



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318160-23

<b>Development</b>	Retention of change of use to residential with all associated site works
<b>Location</b>	18 Crescent Gardens, East Wall, Dublin 3
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	4168/23
<b>Applicant(s)</b>	Tony McEnroe
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Dublin City Council
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	Tony McEnroe
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27 <sup>th</sup> August 2024
<b>Inspector</b>	Clare Clancy

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## **1.0 Site Location and Description**

- 1.1. The appeal is located in Crescent Gardens which is a mature residential area located in the inner suburban area of East Wall to the east of West Road. The site comprises of a semi-detached two storey dwelling at the end of a terrace which comprises of three dwellings. The immediate area is characterised similarly.
- 1.2. There is an existing gated access from the side to the rear garden of the dwelling. There is no defined boundary at the front between the appeal site no. 18 and the adjoining dwelling no. 19. The shared boundary of the site with no. 17 is defined by a low brick wall and the roadside boundary is defined by a similar wall with metal railings incorporated.
- 1.3. The dwelling is extended to the rear with a flat roof extension and in addition to the subject development, there is a small shed within the site. The northern boundary of the site is defined by a timber fence. The southern boundary of the site is defined by a low block wall and temporary Heras fencing covered by vegetation. The appeal site backs on to an adjoining residential development. Parts of the site are over grown and there are a number mature trees along the rear boundary of the site. The subject development comprises of a detached flat roof outbuilding / workshop located adjacent to the rear and side boundary of the site.

## **2.0 Proposed Development**

- 2.1. The proposal is to retain the change of use from a garage / workshop to residential use. The subject development is a single storey flat roofed structure at the rear of the garden. The subject site has a stated area of 298 m<sup>2</sup> (0.0298 ha) and the existing structure has a stated floor area of 38.7 m<sup>2</sup>.
- 2.2. Access to the subject development is to the side of the existing dwelling via a side entrance to the rear garden of the existing dwelling. It is stated that this is a shared Right of Way.
- 2.3. As part of the appeal, the first party appellant has submitted revised plans and drawings proposing an increase in the floor area of the subject development resulting in a gross floor area of 45.10 m<sup>2</sup>.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Dublin City Council refused retention permission by Order dated 11<sup>th</sup> November 2023 for one reason:

*Having regard to the location, orientation and proximity of the proposed development for retention to the rear elevation of No.18 Crescent Gardens, the development would prove injurious to the residential amenities of the adjoining property, by way of negatively impacting upon the privacy of residents. Given the proximity of the subject building to the main dwelling at No.18, the separation distances between the rear ground floor window of No.18 and the living room window of the subject building are deemed insufficient and likely to result in overlooking and loss of privacy. The proposal would, therefore, result in a substandard form of residential development and set an undesirable precedent for similar such developments in the area. Furthermore, it is considered that the proposal does not adhere to the requirements of Policy QSHN 22, Policy QSHN 37, Section 15.19<sup>1</sup> and Appendix 18 of the Dublin City Council Development Plan 2022 – 2028 and as such, is contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

One planning report forms the basis of the assessment and recommends retention permission to be refused. The following points are noted:

- The proposal meets the requirements in terms of plot ratio, minimum floor area for a 1-bed unit, and dual aspect and floor to ceiling height.
- No space afforded to storage therefore does not meet minimum requirements.

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<sup>1</sup> This would appear to be a typo error, Section 15.19 of the CDP relates to Dublin Port. Section 15.9 relates to Apartment Standards.

- Amenity space available is facilitated in the large rear garden but access is via the private amenity space for the main dwelling. Concerns raised regarding Impact on existing amenities, and future occupants of the subject development.
- The separation distances between the existing dwelling and the subject development are limited, therefore impact on residential amenities of the existing dwelling.
- The rear ground floor window on the existing dwelling is directly opposite the window serving the living area of the subject development giving rise to impact on privacy of occupants for both dwellings, as a result of overlooking.
- Overdevelopment of the site arising from change from a garage to a residential unit, consequently it negatively impacts on the character of the area.

#### 3.2.2. Other Technical Reports

- Drainage Division – No objection raised.
- Transportation Planning Division – No objection raised, given the central location of the site, non-provision of car parking is acceptable.

#### 3.3. Prescribed Bodies

None.

#### 3.4. Third Party Observations

None.

### 4.0 Planning History

#### 4.1. Appeal Site

Enforcement – P.A. Ref. E0116/23: Enforcement Notice issued in relation to the use of the existing structure as a habitable unit without the benefit of planning permission.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2022-2028 (CDP)

#### 5.1.1. Zoning

##### Section 14.7.1 Sustainable Residential Neighbourhoods – Zone Z1

The site is zoned Z1 Sustainable Residential Neighbourhoods, the objective for which is “to protect, provide and improve residential amenities”.

#### 5.1.2. Chapter 5 Quality Housing and Sustainable Neighbourhoods – the following policies are relevant to note:

- QHSN6 Urban Consolidation

To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaption of existing housing stock and use of upper floors, subject to the provision of good quality accommodation.

- QSHN22 Adaptable and Flexible Housing

To ensure that all new housing is designed in a way that is adaptable and flexible to the changing needs of the homeowner as set out in the Lifetime Homes Guidance contained in Section 5.2 of the Department of Environment, Heritage and Local Government’s ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007) and the Universal Design Guidelines for Homes in Ireland 2015.

- QSHN37 Houses and Apartments

To ensure that new houses and apartments provide for the needs of family accommodation with a satisfactory level of residential amenity in accordance with the standards for residential accommodation.

#### 5.1.3. Chapter 15 Development Standards – the following is relevant to note:

- Section 15.9 Apartment Standards -- sets out guidance for apartment schemes in particular, requiring the provision of high quality, attractive and

liveable apartment units. All apartment developments should make a positive contribution to the local area in terms of public open space and / or public realm improvements, and should provide long term living environments for future residents through communal amenity spaces and attractive and sustainable internal units.

- Section 15.9.2 Unit Size / Layout Studio type 1 bed apartments require minimum floor area of 37 m<sup>2</sup>.
- Notes that the concept of habitable rooms as distinct from bedrooms is important as it allows a residential unit to adapt to the needs of its residents over time (with the exception of the studio unit).

#### 5.1.4. Appendix 18 Ancillary Residential Accommodation

- Section 1.0 Residential Extensions.
- Section 2.0 Detached Habitable Rooms.
  - Describes such developments as backland development within the curtilage of an existing dwelling, that does not contain a separate vehicular access point.
  - The purpose of habitable rooms is to provide for additional space within the rear garden of an existing dwelling for study / home office use or additional living / children's play room to be used only as ancillary residential accommodation.
  - The room may not be sold or rented separately from the main dwelling unit.
- Section 6.0 Subdivision of Dwellings – sets out the guidance in relation to the subdivision of a property for the creation of additional residential units within the space occupied by the existing individual dwelling, and that the council will consider the subdivision of larger homes subject to compliance with Section 15.9 of Chapter 15
- Section 7.0 Ancillary Family Accommodation – refers to the subdivision or extension of a single family dwelling unit to accommodate an immediate family member for a temporary period, or other circumstances relating to disability illness or specific temporary house need. It notes that such accommodation

should be contained within the existing unit or provided as an extension to the main dwelling.

## **5.2. Natural Heritage Designations**

5.2.1. The nearest European Sites and Natural Heritage Areas in close proximity to the appeal site are the following:

- pNHA North Dublin Bay Site Code 000206 – approx. 181 m to the northeast.
- SPA South Dublin Bay and River Tolka Estuary SPA Site Code 004024 – approx. 483.6 m to the northeast.
- SPA North Bull Island Site Code 004006 – approx. 3.7 km to the east.
- pNHA Royal Canal Site Code 002103 – approx. 487 m to the west.
- pNHA Grand Canal Site Code 002104 – approx. 1.4 km to the south.
- SAC South Dublin Bay Site Code 000210 - approx. 2.9 km to the south.
- pNHA South Dublin Bay Site Code 000210 – approx. 2.9 km to the south.

## **5.3. EIA Screening**

5.3.1. The development, comprising of a change of use, does not constitute a project for the purposes of EIA. Refer to Appendix 1.

## **6.0 The Appeal**

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

6.1.1. A First Party appeal submission was made by Tony McEnroe of no. 18 Crescent Gardens, East Wall, the site owner. The grounds of the appeal can be summarised as follows:

- The use of the subject development is to provide accommodation for a homeless lady in receipt of HAP payment and that access to the appeal site is via a side passage along the shared boundary between no. 18 and no. 19 Crescent Gardens which is a shared Right of Way.



- The first party has sought to address the issues raised by the Planning Authority in their assessment with regard to minimum internal storage provision, private amenity open space, refuse storage, separation distances and overlooking as follows:
  - Internal storage space is shown on the revised plans as an internal lobby / storage area of 5.3 m<sup>2</sup>.
  - Notes that the minimum private amenity open space for a studio apartment is 4 m<sup>2</sup>. Private amenity open space is addressed by the provision of 13.6 m<sup>2</sup> provided in the garden to the rear of the existing dwelling no. 18 (inclusive of access to entrance of dwelling shown on site plan).
  - A refuse storage area is proposed adjacent to the existing structure.
  - The separation distance between the rear of no. 18 and to the subject development at first floor level is 7 m, and 3.1 m between the existing flat roof extension to the rear of no. 18 and the subject development.
  - A 2.2 m high 'hit and miss' fence is proposed to enclose the private amenity space of the subject development which will afford a degree of privacy to no 18 and the subject development.
- The proposal does not constitute overdevelopment of the site having regard to the revised details proposed. The structure has been extant for a period of time and the change of use to residential is appropriate when viewed in the context of availability of accommodation for homeless people.
- The proposal does not negatively impact on the character or the visual amenities of the area.

## **6.2. Planning Authority Response**

- 6.2.1. Request that the Board uphold the decision of the Planning Authority and in the event of a grant, that a condition requiring the payment of Section 48 development contribution, and a naming and numbering condition included.

### 6.3. Observations

None.

## 7.0 Assessment

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development.
- Amenity Impacts.

### 7.1. Principle of Development

The appeal site is zoned Z1 the objective of which is to '*to protect, provide and improve residential amenities*'. Residential development is a permissible use under this zoning objective.

#### Nature of Use and Compliance with Planning Policy

- 7.1.1. In its assessment of the development proposal, the Planning Authority considered the proposal having regard to Section 6.0 Subdivision of Dwelling, which is contained in Appendix 18 Ancillary Residential Accommodation, of the CDP. This relates specifically to the subdivision of a property within the site, and the subdivision of larger homes subject to compliance with the relevant standards for apartments units (Section 15.9 of Chapter 15). I note the application red line boundary including existing and proposed residential units, the existing access and subdivision of the site not specifically proposed, notwithstanding separate dwelling units proposed thereon.
- 7.1.2. The first party appellant has sought to address the issues raised by the Planning Authority in the assessment and reason for refusal through the submission of revised drawings, particularly in reference to Section 15.9 of the CDP whilst noting that the proposal does not constitute overdevelopment of the site, having regard to the revised proposals. In this regard, it is proposed to increase the footprint of the existing structure

by extending the structure to provide 5.6 m<sup>2</sup> additional floor space in order to increase internal storage space to meet minimum requirements, and to address residential amenities by the construction of a new fence.

- 7.1.3. In addressing access through the private amenity space associated with the main dwelling on the site, it is submitted that access to the subject development is via a shared Right of Way, and not through the private amenity space of the main dwelling. To address overlooking and privacy, it is indicated on the drawings that a 2.2 m high 'hit and miss' fence is proposed to enclose the private amenity space for the unit.
- 7.1.4. Appendix 18 of the CDP sets out the policy approach to be considered for development proposals relating to ancillary residential accommodation. Section 2.0 relates to detached habitable rooms describing such development as backland development within the curtilage of the site using the existing vehicular access. It notes that the purpose of such rooms is to provide additional living space such as home office / study / playroom / living space within the rear garden of an existing dwelling, which cannot be sold or rented separately to the main dwelling unit on the site.
- 7.1.5. I note that Section 6.0 relates to the subdivision of a property to provide for additional residential units within the space occupied by the existing dwelling on the site. The Planning Authority noted that the subject development did not strictly represent the subdivision of a larger home on the site. I concur with same, and I do not consider that the proposal represents the subdivision of the existing property given that the proposed development does not seek to do so. On that basis I do not consider Section 6.0 to be relevant.
- 7.1.6. Section 7.0 refers to ancillary family accommodation with regard to the subdivision or extension of a single family dwelling unit to facilitate immediate family members or other circumstances such as a disability or illness. It is described as a temporary housing need that can be facilitated within the existing unit or by means of an extension to the main dwelling, preferably having a direct connection to the main house, and not be a separate detached dwelling unit.
- 7.1.7. The subject development for which retention is sought is a detached independent structure, the former use of which was a garden shed / workshop ancillary to the use of the existing dwelling. Having regard to the policies and objectives set out in the Development Plan in particular Sections 2.0, 6.0 and 7.0, of Appendix 18, I do not

consider that the subject development comes within the planning policy scope of any of these accommodation standards. The revised drawings are noted, however I do not consider that the amendments proposed address the reason for refusal, and I consider that the existing detached residential unit within the curtilage of the existing development constitutes overdevelopment of the site. In that regard, I do not consider that the principle of the proposed development is acceptable in this case and is not in accordance with the proper planning and sustainable development of the area. I recommend refusal on this basis.

## **7.2. Amenity Impacts**

- 7.2.1. The Planning Authority considered that the development to be retained would be injurious to the residential amenity of the main dwelling house on the site. This is in the context of the limited separation distance of approx. 6.7 m between the ground floor window to the rear of the existing dwelling, and the window serving the living area on the western elevation of the subject development. It was also raised that the existing access to the subject development would be through the private rear amenity space for the main dwelling, which would also have an unacceptable impact on the existing dwelling.
- 7.2.2. To address the issue of overlooking and the impact on privacy, the appellant has proposed to construct a 2.2 m high 'hit and miss' fence to enclose the private amenity area associated with the subject development and submits that this would safeguard the residential amenities for both properties. It is also stated that access to the subject development from the street is via the shared Right of Way and not through the private amenity space of the main dwelling.
- 7.2.3. In regard to overlooking, the proposed fence would mitigate to a degree overlooking between the living area of the subject development and the rear ground floor window of the existing dwelling no. 18. However, I do not consider this to be a suitable privacy measure given the nature of the site and the close proximity of both developments. Consequently, I consider that it would give rise to a negative visual impact to the residential amenities of both the subject development and the adjoining dwelling potentially obscuring daylight to both. I would further concur with the Planning Authority's assessment regarding access to the subject development via the existing

side entrance, and consider that it would further impact on the residential amenities of the existing dwelling in terms of privacy by reason of overlooking.

- 7.2.4. The location and orientation of the existing structure and its proximity to the adjoining dwelling are such that the retention of the use of the structure as an independent dwelling would have a significant negative impact on adjoining residential amenity by virtue of visual intrusion, overlooking and loss of privacy. It is therefore my consideration that these impacts are such that the retention of the development would be contrary to the Z1 Zoning Objective for the site which has a stated objective '*to protect, provide and improve residential amenities*'. On that basis, it is recommended that permission for retention is refused.

## 8.0 AA Screening

- 8.1.1. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 (as amended).

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

- The closest European Sites, part of the Natura 2000 Network are the South Dublin Bay and River Tolka Estuary SPA which is located approx. 483.6 m to the northeast, North Bull Island SPA located approx. 3.7 km to the east, and the South Dublin Bay SAC located approx. 2.9 km to the south of the appeal site.
- The subject site which is an existing developed site and is located in a mature residential area. The subject development entails the retention of the change of use of the existing garage / workshop to residential use. No significant construction or ancillary works were proposed as part of the application. The subject site is connected to adjoining foul sewer and water mains.
- No nature conservation concerns were raised at planning application stage or in the planning appeal.

- 8.1.2. Having considered the nature, scale and location of the subject development, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- The nature of the development which comprises of the retention of change of use.
- The location of the development in a serviced urban area, that has the benefit of piped water and wastewater services, distance from European Sites and urban nature of intervening habitats, absence of ecological pathways to any European Site.
- Screening assessment of the Planning Authority.

8.1.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 9.0 Recommendation

I recommend that permission be refused for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. Having regard to the zoning of the site, the objective of which is to 'protect, provide and improve residential amenities', to the limited site area and access arrangements associated with the site, and the existing structures' relationship with the adjoining dwelling within the site, and having regard to Sections 2.0, 6.0 and 7.0 of Appendix 18 of the Dublin City Development Plan 2022-2028 which relates to Ancillary Residential Accommodation, it is considered that the development proposed to be retained is a separate independent residential unit that results in an inappropriate form of backland development giving rise to a substandard residential unit, which would have a significant negative impact on the residential amenities of the adjoining dwelling to the west, by virtue of visual intrusion, overlooking and negative visual impact. It is therefore considered that the development proposed to be retained would be contrary to the provisions of the Dublin City Development Plan 2022-2028, would seriously injure the residential amenities of the existing adjoining property, would be contrary to the

residential zoning objective of the site, and would therefore, be contrary to the proper planning and sustainable development of the area.

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

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Clare Clancy  
Planning Inspector  
16<sup>th</sup> September 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	318160-23			
<b>Proposed Development Summary</b>	Retention Permission for change of use from garage / workshop premises to residential use of existing single storey flat roofed structure (38.7 m <sup>2</sup> )			
<b>Development Address</b>	18 Crescent Gardens, East Wall, Dublin 3			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>		
		<b>No</b>	✓  No further action required	
<b>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?</b>				
<b>Yes</b>		Class.....	EIA Mandatory EIAR required	
<b>No</b>	✓		Proceed to Q.3	
<b>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]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>	✓	N/A		No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....		Proceed to Q.4



**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_