



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316390-23

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<b>Development</b>	Protected Structure: Construction of staircase and balcony with all associated site works
<b>Location</b>	21, Kenilworth Square North, Rathgar, Dublin 6
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3172/23
<b>Applicant(s)</b>	Jessica Ryan, Ian & Craig Marron
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jessica Ryan, Ian & Craig Marron
<b>Observer(s)</b>	Suzanne & Bernard Leahy
<b>Date of Site Inspection</b>	16/06/2023
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site is a mid-terrace three storey period property located on Kenilworth Square North. On the date of my site visit the property was undergoing construction work.
- 1.1.2. The rear of the property adjoins Kenilworth Lane. Many of the adjoining properties have developed a mews onto the lane but the subject property retains its full rear garden with vehicular access on to the lane.

## 2.0 Proposed Development

- 2.1. On the 3rd February 2023, planning permission was sought for works to a Protected Structure, a three-storey period property comprising the provision of a new rear staircase and balcony to provide access to the rear garden, a timber privacy screen to the boundary and the replacement of an existing sash window with a French style door with overlight.
- 2.2. The application was accompanied by a Conservation Impact Statement.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 29<sup>th</sup> March 2023 the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:
  1. Having regard to the location of the balcony and the privacy screen, directly on the boundary with the adjoining protected structure at number 20 Kenilworth Square North , it is considered that the proposed development would lead to additional overlooking of the adjoining property at number 21 Kenilworth Square North and also the rear garden of the mews at number 21 Kenilworth Lane, and would result in noise and general disturbance to the adjoining properties. The proposed development would seriously injure the residential amenities of the adjoining properties and would be contrary to the proper planning and sustainable development of the area.
  2. The removal of the window on the rear elevation at upper ground floor level, insertion of a French window and the provision of a balcony and privacy screen will have a significant adverse impact on the rear elevation of this

Protected Structure and also on the adjoining Protected Structure at number 20 Kenilworth Square North. The loss of the window to the rear room on the principal floor and the introduction of the balcony with steps is inappropriate and not sensitive to the special interest of the Protected Structure. The proposed development would thereby be contrary to policy BHA2 which seeks to protect structures included on the RPS from any works that would negatively impact their special character and appearance, and contrary to the proper planning and sustainable development of the area.

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

- 3.2.1. **Engineering Department:** No objection subject to condition.
- 3.2.2. **Conservation Officer:** Significant adverse impact on the rear elevation of the Protected Structure, and adjoining. Loss of window to the rear room on the principal floor and the introduction of raised patio with steps is inappropriate and not sensitive to the special interest of the Protected Structure. Notwithstanding the grant of a similar intervention at no.4, the precedent is undesirable. Recommendation to refuse permission.
- 3.2.3. **Planning Report:** Notes that permission exists for a rear staircase (3810/22). Planning Authority has concerns regarding impact on adjoining structures at 20 Kenilworth Square and its mews at 20 Kenilworth Lane. Notes the comments of the conservation officer and states that these concerns are shared. Recommendation to refuse for two reasons.

### 3.3. **Prescribed Bodies**

- 3.3.1. None on file.

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

- 3.4.1. Two observations raising concerns about privacy, light, overlooking and disturbance.

## 4.0 **Planning History**

- 4.1.1. **Planning Authority reg. ref. 3810/22:** Planning permission granted for works including renovation, alteration and conservation works to existing 3 storey period property and 1) conversion of the property from bedsit accommodation layout back into a dwelling house with separate apartment unit on the lower ground floor; 2)

removal of non-original partition walls internally and formation of new openings and partitions to accommodate new proposed internal layout; 3) general refurbishment and conservation works to the interior; 4) re-slating and roof repairs - including 2 no. new rooflights; 5) installation of photo-voltaic solar panels to southern roof facades; 6) demolition of existing shed to rear of property; 7) conservation & refurbishment works to existing timber sash windows and front entrance door; 8) 1 no. new door opening and 1 no. new widow opening to rear of dwelling, and all associated site development works.

## 5.0 Policy Context

### 5.1. Architectural Heritage Protection – Guidelines for Planning Authorities

5.1.1. This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principal of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).

### 5.2. Dublin City Development Plan 2022-2028

5.2.1. In the 2022-2028 plan the subject site is zoned **Z2 Residential Conservation** area zoning, which has the stated objective 'To protect and/or improve the amenities of residential conservation areas'. Section **14.7.2** of the development plan states that "Residential conservation areas have extensive groupings of buildings and associated open spaces with an attractive quality of architectural design and scale"

5.2.2. Chapter 11 of the development plan refers to Built Heritage and Archaeology. Of relevance to the proposed development is Policy BHA2 which states:

It is the Policy of Dublin City Council: **BHA2** Development of Protected Structures That development will conserve and enhance protected structures and their curtilage and will:

(a) Ensure that any development proposals to protected structures, their curtilage and setting shall have regard to the Architectural Heritage Protection Guidelines for

Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht.

(b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

(c) Ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.

(d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.

(c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

(d) Respect the historic fabric and the special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.

(e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

(f) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.

(g) Ensure historic landscapes, gardens and trees (in good condition) associated with protected structures are protected from inappropriate development.

(h) Have regard to ecological considerations for example, protection of species such as bats.

5.2.3. The subject property is included in the Record of Protected Structures, Volume 4 Part 2, ref no. 4118.

### 5.3. **EIA Screening**

5.3.1. Having regard to nature of the development comprising redevelopment of an existing dwelling and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for

environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

- 6.1.1. An agent for the first party has submitted an appeal against the decision of the Planning Authority to refuse permission. The appeal provides detail on the reasons for refusal, the subject site, the proposed development and the planning history. Regarding the Planning Authority assessment of the proposed development, the appellants agent states that the Conservation Officer's report did not form a recommendation to refuse permission.
- 6.1.2. The grounds of the appeal can be summarised as follows:
- The proposed external stair is to provide a link to the rear garden, being a more suitable location coming from the rear ground floor window of the main dwelling.
  - The removed sash window would be carefully stored to allow for potential reinstatement.
  - The proposed lowering of the existing window cill and installation of a new painted hardwood French door would be in keeping with the internal shutters and decorative timber architrave.
  - The proposed development would reduce the visual impact of the existing stairs and deck. The proposed privacy screen will prevent direct overlooking of the adjoining property. The gardens are currently overlooked from the existing ground and first floor windows.
  - The proposed development is a modest alteration from that already permitted under 3810/22.
  - Similar development was granted permission at no. 4 Kenilworth Square 2092/20 refers.
  - The proposed minimal interventions are in line with conservation principles.
  - There is poor residential amenity from the upper ground level regarding access form the house to garden level.
  - The proposed development which adds no additional floor area, enhances the amenity of the house with an improved layout and direct access to the garden.

- A connection from the upper ground level to the garden would historically have been a feature of these houses. There are several examples of original garden access stairs (1,2,13-17 Kenilworth Square North).
- The Planning Authority's assessment does not take account of the need to encourage innovative design to encourage people back into the city. The subject dwelling has been vacant for ten years.
- The proposed development of a small terraced area with garden access is becoming more common.
- The proposed development ensures minimal overlooking. Similar development has been undertaken at no. 4 Kenilworth Square. The adjoining property will see a timber screen above their existing sheds and water tank.
- The existing external stairs and deck at upper ground floor level on the rear return has no screening and projects further into the garden space has a greater impact than that proposed. The stairs currently permitted will directly overlook the neighbouring property.
- The proposed development will provide greater screening than currently in place.
- Any noise or disturbance arising will be comparable to that currently arising.
- The proposed development complies with each section of Policy BHA2:
  - Complies with Architectural Heritage Guidelines
  - Respect the character of the dwelling
  - In line with best conservation practice
  - Will not have a significant impact
  - Retain form, structural integrity and special architectural interest
  - Restore special interest of the interior
  - Retain architectural character
  - Not interfere with garden,
  - Not interfere with ecological considerations
- The proposed alterations are modest and in the context of the overall enhancement and conservation of the Protected Structure.
- The proposed development seeks to augment and complement the primary structure through the provision of a legible articulate contemporary intervention.
- New window will match other windows being refurbished.
- Proposed development will sustain the use of the building in to the future.

- Works will not be visible from the streetscape or the public realm.
- The proposed development has regard to the Architectural Heritage Protection Guidelines for Planning Authorities and Policy BHA 2
- The Board is requested to grant permission.

## 6.2. Planning Authority Response

6.2.1. None on file.

## 6.3. Observations

6.3.1. Suzanne Leahy, 20 Kenilworth Square, Bernard Leahy 20 Kenilworth Lane

- Concerns regarding the total loss of privacy in their back garden.
- Light pollution and noise will come from the kitchen that opens on to a glass balcony.
- Private open space will be majorly curtailed.
- Sleep in the bedrooms adjoining the new French doors and balcony will be disturbed.
- The high privacy screen will lead to a loss of light in an already dark area.
- The oil tank on the observers property will be removed, leaving the tall fence exposed.
- The Board is requested to uphold the decision to refuse permission.

## 7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant and the planning authority. Given the planning history on the subject site, I am satisfied that the single issue raised adequately identifies the key potential impacts is as follows:

### 7.2. Impact on Visual and Residential Amenity

7.2.1. A stair exists from the rear return at upper level (currently obscured from view by the ground level shed). Permission exists for a staircase from the utility in the return at upper ground level (Planning Authority reg. ref. 3810/22 refers).



- 7.2.2. Permission is now sought to replace that permitted staircase with a deck of 1.4m deep and 4m wide. The principle of access to the garden level is established. The significant difference between the permitted and the proposed development is that the proposed development will facilitate the use of the deck for recreation rather than the permitted development which just provides access to the garden. The observers state that this will injure their residential amenity. I am satisfied that the scale of the deck is such that it will not facilitate significant recreational use, not to the extent that it would seriously injure the residential amenity of the adjoining neighbours.
- 7.2.3. Likewise, the level of overlooking that currently exists from the staircase, or that would occur from the permitted staircase would not be significantly increased by the proposed development. The proposed privacy screen of 1.5m high will protect the residential amenity of the adjoining property.
- 7.2.4. The proposed alteration to facilitate the installation of French door in place of the existing timber sash window is considered minor, in the context of bringing a derelict period property back into residential use. The rear elevation of the subject property is not visible. The special architectural interest of the building is not compromised, the rear not being the principal elevation of note. I note section 17.4 of the Architectural Heritage Guidelines which provides for the replacement of original window openings with doors to facilitate escape, recommending that they be avoided on principal elevations or where they would impact on important views of the structure. The proposed development is not an escape route, one being permitted under the previous application, but it does lend weight to the idea of similar development being acceptable in a lesser important elevation.
- 7.2.5. Regarding policy BHA2 of the 2022-2028 city development plan, I am satisfied that that proposed development does not negatively impact the special character and appearance of the Protected Structure, is of an appropriate scale, retains the special character of the protected structure, respects the historic fabric and the special interest of the interior, does not interfere with any important elements of the building and is in keeping with the policies and objectives of the Architectural Heritage Guidelines. I am satisfied that the proposed development is in accordance with policy BHA2 of the 2022 -2028 city development plan.

### 7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the proposed development to be retained in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

### 8.0 Recommendation

- 8.1. I recommend permission and permission to retain be GRANTED for the following reasons and considerations and subject to the following conditions:

### 9.0 Reasons and Considerations

- 9.1.1. Having regard to the Z2 zoning objective for the area which seeks to ‘to protect and/or improve the amenities of residential conservation areas’ in the Dublin City Development Plan 2022-2028 and to the nature and scale of the proposed and existing development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely affect the character or setting of the existing house, adjoining dwellings in the terrace or the mews dwellings on the adjoining lane and would not seriously injure the residential amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 10.0 Conditions

1.	<p>The development shall be carried out and retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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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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Gillian Kane  
Senior Planning Inspector

19 June 2023