



An
Bord
Pleanála

Inspector's Report

ABP-316556-23

Development	Subdivision of site, alterations to dwelling and construction of dwelling with all associated site works
Location	'Sleepy Hollow', 5A, Temple Villas, Palmerston Road, Rathmines, Dublin 6 (Site adjoins Palmerston Gardens to the rear)
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	WEB1083/23
Applicant(s)	Thomas Hopkins
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Thomas Hopkins
Observer(s)	Gabriel Gavigan
Date of Site Inspection	09 June 2023
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site, 5A Temple Villas, is a two-storey detached dwelling facing Palmerston Road with a side garden with a vehicular access. The subject site is irregularly shaped, with the northern boundary projecting into the adjoining site (5 Palmerston Road) and the western boundary projecting in and out of the mews site to the rear (Palmerston Gardens). The subject site has pedestrian access onto this mews lane.
- 1.1.2. Currently on site is a detached two storey dwelling with large side garden.

2.0 Proposed Development

- 2.1.1. On the 27th February 2023, planning permission was sought for the subdivision of a site of 395sq.m., the construction of a new two storey detached dwelling of 98sq.m. and alterations to the existing dwelling Sleepy Hollow at 5A temple Gardens (200sq.m.) comprising the removal of an existing bay window and canopy and the installation of roof lights at ground floor level.
- 2.1.2. The application was accompanied by a planning cover letter, letters of consent to the making of the application, letter from neighbouring properties, Daylight Performance Assessment Report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 31st March 2023, the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:
 - 1 Having regard to the Z2 land use zoning objective which is 'to protect and/or improve the amenities of residential conservation areas' and to the siting, and scale of the development, it is considered that the proposal constitutes overdevelopment of the site, would result in an unacceptably low level of residential amenity for the proposed dwelling and the parent property, would have an excessively overbearing effect on adjoining dwellings and would have an adverse impact on the visual amenity and character of the conservation area. The proposed development would therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of

property in the vicinity, be contrary to the provisions of the Dublin City Development Plan 2022-2028 and be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. **Drainage Division:** Standard conditions

3.2.2. **Transportation Planning:** No objection subject to 6 no. conditions.

3.2.3. **Planning Report:** Notes planning history. Notes that the existing dwelling at no. 5a Temple Gardens appears to have been in the original curtilage of no. 12 Palmerston Park, so the proposed development is a third dwelling on the site. Proposed development accords with requirements for plot ratio, site coverage, floor area and space requirements. Concern raised regarding impact on natural lighting, daylight and sunlight in existing and proposed dwelling due to restricted site and separation distances between the two dwellings. Private open space is compromised due to boundary walls and size. Planning Authority consider private open space provision to be substandard. The proposed dwelling would be overbearing and would negatively impact on the residential amenity of the mews house granted to the rear.

3.3. **Prescribed Bodies**

3.3.1. None on file

3.4. **Third Party Observations**

3.4.1. One submission raised issues of concern: overdevelopment of site, removal of off-street parking, contrary to Z2 zoning.

4.0 **Planning History**

4.1.1. Planning Authority reg. ref. **WEB1900/22:** Planning permission REFUSED for Construction of new three storey detached dwelling (146m²) on site to side of existing two-storey dwelling ('Sleepy Hollow'). Development to include provision of roof-lights and roof-mounted photo-voltaic panels to flat roof, together with associated drainage, landscaping, boundary fencing, and ancillary site works., construction of new single storey glass-roofed conservatory extension (15m²) to southern side of existing house ('Sleepy Hollow') and alterations to existing front

vehicular gates (to existing front boundary wall) - to provide new pedestrian & bicycle access gate to proposed new dwelling. Reasons for refusal:

- 1 Having regard to the Z2 land use zoning objective and to the siting, scale and height of the development, it is considered that the proposal constitutes overdevelopment of the site, would result in an unacceptably low level of residential amenity for the proposed dwelling and the parent property, would have an excessively overbearing effect on adjoining dwellings and would have an adverse impact on the visual amenity and character of the conservation area. The proposed development would therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.

- 4.1.2. **ABP-305188-19**: Planning permission granted for a mews dwelling to the rear of 11 Palmerston Park, to the immediate west of the subject site. This permission was further modified by Planning Authority reg. ref. 2149/21.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. 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".
- 5.1.2. Regarding **houses in side gardens**, section **15.13.3** states that the planning authority will have regard to the following criteria in assessing proposals for the development of corner/side garden sites:
 - The character of the street.
 - Compatibility of design and scale with adjoining dwellings, paying attention to the established building line, proportion, heights, parapet levels and materials of adjoining buildings.

- Accommodation standards for occupiers.
- Development plan standards for existing and proposed dwellings.
- Impact on the residential amenities of adjoining sites.
- Open space standards and refuse standards for both existing and proposed dwellings.
- The provision of a safe means of access to and egress from the site.
- The provision of landscaping and boundary treatments which are in keeping with other properties in the area.
- The maintenance of the front and side building lines, where appropriate.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas and the Council will support innovation in design.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable and should be avoided.
- Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained/ reinstated where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking footpaths, roads and open spaces for visual amenity and passive surveillance.

5.2. EIA Screening

- 5.2.1. Having regard to nature of the development comprising an additional 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 appellant states that the Planning

Authority decision is an over-rigid interpretation of over-development and how the innovative design responds to the site. It is submitted that the site is of sufficient size to accommodate the proposed development. The appellant provides details of the site context, noting that the subject site no. 5a Temple Villas is the only infill house. Notes that the subject property is not a protected structure, it was almost entirely reconstructed in 2005. The appeal refers to the planning history on site and states that the subject proposal addresses the previous reasons for refusal by reducing size, scale and height. The appellant provides details of the proposed works to the existing dwelling and the proposed new dwelling.

6.1.2. The grounds of the appeal can be summarised as follows:

- The proposed and the existing dwelling meet the BRE standards for daylight and sunlight and the front garden of both houses meets the required criteria of sunlight hours on the 21st March.
- The distance of 2m between the two houses is commonplace.
- The transportation department of Dublin City Council had no objection to the removal of off-street parking or the lack of parking provision. This allows the front gardens to be used as amenity areas, aided by the 2.5m boundary walls.
- The proposed house is 90° to the permitted mews to the rear. The only impact would be a peripheral impact on the garden.
- An alternative proposal is submitted:
 - a reduction in the size and length of the high-level window to the rear being 1.6m in length and 0.8m in width is that the cill is 1.8m above the first-floor level,
 - pleached evergreen planting at 1.1m above the boundary wall to create a screen of 2.5m between the proposed house and the permitted mews,
 - increase in width and reduction in height of the window in the side elevation of the single bedroom / study as it faces south and
 - centralisation of the rooflight above the single bedroom / study.
- The reduction of the proposed ceiling heights from 2.8m (ground floor) and 2.5m (first floor) to 2.6m and 2.4m respectively would reduce the height of the new dwelling by 300mm so that its parapet would match the eaves of the new house.

- The Daylight Performance Assessment prepared for the application demonstrates that both houses will achieve more than adequate levels of natural sunlight and daylight. The results of the study (Study D) indicate that advisory minimums are achieved for all rooms in the proposed dwelling and most rooms in the existing dwelling. The shortfall in the existing dwelling are due to its existing layout and form, and are not caused by the proposed dwelling.
- There are, therefore, no grounds for claiming that the proposed development would injure the residential amenity of the existing or proposed dwelling.
- A second study (Study E) indicates that both the proposed and the existing dwelling would meet the advisory levels of sunlight. The changes proposed in the appeal would further improve the results for the single bedroom.
- The existing dwelling will be served with a rear courtyard of 20.3sq.m. and a front amenity space of 101.3sq.m., a total 121.6sq.m. The proposed dwelling will have a rear courtyard of 11.8sq.m. and a front amenity space of 46.8sq.m., a total of 58.6sq.m. The high boundary walls create a rear garden affect, with a significant degree of privacy.
- Section 15.11.3 of the 2022-2028 development plan allow a degree of flexibility in applying the 10sq.m. private open space per bedspace rule. It is submitted that a stand-alone assessment of the proposed development is required. The appeal notes that the Planning Authority were not concerned about the quantum of open space, only the quality. Study F submitted by the applicant demonstrates that the front outdoor amenity space achieves an acceptable qualitative standard of sunshine on March 21st.
- Table 4 of the study demonstrates that 50% of the front garden space of both dwellings will receive at least two hours sunlight on the 21st March, and levels of sunlight on the 21st April (80-90%), 21st May (two hours) and 21st June.
- The impact of the proposed dwelling in the amenity of the permitted mews to the rear will not be overbearing. The proposal is amended to include evergreen planting 1.1m above the boundary wall as well as a reduction in in the high-level window (drawing no. A.04.5).

- Due to the extensive width of the rear garden of the mews (18m), the proposed development would be akin to a two-storey extension set back from the boundary.
- The proposed contemporary dwelling will site well within the streetscape, without impact on the character or architectural quality of the Z2 zone.
- The dwelling will not be visible from the south-east, is partially screened from the north-east and only a short distance along Palmerston Road. The proposed amendments will further reduce the visual impact.
- The proposed development complies with section 15.13.3 of the 2022-2028 City Development Plan.
- The Board is requested to grant permission for the proposed development.

6.2. Planning Authority Response

- 6.2.1. Board is requested to uphold the Planning Authority decision to refuse permission. If permission is to be granted, requests that a s48 development contribution condition be attached.

6.3. Observations

- 6.3.1. **Gabriel Gavigan, 4 Palmerston Park:** agrees with decision of Planning Authority, proposed development will have an adverse visual impact on Z2 Conservation area. Proposed development is over development of the site, removing a significant portion of the existing open space, removal of off-street car parking, new structure is visually out of character and contrary to Z2 zoning. Board is requested 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, the appellants and the planning authority. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development

- Impact on Residential Amenity
- Visual Impact

7.2. Principle of Development

7.2.1. The subject site is located in an area zoned for residential development. I note section 15.13.3 of the 2022-2028 development plan wherein the Planning Authority state that they will favourably consider infill housing having regard to development plan policy on infill sites and to facilitate the most sustainable use of land and existing urban infrastructure. Subject to compliance with all other planning considerations, the proposed development is acceptable in principle.

7.3. Impact on Residential Amenity

- 7.3.1. The Planning Authority raised a concern that the proposed development would create “an unacceptably low level of residential amenity for the proposed dwelling and the parent property”.
- 7.3.2. I note that the Daylight Performance Assessment report submitted by the applicant found that while two of the rooms in the existing dwelling did not meet the level of daylight required (Study D), this was not caused by the proposed dwelling. It is due to the tall pine trees on the adjoining site and the proximity of the two rooms to the rear boundary wall. The inference being, that granting or refusing the proposed development will not change that position.
- 7.3.3. The Planning Authority note that both rear courtyards do not achieve the minimum sunlight on March 21st (study F). As above, the courtyard serving the existing dwelling currently does not achieve the required sunlight and this is not due to the proposed dwelling. For the proposed dwelling, the courtyard to the rear, given its restricted size is unlikely to provide the main amenity space to the future residents. I note the proposal to include 1.1m high pleached evergreen planting (drawing no. A.04.5revA submitted to the Board on the 26th April 2023). I consider this to be unnecessary as it would likely impact the level of light reaching both the proposed courtyard and the windows on the western elevation of the proposed dwelling. Should the Board decide to grant permission, this should specifically be omitted by way of condition.

- 7.3.4. I note the amendments proposed by the appellant in their submission to the Board dated 26 April 2023 and that they will further increase the performance of the proposed dwelling in sunlight and daylight assessment.
- 7.3.5. I also note however, the proviso stated in appendix 16 of the 2022-2028 development plan that “.. *it is noted that both BS 8206-2 and BS EN 17037 present minimum values for residential developments, rather than best practice values. This is very clearly laid out in clause 5.6 of BS 8206-2 and clause NA.2 of BS EN 17037. These minimum values will not produce spaces that are well daylit or be considered predominantly daylit*”. I concur with the Planning Authority that achieving the minimum (and not even the minimum in some cases) is a low bar by which to measure the proposed development. On balance, however, the greatest shortfall is exhibited in the existing dwelling and not permitting the proposed dwelling to go ahead would not change the residential amenity within the existing dwelling.
- 7.3.6. Regarding the provision of private open space, section 15.11.3 of the development plan states that generally private open space is provided to the rear of a dwelling with 10sq.m. per bedspace normally required. These standards can be relaxed subject to a qualitative analysis of the development. Due to the nature of the site, the private open space for the existing dwelling Sleepy Hollows is located to the side of the house. On the date of my site visit, the site had been divided by way of a wooden fence and cars were parked on the site of the proposed dwelling. It is unlikely this side garden is actively used for recreation. It is more likely used for car parking, being at the location of the existing vehicular entrance. I am satisfied that its loss of this space would not be unduly onerous nor significant. The high boundary walls bounding Palmerston Road and lack of overlooking by adjoining properties create an unusually high degree of privacy to the front of the existing dwelling. Providing that boundary treatment remains, I see no reason why the front garden should not be used as private open space.
- 7.3.7. Likewise, the proposed private open space to the front of the proposed dwelling would provide sufficient private open space and I have no difficulty in including it in the quantum of open space available to the proposed dwelling. I note the provision for ‘defensible space’ provided for in section 15.11.3 of the development plan and I am satisfied that the proposal can be assessed along those lines.

7.3.8. I am satisfied that both the quality and quantum of private open space available to the proposed and existing dwellings is acceptable.

7.4. Visual Impact

7.4.1. I am satisfied that the visual impact of the proposed dwelling will not detract from the architectural character or the architectural integrity of the streetscape. The proposed flat roofed two storey dwelling of contemporary design is an appropriate response to this infill site. The dwelling will clearly read as a new entry in the streetscape, one that does not compete with the protected structures on Palmerston Road or Palmerston Park.

7.4.2. In terms of the permitted mews dwelling to the rear (ABP-305188-19 as modified by Planning Authority reg ref. 2149/21), I am satisfied that the proposed dwelling will not be unduly overbearing. This is notwithstanding my recommendation to omit the pleached evergreen screening of 1.1m (see drawing no. A.04.7revA submitted to the Board).

7.5. Appropriate Assessment

7.5.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area and proximity to the nearest European site, 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 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 provisions of the Dublin City Development Plan 2022-2028 and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, and would comply with the provisions of the Development Plan. 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 completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 26th day of April 2023, 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>Reason: In the interest of clarity.</p>
2.	<p>The proposed pleached evergreen planting proposed to be placed on top of the western boundary of the proposed dwelling (drawing no. A.04.5revA submitted to the Board on the 26th April 2023) shall be omitted.</p> <p>Reason: In the interest of protecting the residential amenity of the courtyard serving the proposed dwelling.</p>
3.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p>

	Reason: In order to safeguard the amenities of property in the vicinity.
5.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
6.	<p>The construction of the development shall be managed in accordance with the Construction Management Plan, submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity</p>
7.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Classes 1, 3 and 5 of Schedule 2, Part 1 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.</p> <p>Reason: In the interest of orderly development, and to allow the planning authority to assess the impact of any such development on the amenities of the area through the statutory planning process</p>
8.	<p>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</p>

<p>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.</p> <p>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.</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.

Gillian Kane
Senior Planning Inspector

12 June 2023