

ABP-317857-23

Development	Permission is sought for the demolition of existing storage shed, removal of existing rear gate with part of block boundary wall, construction of 3-storey mews building comprising 1 no. 2-bedroom ground floor apartment and 1 no. 2-bedroom duplex dwelling, 2 no. parking spaces accessed from lane, refuse bins enclosure, boundary treatment and all ancillary site works at rear.
Location	No. 28, Bengal Terrace, Glasnevin, Dublin 11.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3875/23.
Applicant(s)	Highgate Design Ltd.
Type of Application	Planning Permission.
Planning Authority Decision	Refused.
Type of Appeal	First Party.
Appellant(s)	Highgate Design Ltd.
Observer(s)	<ol style="list-style-type: none">1. Anna Sheane & Kieron Farrell.2. Emmett Scanlon & Others.3. Anne Scanlon.4. Alfreda O'Brien Kavanagh.

Date of Site Inspection

2nd day of February, 2024.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The appeal site relates to an irregular rectangular shaped parcel of land with a stated area of 190m² that is located to the rear of No. 28 Bengal Terrace, in the north Dublin city suburb of Glasnevin, Dublin 11. It consists of what was once the rear most garden area of this period two storey over basement end of terrace property that dates to circa 1830s. It contains a single storey metal shed structure that has a rectangular shape, and which adjoins the boundary with No. 30 Bengal Terrace. No. 28 Bengal Terrace and its once highly uniform and coherent group of six matching terrace properties are setback from the heavily trafficked R135 (Finglas Road) by deep front gardens. Most of which are bound by low walls with rails over.
- 1.2. This terrace group is wrapped on its southern and eastern side by a service lane that appears to have been recently gated at both ends where it runs alongside the southern boundary of No. 28 Bengal Terrace. There is a pedestrian access opening onto this gated section of lane from No. 28 Bengal Terrace. The former service lane splits in two directions alongside the south eastern boundary of the site and its northernmost stretch ends alongside the rear boundaries of No. 36 and 38 Benegal Terrace. Directly opposite this stretch of the lane there are tall stone walls as well as a stone watch tower structure associated with the grounds of Glasnevin (Prospect) Cemetery. The watchtower on the opposite side of the lane from the rear boundary of the site marks one of the corner points of the perimeter boundaries of this historic cemetery complex.
- 1.3. The lane bounding the site also extends in a north easterly direction for circa 75m to where it terminates at the public domain of Prospect Square. Before it meets Prospect Square it is mainly bound on its northern side by the perimeter walls of the Glasnevin Cemetery and its southern side the rear gardens of the two storey period terrace properties of De Courcy Square and Prospect Square. At the juncture where the period residential schemes of De Courcy Square and Prospect Square meet on its southern side there is an ESB substation. At this point the lane widens.
- 1.4. Access from the site to the lane is via a tall solid metal gate that is of sufficient width for vehicle access.
- 1.5. To the west of the site there is a single storey detached building that has the appearance of being in residential use. This building extends the width of the site and is roughly centrally located on what was originally the rear curtilage of No. 28 Bengal

Terrace. This structure blocks access from the rear of the main building to the appeal site and the shed structure for which demolition is sought.

- 1.6. The site is bound on its northern side of the rear garden area of No. 30 Bengal Place. At the time of inspection this adjoining property was subject to ongoing alterations and rear additions. The works appear to relate to a recent grant of permission by Dublin City Council for application P.A. Ref. No. WEB2124/22.
- 1.7. The public domain in close proximity to the south of Bengal Terrace contains a Dublin City Bus Stop (Note: 1537) and serves Dublin City Bus Routes No.s 40, 40b, 40d and 140. On the opposite side of the R135 to Bengal Terrace is St. Vincents Secondary School. There are several well-established amenities, social through to community services and infrastructure in the surrounding area with the suburb of Glasnevin characterised by its mainly period residential building stock of semi-detached and terraced type housing.

2.0 Proposed Development

- 2.1. Permission is sought for the demolition of existing storage shed, removal of existing rear gate with part of block boundary wall, construction of 3-storey mews building of 8.45m high comprising 1 no. 2-bedroom (3-Person) ground floor apartment and 1 no. 2-bedroom (4-Person) duplex dwelling, 2 no. parking spaces accessed from lane on the northernmost end of the site, refuse bins enclosure, boundary treatment and all ancillary site works at rear of No. 28 Bengal Terrace.
- 2.2. According to the accompanying planning application form the total floor area of buildings to be demolished is 80m² and the total floor area of new buildings is 199m². In addition, it sets out that the proposed plot ratio would be 1.06 and site coverage would be 48%.
- 2.3. The accompanying plans indicate that the site has a variable width of 9.2m which reduces towards its splayed rear boundary where it is circa 5m and it has a variable depth that ranges from 20.85m to 21.57m.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 26th day of July, 2023, the Planning Authority **refused** permission for the following stated reasons:

- “1. *Having regard to the scale and massing of the proposed building relative to the narrow and constrained backland nature of the site; the height of the development; the proximity to party boundaries; the incorporation of proposed private amenity spaces in unacceptably close proximity to adjoining party boundaries; and the substandard quality and quantity of rear garden space remaining for the multiple units at No. 28 Bengal Terrace; the proposed development would serve to have an unacceptable impact on the residential amenities of Nos. 28 and 30 Bengal Terrace due to overbearing impacts, and would have unacceptable overbearing and overshadowing impacts on properties to the east on De Courcy Square, most notably Nos. 10 and 11. The proposed development, would, therefore seriously injure the amenities of property in the vicinity and be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the scale, form, materiality and articulation of the proposed 3-storey building in the rear garden of an existing two-storey over basement end-of-terrace dwelling, it constitutes overdevelopment of the site and is considered to be contrary to the 2022-2028 Dublin City Development Plan, insofar as it will seriously injure the visual amenities of properties located within its immediate vicinity, by reasons of being visually overbearing and visually incongruous. The proposed development, would, therefore seriously injure the amenities of property in the vicinity and be contrary to the proper planning and sustainable development of the area.*
3. *Having regard to their layout, orientation, proximity to party boundaries, and proximity to the rear extension to No. 30 Bengal Terrace permitted under WEB2124/22, the applicant has failed to demonstrate to the satisfaction of the planning authority that the proposed ground floor unit would receive adequate daylight or outlook to the front and rear having regard to the proposed overhang*

and floor-to-ceiling heights, or would receive adequate levels of sunlight into its proposed private amenity space having regard to its width and proximity to tall boundaries. The applicant has also failed to demonstrate that the private amenity space serving the duplex unit would be functional having regard to the nature and extent of privacy screening proposed along its south/west/east perimeter. The proposed development would therefore, not provide appropriate residential amenity to future occupants and would fail to comply with Section 15.9.7 of the Dublin City Development Plan 2022 – 2028.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

This report is the basis of the Planning Authority's decision. It includes the following comments:

- Concern is raised that the dwelling units have the potential to accommodate more bedspaces.
- The quality and functionality of the private open space given their siting and the level of screening required to ensure privacy and prevent undue overlooking is questioned.
- Concerns are raised regarding the sunlight and daylight within the ground floor level apartment.
- The laneway serving the site is substandard.
- Concerns are raised in relation to the size of the bin store proposed.
- No internal layout has been provided for the main dwelling No. 28 Bengal Terrace which is in the applicant's ownership.
- This proposal would result in the main dwelling having inadequate private open space amenity.
- The proposed development would give rise to visual overbearance and diminishment of residential amenities.
- There is a lack of subservience between the proposed building and the main dwelling on site as well as on properties in its vicinity.

- The proposed building would have a similar height as the watch tower opposite which forms part of a Protected Structure. The proposed building would be inappropriate in this context and would also block views of this feature from Finglas Road.
- Insufficient information has been provided on the external palette of materials.
- Recent works have given rise to the removal of a historic boundary wall at this site.
- No AA or EIA issues arise.
- Concludes with a recommendation for refusal.

3.2.2. Other Technical Reports

Transportation: Further information sought. The following comments are noted:

- The site can only be accessed both pedestrian and vehicular, via a laneway that connects to Prospect Square to the north east.
- The laneway is not maintained by the Council.
- This lane has a pinch point of 3.6m and does not meet the required width for a mews lane. It also lacks footpaths and public lighting.
- No swept analysis has been provided for emergency service vehicles, refuse trucks and potential construction vehicles.
- The site is 75m remote from the public roadway at Prospect Square and under Part B of the Building Regulations where pump appliances should be provided these should be within 45m of the principal entrance.
- The car parking space dimensions does not comply with Appendix 5 of the Development Plan.
- No cycle spaces proposed.
- Concludes with a request for further information.

Engineering Department – Drainage Report: No objection, subject to safeguards.

3.3. Prescribed Bodies

- 3.3.1. This application was referred by the Planning Authority to **Irish Water, Irish Rail** and, **National Transport Authority**, however, no responses were received.
- 3.3.2. This application was referred by the Planning Authority to **Transport Infrastructure Ireland**. Their response requested that a Section 49 condition be attached in the event of a grant of permission.

3.4. Third Party Observations

- 3.4.1. 15 No. Third Party submissions were received by the Planning Authority during its deliberations. These submissions raise a number of concerns including visual amenity, residential amenity, built heritage including adverse impact on Glasnevin Cemetery and nearby ACAs, traffic hazard, substandard development, substandard state of the laneway, overdevelopment of a site that is already in use for multiple occupancy, civil matters including closing off this access without consent.

4.0 Planning History

4.1. Site

- 4.1.1. No recent and/or relevant planning history.

4.2. Setting

- **P.A. Ref. No. WEB2124/22 - No. 30 Bengal Terrace.**

Planning permission was **granted** subject to conditions for a development consisting of the change of use from 3 apartments to a single dwelling, the removal of the existing rear extension, the construction of a new part two-storey, part one-storey extension to the rear of existing house and new rooflight to rear of existing roof. (Note: Decision date: 16th February, 2023).

- **P.A. Ref. No. 2702/08 - No. 32 Bengal Terrace.**

Planning permission was **refused** for a development consisting of the demolition of an existing 2 storey rear extension: part of the existing 2 storey over garden level terraced building; retaining the existing front elevation, roof and party walls; the construction of a new 2 storey over garden level extension to rear and the renovation of the existing

building; together with ancillary works; to provide 3 no. 2 bedroom apartments and 2 no. 1 bedroom apartments (Note: Decision date: 27th June, 2008). The stated reasons read:

- “1. Having regard to the substandard floor area sizes, inadequate floor to ceiling heights and inadequate internal storage spaces for the 2 bed apartments, it is considered that the proposed development would constitute a grossly sub-standard form of residential development, would materially contravene the Dublin City Development Plan as amended by Variation 21, would set an undesirable precedent for similar such developments, and as such would be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the height and scale of the proposed development on the site, it is considered that the development would be incongruous with the general pattern of development in the area and would seriously injure the residential and visual amenities of properties in the vicinity. It is considered that five apartment units on this site would be excessive, would result in overdevelopment of this site and could set an undesirable precedent for similar development in the area, which would be contrary to the proper planning and sustainable development of the area.”*

• **ABP Ref. No. PL29N.121013 (P.A. Ref. No. 1919/00):** Permission was **refused** for two blocks of houses of terrace houses to the rear of **No.s 28 to 38 Bengal Terrace** (Note: Decision date: 22nd day of February, 2001). The Boards stated reasons and considerations read:

- “1. The proposed development would constitute over-development of this restricted site and as a result would seriously injure the privacy, private open space, car parking and outlook enjoyed by existing residents, would result in an inadequate standard of such amenities for the residents of the proposed houses and would fail to provide for the displaced parking associated with Bengal Terrace, which is located in a Residential Conservation Area. The proposed development would, therefore, conflict with policy of the planning authority as set out in the current Dublin City Development Plan, which policy is considered reasonable. The proposed development would, therefore, be contrary to the proper planning and development of the area.*

2. *The proposed development would be served directly by a lane that would remain substandard in layout after improvement which would subsequently be connected to a substandard lane unsuitable to take any additional traffic or serve as a main access, all to the detriment of road safety, contrary to the Development Plan. Accordingly, the proposed development would tend to create serious traffic congestion and would tend to create serious traffic congestion and would be contrary to the proper planning and development of the area."*

• **ABP Ref. No. PL29N.109058 (P.A. Ref. No. 2343/98):** Outline Planning Permission was refused for 2 No. 2-Storey houses at **No.s 34 and 36 Bengal Terrace**. (Note: Decision date: 4th day of March, 1999). The Boards given reasons and considerations read:

- "1. *It is considered that the proposed development of two houses would, by reason of inadequate private open space and space separation between the existing and proposed houses, represent serious overdevelopment of the overall site. The proposed development would, therefore, seriously injure the amenities of property in the vicinity and be contrary to the proper planning and development of the area.*
2. *Development of the kind proposed would be premature by reference to constraints imposed by an existing deficiency in the provision of drainage facilities and the period within which the constraints involved may reasonably be expected to cease. The proposed development would, therefore, be contrary to the proper planning and development of the area."*

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is zoned 'Z2 – Residential Neighbourhoods (Conservation Areas)' under the Dublin City Development Plan, 2022-2028. The stated land use zoning objective for such lands is: "to protect and/or improve the amenities of residential conservation areas".

- 5.1.2. The neighbouring land to the south of the access lane encompassing De Courcy Square and Prospect Square is designated an ACA (Note: Prospect Square and De Courcy Square and Environs ACA).
- 5.1.3. Additionally, Glasnevin (Prospect) Cemetery which lies opposite is a Protected Structure (RPS. No. 2745), with this protection including but not limited to its perimeter stone walls which contained ten stone watch towers.
- 5.1.4. 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. A Zone Z2 area may also be open space located within or surrounded by an Architectural Conservation Area and/or a group of protected structures. The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area”*.
- 5.1.5. Chapter 2 of the Development Plan sets out the core strategy.
- 5.1.6. Chapter 3 of the Development Plan deals with climate action.
- 5.1.7. Chapter 5 of the Development Plan deals with the matter of quality housing and sustainable neighbourhoods.
- 5.1.8. Chapters 11 of the Development Plan deals Built Heritage and Archaeology.
- 5.1.9. Chapter 15 of the Development Plan sets out the development management standards, with Section 15.5.3 dealing with alterations and extensions.
- 5.1.10. Volume 2, Appendix 18 of the Development Plan sets out the design principles and considerations for alterations and extensions to dwellings.
- 5.1.11. Volume 4 of this plan contains the Record of Protected Structures.
- 5.2. **Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031.**
- 5.2.1. This strategy provides a framework for development at regional level. The RSES promotes the regeneration of our cities, towns, and villages by making better use of under-used land and buildings within the existing built-up urban footprint.

5.3. National Policy

- 5.3.1. **National Planning Framework – Project Ireland 2040** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040 and within this framework Dublin is identified as one of five cities to support significant population and employment growth.

The NPF supports the requirement set out in the Government's strategy for 'Rebuilding Ireland: Action Plan for Housing and Homelessness', 2016, to ensure the provision of a social and affordable supply of housing in appropriate locations.

National policy objectives (NPOs) for people, homes and communities are set out under chapter 6 of the NPF.

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints.
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards.
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.
- NPO 32 targets the delivery of 550,000 additional households by 2040.
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location.

- 5.3.2. **Housing for All – A New Housing Plan for Ireland, 2021:** The government's vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social, and environmental sustainability built into the system. The policy has four pathways to achieving housing for include increasing new housing supply.

- 5.3.3. **Rebuilding Ireland – Action Plan for Housing and Homelessness, 2016:** Pillar 3 of this Plan relates to increasing the output of private housing to meet demand at affordable prices.

- 5.3.4. **Climate Action Plan, 2023:** This plan refers to the need to reduce car parking, both for developments and on-street. Alternative construction materials should be substituted for high carbon products.

- 5.3.5. **National Sustainable Mobility Policy, 2022:** This policy aims to support this modal shift between now and 2030, through infrastructure and service improvements, as well as demand management and behavioural change measures.
- 5.3.6. **Places for People – the National Policy on Architecture, 2022:** This policy document provides national policy on architecture and outlines ways to promote and embed quality in architecture, the built and natural environment over the coming years in Ireland.
- 5.3.7. The following **Section 28 Ministerial Guidelines** and other national policy documents are particularly relevant:
- Sustainable Residential Development and Compact Settlement Guidelines, 2024, replaces the Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities.
 - Urban Development and Building Heights, Guidelines for Planning Authorities (2018). These outline the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.
 - The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020, updated December 2022, and July 2023).

5.4. **Natural Heritage Designations**

- 5.4.1. None within the zone of influence.

5.5. **EIA Screening**

- 5.5.1. See completed Appendix 1 Form 1 attached to this report.

5.6. **Built Heritage**

- 5.6.1. I note that the perimeter boundaries of Glasnevin Cemetery are part of the features of interest of this Protected Structure they are also listed in the NIAH (Note: Reg. No. 50130070) and rated national in their importance with their categories of special interest being 'Architectural', 'Artistic' and 'Historical'.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as followings:

- They seek to make the most efficient use of a centrally located, residentially zoned site which is in proximity to various public transport services alongside to provide a high standard of accommodation for future occupants.
- The proposal is consistent with local through to national planning policy provisions.
- The boundary changes are only to the rear laneway.
- The design has maximised residential densities whilst providing adequate protection for existing residential amenities.
- The private open space provisions significantly exceed that required for the type of dwelling mix proposed and the main dwelling will retain adequate private amenity space for its occupants.
- This backland site is an adequate size and suitable to accommodate the mews development proposed.
- The proposed mews is set back at first and second floor levels to ensure adequate separation distance from neighbouring structures.
- The proposed development would not give rise to any negative visual or residential amenity impacts.
- The site benefits from a south west to north east orientation and therefore it will not result in any significant overshadowing of properties.
- The proposed development would give rise to a site coverage of 70% and the plot ratio is c1.04. This reflects that the proposed development would not give rise to overdevelopment of the site despite being slightly above site coverage and plot ratio guidance set out in the Development Plan.
- The two proposed units will receive adequate levels of daylight.
- Reference is made to precedents for similar developments in Dublin city.
- The Board is sought to overturn the decision of the Planning Authority.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority seeks that its decision be upheld; however, if the Board permits the proposed development, it requests that Section 48, Section 49, as well as suitable naming and numbering conditions are imposed.

6.3. Observations

- 6.3.1. Third Party Observations were received from:

- Anna Sheane & Kieron Farrell.
- Emmett Scanlon & Others.
- Anne Scanlon.
- Alfreda O'Brien Kavanagh.

- 6.3.2. These submissions can be summarised as follows:

Adjoining and Neighbouring Properties

- The proposed development would seriously injure their residential amenities and would depreciate the value of their properties.
- In relation to the adjoining properties of Bengal Terrace and neighbouring properties of De Courcy Square concerns are raised that the proposed development would give rise to undue overshadowing, overlooking and visual overbearance of these properties.
- The proposed development would devalue properties in its vicinity.
- The details provided in relation to privacy screening to protect neighbouring properties is unclear.
- The level of residential intensification of this site would give rise to undue nuisances for residential properties in its vicinity including by way of traffic and noise.

Built Heritage

- If permitted, the proposed development would contravene the provisions of the Development Plan for Protected Structures and for ACA's.

- This development would detract from the historic laneway as well as period Bengal Terrace group.
- The scale of the development is inappropriate in the context of original Glasnevin Cemetery Wall and Watchtower. In addition, the proposed building's height and overall built form would obscure views to them.
- The proposed development would be inappropriate in the context of the De Courcy Square and Prospect Square ACA setting.
- Bengal Terrace is mentioned in Ulysses.
- This proposal could give rise to the loss of built fabric dating back to the original build of Bengal Terrace and its boundaries. In recent times there has already been the loss of the original front boundary wall.

Amenities of the Main Dwelling

- The main dwelling of No. 28 Bengal Terrace is in multiple occupancy and would be left with substandard residential amenities.
- The proposed development would result in 19 bed spaces in the curtilage of No. 28 Bengal Terrace which would be overdevelopment of this property.
- There is minimal open space amenity provided or would be remaining for occupants of No. 28 Bengal Terrace.

Mews Development on Bengal Terrace

- There is no evidence that mews structures ever existed at Bengal Terrace and the proposed development does not respect the modest in scale structures to the rear of this period terrace group.

Visual Amenities

- The height, scale, design, and juxtaposition of the proposed development in its context would be visually incongruous and would seriously diminish the visual amenities of the area.

Design and Layout

- The proposed development at three storeys in height together with its overall design and layout which is not sympathetic to its setting would, if permitted, give rise to an undesirable precedent for other similar developments in the area.
- The proposal would provide a substandard quality of residential amenities for future occupants, including in terms of inadequate open space, waste, and access to the public domain provisions.

Access

- The laneway is substandard and is unsuitable to serve as the main and only pedestrian and vehicle access serving the proposed dwelling units.
- The lane is only occasionally used for car access, is poorly surfaced, is not drained and is not maintained.
- The laneway is not in the control of the Council nor has the Applicant have the consent or authority to upgrade it.
- The additional traffic movements would give rise to additional potential for conflict at its entry with the public road at Prospect Square.
- There is no bin collection on this lane, and it is not suitable to be used by a refuse truck.
- No. 28 has access to Finglas Road along its side. The use of the gated off lane access to Finglas Road would give rise to less nuisance and traffic hazards.
- The sightlines onto Prospect Square are not adequate.
- The proposed development, if permitted, would give rise to this lane's further deterioration.

Procedural

- The documentation provided is inadequate to make an informed decision on.

Civil/Unauthorised Works

- The lane running alongside the boundary of No. 28 Bengal Terrace has been gated. This historically was used as an access to Finglas Road.

6.4. Referrals

- 6.4.1. The Board referred this appeal case to An Chomhairle Ealaíon, Fáilte Ireland, An Taisce, The Heritage Council and the Development Application Unit. No responses were received.

7.0 Assessment

7.1. Introduction

- 7.1.1. I have read the entire contents of the file, visited the site, and have had regard to the issues raised in the grounds of appeal as well as all submissions received by the Board.
- 7.1.2. The proposed development in summary consists of the demolition of a storage shed, a boundary wall and the construction of a 3-storey mews building containing 1 no. 2-bedroom (3-Person) ground floor apartment and 1 no. 2-bedroom (4-Person) duplex dwelling together with 2 no. car parking spaces access onto an adjoining lane together with associated site works and services to the rear of No. 28 Bengal Terrace in the Dublin city suburb of Glasnevin.
- 7.1.3. The site forms part of a period terrace of 6 dwellings dating to circa 1830s that address Finglas Road and are separated from the perimeter boundaries of the Glasnevin (Prospect) Cemetery by a modest in width service lane that at this point wraps around the southern and rear boundaries of the site. This period terrace group is zoned under the Dublin City Development Plan, 2022-2028, as Residential Neighbourhoods (Conservation Areas), i.e., 'Z2'. The stated zoning objective for such lands is to protect and improve the amenities of the city's residential conservation areas.
- 7.1.4. The general principle of residential development is accepted within this zoning objective subject to compliance with the Dublin County Development Plan, 2016-2022. I also note that the said Development Plan also includes provisions for transitionally zoned areas of the city under Section 14.6. It states that: "*in dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones*". I consider that this is of relevance given that Glasnevin Cemetery forms part of a parcel of land that is zoned 'Z9' (Amenity/Open Space Lands/Green

Network) land use zoning under the Development Plan. I note that the objective for 'Z9' zoned lands is to preserve, provide and improve recreational amenity, open space, and ecosystem services. This sensitivity to change is further added to by the fact that Glasnevin Cemetery is also a designated Protected Structure and the neighbouring lands within the visual context of the site of De Courcy Square and Prospect Square are designated Architectural Conservation Area (ACAs). The Development Plan provides specific protection for Protected Structures and ACAs which includes protecting them from inappropriate development that have the potential to diminish their character and setting.

- 7.1.5. As such any proposed development at this location is subject to additional built heritage safeguards.
- 7.1.6. The Board received a First Party appeal against the planning authority's decision to refuse permission and 4 No. Third Party Observations that seek the decision of the Planning Authority is upheld mainly on residential and visual amenity grounds. The Board also received a response from the Planning Authority that also seeks its decision be upheld but in the event of the Board being minded to grant permission it seeks that a number of standard conditions be imposed, including but not limited to Section 48 and 49 conditions.
- 7.1.7. I consider that the substantive issues before the Board in this case can be dealt with under the following broad headings:
- Compliance with Development Plan Provisions
 - Residential Amenity
 - Access
- 7.1.8. I also note that the matter of '*Appropriate Assessment*' also requires examination.
- 7.1.9. Prior to commencing my assessment, for clarity I concur with the Planning Authority that the demolition of the existing shed and gate structures on site gives rise to no significant concerns subject to standard safeguards. This is on the basis that I consider that these structures are of no architectural or other merit that would warrant their protection and retention on site. I also concur with the Planning Authority that there is no significant issue in terms of capacity of the existing public mains water and

drainage to accommodate the proposed two dwelling units sought under this proposed development.

- 7.1.10. However, in relation to the demolition of an existing perimeter boundary wall running along the southern boundary of the site, I share the Third-Party concerns that from my examination of the site it would appear that this boundary is mainly comprised of what appears to be a surviving section of part of the original perimeter stone masonry wall of No. 28 Bengal Terrace.
- 7.1.11. This stone wall is a surviving feature of the period terrace group No. 28 Bengal Terrace forms part of and is an attractive feature that is visible from the public domain of Finglas Road. In the context of the views available of it from Finglas Road it also forms part of the views towards the perimeter stone wall and stone watchtower of Glasnevin Cemetery. As part of this view, it is visually in harmony as well as respectful of these historic features of this cemetery complex. With these features listed as features of built heritage interest in Volume 4 of the Development Plan's Record of Protected Structure description of this Protected Structure and in the NIAH Reg. No. 50130070. The NIAH rates these as being of National importance and their categories of special interest as being 'Architectural', 'Artistic' and 'Historical'.
- 7.1.12. Moreover, this section of wall for which demolition is sought in terms of material, patina of age and its respectful graduation in height relative to the perimeter boundary features of Glasnevin Cemetery in its vicinity contributes to the surviving harmony of built features within this historic urban landscape that date to circa the 1830s. Together they contribute to the intrinsic character of this stretch of the eastern side of Fingal Road and inform its individual visual streetscape identity.
- 7.1.13. The proposed development as set out in the accompanying documentation indicates that the southern boundary perimeter wall would be demolished and rebuilt to the height of 2.8m. There is an issue of clarity on whether or not that this demolition would extend beyond the red line area of the site and how it would be integrated with this adjoining period stone wall if that is not the case. Of concern there is no rationale or justification given as to why this approach is required over and above its sensitive structural repair. In my view the demolition of this stretch of historic boundary wall has not been justified and its loss has the potential to give rise to the loss of original built

fabric, the contribution of this wall to this historic urbanscape and its patina of age that marries in with other surviving stone-built structures from the same period.

7.1.14. In particular the surviving visual authenticity of perimeter features of Bengal Terrace, the boundary treatment of Glasnevin Cemetery which at this point is comprised of a formally designed stone wall and watchtower but also would diminish the legibility and authenticity of this historic urbanscape which at this point consists of a Residential Neighbourhoods (Conservation Areas) and Architectural Conservation Area. For these reasons I consider this component of the proposed development would be contrary to the land use zoning objective of 'Z2' lands but also the Development Plan provisions for built heritage as provided for under Chapter 11 and the development management provisions under Chapter 15.

7.1.15. An additional concern that I would raise with the proposed development is that the removal of the rear boundary, albeit this section is comprised of a tall solid gate and concrete block wall would diminish the enclosure and containment of the lane. In its current form the site maintains defined boundaries reflecting the original plots of Bengal Terrace. With these also providing a defined edge to the lane in a manner that is consistent with the predominant solid boundaries of Glasnevin Cemetery, De Courcy Square and Prospect Square. This concern is not one that would warrant a refusal of permission however it adds to the cumulative visual amenity impacts of concern that would arise from the proposed development discussed below.

7.2. Compliance with Planning Provisions

7.2.1. As previously noted above the principle of residential development is deemed to be generally acceptable on 'Z2' zoned land, particularly in highly accessible and in proximity to a plethora of amenities, community through to social infrastructure that is synergistic to such development's locations like this. In terms of the typology of residential development I consider it to be a backland mews development given its location to the rear of No. 28 Bengal Terrace with access being dependent on a lane to provide access to the public road network at Prospect Square. I note that the Development Plan is supportive of infill residential developments at suitable locations subject to safeguards, including that they achieve a reasonable balance between new developments and protecting established residential amenities.

- 7.2.2. Section 15.13.5 of the Development Plan deals specifically with this type of development and recognises that they are an integral part of backland development across the city.
- 7.2.3. This section of the Development Plan also sets out that the relationship between the main house and its mews structure remains a relevant consideration for architectural heritage protection as. It also sets out that the Council will seek to ensure that all new mews type proposals are respectful as well as appropriate to their context.
- 7.2.4. Of concern the proposed development is dependent on access to the public domain from a lane where there is no precedent for mews development and where there is no agreed unified approach for this type of development along it with the various property owners that bound this lane.
- 7.2.5. Under Section 15.13.5.1 of the Development Plan which deals with the matter of design and layout of mews developments it sets out that the Council will actively encourage schemes which provide a unified approach to the development of residential mews lanes and where consensus between all property owners has been agreed. It indicates that this unified approach framework is the preferred alternative to individual development proposals. However, it also indicates that there is provision for the consideration of individual proposals and that these will be assessed on a case-by-case basis.
- 7.2.6. The documentation provided with this application sets out no details on what measures they have taken to agree a unified approach for the development mews lane. The absence of any consensus and coherent plan for the development of this lane to accommodate mews dwellings is significant given that the proposed development would be located c75m from where this lane reaches the public domain with no other mews development along this stretch or dependent upon it. This lack of unified approach adds further concerns given the deficiencies of this lane for accommodating this modest in unit number residential development. Given that it is of a restricted width, has a degraded as well as uneven surface and has pockets of water ponding along its length. There is also no evidence to support that there are any plans for its upgrade by those with a legal interest in this lane. With the Council not being responsible for its maintenance given that this lane is not a public laneway, and it falls outside the public road network.

- 7.2.7. Of further concern on the day of inspection it was evident that No. 28 Bengal Terrace was in multiple occupancy. Though I acknowledge that the applicant in their documentation indicate that this is the case alongside they contend that it has been in such use since pre-1963 they provide no clarity on the exact mix and number of individual units that are present at their property in its existing use.
- 7.2.8. I do note that publicly available property details of this property indicate that at the time of its last purchase it was advertised as being divided into 11 units, 9 units in the main property and 2 located in the single-story structure to the rear.
- 7.2.9. This advertisement also indicated that the units consisted of all studio type dwelling units with own W.C. and shower. The advertisement also describes the shed structure as being located in a separate yard to the rear and with its previous use described as a workshop. This publicly available description of the property correlates with the unit the land use of No. 28 Bengal Terrace as described by Third Parties in this appeal case and what appears to be visible from its exterior.
- 7.2.10. This application effectively seeks the subdivision in two of the existing curtilage of No. 28 Bengal Terrace in order to accommodate the demolition of the existing single storey shed structure and in its place the construction of a three storey building accommodating two apartment units.
- 7.2.11. It is unclear from the documentation provided by the First Party what number of dwelling units would arise in the historical plot of No. 28 Bengal Terrace if permission is granted for the development as proposed.
- 7.2.12. Based on the available information on the likely quantum and type of dwelling units present it would appear that these units are already served by deficient in quantity and quality private amenity space amenity.
- 7.2.13. This conclusion is also based on the fact that the curtilage of No. 28 Bengal Terrace is physically and functionally segregated as well as having regards to the Section 15.11.3 of the Development Plan. This sets out a private open space amenity provision of a minimum standard of 10m² per bedspace will normally be applied with a single bedroom and subject to a single bedroom representing one bedspace and a double bedroom representing two bedspaces. It also sets out a lesser standard of 5–8m² of private open space per bedspace will normally be applied for inner city areas; however, this area is not considered to be such a location. Notwithstanding, in either

scenario the existing private amenity space available to occupants of No. 28 Bengal Terrace at present significantly falls short of these minimum standards and there is no justification for a site of this size and having regard to the floor area likely to be present as well as in use as habitable floor area that there is such inadequate provision of private open space amenity.

- 7.2.14. On this point I note that the area that is not built upon which is accessible to the rear of No. 28 Bengal Terrace and the separate single storey detached building is modest in its size. It is also concreted over and is a space that is heavily overshadowed as well as appears to be also used for various storage purposes. It is not a space that could be considered to provide existing occupants with adequate quantitative or qualitative private open space amenity for occupants of the main dwelling were it in use as a single dwelling unit or in multiple occupancy.
- 7.2.15. Section 15.13.5.1 of the Development Plan states that: *“private open space shall be provided to the rear of the mews building to provide for adequate amenity space for both the original and proposed dwelling and shall be landscaped so as to provide for a quality residential environment”* and *“if the main house is in multiple occupancy, the amount of private open space remaining after the subdivision of the garden for a mews development shall meet both the private open space requirements for the main house divided into multiple dwellings and for mews development”*.
- 7.2.16. Additionally, Section 15.13.5.2 of the Development Plan, sets out as one of the criteria under which three-storey mews developments like that proposed under this application will be considered is where they contain an acceptable level of private open space amenity.
- 7.2.17. Though the proposed apartment units within the scheme have provisions of private open space that are quantitatively above minimum standards. In this regard I note Unit 1 is stated to have a private open space amenity of 33m² and Unit 2 of 26m² with these spaces dependent upon high level robust screening in order to function as private open space for future occupants. Notwithstanding, I consider that their overall design, layout, the orientation through to their relationship with existing and proposed structures including the level of screening they would require results in the qualitative functional use of these spaces being significantly diminished by overshadowing throughout the year.

- 7.2.18. Whilst the First Party in their submissions contend that this is not the case, they have not demonstrated based on best accepted scientific assessment of such matters that this is not the case.
- 7.2.19. I further note that the issue of overshadowing of the proposed private amenity space for both units proposed under this application was a concern raised by the Planning Authority's Planning Officer's as a concern.
- 7.2.20. I am not therefore satisfied that the proposed development has demonstrated compliance with the Development Plan requirement for private open space for existing and proposed residential use of No. 28 Bengal Terrace for mews developments.
- 7.2.21. Further, I also consider that permitting the proposed development would remove any future potential to improve the substandard private open space provision currently provided for occupants of No. 28 Bengal Terrace.
- 7.2.22. Of further concern in relation to compliance with the standards for mews development I note that Section 15.13.5.2 of the Development Plan which deals with the matter of height, scale and massing states that: *"new buildings should complement the character of both the mews lane and main building with regard to scale, massing, height, building depth, roof treatment and materials"*; *"the height of mews building should not negatively impact on the views from the main property"*; and, the *"development will generally be confined to two-storey buildings"*.
- 7.2.23. Of concern the proposed building is three-storey in its built form. Its given height of 8.45m is 0.09m above that of the main dwelling at No. 28 Bengal Terrace and the group of three period highly coherent circa 1830s terrace properties it forms part of.
- 7.2.24. I also consider that visually the overall height of the proposed new building would be legibly different when viewed in the context of the main dwelling. With the main dwelling being legible in its context as a two-storey period building over raised basement level with a low-profile slate roof over. With the exception of the regular rhythm of chimney stacks the roof structure of the main dwelling is in my view a highly prominent feature of the architectural design of this building and the period terrace group it forms part of. Whereas the proposed new build would be clearly legible as a distinct three-storey built form in its predominantly two storey surrounding setting and with its third-floor level consisting of a heavy seam clad metal external envelope.

- 7.2.25. In terms of its immediate setting outside of the terrace group, the proposed three-storey new build would sit in a visual setting where it would be in close proximity to the west of the stone watchtower and its adjoining tall stone walls.
- 7.2.26. These historic built features of interest as previously mentioned in this report form part of the Glasnevin Cemetery Protected Structure and at their nearest point are situated within 7m of the site.
- 7.2.27. The actual height of the proposed new building relative to these features of built heritage interest is not shown in the submitted contextual drawings. But the slender watch tower is in my view a comparable height to the proposed new building proposed under this application. Positioned to the west of this structure the new build, if permitted, the significantly more robust scale, mass and volume would block views towards the watchtower particularly from the public domain of Finglas Road. With as said this stretch of the eastern side of Finglas Road consisting of a Residential Conservation Area that encompasses Bengal Terrace and the laneway running alongside its southern boundary as well as the ACA that encompasses De Courcy Square to the south and the perimeter boundary of Glasnevin Cemetery to the north of Bengal Terrace.
- 7.2.28. Further, the height, mass, scale, and bulk of the new build occupying a position to the west of the tower would effectively reduce the visual apparentness of this watch tower which in its current situation projects distinctly above other surrounding man-made features. It is a visually standalone element of the perimeter boundary features of the Glasnevin Cemetery Protected Structure but in terms of the laneway itself it marks a corner point of these boundaries as well as key built feature standing proud along the laneway and neighbouring properties which it was designed to be of a height to overlook beyond.
- 7.2.29. The proposed mews building would blur the appreciation of this watchtower and would erode the established evolution of the buildings and spaces within the surrounding urban landscape where built features and structures are subservient to them. It would also dilute the legible visual and functional purpose of this watchtower as appreciated from its setting including the public domain. Moreover, it would diminish its legibility as part of other key structures positioned along the perimeter boundaries of Glasnevin Cemetery which included other watch tower structures with these structures being

subservient but harmonious to the O'Connell Monument (NIAH Reg No. 50130079) which is centrally located within this historic protected landscape.

- 7.2.30. I therefore raise a concern that the proposed three-storey built form, together with its massing, volume, and lack of adequate separation distance from built features of interest would, if permitted, visually diminish the character of the Glasnevin Cemetery Protected Structures setting but also would obstruct key views towards built features of interest that form an important part of this areas historic urban landscape. With these key views being Finglas Road and from Prospect Square but also given the positioning of the three-storey building it would be also visible from inside the Cemetery complex where its height and built form would overbear the watchtower.
- 7.2.31. As a result, I consider to permit the proposed development would be contrary to Policy BHA2 of the Development Plan. This policy in part seeks to ensure that new development does not adversely impact the special character of the Protected Structure as well as seeks to ensure that historic landscapes are protected from inappropriate development.
- 7.2.32. The lack of visual subservience of the proposed three-storey built form of the apartment building proposed in my view is also a concern for the character of the neighbouring ACA.
- 7.2.33. This ACA is mainly composed of modest 2-storey period properties and associated spaces of De Courcy Square but extends to encompasses Prospect Square and Prospect Avenue which contain similar in height modest period buildings. With the site itself being visible from the public domain of Prospect Square as well as being highly visible from De Courcy Square and Prospect Square properties that bound the lane.
- 7.2.34. In this regard I note that Policy BHA7 of the Development Plan seeks to ensure that any new development immediately adjoining an ACA is complementary and/or sympathetic to their context. Including that they are sensitively designed and appropriate in terms of scale, height through to mass and that they protect as well as enhance the ACA.
- 7.2.35. The proposed three storey height for what is effectively a backland site in a historic and sensitive to change urban landscape would be visually dominant and incongruous to the neighbouring properties of the ACA.

- 7.2.36. Of additional concern information available on the floor area of the main dwelling, which I note is also not clarified in the documentation provided, indicates that it is likely to be a smaller floor area of 156m². Whereas the proposed floor area of the apartment building sought under this application is given as having a gross 199m². This additional floor area given the design and layout results in the upper floor levels of the proposed new building having a mass and volume that is visually not subordinate to its setting. With for example at first floor level the proposed new building has a depth of 11m and at second floor level a depth of c7.5m. Whereas the main building of No. 28 Bengal Terrace has a depth of less than 6m. This quantum of floor area on this backland site results in a development that in my view is highly constrained in its available site area.
- 7.2.37. Section 15.13.5.2 of the Development Plan sets out that three-storey mews developments incorporating apartments will be acceptable, where they are subordinate in height and scale to the main building. Given the above concerns I am not satisfied that this is the case in this situation.
- 7.2.38. Moreover, the 8.45m height of the proposed building would be overtly dominant in the context of the restricted lane upon which it is dependent upon for access and would result in a visually prominent man-made feature that would overwhelm the Glasnevin Cemetery perimeter features at this location, particularly the watchtower. With I note the lane adjoining the southern boundary of the site having a variable width of c4.8m. Access is not proposed from the subject property onto this adjoining stretch of lane but rather to the ungated section that extends to Prospect Square c75m to the north east of the site at its closest point. With the lane along this stretch reducing to a pinch point of c3.6m.
- 7.2.39. The Development Plan under Section 15.13.5.4 also requires potential mews laneways to provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles. Where access cannot be provided, an access and movement strategy must be provided to justify that the development can be adequately served.
- 7.2.40. Of concern the proposed development is not a 'cars free' development and proposes two car parking spaces with all access to the proposed development during demolition, construction, and operation dependent upon a laneway which meets with the public domain at Prospect Lane as said circa 75m away.

- 7.2.41. Section 15.13.5.4 of the Development Plan requires potential mews laneways to provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles.
- 7.2.42. Of concern this is not demonstrated in the application provided with this application.
- 7.2.43. Of further concern Appendix 5 of the Development Plan requires under Section 4.3.8 that a minimum carriageway of 5.5m in width where there are no verges and footpaths. This is the case for this lane and as said this lane has a pinch point of 3.6m with the widths along the stretch for which access is dependent upon significantly falling short of the minimum required 5.5m width.
- 7.2.44. Additionally, the applicant has not demonstrated that they can provide improvements to the lane to meet the minimum required widths for a mews laneway. Nor have they demonstrated that the site would be accessible for emergency through to refuse vehicles.
- 7.2.45. In terms of waste management, the applicant has not demonstrated adequate storage within the site for the proposed two dwelling units proposed. Nor have they demonstrated adequate provisions for collection of waste within the surrounding context of the site should permission be granted for the proposed development. The storage of waste receptacles and potentially their storage remote from the site has the potential in my view to give rise to nuisance for users of the lane as well as the nearby public domain.
- 7.2.46. I am not satisfied that it has been demonstrated by the First Party in the documentation provided that the lane can accommodate safe and necessary minimum levels of access for the proposed development and ultimately the two dwelling units proposed remote from the public domain.
- 7.2.47. Further, I am also not satisfied that the design of the car parking spaces is of design that is capable to accommodate two car parking spaces. For example, the local planning provisions requires such spaces to be 5m deep by 3m wide. On this point I also consider that access and egress from the proposed car parking spaces have the potential to give rise to conflict and hazard with users of the adjoining laneway given that there is no turning space on site for access and egress. With the spaces being accessed at a corner point of the lane where sightlines are therefore restricted. Nor am I satisfied that there is safe access as well as egress for emergency through to

refuse vehicles can be accommodated on this lane to the frontage of the proposed apartment building. Moreover, I am not satisfied that the quantum of car parking and bicycle spaces that would arise for the main dwelling and the proposed development in combination with one another is of an acceptable minimum standard given the likely number of bedspaces that this proposed development, if permitted, would give rise to.

7.2.48. On this point I also note that there is no car parking or bicycle provision proposed for the main dwelling and no bicycle storage for the new dwelling units. Nor is there any indication on any sustainable mobility provisions for occupants of No. 28 Bengal Terrace should permission be granted for additional dwelling units.

7.2.49. I also concur with the Planning Authority's Planning Officer the potential bedspaces that the proposed dwelling units could cater for are not reflective of their actual size. With for example Unit 1 should a single bedspace in a 'Bedroom 2' which has a size of 13.2m². This size of room is one that could accommodate two bedspaces under local through to national planning provision standards given its width and depth.

7.2.50. Additionally, Unit 2 contains a room that is labelled study that is 8.2m². This is above the minimum size of a single bedroom.

7.2.51. I therefore raise caution that the bedspace numbers indicated for the proposed two units is not reflective of what they could actually accommodate and thus there is a disparity in terms of existing and proposed bedspaces. This adds to the lack of clarity regarding the existing bedspaces present at No. 28 Bengal Terrace and ultimately how to determine the resulting car parking and cycle space provision that would be required to meet Development Plan standards. But also, in terms of the proposed apartments the discrepancy in terms of bedspaces has the potential to result in disparity between the storage requirements should for example the apartments be used to accommodate additional bed spaces.

7.2.52. Ultimately given the likely potential bed spaces arising from the existing and proposed quantum of development I am not satisfied that the proposed development would not give rise to an overspill of car parking that would place undue burdens onto the limited publicly provided parking in this area. A locality where there is a heavy reliance on these spaces. Nor am I satisfied that this quantum of residential development does not include storage for bicycles, nor does it provide for any sustainable mobility

solutions for residents despite the accessible and well connected by public transport location.

7.2.53. In addition to this I raise a concern that the Development Plan standards for Residential Conservation Areas has an indicative site coverage of between 45-50% with the First Party's appeal submission setting out that the coverage for the subdivided site would be 70%. When this is taken together with the other concerns raised above, particularly I raise a concern that the proposed development, if permitted, would give rise to overdevelopment of the site.

7.2.54. Whilst I consider that the proposed development, if permitted, would be inconsistent with the Development Plan provisions for mews developments and would be an inappropriate development in the context of this highly sensitive to change historic urban scape, concerns are also raised that the proposed development would give rise to substandard qualitative amenities for future occupants. In this regard, a substantive concern is given the lack of light that would enter the proposed ground floor unit proposed. This is based on their orientation, spatial arrangement through to the relationship between its window openings given their dimensions and the solid boundaries of the site. This concern is added to by the limited floor to ceiling height of 2.45m. A height that is just marginally above minimum Building Regulation Standards but crucially below that specified under Section 15.9.4 of the Development Plan. This specifies a minimum floor to ceiling height of 2.7m with this being consistent with national guidance and standards on such matters.

7.2.55. On this point I note that Section 3.20 to 3.25 of the Sustainable Urban Housing: Design Standards for New Apartments, as amended, and its Specific Planning Policy Requirement 5 set out a minimum standard for ground level apartment floor to ceiling of 2.7m. Whilst this SPPR like the Development Plan provides a level of flexibility for sites including infill schemes of up to 0.25ha on a case-by-case basis, this is subject to overall design quality. Given the substantive concerns already raised in relation to the proposed development overall design quality I am not convinced that this flexibility should be considered in this case.

7.2.56. Conclusion

7.2.57. Based on the above considerations I consider that the proposed development, if permitted, would be contrary to the provisions for mews developments, Protected

Structures, Architectural Conservation areas and would give rise to a poor standard of residential amenity for existing as well as future occupants of No. 28 Bengal Terrace. Additionally, the proposed development as a result of its design, layout, height, massing, and separation distance from built features and designed historic urban landscape of merit would be visually incongruous, overtly dominant and a development that would conflict with the land use zoning objectives for 'Z2' land that seeks to protect amenities of residential conservation areas. If permitted, it would give rise to an undesirable precedent for *ad hoc* and piecemeal substandard mews lane developments in the area. For these reasons the proposed development would be contrary to the proper planning and sustainable development of the area.

7.3. Amenity Impact

- 7.3.1. Given the urban location of the site, a certain degree of overlooking and overshadowing is to be anticipated. I also acknowledge that there is a housing crisis, and this appeal site is located in a serviceable accessible by public transport albeit remote from the public domain site, in an established city area, where there are ample services, facilities and employment in close proximity.
- 7.3.2. Notwithstanding given the previous concerns raised in this assessment I consider the proposed 3-storey built form, the overall massing, volume, the separation distances between it and the main dwelling as well as the adjoining property of No. 30 Bengal Terrace and other residential properties in its vicinity that the proposed development, if permitted, would be overtly dominant due to its lack of subservience with existing established pattern of development. With this being predominantly 2-storey in built form.
- 7.3.3. I am also not satisfied based on the information before me that the proposed development, if permitted, would not give rise to undue overshadowing of properties in its vicinity.
- 7.3.4. On this point I note that the applicant has not carried out a shadow/sunlight assessment for surrounding properties and given the overall height, built form, orientation through to placement of the proposed building relative to adjoining properties and the rear private space amenity. It is my considered opinion that its highly probable that significant diminishment would arise particularly to the adjoining

property of No. 30 Bengal Terrace by way of reduced daylight and sunlight as well as increased levels of overshadowing.

7.3.5. Whilst measures could improve actual overlooking from the proposed development, I am not convinced that the design of this three-storey building even with such improvements would not give rise to an increased level of overlooking and/or perception of being overlooked for properties in its vicinity.

7.3.6. Conclusion

7.3.7. Whilst I am of the view that the concerns raised in Section 7.2 of the assessment above are of substantive weight in their own right to warrant a refusal of permission, I consider that there is merit in to the Third-Party Observers concerns that the proposed development would give rise undue diminishment of the residential amenities by way of visual overbearance, overlooking through to overshadowing.

7.4. Access

7.4.1. In addition to the concerns already raised on the access lane I note that not only is it not compliant with the access requirements for potential mews lanes under the Development Plan provisions, additionally it is a lane that does not form part of the public road network. It is not therefore a lane that is maintained by the Council, and it is in a poor state of repair along the length upon which the proposed development would be dependent for access to the public domain.

7.4.2. On this point I note that no access is proposed through the adjoining gated lane or through the subdivision proposed for the main dwelling of No. 28 Bengal Terrace.

7.4.3. Further, as said the lane does not contain pedestrian footpaths nor does it contain any public lighting.

7.4.4. It is also a lane that could not be described as having good passive surveillance and there is no indication that there is any unified plan for any meaningful qualitative improvements to it.

7.4.5. I therefore consider that this lane is unsuitable to cater for any additional traffic or serve as a main access to any dwelling.

7.5. Other Matters Arising

7.5.1. **Depreciation of Property Values:** Whilst I concur with the Planning Authority that the proposed development, if permitted, would give rise to negative adverse residential and visual amenities. Including by way of loss of daylight and overshadowing of properties in its immediate vicinity. Notwithstanding, there is no professionally supported evidentiary based proof to support that this would be the case. I therefore do not consider that the proposed development warrants refusal on this basis.

7.5.2. **Adequacy of the Documentation:** Having examined the documentation on file together with having carried out an inspection of the site and its setting I consider that there is adequate information to make an informed decision on this planning application. With this aided to by the photographs taken during my inspection of the site and its setting.

7.5.3. **Civil Matters/Potential Unauthorised Development:** Concerns are raised that at some point in time the section of the lane running along side No. 28 Bengal Terrace has been gated at two points with access restricted and privately controlled. Whilst I note that there is an access serving No. 28 Bengal Terrace to the gated section of lane there is no evidence to support who carried out these works. Further, these works relate to land outside of the red line area of the site and I also note that they are not indicated as being in the applicant's ownership given that they are outside of the blue line area indicated in the accompanying drawings. Moreover, there is no planning history in relation to the provision of these gates and their associated works. Nor is it clear who owns this section of lane or how many parties' benefits from a right-of-way along it. It is however indicated in yellow in the submitted 'Site Location Map' provided.

While I accept that access to the public domain via this adjoining gated stretch of lane to Finglas Road would provide a more direct pedestrian and vehicle access to the site this is not proposed under this application.

In this case I consider that the matters relating to restriction of access to the adjoining stretch of lane that adjoins the southern boundary of the site are civil matters outside Boards remit.

I also consider that the matter of unauthorised development on lands that lie outside of the redline area are not part of the proposed development before the Board for its determination in this appeal case and I am cognisant that such matters fall within the

remit of the Planning Authority to deal with as it sees fit. Similarly, is the matter of whether there has been intensification of residential use, change of use, alterations and additions that have occurred within the curtilage of No. 28 Bengal Terrace that fall outside the scope of exempted development provisions.

Should the Board be minded to grant permission for the development sought under this application, they may as a precaution include as an advisory note the caveat provided for in Section 34(13) of the Planning and Development Act 2000, as amended, should they deem it necessary to do so. This stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development. Given the proximity of the proposed building to the boundary with No. 30 Bengal Terrace and the potential age of boundary structures associated with this period terrace group I consider such an advisory note appropriate.

- 7.5.4. **Demolition and Construction Works:** The main impact that would arise to the amenities of this area would result from the demolition/construction phase. During these phases the works would inevitably result in noise, dust, building debris and so forth. Notwithstanding, such nuisances would be of a temporary nature and would be required to be carried out in compliance with standard codes of practice. It is also standard planning practice to include conditions that seek to minimise such impacts in the event of a grant of permission.

More crucially in my view is that during demolition and construction phases there is also potential for these works to give rise to potential damage or threat to the historic stone walls and watchtower of Glasnevin Cemetery. These are man-made built features specifically listed for specific protection from harm and inappropriate development under the Development Plan provisions.

I therefore consider in this locational circumstance that appropriate precautionary mitigation measures and protection measures need to be in place to safeguard and protect the Protected Structure, during these phases of the development were it to be permitted. With oversight by an appropriately qualified and experienced Architectural Heritage professional. Should the Board be minded to grant permission I recommend that suitably worded condition be imposed in the interest of safeguarding these important built features with the details of the same requiring the prior commencement written agreement of the Planning Authority.

There is also potential for obstruction of traffic movements along the substandard laneway that connects to Prospect Square to the north east with the most direct access route to this lane from the R135 via Prospect Avenue to its entrance at Prospect Square. This is a historic urbanscape that includes De Courcy Square that is afforded protection as an ACA and this access consists of modest in width roads with limited space that could accommodate demolition and construction generated traffic. These roads also provide the on-street car parking for the period properties that make up this ACA as well as they include pay and display parking for those parking in this locality to access Glasnevin Cemetery. In this type of setting, it is important that whilst these nuisances arising would be temporary in nature. Nonetheless it would be standard practice to impose a condition to require compliance with standard codes of practice and to minimise such impacts in the event of a grant of permission.

7.5.5. **Precedent:** The First Party in their appeal submission set out a number of examples of backland, mews, and infill type developments in the Dublin area. I consider that the site context of the examples cited are not the same as this appeal site or the development sought. In addition, there has been significant changes to local through to national planning policy provisions since these examples were permitted. Moreover, it is in accordance with proper planning procedures that each application for development is assessed by the Board on appeal on its own individual merits against prevailing relevant planning policy provisions.

7.5.6. **Appropriate Assessment**

7.5.7. The subject site is located in an established residential area and is not located adjacent to nor in close proximity to any European sites, as defined in Section 177R of the Habitats Directive. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to the nearest European site, no appropriate assessment issues arise, and it is not considered that the proposed development would 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 that permission is **refused**.

9.0 Reasons and Considerations

1. It is considered that the proposed development would be contrary to the provisions for mews development as provided for under Section 15.13.5 of the Dublin City Development Plan, 2022-2028, having regards to the proposed three storey buildings lack of subservience to the main dwelling, the inadequate provision of private open space amenity for existing and proposed development cumulatively, through to the potential of the quantum of residential development that would arise at No. 28 Bengal Terrace to give rise to undue traffic inconvenience and hazards together with the potential to give rise to an unreasonable overspill of car parking in the surrounding area. The proposed development, both by itself and by the precedent it would set for other *ad hoc* piecemeal development, particularly along this sensitive to change laneway, and would therefore be contrary to the provisions of the Development Plan. For these reasons the proposed development would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the existing character and the prevailing pattern of development; the site location on 'Z2' – Residential Neighbourhood Conservation Areas zoned land for which the Dublin City Development Plan, 2022-2028, which has a zoning objective to: "*protect and/or improve the amenities of residential conservation areas*"; the presence of the perimeter stone walls and a stone watch tower associated features listed in the said Plans Record of Protected Structure's for Glasnevin (Prospect) Cemetery (RPS Ref. No. 2745) and the neighbouring land to the south which forms part of an Architectural Conservation Area, it is considered that the proposed development, by reason of its overall design, layout, its height, scale, massing and volume, would be out of character with its surroundings, would seriously detract from as well as would be visually overbearing in the context of the architectural character and setting of features of interest that form integral part of the Glasnevin Cemetery Protected Structure. It would similarly be visually diminishing to the Residential Conservation Area if forms part of, in particular by way of its lack of visual subordination with the Bengal Terrace group and

also the more modest neighbouring ACA two storey structures. The proposed development would, therefore, materially, and adversely affect the character of this Protected Structure, would seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the established pattern of development in the surrounding area, it is considered that the proposed development by reason of its height, scale, form, design, and setbacks would constitute overdevelopment of this site area, would be visually obtrusive and out of character with development in the vicinity as well as would seriously injure the amenities of property in the vicinity by reason of proximity, overshadowing and visual overbearance. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.
4. The proposal provides for an apartment mews development which is accessed via a poorly surfaced laneway that contains no footpath or verge. Section 15.13.5.4 and Appendix 5, Section 4.3.8, of the Dublin City Development Plan, 2016-2022, requires that such mews development is only permitted where the adjacent access road width is no less than 5.5 metres and where adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles can be provided. It is considered that these requirements are reasonable particularly in the context whereby there is no unified or coordinated approach for mews development along this lane. The proposed development would therefore endanger public safety by reason of a traffic hazard and would be contrary to the provision of the Dublin City Development Plan in this regard. For these reasons the proposed development would 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.

Patricia-Marie Young
Inspector

5th day of February, 2024.

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317857-23			
Proposed Development Summary	Permission is sought for the demolition of existing storage shed, removal of existing rear gate with part of block boundary wall, construction of 3-storey mews building comprising 2 apartment units, 2 no. parking spaces accessed from lane together with all ancillary site works and services.			
Development Address	Rear of No. 28 Bengal Terrace, Glasnevin, Dublin 11.			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓	
		No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes	X	Class 10, (b)	Sub-Threshold	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	Assessment conducted as part of planning application; modest urban residential development with no real likelihood of significant effects.	Preliminary Examination required
Yes	No.	Screening Determination required

Inspector: _____

Date: _____

Appendix 2 - Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-317857-23	
Proposed Development Summary	Permission is sought for the demolition of existing storage shed, removal of existing rear gate with part of block boundary wall, construction of 3-storey mews building comprising 2 apartment units, 2 no. parking spaces accessed from lane together with all ancillary site works and services.	
Development Address	Rear of No. 28 Bengal Terrace, Glasnevin, Dublin 11.	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p>	It is consistent with the nature of development that is deemed to be permissible on land zoned 'Z2' under the Dublin City Development Plan, 2022-2028. The nature of the proposed development is not exceptional with the existing environment which includes existing hotel developments that have in the past been extended.	No.
<p>Will the development result in the production of any significant waste, emissions, or pollutants?</p>	The proposed development would produce standard expected waste, emissions/pollutants that correlate with its nature and extent during demolition, construction, and operational stages. The waste, emissions and/or pollutants are not significant having regard to the nature and the extent of the proposed development in a built-up inner-city area and can be appropriately managed by standard best practice measures and controls.	No.
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	The proposed development would generally be consistent with the size of development within an urban setting where there denser more compact development is encouraged and where plot sizes in this area are generally small through to medium in size. In this context the size of the proposed development having regard to the character of the surrounding area and the sizes of development present is not exceptional in its size.	No.
<p>Are there significant cumulative considerations</p>	The surrounding area is an historic but evolving urban landscape. There would be no significant cumulative considerations with	No.

