



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319692-24

#### Development

Permission sought for the construction of 2 dwellings & all associated site works.

#### Location

Rear of No. s 58 & 60 Garville Avenue Upper (accessed from Garville Lane Upper), Rathgar, Dublin 6.

#### Planning Authority

Dublin City Council South.

#### Planning Authority Reg. Ref.

3254/24.

#### Applicant(s)

PAJC Garville Limited.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Refusal.

#### Type of Appeal

First Party.

#### Appellant(s)

PAJC Garville Limited.

#### Observer(s)

1. Pól Ó Briain.
2. Mr. & Mrs Frank Gannon.

**Date of Site Inspection**

23<sup>rd</sup> day of August 2024.

**Inspector**

Patricia M. Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site which has a stated area of 248m<sup>2</sup> consists of a vacant separate parcel of unkempt land located to the rear of No.s 58 and 59 Garville Avenue Upper and that fronts onto the southern side of the restricted in width cul-de-sac of Garville Lane Upper, c13.8m to the west of its junction with Rathgar Avenue, in the south Dublin city suburb of Rathgar, Dublin 6.
- 1.2. At the time of inspection, the lane side boundary contained a tall metal railed gate and boundary treatment with the remaining site boundaries consisting of tall solid boundary walls. To the immediate east of the site with zero setback from the southern lane side carriageway edge there is a single storey mono pitched roofed vacant building. This building is adjoined by a two-storey modern in design mews type dwelling that fronts onto the southern side of Garville Lane Upper's junction with Rathgar Avenue.
- 1.3. The rear of the site adjoins the private amenity space of No. s 58 and 59 Garville Avenue Upper.
- 1.4. The adjoining property to the west maintains contains a separated parcel of land from No. 62 Garville Avenue Upper which was in use at the time of inspection for ungated off-street car parking.
- 1.5. Garville Lane Upper contains several buildings along its restricted length. The predominant building type is ad hoc single storey garage structures and there is a number of vehicle as well as pedestrian access points along it. There is also an ESB substation located towards its end. The surface of Garville Lane Upper consisted of patched concrete and tarmac that was in poor condition. It is of a variable restricted width and contains no street lighting or dedicated pedestrian footpath. The surrounding area has a mature residential period character.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
  - Removal of existing fencing, gates, and site clearance.
  - Construction of 2 no. 2 storey, 3 bedroomed dwellings (Note: each with a floor area of 136m<sup>2</sup>) incorporating integrated off-street car parking.

- All associated site works including all boundary treatments, hard and soft landscaping, associated external alterations through to connections to services and utilities.
- 2.2. According to the submitted documentation the proposed floor area of new buildings is 272m<sup>2</sup>, the plot ratio is 1.11 and site coverage is 55%. The submitted documentation also indicates that two car parking spaces are proposed and that the dwelling mix is comprised of two matching in design, layout and built form three-bedroom units. The proposed dwellings would be positioned with a zero setback from the lane side edge with the lane at this point having a maximum width of 4.225m. The submitted drawings also show they would have a maximum height of 7.5m; a depth of 11.44m; combined width addressing the lane side edge of 12.88m; a rear garden depth of 7.174m through to a coherent external expression with the principal frontage including mainly powder coated roller shutters at ground floor level, stone cladding at first floor level and blue/black slate over.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 12<sup>th</sup> day of April 2024, permission was **refused** for the following stated reason:
- “Having regard to the substandard, restricted, and narrow width of the existing laneway where no vehicle manoeuvring and turning facilities exist, it is considered that the proposed development could not be safely and conveniently accessed for essential and emergency services, resulting in hazardous manoeuvres onto and off Rathgar Avenue by all vehicles. The proposed development would therefore endanger public safety by reason of traffic hazard, would be contrary to Section 4.3.8 of Appendix 5 of the 2022-2028 Dublin City Development Plan and, by itself and by reason of the undesirable precedent it would set for other similar substandard development along the laneway, be contrary to the proper planning and sustainable development of the area”.*

## 3.2. Planning Authority Reports

3.2.1. **Planning Reports:** The Planning Officers report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submissions and the relevant planning provisions. They also had regard to the planning history of the site's surrounding setting report and includes a section on Appropriate Assessment Screening and Environmental Impact Assessment. The Planning Officer concurred with its Transportation Planning Division and concluded with a recommendation to refuse permission as per Section 3.1.1 above.

## 3.2.2. Other Technical Reports

- **Transportation:** Includes the following comments:
  - Concern is raised to lack of compliance with Section 15.13.4 of the Development Plan.
  - There are no turning facilities within the laneway and turning manoeuvres are reliant on access to existing driveways.
  - There is no lighting on this laneway and its surface requires upgrading.
  - Insufficient traffic and access information provided.
  - The creation of a precedent for the collection of refuse at the junction with Rathgar Avenue is not supported.
  - A clear width of 5m in length and 3m in width should be demonstrated for each car port.
  - No cycle parking provision.
  - Concludes with a recommendation for refusal.
- **Engineering:** No objection subject to standard safeguards.

## 3.3. Prescribed Bodies

3.3.1. None.

### 3.4. Third Party Observations

- 3.4.1. There are 2 No. Third-Party Observations noted on the Planning Authority file. The key issues raised correlate with those raised by them in their Third-Party Observations received by the Board (see Section 6 below).

## 4.0 Planning History

### 4.1. Site

- 4.1.1. None.

### 4.2. Setting

- 4.2.1. No recent or relevant planning history pertaining to the immediate site setting. Notwithstanding, I note that planning permission was **granted** at No. 54 Garville Avenue for a two-storey three-bedroom mews with integrated garage dwelling with a setback of 1m from the site's junction with Rathgar Avenue and Garville Lane Upper subject to safeguards under **P.A. Ref. No. 5942/05**.
- 4.2.2. Additionally, I note that under **P.A. Ref. No. 4000/23** permission was **granted** for the demolition of an existing single storey vehicle workshop and existing single storey light industrial shed; the subsequent construction of 7 no. 3 storey, 4 bedroom terraced houses, with roof terraces to front and rear, associated site & landscaping works and new vehicular access from Rathgar Villas at Rathgar Avenue, Dublin 6, D06 X3T0 and 27a Rathgar Avenue, Dublin 6, D06 T0X6 which are to the rear of nos. 27, 28 & 29 Rathgar Avenue and adjoin Rathgar Villas. Decision date: 28 Feb 2024. This decision was subject to an appeal case **ABP-319387-24** which was **withdrawn** on the 5<sup>th</sup> of April 2024.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The appeal site is zoned Z2 Residential Neighbourhoods (Conservation Area) in the Dublin City Development Plan, 2022-2028. The given objective for 'Z2' lands is '*to protect and / or improve the amenities of residential conservation areas*'.

- 5.1.2. Regarding development within this zone, 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”*. Additionally, it sets out that the principal land-use encouraged in residential conservation areas is housing and it states that: *“the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area”*.
- 5.1.3. Section 15.13.5 of the Development Plan deals with the matter of ‘Mews’ developments. Given the stated reason for refusal Section 15.13.5.4 which deals with the matter of Access and Parking provision in mews lanes is of particular relevance. It states that: *“each development will be assessed on a case-by-case basis. Potential mews laneways must provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles”*.
- 5.1.4. Appendix 5 Section 4.3.8 of the Development Plan provides further detail on Mews Parking. It states that: *“all parking provision in mews lanes, where provided, will be in off-street garages, forecourts or courtyards, subject to conservation and access criteria”* and that *“potential mews laneways must provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles. A minimum carriageway of 4.8m in width (5.5m where no verges or footpaths are provided) is required. In circumstances where these widths cannot be provided, safe access and egress for all vehicles and pedestrians must be demonstrated”*.
- 5.1.5. Section 15.13.5.1 of the Development Plan sets out the development standards for Design and Layout of Mews Dwellings.
- 5.1.6. Section 15.13.5.2 of the Development Plan sets out the development standards for Height, Scale and Massing of Mews Dwellings.



- 5.1.7. Section 15.13.5.3 of the Development Plan sets out the development standards for Roofs of Mews Dwellings.
- 5.1.8. Section 11.5.3 of the Development Plan Z2 also provides guidance on Conservation Areas with Policy BHA 9 seeking to protect their special interest and character. This Development Plan policy also states that: *“development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible”*.
- 5.1.9. Policy BHA14 of the Development Plan states that the City Council will seek: *“to promote the redevelopment and regeneration of mews lanes, including those in the north and south Georgian core, for sensitively designed, appropriately scaled, infill residential development, that restores historic fabric where possible, and that removes inappropriate backland car parking areas”*.
- 5.1.10. BHA05 of the Development Plan states that it is an objective of the City Council: *“to prepare a best practice design guide regarding appropriate mews development in the city”*.

## 5.2. Natural Heritage Designations

- 5.2.1. None within the zone of influence.
- 5.2.2. In this regard I note the nearest Natura 2000 are South Dublin Bay SAC (Site Code: 000210) and South Dublin Bay & River Tolka Estuary SPA (Site Code: 004024) which are located c4.8km to the east of the site as the bird would fly.

## 5.3. EIA Screening

- 5.3.1. See Appendix 1 – EIA Pre-Screening Form attached.
- 5.3.2. Having regard to the modest nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed

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

## 6.0 The Appeal

### 6.1. Grounds of Appeal

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

- The Board is requested to overturn the Planning Authority's decision.
- An alternative scheme accompanies this appeal submission which seeks to address the Planning Authority's concerns. It includes a setback of 1.3m for both mews dwelling units to create a 5.5m wide laneway fronting the proposed development and modifies the dwelling units to 1 no. 2-bedroom and 1 no. 3-bedroom. The revised dwelling units would have rear garden depths of 6.5m and c41.6m<sup>2</sup> of rear private amenity space. It is contended that these revisions accord with the proper planning and sustainable development of the area.
- The site benefits from existing vehicular access onto the lane and this lane provides a much-used vehicle access to the rear of the Garville Avenue Upper terrace.
- No. 58 and 60 Garville Avenue Upper are in separate ownership. The separation distances between the proposal and these properties accord with requirements.
- Reference is made to the grant of permission P.A. Ref. No. 5942/05.
- The pole at the entrance to Garville Lane Upper could be moved.
- No adverse overlooking would arise from the amended scheme.
- Emergency access can be provided.
- The adjoining vacant commercial building has development potential.
- The depth of the rear gardens is such that they can facilitate widening of Garville Lane Upper.
- A swept analysis shows that a vehicle with a 5m length can enter and exit the car parking space serving each of the amended dwelling units. This access is not inhibited by the structure to the rear of No. 56 Garville Avenue Upper.

- The revised car ports meet the requirements of Appendix 5 of the Development Plan.
- It is a standard practice for properties in mews laneways to bring bins to the end of the laneway for collection or for bins to be brought down the lane by collectors. There are regular bin collections on Rathgar Avenue.
- The Board could omit the car parking provision by way of condition.
- The removal of this vacant site would have a positive impact on the area.
- The proposed development would not give rise to an undesirable precedent.
- The proposed development would not give rise to any undue amenity impacts and it would accord with the proper planning as well as sustainable development of the area.

## 6.2. Planning Authority Response

- 6.2.1. The Planning Authority seek that the Board uphold its decision but if the Board is minded to grant permission request that Section 48, payment of a bond as well as a naming and numbering conditions are included.

## 6.3. Observations

- 6.3.1. The Board received Third Party Observations from:

- Pól Ó Briain.
- Mr. & Mrs Frank Gannon.

For clarity I note that both observers support the Planning Authority's decision and for the purposes of avoiding repetition I have summarised these submissions collectively under the broad headings below:

### **Appeal Submission Amendments**

- The revisions to the proposed development as lodged are material and significant in terms of the changes they propose. They would require new public notice.

- There is insufficient information provided on the amended scheme proposed by the appellant, including differentiation between what was proposed as lodged with the Planning Authority and the amended scheme submitted with the appeal.
- The Board is requested to not consider the amended scheme in the interest of fair procedures and natural justice.

### **Procedural Concerns**

- Site Notice validity raised.
- The submitted drawings indicate mature planting adjoining the rear of the site which is not reflective of the actual site context.
- The accompanying swept analysis is not scaled. It is not accepted that this swept analysis provides assurance that for example that a car could make the turns indicated. This analysis also does not provide adequate assurance for other type of vehicles during construction and operational phases, including emergency service vehicles.
- There is no topographical analysis of the lane as part of the appeal submission.

### **Garville Lane Upper**

- This lane is substandard in width and condition. It also includes no lighting.
- This lane is used for parking thereon.
- This proposal, if permitted, would endanger public safety, and give rise to inconvenience for its existing users.
- Permitting this development would give rise to an undesirable on this lane.
- This proposal fails to comply with relevant planning provisions for access.

### **Residential Amenity Impact**

- There is a difference in ground level between the site and its immediate setting.
- This proposal would give rise to undue overlooking and a loss of sunlight to their properties.
- The measures proposed for protecting adjoining residential amenities is unclear.
- There is no sunlight survey provided with this application.

- The amended scheme results in the two proposed mews dwelling units being closer to the rear of adjoining properties. This is objected to.

### **Planning History and Surrounding Planning Context**

- Mews development has been previously refused on this lane.
- The residential scheme P.A. Ref. No. 4000/23 does not include any vehicle access onto the lane but would result in increased pedestrian use of Garville Lane Upper.

### **Other matters**

- The vehicle access on the opposite side of Garville Lane Upper to the rear of No. 27a Rathgar Avenue does not appear to benefit from a grant of permission.
- Rathgar Avenue is narrow and sightlines onto this lane is obscured by parking and passing cars.
- It is questioned how construction works are deliverable without obstructing access to the lane including a 38kV ESB substation.
- The proposed scheme is higher than other developments on the lane.
- The proposed scheme provides substandard defensible space and private amenity space.
- A Transport Report accompanies one of the observations. It includes the following comments:
  - Due to the effective obstructions its width between Rathgar Avenue at its most restricted point is c3.7m.
  - The adjacent carriageway immediately adjoining the site and the lane's junction with Rathgar Avenue is c3.9m wide.
  - Rathgar Avenue was observed to carry a large volume of vehicles moving at moderate speed.
  - The appeal submission is heavily reliant on the now proposed setback. However, the laneway serving the site is less than the 5.5m minimum width requirements under the Development Plan.
  - Larger vehicles would be required to reverse onto the lane to access the site from Rathgar Avenue. This would add to road safety concerns.

- The swept analysis is not based on topographical survey of the site and setting. The drawings also change the position of the opposing boundary wall and do not show access for a fire tender vehicle.

#### **6.4. Further Responses**

6.4.1. None.

### **7.0 Assessment**

#### **7.1. Introduction**

7.1.1. I consider that the key issue in this appeal arises from the Planning Authority's decision to refuse permission for the proposed development set out under Section 2.1 of this report. I also consider that there are a number of sub issues raised by the Third Party Observes that also require examination. In addition, the issue of appropriate assessment also needs to be examined. I therefore propose to examine this appeal under the following broad headings:

- PA Refusal
- Procedural Issues
- Other Matters Arising
- Appropriate Assessment

7.1.2. Before I commence my assessment, I note that the general principle of residential development and the reversal of the appeal's site current vacant state is consistent with land use objectives for 'Z2' zoned land through to the general planning provisions for conservation areas is consistent with the Dublin City Development Plan, 2022-2028. Further, the Development Plan also encourages the delivery of residential development, climate resilient, compact and consolidated growth on serviced brownfield and infill sites at appropriate locations within the city in a manner that I consider accords with regional and national planning policy provisions (Note: Chapter 2 – Core Strategy and Objectives including but not limited to Objective CSO7). Based on the foregoing, I am satisfied that the general principle of the proposed development is acceptable, subject to site and context safeguards.

- 7.1.3. I also note that the First Party Appeal submission is accompanied by an amended design proposal that seeks to overcome the Planning Authority's concerns in relation to the residential scheme as lodged.
- 7.1.4. On this matter I consider that the application before the Board for adjudication by way of this appeal case is that which was lodged with the Planning Authority. Whilst there is no legal impediment to the submission of additional detail and revised plans with the appeal it is at the Board's discretion whether to defer to the revised proposals. At this juncture I am of the opinion that the details submitted whilst seeking to address the Planning Authority's access, traffic hazard through to compliance concerns including for example with Section 4.3.8 of the Development Plan in my opinion puts forward a materially different in nature and extent proposed development to that originally submitted and determined by the Planning Authority. With this including a revised dwelling unit mix, a reduced lateral setback between the rear building line and the rear boundary of the site which adjoins the rear private amenity spaces of No. s 58 and 60 Garville Avenue Upper as well as adjoining and neighbouring properties to the southeast and southwest of it. While the landowners of No. s 58 and 60 Garville Avenue Upper are parties to this appeal and are aware of the amended design option provided the owners of the adjoining and neighbouring properties to the southeast and southwest are not active parties in this appeal case. Therefore, they have not had the opportunity to comment on the amended design option provided by the Appellant with their appeal submission.
- 7.1.5. On this basis I propose to confine my assessment to the proposed development as lodged with the Planning Authority. Should the Board be minded to do otherwise and decide to grant permission for the proposed development as amended I recommend that they to first seek revised public notices so as to ensure that the public is appropriately alerted to the nature and extent of the development as amended in accordance with Article 18 and 19 of the Planning Regulations.

## **7.2. Planning Authority's Reason for Refusal**

- 7.2.1. It is my considered opinion that the Planning Authority's single reason for refusal is the main issue for consideration in this appeal case. In summary, this refusal reason sets out that Garville Lane Upper is substandard based on its restricted and narrow width with no vehicle manoeuvring and turning facilities present. It therefore considered it

unsuitable to safely and conveniently accommodate the proposed development. This refusal reason also raises concerns that the proposed development would result in hazardous manoeuvres onto and off Rathgar Avenue by all vehicles; that it would be contrary to Section 4.3.8 of Appendix 5 of the Development Plan; and that it would set an undesirable precedent for other similar substandard development along Garville Lane Upper. For these given reasons, it concludes that the proposed development would be contrary to the proper planning and sustainable development of the area.

- 7.2.2. The subject appeal site consists of the amalgamation of part of the rear gardens of Nos 58 and 60 Garville Avenue Upper. The site is in separate ownership from these properties. It is landlocked on three sides with its southern boundary aligning with the restricted in width Garville Lane Upper c13.8m to the west of this lane's junction with Rathgar Avenue. This laneway is irregularly surfaced with concrete and tarmac. The condition of its surface between the subject site and the lane's width measuring c4.2m fronting the site reducing to a measured c3.8m at its junction with Rathgar Avenue. At this point there is a utility pole on the southern side of this junction. Sightlines from the lane's entrance onto Rathgar Avenue, a road which I observed was steadily trafficked at the time of inspection, was obstructed by off-street parking and the boundary treatment of No. 27 Rathgar Avenue to the north and as said by the presence of a utility pole which is located to its south.
- 7.2.3. The carriageway of Garville Lane Upper contains no pedestrian footpaths or street lighting along its length. There is no mews development along its main stretch, however there is a single mews dwelling located to the rear of No. 54 Garville Avenue Upper which fronts onto the southern side of the entrance of Garville Lane Upper with this property accessed directly from Rathgar Avenue. I also observed that its setback area from Garville Lane Upper forms part of its curtilage with raised kerbing demarcating it from this lane's public domain. I further observed that there is a utility pole positioned alongside this kerbing at its northeastern most corner. With this pole positioned on the public domain of Garville Lane Upper.
- 7.2.4. Moreover, between the mews dwelling to the rear of No. 54 Garville Avenue Upper and the subject site there is a single storey vacant commercial building. This building has a zero setback from the lane and at this point the lane has a measured width of c4.2m. With the southern lane-side edge in a poor state and encroached by dense linear strip of weeds.



- 7.2.5. For the most part the carriageway of Garville Lane Upper was adjoined by the rear boundaries of Garville Avenue Upper properties on its southern side (Note: No.s 54 to 78) and on its northern side it is mainly adjoined by the rear garden of No. 27 Rathgar Avenue; a commercial building that adjoins the rear of No. 27 to 31 Rathgar Avenue for which permission has recently been granted for its demolition and replacement with a multi-unit scheme that includes five independent pedestrian accesses onto Garville Lane Upper; and an ESB substation near its end. I observed that the ESB substation is solely dependent on Garville Lane Upper for access to the public road network. During my inspection of the site and its setting I observed one pedestrian accessing the lane from Rathgar Avenue. I also observed *ad hoc* on-street parking on Rathgar Avenue in the vicinity of Garville Lane Upper's junction with Rathgar Avenue.
- 7.2.6. As set out under Section 3 of this report the Planning Authority's Transportation Planning Division raised concerns that the proposed development failed to demonstrate compliance with the Development Plan access requirements for mews development. They also considered that Garville Lane Upper was substandard in its nature, layout, and condition for providing vehicle access to the proposed development. They also considered that the integrated car ports both failed to demonstrate a clear width of 5m in length and 3m in width; that there was no cycle parking provision for either dwelling; that there was insufficient information provided on traffic as well as access for the proposed development during construction and operation; through to they considered that the proposed development would create an undesirable precedent for the collection of refuse at the junction with Rathgar Avenue. Based on these concerns the Planning Authority's Transportation Planning Division concluded with a recommendation of refusal. With the Planning Officer concurring with the considerations and conclusion of this report.
- 7.2.7. The Third-Party Observers also raise similar concerns in relation to Garville Lane Upper's suitability to accommodate the proposed development through to they are not satisfied that the amended design option overcomes the Planning Authority's concerns. They further raise concerns that in either scenario the development would give rise to road safety and traffic hazard issues for existing as well as future users of the lane. With the stretch to the east of the site still being significantly restricted in its width and from which the proposed development would be dependent on vehicle access to the wider public road network.

- 7.2.8. The Appellant on the other hand considers that the proposed development should be considered on its merits. In this regard, they have included an amended design option with their appeal submission for the Boards consideration.
- 7.2.9. The inclusion of an 'amended design option' is not an uncommon practice in the appeal process and the main aims of the amended proposal are to provide a setback between the principal elevation of the two proposed units and the lane-side edge. As such the design and layout has been amended to exclude the zero setback to a proposed 1.3m setback from Garville Lane Upper's carriageway's southern side edge. This would provide the required minimum 5.5m width required under Section 4.3.8 of Appendix 5 of the Development Plan where no verges or footpaths are provided.
- 7.2.10. Whilst I have set out the reasons as to why I consider that the overall design and layout changes are of a material nature and extent it is incumbent to note that the site is as said setback from Garville Lane Upper's junction with Rathgar Avenue by c13.8m. I also accept that this is a modest lateral separation distance between the site and the entrance of this lane onto the public domain of Rathgar Avenue. Notwithstanding, it is significant in my view that this lane's width is restricted from c4.2m to the immediate east of the appeal site's lane side boundary. With this further restricting to c3.8m at the entrance of this cul-de-sac lane onto Rathgar Avenue.
- 7.2.11. Additionally, sightlines are restricted particularly in a northerly direction and less so in a southerly direction. With Rathgar Avenue appearing to have a posted speed limit of 50kmph through to the operational width of this road for the movement of two-way vehicle traffic appears to be impaired by *ad hoc* on street car parking. Where this occurs the width of this road is only suitable for one-way traffic.
- 7.2.12. Of further concern the drawings appear to suggest that the subject appeal site shares the same alignment setback as the property to the east of it but on inspection of the site the lane-side boundary of the site is slightly setback southwards. This discrepancy is also not noted in the lodged drawings with this application. Through to there is a lack of topographical and surveying details of the lane which includes a change in ground levels as one journeys towards Rathgar Avenue as well as incidentally, I note that there appears to be a change in ground levels between the site and the adjoining properties.

- 7.2.13. In relation to the relevant planning provisions, I firstly note that the proposed development as lodged includes zero setback from the lane. The submitted drawings indicate that the width of the laneway fronting the lane-side edge would vary between 4.255m and 4.275m. Section 15.13.4 of the Development Plan indicates that parking provision in mews lane where provided are subject to access considerations and that car free mews developments may be permitted in certain circumstances. However, in this case I concur with the Planning Authority that the inclusion of one car parking space for each of the proposed mews dwelling units is reasonable given the constraints of the surrounding area to absorb any overspill of car parking that would be generated by the proposed development. Particularly in the context where *ad hoc* car parking on the public road is adversely impacting on the free flow of two-way traffic on Rathgar Avenue and I observed that the majority of properties on either side of Garville Avenue Upper for the most part retain their period design and layout as well as are heavily dependent on publicly provided on-street car parking spaces.
- 7.2.14. This I note is a comparable situation to other period residential development in the immediate context of the site. As such there appears to be a significant burden on the limited publicly provided on-street permit pay and display parking spaces in this area.
- 7.2.15. It is further noted by one of the Third-Party Observers that the subject laneway is also used for *ad hoc* parking, however, I did not observe this issue during my inspection of the site and its setting.
- 7.2.16. Section 15.13.4 of the Development Plan also indicates that potential mews laneways must provide adequate accessibility in terms of private vehicle movement, emergency vehicles and refuse vehicles. This has not been provided for the proposed development as lodged with the appeal submission providing some level of further clarity on this matter, however, this is based on the provision of a 1.3m setback and with no improvements to the width between the frontage of the site and the width of the laneway to the east of it to where it meets Rathgar Avenue. Further, the demonstration of private vehicle movements is not based on a topographical survey of the adjoining lane and is not to scale.
- 7.2.17. Further, it is not provided with a detailed examination of emergency vehicle and refuse accessibility with the latter being a concern that the placement of waste bins could further infringe on users of the lane safely accessing and egressing from it through to

potentially infringing on the movement of pedestrians on the adjoining public footpath of Rathgar Avenue.

7.2.18. Section 15.13.4 of the Development Plan also sets out that where the required access cannot be provided that an access and movement strategy must be provided to justify that the development can be adequately served. Such a strategy is not provided with the documentation lodged with this application or in relation to the appeal submission.

7.2.19. Moreover, the guidance that is provided under Section 4.3.8 of Appendix 5 of the Development Plan states that: "*potential mews laneways must provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles*". In relation to carriageways as previously noted where there is no verges or footpaths it sets out a minimum carriageway width of 5.5m and where such widths cannot be provided it states that: "*safe access and egress for all vehicles and pedestrians must be demonstrated.*" Garville Lane Upper does not include verges or pedestrian footpaths and as previously noted the carriageway between the lane-side edge and its junction with Rathgar Avenue which is the sole access to the public road network varies between c3.8m to c4.2m in its width. As such, the proposed development does not achieve a 5.5m carriageway width along the stretch of lane from which access is dependent to access onto the public road network via Garville Lane Upper's junction with Rathgar Avenue. There is also no agreement with relevant landowners to the east to achieve this minimum 5.5m carriageway requirement or indeed to improve sightlines at the Garville Lane Upper's junction with Rathgar Avenue or commitment to relocate the utility pole. In saying this it is not demonstrated that during construction, operation through to situations where larger vehicles including emergency service vehicles can safely and conveniently access the site without resulting in any undue traffic hazard and/or obstruction to users of the lane and/or the lane's junction with Rathgar Avenue.

7.2.20. I also note that Section 4.3.7 of Appendix 5 of the Development Plan is also indicated as a relevant consideration for parking in Conservation Areas.

7.2.21. This section of the Development Plan sets out where site conditions exist proposals for limited off-street parking will be considered where a number of criteria can be met. This includes but is not limited to access to and egress from the proposed parking space will not give rise to a traffic hazard.

- 7.2.22. In this regard, as considered above, the proposed development including access to its integrated car ports is dependent on a restricted in width lane that fails to meet the minimum 5.5m carriage width requirement. The applicant has not demonstrated that safe access and egress can be provided during the construction and operational phases of the proposed development with that including no undue traffic hazard and safety issues for existing and future users of Garville Lane Upper and this lane's junction with Rathgar Avenue.
- 7.2.23. Additionally, the documentation provided is not sufficient to demonstrate that accessing and egressing the integrated car ports can be achieved safely without any undue conflict with existing vehicle as well as vulnerable users of the lane. It is also not part of a considered coordinated masterplan and/or vision for Garville Lane Upper and at this point of time the Planning Authority has not adopted their proposed best practice guidance for mews development. This is set out as an objective under BHA05 of the Development Plan.
- 7.2.24. There is also no indication that there will be any improvements to the poor condition of this lane.
- 7.2.25. Section 4.3.7 of the Development Plan requires car parking bays to be no greater than 5m x 3m metres wide and where possible they are combined with the existing pedestrian entrance to form an entrance no greater than 2.6m. Moreover, it sets out that the combined entrance should be no greater than half the total width at the road boundary.
- 7.2.26. On this point I note that the vehicle entrance and pedestrian access serving both proposed dwellings are not combined. The vehicle entrance for each port is 3.885m and when combined with the separate pedestrian access significantly exceeds half of the road frontage of each dwelling (Note: each road frontage is 6.44m in width). It is also of note that there is no dedicated area provided for bicycle storage within the design of the proposed development. With Section 3.1 of the Development Plan requiring a minimum of provision of 1 long term cycle parking space per dwelling unit.
- 7.2.27. My final comment relates to the Planning Authority's concern that the proposed development, if permitted, would establish a precedent for development of this kind. On this point while I am of the view that neither the Local Authority nor An Bord Pleanála are bound by precedent decisions. With it being accepted practice that each

application/appeal case assessed on their individual merits. However, in this context given the proposed developments variance with the local planning provision's access and parking provisions for mews dwellings the concerns raised in relation to giving rise to an undesirable precedent is not in my view an unreasonable concern.

#### 7.2.28. Conclusion

On the basis of the above I consider that Garville Lane Upper over which the proposed development is to be accessed is seriously deficient in width along its length, in particular between the lane side frontage and its junction with Rathgar Avenue and it lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development would generate combined with the existing and future pedestrian movements associated with this development as well as permitted development to the west of it which would increase pedestrian footfall along it. In the absence of any comprehensive proposals for the upgrade of this lane to meet the minimum access requirements for mews type development as well as improvements to the design and layout of its junction with Rathgar Avenue, it is considered that the proposal would constitute an *ad hoc* piecemeal uncoordinated development which would endanger public safety by reason of traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### 7.3. Other Matters Arising

#### 7.3.1. Procedural – Site Notice

The Third-Party Observers raise a number of validation concerns in relation to the Site Notice including it was not erected in a viewable position relative to Rathgar Avenue and that it was absent from the site for significant duration of the five weeks in which it was required to be displayed.

According to the documentation on file these concerns were also raised to the Planning Authority by the same observers during its determination of the subject planning application. The Site Notice is indicated as being erected on the lane-side frontage. I observed that many properties adjoining Garville Lane Upper have a vehicle and/or pedestrian access point onto this lane. It is however unclear if this lane meets the definition of a public road from the information available on file. Notwithstanding,

the Planning Authority in their determination of this application raised no concerns in relation to the validity of this planning application based on Site Notice.

The Planning Officer's report also indicates that the Site Notice was present and visible at the time they conducted their inspection of the same (Note: 13<sup>th</sup> of March 2024).

I note at the time of my inspection that the Site Notice though not required to be *in situ* was in place.

I accept that the main method of publicising the proposed development is via the Site Notice and Newspaper Notice. Alongside I accept that there appears to be a discrepancy between whether or not the Garville Lane Upper is a public road together with its access by properties benefitting from vehicle/pedestrian access onto it along its restricted length. With not all properties forming part of the terrace in which No. s 58 and 60 Garville Avenue Upper forms part of benefitting from direct access onto Garville Lane Upper. With this being the case for example for the adjoining property of No. 56 Garville Avenue Upper.

Having regard to the requirements of Article 19(1) (c) of the Planning Regulations which in relation to Site Notice for a planning application states that subject to sub-article (2) they should be: *"securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from public roads, on or near all such entrances, or on any other part of the land or structure adjoining a public road, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time"*.

I am cognisant that the responsibility for validation is the responsibility of the Planning Authority which in this case took the view that the planning application as lodged satisfied the minimum statutory requirements. Notwithstanding, based on the above considerations as a precaution should the Board be minded to grant permission, I advise that it first seek revised Public Notices. With the inclusion of a Site Notice at the junction of Garville Lane Upper and Rathgar Avenue.

### 7.3.2. **Procedural – Documentation Provided**

The Third-Party Observers raise concerns in relation to a number of inaccuracies presented in both the documentation accompanying the planning application and the

appeal. Having reviewed all the submitted plans and particulars on file together with having carried out an inspection of the site and its setting I consider that while there are some inconsistencies and deficiencies in the details provided, nonetheless, there is sufficient information to make a determination on the proposed development.

Further, should the Board be minded to grant permission I consider that suitably worded conditions could be imposed to agree details, to seek minor amendments through to deal with standard nuisances to ensure that the proposed development accords with proper planning as well as sustainable development.

### **7.3.3. Residential Amenity Impact**

Both Third Party Observers raise concerns that the proposed development as lodged and as amended would seriously impact on their residential amenities by way of undue overlooking and diminishment of sunlight to the rear of their property's. While I accept that the proposed development as lodged and as amended would give rise to a change of context for No. s 58 and 60 Garville Avenue Upper. Similarly, it would also change the context of the terrace group they form part of. Given that outside of mews dwelling to the rear of No. 54 Garville Avenue Upper that there is no existing or permitted precedent for a mews development served solely with vehicle access to the public domain along Garville Lane Upper as well as two storey buildings along the main southern stretch of this lane.

Further, the proposed development as lodged meets the minimum separation distances of 16m set out under SPPR 1 of the Sustainable and Compact Settlements Guidelines for Planning Authorities, 2024, between opposing windows serving habitable rooms to the rear of properties located to the south of it.

Moreover, additional measures such as site appropriate landscape planting, e.g. pleated evergreens, would over time significantly reduce the perception of being overlooked from the first-floor level opposing windows which have a maximum height of less than 5m above the indicated ground level. Also, such planting would not give rise to any significant additional diminishment of sunlight and daylight to the rear private amenity space of No. s 58 and 60 Garville Avenue Upper.

I also consider that the level of combined lateral separation between the rear elevation of the proposed mews dwellings and the rear of No.s 58 and 60 Garville Avenue Upper is not exceptional in the context of a suburban location where a level of overlooking is



already present as well as is to be expected as part of delivery of more compact and consolidated residential development of appropriate serviced brownfield and infill sites in this type of location. Similarly, I consider it is not exceptional in relation to the other adjoining Garville Avenue Upper terrace properties to the southeast and southwest of the site.

I also consider that the private amenity space of the proposed development as lodged and as amended meet the minimum requirements set out under SPPR2 of the said Guidelines. Further there are active and passive recreational amenity spaces present within reach of the site e.g. Kenilworth Square, Ashbrook Lawn, and Tennis Club.

In relation to diminishment of daylight and sunlight of the established residential amenity of the Third-Party Observer's properties, i.e. Nos 58 and 60 Garville Avenue Upper, there is no accompanying assessment of the existing and the impact of the proposed development were it to be permitted as proposed or as amended.

The proposed two mews dwellings would be located to the north of these properties, and they would be setback a stated 7.174m from the shared boundary by an existing solid boundary wall of c2m height. The double pitched roof design would have a maximum 7.5m height and an eaves height of 5.12m to the front and 5.108m to the rear.

There would be additional overlooking arising to the private amenity space of No. 62 Garville Avenue Upper, which does not contain any buildings at its rearmost boundary adjoining Garville Lane Upper.

There is likely to be additional shadows cast over the adjoining property of No. 27 Rathgar Avenue which is located in proximity on the opposite side of Garville Lane Upper as well as additional overshadowing of the lane's public domain.

The extent of impact cannot in my view be fully examined given the absence of an evidence-based assessment of these matters in accordance with best accepted practices.

In relation to nuisances arising during the construction phase I consider that this can be dealt with by way of standard conditions, including but not limited to the agreement of a Construction Management Plan, limiting hours/days of construction and the like.

Conclusion: Given the substantive concerns already raised in relation to the provision of safe and convenient mews lane access I consider that there is inadequate information to warrant the refusal of permission on the basis of this proposal being one that has failed to demonstrate a reasonable balance between protecting the established residential amenities and the provision of residential development. I also consider that in such a suburban setting a level of overlooking and overshadowing is to be expected.

#### 7.3.4. **Impact on the Conservation Area Character**

The subject appeal site is subject to the 'Z2' land use zoning objective which seeks to protect and/or improve the amenities of residential conservation areas. I am cognisant that the general objective for these 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. The site itself whilst forming part of a larger parcel of suburban land subject to the 'Z2' zoning land use zoning is not specifically located within an Architectural Conservation Area nor are the adjoining Garville Avenue Upper terraces to the south, south-west, and south-east of it, designated as Protected Structures.

However, it is within the 'Z2' land use zoning due to the quality of the architecture in the surrounding area with Section 11.5.3 of the Development Plan setting out that: "*these areas require special care in terms of development proposals*" and that the: "*City Council will encourage development which enhances the setting and character of Conservation Areas*".

As previously discussed, the site in its existing state fails to positively contribute to its Conservation Area setting because of its vacant, unkempt, and unsympathetic lane-side boundary treatments. Notwithstanding, there are limited localised views of this site by the users of Garville Lane Upper and from its junction with Rathgar Avenue. Nonetheless the principle of the reversal of its vacant state by a land use that is permissible in this mature period in character residential setting would be acceptable subject to safeguards.

On this point I also raise again the concern that there is a lack of a coherent and coordinated vision/plan for this cul-de-sac lane to be developed as a mews lane through to the proposed development as lodged whilst maintaining the zero-setback

of existing single storey buildings that predominate its southern side it is inconsistent with the building line of the mews dwelling. Such a plan could ensure a more qualitative through to coherent design and layout outcome for the future development of Garville Lane Upper as a mews lane. With this including guidance on design, materials, setbacks through to building heights.

Additionally, I consider that the design of the proposed scheme as lodged and as amended includes an unsympathetic principal frontage which is largely compromised of roller door shutters serving the integrated car ports. I also consider that a greater degree of visual and spatial subservience could be achieved in terms of employing a more contemporary architectural design approach which could include for example a revised flat roof structure over. The latter would result in less diminishment of sunlight and daylight to its surrounding context as well as would achieve greater visual subservience with the period terrace that includes No. s 58 and No. 60 Garville Avenue Upper. These considerations could be addressed by way of condition should the Board be minded to grant permission.

## **8.0 AA Screening**

- 8.1. I have considered the proposed development, in light of the requirements S177U of the Planning and Development Act 2000 as amended. In this regard as set out under Section 5.2 of this report above, the appeal site is located c4.8km to the west of South Dublin Bay SAC (Site Code: 000210) and South Dublin Bay & River Tolka Estuary SPA (Site Code: 004024), as the bird would fly.
- 8.2. An overview of the proposed development is provided under Section 2.1 of this report. It sets out that the proposed development consists of the construction of two houses in what was formerly the rear gardens of No. s 58 and 60 Garville Avenue Upper. I have also described the site and its context in Section 1.0 of my report above which sets out the site is unkempt and is vacant of any buildings thereon.
- 8.3. No nature conservation concerns were raised in the planning appeal regarding the loss of natural features and/or potential for adverse impact on any protected species.
- 8.4. The Planning Authority as part of their determination of the planning application considered that a Stage 2 AA would not be required.

8.5. Having considered the nature, scale, and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any Natura 2000 Site or Sites. The reason for this conclusion is as follows:

- The vacant and unkempt existing circumstance of the site.
- The nature, scale and extent of the proposed works associated with the construction of two mews type dwellings on a brownfield site within a serviced suburban location.
- The lateral separation distance between the site and nearest the Natura 2000 site, the nature of the intervening landscape and the lack of any hydrological or other connections from the site to such sites, including via the existing public surface water drainage network.
- The Planning Authority's Appropriate Assessment screening conclusions.

#### Conclusion

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any Natura 200 Site either alone or in combination with other plans or projects. I further conclude that likely significant effects are excluded and therefore Appropriate Assessment (Stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## 9.0 Recommendation

9.1. I recommend that permission be **refused**.

## 10.0 Reasons and Considerations

1. Garville Lane Upper, the existing cul-de-sac laneway over which the proposed development is to be accessed is seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development will generate combined with the existing and permitted movements along it. In the absence of any comprehensive proposals for the upgrade of this lane, particularly the provision of a carriageway width of 5.5m between the proposed site and its junction with Rathgar Avenue. An

improvement which would achieve compliance with Section 15.13.5.4 and Section 4.3.8 of Appendix 5 of the Dublin City Development Plan, 2022-2028, it is considered development would constitute an *ad hoc* piecemeal uncoordinated development which would endanger public safety by reason of traffic hazard by way of the creation of hazardous vehicle manoeuvres which have the potential to endanger public safety by reason of a traffic hazard and obstruction of Garville Lane Uppers users and in vicinity of this lane's junction with the public domain of Rathgar Avenue. For these reasons, the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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

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Patricia M. Young  
Planning Inspector

19<sup>th</sup> day of September 2024.

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	<b>ABP-319692-24</b>		
<b>Proposed Development Summary</b>	Permission sought for the construction of 2 dwellings and all associated site works.		
<b>Development Address</b>	Rear of No. s 58 & 60 Garville Avenue Upper (accessed from Garville Lane Upper), Rathgar, Dublin 6.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		<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:** \_\_\_\_\_