



An  
Bord  
Pleanála

## Inspector's Report ABP-319964-24

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### Development

Retention permission & Permission. Retention permission relates to a retaining wall consisting of gabion cages on a sloping bank on lands zoned Z9 to the south of No. 124 Rathfarnham Road which was constructed on foot of permission ref. ABP-306149-19. Permission is for completion of partially constructed outdoor steps, landscaping works and all ancillary site development works.

### Location

124 Rathfarnham Road, Terenure, Dublin 6W.

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

3170/24

### Applicant(s)

Padraig and Ciara Corrigan

### Type of Application

Retention permission and Permission

### Planning Authority Decision

Grant Permission and Retention permission

### Type of Appeal

Third party

### Appellant(s)

David Graham

### Observer(s)

Mark & Nikki Kane

### Date of Site Inspection

20<sup>th</sup> January 2025

### Inspector

D. Aspell

## 1.0 Site Location and Description

- 1.1. The application address is 124 Rathfarnham Road, Terenure, Dublin. I note two application red line areas are shown in the submitted documentation, one which comprises No. 124 Rathfarnham Road and one which also includes No. 122 Rathfarnham Road. The appeal relates to No. 124, which was constructed within the landholding of and adjacent to No. 122.
- 1.2. The development in question relates to a 3-storey detached dwelling with parking to the front and garden to the rear. The area adjacent the dwelling to the south comprises a steep slope which runs c.20m down to the River Dodder. Within this area there are gabion structures which comprise a retaining structure for the dwelling, as well as some steps from the house down the slope. There are a number of trees and undergrowth within the development area.
- 1.3. No. 122 Rathfarnham Road is to the north. The River Dodder is to the south. No. 28 Westbourne Road is to the east. Further east of the site I note the long rear gardens of a row of 11 no. dwellings on Westbourne Row backing onto the River Dodder. Rathfarnham Road is to the west. Rathfarnham Bridge is a protected structure and is located to the south-west. St. Agnes Terrace is across the Dodder to the south.

## 2.0 Proposed Development

- 2.1. The development description is summarised as follows:
  - Retention permission: The retention permission sought related to a retaining wall consisting of gabion cages on a sloping bank on lands zoned Z9 to the south of No. 124 Rathfarnham Road which was constructed on foot of permission reference ABP-306149-19 (Ref. 3316/19);
  - Planning permission: Completion of partially constructed outdoor steps, landscaping works and all ancillary site development works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. Dublin City Council issued a notification to grant retention permission and planning permission subject to 9 no. standard conditions. I note the following:

- Condition 2 linked the development to permission Ref. 3316/19 / ABP-306149-19;
- Condition 3 related to construction management;
- Condition 7 required tree protection fencing to be erected during construction;
- Condition 8 required archaeological appraisal and monitoring.

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

3.2.1. Planning report: The planning authority report recommended permission be granted generally as per the notification of decision. The report made the following points:

- The house on site is on lands zoned Z1, with the steps and gabion cages which are the subject of the application on Z9 lands. This area is sloping, wooded, in private ownership, and not publicly accessible;
- The application area includes an area of riverbank. The river boundary comprises a stone wall;
- It is not considered that the proposal in itself or in combination with any other proposed developments would have any significant impact on the qualifying interests of any European sites;
- Site is unusual for a Z9 site in being within the curtilage of a private house. Homeowners are not generally precluded from cutting trees on their lands. The approved drawings show extensive tree cover in the Z9 part of the site, and the subsequent removal of the trees could be considered to contravene Condition 1 of the parent permission. The Planning Authority Enforcement Section concluded there were no specific tree protection orders in place on the site and there were no specific conditions preventing the topping and as such no further enforcement action as necessary. The purpose of this

assessment therefore is to determine the impact of the gabion wall to be retained and other works for completion;

- Applicant provides a rationale for why the constructed retaining wall differed from that permitted. The rationale states that given the slope, soil types, ground stability it was decided to substitute a gabion structure in lieu of the permitted retaining wall;
- The gabion to be retained and proposed steps are c.10m from the riverbank. The gabion is ancillary to the house and in principle can be considered within the Z9 lands as part of the amenity space associated with the house. The main concerns relate to the visual impact of the structure being in a red hatch conservation area;
- The gabion is in private lands and not highly visible, although the reduction in tree cover has resulted in some loss of visual amenity. Granting permission provides an opportunity to require by condition screening and planting to restore the riparian character and biodiversity of the lands;
- The DoAHRRG submission recommends refusal and removal of the gabions, but goes on to recommend that this removal be carried out in accordance with a methodology agreed with the Planning Authority. However, if permission is refused, the authority would not be in a position to attach conditions of this nature. The report states that conditions of this nature were attached to the split decision in relation to the previous application on the site;
- The landscaping proposal accompanying the application provide for restoration of trees and landscaping in front of the house;
- The report notes concerns from submissions regarding the impact of tree loss on biodiversity as a result of the gabion, the report also notes that further works to remove or replace the structure would have further biodiversity implications for the area;
- Having regard to the location in a private garden, the proposal would have no undue adverse impact on the visual amenities of the red hatched conservation area or on the visual and recreational amenity value of the riverbank as public open space and will allow for biodiversity on the site. The proposal would be

in keeping with development plan provisions and with the proper planning and sustainable development of the area, subject to conditions.

#### Other Technical Reports

- 3.2.2. Transportation Planning: No report on file.
- 3.2.3. Drainage: Report stated no objection subject to condition.
- 3.2.4. Archaeology: Proposal is within zones of archaeological constraint for 2 no. recorded monuments. Site is c.14m from Rathfarnham Bridge, a recorded monument listed on the Dublin City Industrial Heritage Record. An archaeological monitoring condition was applied to the parent permission. Archaeological monitoring was carried out and a report submitted to the planning authority. Nothing of archaeological interest was found. Given this, the potential for archaeological impact of the subject proposal is considered low. A standard condition is recommended.
- 3.2.5. Environmental Health Officer: No report on file.

### **3.3. Third Party Observations**

- 3.3.1. During the planning application stage 5 observations were made to the planning authority, one of which is signed by a number of local residents. One submission is from a local Councillor. The issues raised related to: construction methodology; impact on trees, woodland and riparian habitats; planning history; submitted documentation; lack of detail in the application; AA screening; mitigation; and conditions.
- 3.3.2. An observation was also received by the City Council from the Department of Housing, Local Government and Heritage Development Applications Unit which recommended that both permission and retention permission be refused. The submission made the following points:
- Large mature trees with an understory of shrubs were present on the site at the time of parent permission was granted in 2019. In October 2020 of the 12 mature trees remaining in the section of the development site zoned 'Z9', 10 were cut down to approximately half or less their original size. Seven of the latter 10 were at least 100 years old and fifty or more feet high. The branches of these trees were also cut back to their trunks;

- In about July 2021 gabions were installed around the bases of many of the tree. Within the Z9 zone this resulted in destruction of the bulk of the understorey plants which had survived. This resulted in enforcement action and application Reg. Ref. 3632/21 which the Department recommended be refused. The observation stated that that application was refused by the Council and Board;
- The subject application is basically a repeat application for retention of the gabions, but with a landscaping plan providing for covering of the gabion with soil and wildflowers. The submission states the proposed planting would not be compatible with the current site;
- The submission notes the submitted engineer report that if the gabions are not allowed to be retained, the house foundations would have to be reinforced with steel props and a 6m high reinforced concrete wall with 3m wide foundations which would necessitate removal of much of the existing slopes and 1 or 2 of the existing trees;
- The submitted engineering report appears to contradict Appendix 1 of the Arboricultural Report submitted with the original application Reg. Ref. 3316/19 which stated that the then proposed foundation would not impact the Z9 boundary;
- The horticulture report submitted with application Reg. Ref. 3316/19 stated that one tree would be reduced to a stump, one would have a branch removed, and no pollarding / topping of trees was proposed. The arboricultural report for the subject application also appears questionable given that the gabions were installed in 2021. The Department considers the careful removal of the gabions, if necessary manually, could only benefit the trees;
- The submission recommends refusal. The reason given was to restore to the greatest extent possible the vegetation of the riparian zone so as to allow it to function as a wildlife corridor and screen the biota of the river from artificial light pollution and other disturbance. The submission also recommended a condition for agreement of a methodology for removal of the gabions from Zone 9 land use area.

### 3.4. Prescribed Bodies

None.

## 4.0 Planning History

### 4.1. Subject site

Reg. Ref. 3632/21 (ABP-312369-22): Split decision issued by the Board in 2023 in relation to an application for:

- Retention permission for alterations and amendments to house in so far as is constructed which differs from that previously approved on foot of planning registry file reference 3316/19 (Site B) and including (i) "as built" minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm and (ii) for the construction of a retaining wall consisting of gabion cages on sloping bank to south of house under construction on Lands zoned Z9 in Dublin City Councils Development Plan.
- Permission is to complete the development and all ancillary site development works and services.

The Board granted permission for retention of the minor dimensional adjustments & an altered roof pitch & profile resulting in an increase in ridge height of 471mm. The Board refused permission for retention of construction of a retaining wall consisting of gabion cages on sloping bank to south of house and permission to complete the development and all ancillary site development works and services. The reason for refusal stated that this element of the development significantly impacted on the special character of the riparian strip adjoining the banks of the River Dodder due to the clearance and cutting back of existing trees, and the destruction of understorey plants without the required arborist or ecological report, and that as such the works are considered to be contrary to the Z9 zoning objective of the site. The refusal reason also referenced concerns regarding the destruction of habitat that could potentially impact on protected species.

As part of that application the applicant submitted a cover letter from the applicant's engineer setting out the rationale for the proposal, as well as plan and elevation drawings.

Ref. 3316/19 (ABP-306149-19): Planning permission granted by the Board in June 2020 for alterations to an existing dwelling house, demolition of an existing single storey detached garage and construction of a new three storey detached dwelling to the south side of the existing dwelling house and associated site development works including construction of a retaining wall. The alterations will include removal of cast concrete stepped access to the front and side of the dwelling, works to Rathfarnham Road boundary wall to widen the existing vehicular entrance and to create a new vehicular entrance and driveway, and construction of new stepped access to the existing dwelling.

Ten standard conditions were attached by the Board. I note in particular the following:

- Condition 1: Development to be carried out and completed in accordance with the plans and particulars lodged with the application as amended by further plans and particulars;
- Condition 3: Agreement of construction management plan;
- Condition 7: Tree protection measures shall be erected prior to any construction works. Within a period of 6 month following the substantial completion and occupation of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species.  
Reason: In the interests of visual amenity.
- Condition 8: Archaeological appraisal of site.

I note that the retaining wall shown in that application was entirely within the 'Z9' zoned lands, being c.1m to c.3m into the Z9 lands. It measured across c.32m and ran almost fully across the site from the roadside boundary almost to the rear wall. In that application the retaining wall is described as a low-rise retaining wall. Basic section and elevation drawings of the retaining wall were provided however minimal details of the full depth or extent of the proposed wall, or the nature of its construction were provided. The submitted section drawings show no details for



below ground elements of the wall. The section drawings show the above ground, visible section extending from c.0.2m to x.2.5m in height. The submitted elevation drawings show the visible height of the wall extending to c.1.8m in height and being partly visible for almost the full length of the wall (Drw. No. 1804 P200 'Elevations & Section' submitted as part of the application in that case.)

As part of that application a flood risk assessment prepared by the applicant's architect, an appropriate assessment screening report prepared by the applicant's environmental consultant, as well as an arboriculturally assessment report from the applicant's arborist. The arboricultural assessment assessed the impact of the proposed dwelling on trees on site but the tree survey and constraints drawings did not show the proposed retaining wall. Of the 13 no. trees on site identified, no action necessary was stated for 11 of the trees, with 1 being recommended for felling (to be retained as a stump) and some weight reduction for one limb on another tree. A third tree had conflicting recommendations with one part of the report recommending removal and another part recommending no action.

No landscaping plans were submitted.

#### 4.2. Nearby sites:

None relevant.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

- 5.1.1. Regarding land use zoning, in the Dublin City Development Plan 2022-2028 the northern portion of the site is zoned 'Z1 Sustainable Residential Neighbourhoods' and the southern portion is zoned 'Z9 Amenity/Open Space Lands/Green Network'. The works to be retained, and the proposed works to be completed are within the 'Z9' zone. The land use zoning objective for 'Z9' lands is: "*To preserve, provide and improve recreational amenity, open space and ecosystem services*". I note this latter land use zoning is applied to not only public but also private lands in the City. 'Open space' is permissible in principle in this zone. Residential use is

neither permissible nor open for consideration in this zone. I note Section 14.7.9 'Amenity / Open Space Lands / Green Network – Zone Z9'.

- 5.1.2. Regarding trees, I note Chapter 10 Green Infrastructure Strategy, including Policies GI2 'Connectivity', GI14 'Ecological / Wildlife Corridors', GI29, 'Protect Character of River Corridors', GI34 'New Development and Public Open Space along River Corridors', GI41 'Protect Existing Trees as Part of New Development', GI42 'Tree Management', GI44 'Resilient Urban Forest', as well as Section '15.6.9 Trees and Hedgerows'.
- 5.1.3. Regarding ecology, Section 9.5.2 'Urban Watercourses and Water Quality' and Section 15.3.3 'Ecological Impact Assessment'.
- 5.1.4. Regarding woodlands, I note Section 3.5.7 'Green Infrastructure and Nature Based Solutions', Section 10.5.2 'Biodiversity', Section 10.5.4 'Parks and Open Spaces', and Section 10.5.7 'Urban Forest'.
- 5.1.5. Regarding rivers and riparian zones, I note Policy GI29 'Protect Character of River Corridors', Policy GI34 'New Development and Public Open Space along River Corridors', GI40 'Protect Character of River Corridors', Section 10.5.5 'Rivers and Canals', and Section 15.6.6 'Sensitive Ecological Areas'. I also note Policy SI10 'Managing Development Within and Adjacent to River Corridors'.
- 5.1.6. Regarding conservation areas and heritage, I note Policy BHA9 'Conservation Areas', Section 11.5.3 'Built Heritage Assets of the City' and Section 15.15.2.2 'Conservation Areas'.

## 5.2. National guidelines and strategies

National Biodiversity Action Plan 2023, including its Objectives and Targets.

Planning for Watercourses in the Urban Environment, Inland Fisheries Ireland, 2020.

Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters, Inland Fisheries Ireland, 2016.

Planning System & Flood Risk Management Guidelines 2009 (OPW).

Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites, Eastern Regional Fisheries Board, 2009.

### **5.3. Natural Heritage Designations**

- 5.3.1. The South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA are c.5.36km to the east.

### **5.4. Environmental Impact Assessment screening**

- 5.4.1. Having regard to the nature and scale of the proposed retention of a retaining wall consisting of gabion cages and completion of steps, landscaping works, and ancillary site development works, the location in a serviced area, and to the criteria set out in Schedule 7 of the Planning & Development Regulations 2001, as amended, I consider that 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. (See Form 1 & 2 Appendix 1).

## **6.0 The Appeal**

### **6.1. Grounds of Third-Party Appeal**

- 6.1.1. A third-party appeal was received, the main points of which are summarised as follows:

- The application is a re-submission of a previous retention application which was refused by the planning authority (Ref. 3632/21) and Board (ABP-312369-22). Approval of the retention application is a complete reversal of opinion;
- All facts in relation to the application were not given full / due consideration by the planning authority, particularly in respect of the observations lodged including the Department of Environment;
- The permission is in breach of Condition 1 of the parent permission (Ref. 3316/19 / ABP-306149-19);

- The current application says the existing works are required due to risk of dwelling collapse, whereas the previous application state the foundations would not require intrusion into the Z9 area;
- The applicant's arborist report stated removal of the gabions would have significant negative impact on trees but does not explain why;
- There appears to be no impediment to the applicant removing any or all trees in the Z9 zoned area;
- Opportunities to restore the riparian character of the woodland appear to have been ignored and the landscaping plans have more the character of an urban garden;

The appeal sets out details of the planning and enforcement history. A photograph of the site is included.

## **6.2. First-Party Response to Third-Party Appeal**

6.2.1. A first-party response to third-party appeal was received, summarised as follows:

- The appellant has not disclosed if they are experts in their fields raised in their submission, or if consultations were had with same;
- The response sets out background to the subject application, including documents submitted, and states the subject application is not a resubmission of the previous application (Ref. 3632/21);
- Application was comprehensive. All facts were considered by the Planning Authority;
- The subject approval (Ref. 3170/24) means the approval is not in breach of condition 1 of ABP-306149-19;
- The gabion will be landscaped as per the submitted landscape drawings and is not immediately apparent from Pearse Bridge;
- Dublin City Council Enforcement Section exonerated the applicant from any wrongdoing regarding trees on site;

- The private open space proposal is compatible with the development plan zoning.

### **6.3. Planning Authority Response**

6.3.1. None.

### **6.4. Observations**

6.4.1. One observation from M & N Kane was received by the Board, summarised as follows:

- Observation requests the Board to review all of the previous application involved;
- The site is adjacent a riparian woodland, a protected structure, the River Dodder, architectural heritage, and an area of outstanding natural beauty;
- There was no archaeological monitoring of the area where the gabion structure is located;
- Observation sets out details of previous and current cases on the site, and states that there have been errors in assessment;
- Observation main concern with the gabion is that it occurred on steeply sloping Z9 lands which had undergone extensive change prior to the gabion and since permission was granted for the parent application;
- Observation also concerned that the planning authority have acknowledge and confirmed that the gabion structure are vital to the structural integrity of the dwelling; if that is the case a major new flood risk has been introduced;
- The statement that it is not highly visible is incredulous. The loss of visual amenity is not just to St. Agnes Tce. The works can be seen from all directions;
- It is the responsibility of the Council, the Board, and relevant State authorities to protect and nurture the unique riparian woodland that existed prior to construction of the dwelling and subsequent unauthorised works;

- The development on the site, in particular the gabion structure and the cutting of trees has had an impact on trees/woodland, ecology, visual amenities, and residential amenity beyond that assessed and permitted previously;
- There has been a loss of visual amenity for residents in the area as a result of the development on site;
- Observation queries compliance with conditions of previous decisions on site;
- The Z9 lands in question were and are of vital importance to the biodiversity, ecology and landscape of the locality.

## 7.0 **Assessment**

7.1. Having regard to the foregoing; having examined the application, appeal and planning authority reports; having inspected the area within and around the site; and having regard to relevant adopted development plan policies and objectives, I consider the main issues in this appeal are as follows:

- Principle of development;
- Previous and current applications;
- Nature, extent and impact of works, including impacts on trees, habitats & biodiversity; visual impact, and use of the land;
- Related matters raised in the course of the appeal.

### Principle of development

- 7.2. The application red line area includes a dwelling and a semi-natural wooded area adjacent. The site is private property and not publicly accessible.
- 7.3. The dwelling in question, No. 124 Rathfarnham Road, was permitted by the Board under Ref. ABP-306149-19. That development included a retaining wall for the dwelling and ancillary residential works in the form of terrace paving and gravel parking. In the subject case the parties generally agree the retaining wall, steps, and related works were not constructed as permitted.
- 7.4. For clarity, the southern portion of the application site is within an area zoned 'Z9 Amenity/Open Space Lands/Green Network', and the northern portion is within an

area zoned 'Z1 Sustainable Residential Neighbourhoods'. The retaining wall, steps, associated landscaping and related works are located within the Z9 area, with the remainder of the dwelling located generally within the Z1 area. I note the parent permission was granted under the 2016-2022 Dublin City Development Plan, and that the site was zoned Z1 and Z9 under the previous development plan, in a broadly similar configuration as the current plan. As such, when the parent permission was granted the retaining wall, steps and landscaping were permitted within the Z9 zoned area as is the existing gabion retaining structure under the current development plan. Accordingly, I am satisfied the retaining wall and associated works were permitted within Z9 lands. I consider the use of the lands in the context of the zoning objective further below.

#### Previous and current applications

- 7.5. I note one observer's comments that the subject application is the same as the previous application.
- 7.6. The current application is for the retention of retaining wall consisting of gabion cages; completion of partially constructed steps; landscaping works; and all ancillary site development works. The proposed landscaping works would entail the almost complete covering of the cages with soil and planting of wildflowers. Shrub and understorey planting is also proposed elsewhere throughout the 'Z9' lands. All trees on site are to be retained.
- 7.7. The previous application (Ref. 3632/21 / ABP-312369-22) for which a split decision was issued by the Board included retention of alterations and amendments to house including minor dimensional adjustments and altered roof pitch & profile resulting in an increase in ridge height. In relation to the Z9 area of the site, it proposed construction of a retaining wall consisting of gabion cages and all ancillary site development works and services. Whilst not stated specifically in the description, the application included shrub planting and a section of grass surface on top of the gabions. Elsewhere in the 'Z9' area was indicated as 'mature native trees & planting'.
- 7.8. Given the foregoing, I consider the subject application is not the same as the previous application, including in relation to the proposals for the gabions and related landscaping within the Z9 area specifically, although many of the same issues raised in that case persist in this case.

## Nature, extent and impact of works

### *Context*

- 7.9. I have reviewed in detail the appeal, and the observations on the subject application made to the planning authority and the Board. I have also reviewed the planning history, information submitted by the applicant, the previous Board inspector reports, and technical reports from the planning authority. As part of the subject application the applicant submitted, amongst other documents: engineering drawings; architect drawings; landscape plans; an Appropriate Assessment screening report; Arboricultural Assessment; Engineers Report; Flood risk assessment; and a planning report.
- 7.10. Given the detailed points raised on the file, I consider it worthwhile setting out two contextual points for assessment of the case:
- In assessing the development within the Z9 area I have sought to bear in mind the impact of the gabions and related works to be retained, and the impact of other works that have occurred on the site which may or may not be related directly to construction of the gabions, in particular the extensive cutting back of trees and other impacts arising from construction of the permitted dwelling. Overall, I do not consider it sufficiently clear to what extent the pollarding / pruning of trees on site arose as a result of the gabions or other works on the site. In this regard I note the submitted Arboricultural Report indicated that similar pollarding occurred on the site historically;
  - In assessing the development within the Z9 area, I have also borne in mind what impact construction of the permitted development within the Z9 area would have had (in particular the permitted retaining wall, Ref. 3632/21 / ABP-312369-22). I consider that much of the critique by third parties compares the impact of the existing works to the nature of the site at the time permission for the dwelling was granted. I do not consider this application provides sufficient information to ascertain the extent of impacts, in particular on trees, that would have occurred had the permitted development been implemented in full.

### *Impact on trees*



- 7.11. There are approximately 15 no. large trees within the Z9 area on site. The majority have been heavily pollarded or pruned. Having reviewed the submitted drawings from the original application, the previous retention application, and the current appeal there is significant variation in relation to the number, location and size of trees shown as being on site to the extent that I consider there is a question as to consistency between the drawings in this regard. This is with the exception of the trees along the line of the originally permitted retaining wall which I consider are depicted relatively accurately and consistently, and align well with the trees currently on the site. However, overall, I am satisfied the only larger tree that has been removed on the site since the dwelling was permitted is the tree that was proposed to be removed as part of the parent permission on the site (Ref 3316/19 / ABP-306149-19). I am satisfied no larger trees were removed to facilitate the gabions or related works.
- 7.12. In relation to the impact of the gabions on trees, I note the use of gabions has, to date, allowed for the retention of the adjacent trees. However, the submitted arboricultural report provides minimal information as to medium to long term impact of the gabions; in this regard, there is no reference to impacts from root compression or root and trunk restriction. Similarly, in relation to the proposal to cover the gabions in soil, which would also cover some tree roots and sections of adjacent tree trunks, the assessment makes no reference to the potential for additional impacts in relation to root suffocation or for the trapping of water around tree roots. As such, I am not satisfied there is sufficient information on the file to fully consider the medium- to long-term impact of the gabions on the trees on site.
- 7.13. Regarding the heavy pollarding / pruning of trees on the site, as stated above I do not consider it clear from the available information to what extent this occurred in relation to construction of the gabions specifically, or to other aspects of the development (for example construction of the dwelling, tree management, risks from storms, landowner preference, or perhaps enhancing outlook from or views of the dwelling). A rationale for the cutting back of the trees which is broader than simply construction of the gabions is indicated in Sections 2 and 3 of the submitted Arboricultural Assessment report.
- 7.14. In this regard, it is worthwhile considering the impact that construction of the permitted retaining wall would have had on trees. The submitted arboricultural

assessment (Section 3) indicates that construction of the permitted retaining wall would have had a significant detrimental impact on a number of the existing trees on site. Limited details are provided as part of this application. This impact is reflected in the submitted engineering services report. Given the proximity of the 4 no. most northerly trees (that is, those within the Z9 area closest to the existing dwelling) to the line of the permitted retaining wall; their position on the slope; the nature of the slope; and the likely necessary depth of the retaining wall and necessary excavation of the slope, I consider that these trees would likely have been severely impacted either from cutting back or impacts on their roots and trunks arising from construction of the permitted retaining wall. I do not consider it sufficiently clear from the information submitted in this case whether their removal would have likely been necessary or the impacts so significant as to precipitate their premature loss.

- 7.15. Given the foregoing, I do not consider there is sufficient information on the file to fully consider the medium- to long-term impact of the development to be retained on the site. The Board may wish to seek further submissions in this regard, however, given the lack of detail I consider the application as submitted does not accord with Policies GI41 of the development plan. As such I consider that retention permission should not be granted.

#### *Character and Visual Impact*

- 7.16. Regarding character and visual impact, I note a number of comments from third parties relating to the impact on the character of the area, including reference to the riparian character. The site is part of a wooded area along the banks of the River Dodder. The site is within a Red-Hatched Conservation Area in the development plan (Policy BHA9 'Conservation Areas').
- 7.17. Having reviewed the information on file, and having visited the site, overall I consider the impact of the gabion structures in these regards to be significantly detrimental to the character of the area. However, I am conscious in this regard that the works were unfinished at the time of my site visit; that works to improve the appearance including landscaping are proposed; and that over time I would expect the visual impact to moderate. I note too in this regard the potential for conditions to be attached to a permission for further mitigation.

7.18. I consider that the severe pollarding / pruning of the trees on the site has had the most significant detrimental impact on the appearance and character of the area, and which contributes to the visual impact of the gabions. As set out above I do not consider it fully clear what elements of this pollarding/pruning related directly to the gabions, other works related to the dwelling, or indeed as part of a longer-term approach to tree management on the site.

7.19. In addition, whilst the question at hand is whether the proposed development is in itself acceptable, I consider it useful to again compare the impact of the permitted retaining wall in these regards:

- Whilst the gabions cover a larger area, the permitted retaining structure was considerably longer, generally running the full width of the site as per that indicated in the original application;
- Whilst the existing gabions required minimal soil or tree removal, the permitted structure would have required significant soil removal and may have had further significant impacts on at least four trees, which may have increased its visibility;
- Whilst the gabions are currently exposed, the applicant proposes to largely cover them with soil and landscaping. In comparison, the retaining wall would have been largely covered with the top only remaining visible;

As such, given the foregoing, including the proposals as part of this application to cover and landscape the gabions, I do not consider it sufficiently clear that the proposed development would be materially better or worse in terms of impact on character and visual impact than the permitted retaining structure and related works.

7.20. Overall, considering the development which is the subject of this application, I do not consider it has been clearly demonstrated that the subject development protects the special interest and character of the Conservation Areas. Policy BHA9 of the development plan 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. Policy GI34 seeks to ensure new development responds to the character, importance and setting of the city's rivers where the context allows. I am not satisfied that the development as proposed aligns with these policy objectives.

### *Habitats and Biodiversity*

- 7.21. The site is part of a wooded area along the River Dodder, within what the development plan refers to as a river corridor or riparian zone (Policies GI29 and GI34), which it identifies as sensitive ecological areas (Section 15.6.6).
- 7.22. The third-party appeal referenced impacts from the development on site, including in relation to trees, woodland and riparian habitats. I note the Department of Housing, Local Government and Heritage Development Applications Unit observation to the planning authority referenced impacts on trees and understory plants & shrubs. It recommended refusal of permission to enable restoration to the greatest extent possible of the vegetation of the riparian zone so as to allow it to function as a wildlife corridor and screen the biota of the river from artificial light pollution and other disturbance.
- 7.23. Regarding submitted documentation, whilst the applicant has submitted an Appropriate Assessment screening report, a report assessing impacts on the ecology of the area has not been submitted. No report on the impacts on bats has been provided as part of the application.
- 7.24. Noting the foregoing, I consider there is minimal expert analysis on the ecology of the site from the applicant or interested parties, including in terms of the evaluating the sensitivity of the site or impacts thereon.
- 7.25. Regarding the impact of the gabions on the ecology and habitats in the area, I am satisfied the gabions were placed / built on the slope with minimal cut. Whilst much of Z9 area within the site is covered by undergrowth, the gabions have reduced the available habitat area (by c.70sqm), including the loss of plant growth, but conversely have to date allowed for the retention of trees. The applicant proposes to largely cover the gabions with soil and landscape same with wildflowers. Whilst not fully mitigating impacts on the ecology of the area, this would provide increased ground area and planting for wildlife, however it is unclear from the submitted information how this planting would perform long term. In any event, I consider that a condition would at minimum be required to ensure appropriate planting for the area.
- 7.26. In comparison, the permitted retaining wall would have involved removal of a comparable area of ground and shrubs/plants. This would however have been backfilled to restore much of the ground area for wildlife. Minimal details of planting

were proposed or conditioned however. As set out above, it is not fully clear to me that all of the trees within the footprint of such works would have been retained long term. On balance, I consider the existing gabion structures would have a more detrimental impact on the habitats and ecology of the area than the permitted development.

7.27. In considering the impact of the development on the ecology of the area, I have also borne in mind the following:

- The site is in an urban area, and that it is open space linked to a dwelling (No. 124 Rathfarnham Road), including by concrete steps from the dwelling;
- From the information available the area appears historically to have been amenity space associated with No. 122 Rathfarnham Road. In this regard, mapping on the file indicates steps and a substantial structure built in this part of the site which has since been removed;
- The adjacent riverbank comprises a brick and stone retaining wall rather than being a natural riverbank;
- The gardens of the neighbouring dwellings which back onto the river are largely laid out as private gardens rather than natural woodland;
- Whilst the red line area includes the riverbank which links to other areas of riparian woodland extending to the east, to the west the site adjoins Rathfarnham Bridge which largely severs the site from the riverside woodlands further west and limits the site as part of a wildlife corridor.

As such, I consider that the extent of impacts in this regard must be viewed in the context of the residential and urban environment within which they have occurred, rather than natural riparian woodland.

7.28. In assessing the ecological and habitat impact of the existing works on the site, I have also borne in mind the impact of further works to the area, relative to any improvement to habitats and ecology that would be brought by the proposed development, further mitigation by condition, or the construction of an alternative retaining structure.

7.29. Having regard to the foregoing, on balance I consider the existing gabions have had a significant detrimental impact on the habitats and ecology of the site, and I do not

consider the applicant has submitted sufficient information in this regard to support retention of the gabion structures, including in relation to bats and other woodland and riparian species. Given the relationship of the proposed landscaping in this regard, I also consider that this element of the application should not be permitted. Accordingly, I consider the proposal does not accord with Policies GI14, GI29 and GI34 of the development plan in this regard and that retention and planning permission should not be granted.

#### *Land use*

- 7.30. The area in question is within the 'Z9 Amenity/Open Space Lands/Green Network' zone, where the land use zoning objective: *"To preserve, provide and improve recreational amenity, open space and ecosystem services"*.
- 7.31. As noted above, the area forms part of the amenity space associated with a dwelling (No. 124 Rathfarnham Road), with steps leading from the dwelling to this area. The applicant proposes the completion of related works in this regard. I also consider the area historically formed part of the amenity space associated with No. 122 Rathfarnham Road.
- 7.32. There remains significant tree, shrub and plant growth on the site. There is a significant slope across the site from the house toward the bank of the river. Given the topography and growth on site I consider that its value for recreation and open space has always been relatively restricted. I accept the gabions have reduced the area available to recreation and open space, however given the topography of the site and proposals to landscape the structures, I do not consider the proposal would have a material detrimental impact in relation to the use of the land in line with the recreational amenity and open space objectives of the land use zoning.
- 7.33. Regarding ecosystem services however, I have addressed these matters above and do not consider the applicant has clearly demonstrated the proposed development would preserve, provide for and improve the ecosystems services of the site. As such I consider the application is contrary to the Z9 land use zoning objective for the area and should be refused in these regards.

#### *Summary*

- 7.34. Regarding habitats and ecology, I consider the existing gabions have had a significant detrimental impact in these regards, and I do not consider the applicant

has submitted sufficient information to support retention of the gabion structures. Regarding impacts on trees, I do not consider sufficient information has been provided to fully assess the proposed development and ensure further detrimental impacts in these regards are avoided. As such, I do not consider the applicant has clearly demonstrated the proposed development would preserve, provide for and improve the ecosystems services of the site, and as such I consider the application is contrary to the Z9 land use zoning objective for the area.

- 7.35. Regarding the character and visual amenity of the area, I do not consider the applicant has demonstrated that the proposed development would protect the special interest and character of the Conservation Area, contribute positively to its character and distinctiveness, or take opportunities to protect and enhance the character and appearance of the area and its setting.
- 7.36. As such I consider that the application for both the retention and permission should be refused in these regards.

#### Related matters raised in the course of the appeal

- 7.37. I address a number of other substantive matters raised by the appellant, observers, planning authority and applicant below.

#### Conditions

- 7.38. As I recommend no part of the subject development is to be granted planning permission, no conditions are recommended. In the previous split decision on the site (ABP-312369-22) the Board attached a condition (Condition 2) which stated that the terms and conditions of the original permission for the dwelling (ABP-306149-19) were to be fully complied with except where modified by the split decision (ABP-312369-22). That decision also included a condition requiring removal of the gabions (Condition 4). Neither of these conditions have to date been complied with, with the applicant instead making this subject application. At the time of writing of this report both of these previous permissions and their respective conditions remain extant.

#### Archaeology

- 7.39. The planning authority archaeological section stated that archaeological monitoring was previously undertaken on site, that the nothing of archaeological interest was

found. I note the gabions have been largely placed on the ground with minimal cut to the slope. I am satisfied in this regard.

#### Procedure

- 7.40. The third-party appellant makes a number of points broadly relating to procedure. I consider each below.

#### *Breach of Condition 1 of existing permission*

- 7.41. Regarding the appellant point that the permission is in breach of Condition 1 of the parent permission, all parties appear to agree that the works on the ground are not consistent with the original permission on the site. However there is no restriction on the applicant making the subject application.

#### *Due consideration of facts and observations / Planning authority assessment*

- 7.42. Regarding the appellant points that all facts in relation to the application were not given full or due consideration by the planning authority, particularly in respect of the observations lodged, I am satisfied that due consideration was given to the submissions received, with the exception of the observation from the Department. In this regard I consider the planning authority planner report appeared to characterise the Department submission as being resolved primarily by landscaping. I do not consider this is the case, and consider that the Department submission sets out more fundamental issues with the proposal. I have addressed the matters raised by the Department above.

#### Flood risk

- 7.43. The Observation to the Board states that a major new flood risk has been introduced on the site.
- 7.44. The appellant submitted a flood risk assessment with the application. The assessment concluded that the risk of flooding on the site is low. The planning authority planner report concluded that the risk of flooding associated with the retention of the gabion structures was low in the extreme. I note that a flood risk assessment was also submitted with the application for the dwelling on the site (ABP-306149-19).
- 7.45. Development plan flood risk mapping indicates that the development area in question is within and adjacent the Flood Zone B. The Flood Risk Guidelines state



that construction of structures such as retaining walls within flood zones including Flood Zone B may be acceptable in terms of flood risk on a site. Having regard to the information submitted I am satisfied in relation to the extent of flood risk identified for this space. In this regard, whilst steps lead from the dwelling to the Z9 area in question, and whilst I am satisfied the space may function as amenity space associated with the dwelling, it is not identified as part of the private open space for the dwelling, with a clearly defined back garden already existing within the Z1 area to the rear of the dwelling.

- 7.46. For completeness I note that the flood risk assessment took minimal if any account of the potential displacement of flood waters arising from the gabions. In this regard I consider the gabions present a significantly larger additional volume on the site than the permitted retaining wall. I also note that there is minimal assessment of the stability of the wall in the event of flooding, noting that the gabions are placed on the ground. Given the volume of the gabions and likely extent of displacement I do not consider that this constitutes a reason for refusal.

## **8.0 Appropriate Assessment screening**

- 8.1. 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 SAC and South Dublin Bay and River Tolka Estuary SPA which are c.5.36km to the east from the proposed development. The proposed development is located within an urban and residential area and comprises the retention of a stone retaining wall consisting of gabion cages largely placed on the ground with minimal soil cutting, and completion of partially constructed outdoor steps, landscaping works and all ancillary site development.
- 8.2. I have also considered the Appropriate Assessment screening report submitted by the applicant. I note the Appropriate Assessment screening undertaken by the Planning Authority in this case, and by the Board in relation to the application for the existing dwelling on the site.
- 8.3. Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it would not have

any appreciable effect on a European Site. The reason for this conclusion is as follows:

- The small scale and residential nature of the development which largely comprises retention permission for the placing of stone gabion structures on the site;
- The distance from European Sites.

8.4. 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

9.1. I recommend permission be **Refused** for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. Having regard to nature of the proposed development, and to the lack of information submitted with the application, including in relation to trees and ecology, it is considered that the applicant has not clearly demonstrated that the development would not have a significant detrimental impact on trees, habitats and ecology of the area, or that it would preserve, provide for and improve the ecosystems services of the site. As such, I do not consider the applicant has clearly demonstrated the proposed development is consistent with Policies GI14, GI29, GI34 or GI41 of the Dublin City Development Plan 2022 to 2028, or that the development is consistent with the Z9 land use zoning objective for the area.
2. It is considered that the applicant has not demonstrated that the proposed development would protect the special interest and character of the Conservation Area within which it is located, contribute positively to its character and distinctiveness, or take opportunities to protect and enhance the character and appearance of the area and its setting. As such, the proposed development would be contrary to Policies BHA9 and GI34 of the Dublin City Development

Plan 2022 to 2028 and 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.-*

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Dan Aspell  
Inspector  
30<sup>th</sup> April 2025

## APPENDIX 1

### Form 1 EIA Pre-Screening [EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP-319964-24		
<b>Proposed Development Summary</b>	Retention permission relates to a retaining wall consisting of gabion cages on a sloping bank. Permission for completion of partially constructed outdoor steps, landscaping works and all ancillary site development works.		
<b>Development Address</b>	124 Rathfarnham Road, Terenure, Dublin 6W.		
<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>	X	
	<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>			EIA Mandatory EIAR required
<b>No</b>	x	Class 10(b)(i)	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>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>	X	Class/Threshold 10(b)(i) dwelling units	Proceed to Q.4
<b>4. Has Schedule 7A information been submitted?</b>			
<b>No</b>	X	Preliminary Examination required	
<b>Yes</b>		Screening Determination required	

Inspector: \_\_\_\_\_ Date: \_\_ 21/02/2025\_\_

## Form 2 - EIA Preliminary Examination

<b>An Bord Pleanála Case Reference Number</b>	ABP-319964-24	
<b>Proposed Development Summary</b>	Retention permission relates to a retaining wall consisting of gabion cages on a sloping bank. Permission for completion of partially constructed outdoor steps, landscaping works and all ancillary site development works.	
<b>Development Address</b>	124 Rathfarnham Road, Terenure, Dublin 6W.	
<b>The Board carried 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. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>		
<b>Characteristics of proposed development</b>	Proposed development comprises retention of a retaining wall consisting of gabion cages on a sloping bank, and permission for completion of partially constructed outdoor steps, landscaping works and all ancillary site development works. There would be no increase in floor area. The proposed development has a modest footprint, is related to a single dwelling, requires minimal demolition works, does not require the use of substantial natural resources, or give rise to production of significant waste, significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, human health or is vulnerable to climate change.	
<b>Location of development</b>	The development is located in an urban area with an existing dwelling on site. The receiving location is adjacent the Dodder River however is removed from sensitive designated natural habitats, designated sites and landscapes of identified significance in the City Development Plan. The site is adjacent a protected structures however given the scale and nature of development there will be no significant environmental effects arising.	
<b>Types and characteristics of potential impacts</b>	Having regard to the characteristics and modest nature of the proposed development, the sensitivity of its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.	
<b>Conclusion</b>		
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes or No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector: \_\_\_\_\_ Date: \_\_21/01/2025\_\_\_\_\_

DP/ADP: \_\_\_\_\_ Date: \_\_\_\_\_  
(only where Schedule 7A information or EIAR required)