amenity.
- Land ownership.
- Traffic safety.
- Flooding.
- Other matters
- Appropriate Assessment.

### 9.2. **Principle of the development**

9.2.1. The proposed development is consistent with the residential zoning provisions of the development plan, where residential development is permitted in principle. It also accords with national, regional and local planning policy/guidelines which promote infill residential development on backland and underutilised sites within the built-up area of cities, towns and villages. The proposed development within the core area of Rathcoole village, benefiting from proximity to local amenities and facilities and public transport routes would facilitate the sustainable development of this infill site.

9.2.2. I consider that the proposed dwelling is, therefore, acceptable in principle in this location subject to compliance with standard planning practice and the provisions of the development plan.

### 9.3. **Impacts on residential and visual amenity**

9.3.1. Adjustments have been made to the proposed development to address previous refusals for development on the site. The house to be constructed on the site is part single-storey, part two-storey. The two-storey element coincides with the adjoining

two-storey terraced houses at Barrack Court to the east, and the single storey section wraps around the front, west side and a section of the rear of the house.

- 9.3.2. The minimum standards for housing are set out in Table 12.20 of the development plan. With an overall floor area of c 100m<sup>2</sup> the proposal exceeds the overall target of 80m<sup>2</sup> for a two bed four-person dwelling. The room sizes are generally compliant with best practice guidelines to ensure an adequate level of amenity for future residents. The quantum of private open space was increased to 55m<sup>2</sup> (in response to further information) to comply with the amenity space standards of the development plan standards.
- 9.3.3. There are no windows in the east or west elevation that would result in overlooking of adjoining property. The first floor windows to the rear serving a bathroom and landing will be fitted with obscure glass which will prevent overlooking of observers' house to the north. To the south a bedroom window will face the enclosed rear yard of the Copper Kettle Café with no significant potential for loss of amenity. Potential impacts on privacy from the ground floor windows at the rear will be eliminated by the existing boundary wall.
- 9.3.4. The Shadow, Daylight Analysis and Overshadowing reports indicate that properties immediately adjoining the site are already overshadowed to varying degrees at different times of the day/year. The proposed development will marginally increase the level of overshadowing experienced, but not to such an extent that the amenity of these properties would be seriously diminished. Adjoining properties will continue to receive adequate daylight/sunlight in accordance with BER guidance.
- 9.3.5. I accept that the overall design solution is an acceptable response to its locational context. The development would not be visible from Main Street and when viewed from Barrack Court would not appear incongruous or detrimental to the visual amenities of the area.
- 9.3.6. I accept that the alterations to the design, scale, height and footprint of the house provides an appropriate response to the previous reasons for refusal and will not result in significant overshadowing, overlooking or overbearing impacts on adjacent property.

#### 9.4. **Land Ownership**

- 9.4.1. Access to the proposed development would be via the adjoining Barrack Court housing development. This would entail the removal of a section of the boundary wall and 2 no. car parking spaces serving the existing estate. This is the only potential access to the site which is otherwise surrounded by third party lands.
- 9.4.2. The right of access is central to the planning authority's decision to refuse permission for the development. It is applicant's contention that this matter can be resolved by agreement with the planning authority following a grant of permission in a similar way to the agreement reached by the previous landowner of the site in respect of Ref No SD03A/0286). I note that the documentation referred to by the applicant, which was submitted in response to further information is dated back to 2002 and is somewhat vague in terms of what was agreed.
- 9.4.3. While it is established practice for conditions to be attached to planning permission requiring matters of detail to be agreed, I note that the Development Management - Guidelines for Planning Authorities June, 2007 states that such conditions should be avoided where the matters involved are of a fundamental nature. In my view, the applicant's legal ability to access the site is fundamental to the proposed development and I do not consider that the matter, which could have been addressed at further information stage, should be addressed by way of a condition.

## 9.5. **Traffic safety**

- 9.5.1. The Autotrack analysis indicates that large vehicles including refuse trucks and fire vehicles serving the site would have to reverse through the estate. Having regard to the constricted nature of the access road, similar manoeuvres would currently be required and the development of an additional dwelling in the location proposed would not alter these requirements.
- 9.5.2. The existing parking spaces (which will be relocated) are used by adjacent residents and at the time of inspection included a van. The spaces would effectively be relocated to within the appeal site and would impact on the residential amenity of these residents. The relocated spaces are narrow and it is difficult to envisage how the spaces would accommodate the displaced vehicles and provide (and guarantee) reversing space for the new house. Multiple manoeuvres would be required to access/exit a car parking space and I note that the Road's Department have serious

objections to the layout as proposed. The planning authority's reason for refusal refers to objectives SM7 Objective 10 and 11 which relate to safe parking provision.

- 9.5.3. I consider that the proposal would result in haphazard and disorderly development which is undesirable in terms of traffic safety and convenience and would impact on the residential amenity of residents currently using these spaces.

## 9.6. **Flooding**

- 9.6.1. It is proposed that surface water arising on the site would be discharged to a soakaway on the site. The observers' have concerns regarding potential flooding from the proposed soakaway. The rear garden of their property forms the northern boundary of the appeal site.
- 9.6.2. In response to issues raised by Water Services details of soil infiltration tests carried out on the site were submitted at further information stage. The design of the soakaway was marginally adjusted on the basis of the results but remains in the same location as originally planned to the south of the house. While the observers contend that the response to the planning authority is inadequate and that soakaway is too close to their boundary wall, I would point out to the Board that the soakaway is proposed at the opposite side of the site and I note that the applicant's response was to the satisfaction of the planning authority (report 18/1/23).
- 9.6.3. I note that there are no records of any flood events on the site and subject to the implementation of appropriate surface water management measures as proposed including SuDs, I do not consider that the proposed development poses a flood risk to observers' property.

## 9.7. **Other Matters**

- 9.7.1. **Impacts on Architectural Conservation Area (ACA) and Protected Structure -**  
Due to the location of the proposed development on lands at the rear of Main Street and which is not visible from the ACA no impacts are likely. The proposed development faces towards the rear of the Protected Structure which has later extensions attached to the original façade. Having regard to the design and scale of the proposed development and the distance to the Protected Structure, I do not consider that significant impacts on the character or setting of the structure will arise.

9.7.2. **Financial contribution:** The planning authority's draws attention to the South Dublin County Council Development Contributions Scheme and the Kildare Route Project Supplementary Development Contribution Scheme in the event of a grant of permission. While the general contribution scheme will apply, the site appears to lie outside the area covered by the supplementary scheme.

#### 9.8. **Appropriate Assessment Screening**

9.9. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built-up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

### 10.0 **Conclusion**

While I accept that the proposed development is acceptable in principle in this location and will not impact significantly on the residential or visual amenities of adjoining property, or on Rathcoole Village ACA or the Protected Structure, I am not satisfied that the applicant has demonstrated sufficient legal consent or agreement to alter the layout of Barrack Court to create access to the site to facilitate this development. Furthermore, having regard to the restricted nature of the site, I consider that traffic safety issues are likely to arise from the layout of the proposed carparking.

### 11.0 **Recommendation**

11.1. On the basis of the above assessment, I recommend that permission for the development be refused for the reasons and considerations set out below.

### 12.0 **Reasons and Considerations**

1. The Board is not satisfied on the basis of the information submitted in support of the application and the appeal that the applicant has demonstrated sufficient legal interest to carry out the alterations proposed to the layout of

Barrack Court including the relocation of two car parking spaces to enable access to be provided to the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the layout and restricted nature of the proposed relocated car parking spaces within the Barrack Court residential development and the vehicle manoeuvres required of motorists using the relocated spaces which would necessitate excessive reversing, it is considered that the proposed development would endanger public safety by reason of traffic hazard. Furthermore, it is considered that the relocation of the two parking spaces would represent a loss of amenity for residents entitled to use those spaces. The proposed development would, therefore, be contrary to the proper planning and sustainable 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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Breda Gannon  
Planning Inspector

30<sup>th</sup> August 2023