



An
Bord
Pleanála

Inspector's Report

ABP-320643-24

Development	Construction of two-storey plus attic level house with 6 double bedrooms, alterations to boundary wall with Sydney Parade Avenue and temporary removal of boundary wall with Merrion Road for works access.
Location	Lands to rear of 162 Merrion Road, Dublin 4, D04 P8W8
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	WEB1706/24
Applicant(s)	Brendan and Hannah O'Driscoll
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First-Party
Appellant(s)	Brendan and Hannah O'Driscoll.
Observer(s)	1. Hugh and Sinead Mohan 2. Ailesbury Park Residents Association

3. Ivan Murphy.

Date of Site Inspection

31st January 2025

Inspector

Catherine Hanly

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1.0 Site Location and Description

- 1.1. The site is located on the northeastern side of Merrion Road, at the junction of Merrion Road and Sydney Parade Avenue. Sydney Parade Avenue is not accessible to vehicular traffic from Merrion Road and is sectioned off by a footpath and bollards. The northern side of Sydney Parade Avenue contains double yellow lines. The southern side of Sydney Parade Avenue contains permit and pay and display parking. The site is approximately 170 m from Sydney Parade Dart station.
- 1.2. Merrion Road is located to the west of the site. Merrion Road contains four lanes of traffic. A public footpath and cycle lane on Merrion Road abut the western boundary of the site. The no. 421 bus-stop is located on the south bound lane on Merrion Road, adjacent to the site. The no. 479 bus stop is located on the north bound lane of Merrion Road adjacent to the site. Both bus stops are serviced by the no. 27X bus (UCD Belfield – Clare Hall), the no. 7 bus (Brides Glen Luas – Mountjoy Square), the no. 7A (Loughlinstown – Mountjoy Square) and the no. 4 bus (Monkstown Avenue – Harristown).
- 1.3. To the north-west of the site, is No. 162 Merrion Road. A block of the Merrion Court Apartments is located to the north of the site and road space and a pedestrian entrance gate leading to Sydney Parade Avenue associated with the Merrion Court apartments are located to the east of the site. The southern boundary of the site abuts a narrow area of open space containing trees and a public footpath. The public footpath continues along Sydney Parade Avenue. No. 164 Merrion Road fronts onto Merrion Road and is located to the south of the site on the opposite side of Sydney Parade Avenue.
- 1.4. The site measures 0.037 ha. The site is comprised of two parts. The southwestern portion of the site is landscaped and forms part of the side and rear private garden of no. 162 Merrion Road. This portion of the site is separated from the northeastern portion of the site that adjoins Merrion Court by a railing and mature vegetation. The northeastern portion of the site is located within the grounds of the Merrion Court apartments and is comprised of a tarmacadam area to the rear of the Merrion Court apartments.

- 1.5. The southwestern boundary of the site is comprised of a low-level stone wall with a railing and hedging. The southeastern boundary of the site is comprised of a stone wall.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:

- To construct a new detached, 2-storey plus attic level house that will provide 6 no. double bedrooms, which fronts onto Sydney Parade Avenue.
- Other works include alterations to the existing boundary wall along the Sydney Parade Avenue frontage. Alterations include raising a portion of the granite wall on the southwestern boundary and reducing the height of the granite wall on the southeastern boundary.
- The formation of a temporary construction access onto Merrion road (which includes the demolition of a section of boundary wall that will be reinstated and made good when construction works have been completed).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Refuse Permission issued on 29th July 2024 for 1 no. reason, as follows:

- 3.1.2. *“The proposed development by reason of its size, scale, height, orientation and proximity to the rear north east boundary does not accord with the standards for infill or side garden development outlined in Chapter 15 and Appendix 18 of the Development Plan. The proposed dwelling would have significant negative impacts on adjoining residential amenity, would erode the character and distinctiveness of the area, would set a highly undesirable precedent for infill and side garden developments in the locality and would devalue property in the vicinity. The proposed development would materially contravene the provisions of the Dublin City Development Plan 2022-2028 and would, therefore be contrary to the proper planning and sustainable development of the area.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The application is a revision of what was previously refused under ref. **3596/23**. Some of the changes include a car free development with the removal of the vehicular access off Sydney Parade Avenue. The size, design and orientation of the dwelling is very similar to what was previously refused. Whilst it is set back from the front northeastern boundary, it would still abut the northwestern boundary.
- Under ref. **3596/23** the issue was that the development would set a highly undesirable precedent for infill development in the City. This has not been addressed. The development does not accord with the standards for infill or side garden development.
- The Planning Authority have concerns regarding the level of overlooking from the proposed first and second windows towards the rear garden of no. 164 Merrion Road.
- The development proposes to remove 1 no. category B and 2 no. category C trees from within the site and there will no impact on trees outside the site. This is considered acceptable. The details submitted have overcome refusal reason no. 2 under ref. **3596/23**.
- The development is unlikely to have a significant effect, individually or in combination with other plans or projects, on a European site.
- The need for Environmental Impact Assessment can be excluded at preliminary examination and a screening determination is not required.

3.2.2. Other Technical Reports

- Engineering Department Drainage Division: No objection subject to compliance with 6 no. conditions.
- Transportation Planning Division: No objection subject to compliance with 3 no. conditions.

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. Eight observations were received by the Planning Authority. The issues raised include the following:

- Design
 - The development constitutes overdevelopment and is contrary to the zoning objectives on the site.
 - The proposed dwelling is a three-storey dwelling.
 - The development does not complement the prevailing scale, mass and architectural design which exists along Sydney Parade Avenue.
 - The development will set a poor precedent for future development.
 - Concern regarding the proposed lowering of the boundary wall.
- Impact on Amenities
 - The development will impact the residential amenities of adjacent properties.
 - The development will be overbearing.
 - The original Merrion Court development was designed so as not to encroach Sydney Parade Avenue.
 - The development will impact no. 164 Merrion Road from overlooking and overshadowing. The window on the second floor overlooking nos. 164 and 166 Merrion Road should be omitted.
 - Trees cannot be relied upon for screening during the winter months.
 - No shadow analysis has been submitted.
 - The development will impact the visual amenities of adjacent properties and the streetscape.
 - The second floor should be omitted due to overlooking concerns.
 - Limited information has been submitted regarding the materials.
- Parking
 - There is a requirement for 1no. car parking space.

- The development will exacerbate an existing issue of lack of parking spaces in the area by utilising on-street vehicular parking.
- Discrepancy
 - There is a discrepancy between the red line boundary on the site location map and on the site layout plan.
- Planning History
 - The previous issues raised by the Planning Authority under ref. 3596/23 have not been addressed.
 - The application has addressed the second reason for refusal under ref. 3596/23 which related to the removal of trees outside the red line boundary of the site.

4.0 Planning History

4.1. Planning history for the site:

- Ref. **3596/23**. Construction of a two-storey house. 2023 **Refusal**. Refused for 2 no. reasons. Firstly, due the size, scale, height, orientation and proximity to the site boundaries. The development would impact residential amenity, erode character and distinctiveness of the area and set an undesirable precedent for infill and side garden developments. The development would materially contravene the Dublin City Development Plan 2022-2028 (*Dublin CDP*). Secondly, the removal 2 no. semi-mature trees within the public realm would contravene section 15.6.9. of the *Dublin CDP*.
- Ref. **5452/05**. Construction of a five-storey apartment block providing 11 no. apartments. 2006 **Refusal**. Refused for 3 no. reasons. Firstly, the scale and massing and extent of projection forward into the garden of no. 162 Merrion Road along with the extent of hard surface car parking and removal of soft landscaping would be contrary to the Z2 zoning objective and Policy H13 to protect the character of Conservation Areas. Secondly, the failure to provide adequate amenity space. Thirdly, due to the height and projection into the garden of no. 162 Merrion Road.

5.0 Policy Context

5.1. Dublin City Development Plan 2022 – 2028

Zoning

- 5.1.1. The site is subject to 2 no. zonings. The western portion of the site is zoned Z2 – Residential Neighbourhoods (Conservation Areas), which has the objective “*to protect and/or improve the amenities of residential conservation areas*”. The eastern portion of the site is zoned Z1 – Sustainable Residential Communities, which has the objective “*to protect, provide and improve residential amenities*”.

Flooding

- 5.1.2. The site is located in flood zone A as identified on Map H in Volume 7.

House Developments

- 5.1.3. Section 15.11 provides guidance and standards in relation to the development of new houses.
- 5.1.4. Section 15.11.2 relates to aspect, daylight/ sunlight and ventilation.
- 5.1.5. Section 15.11.3 relates to private open space and states that a minimum standard of 10 sq. m. of private open space per bedspace will normally be applied. It further outlines that these standards may be relaxed on a case-by-case basis subject to a qualitative analysis of the development.
- 5.1.6. Section 15.11.4 states that traditionally a separation distance of about 22 m was sought between the rear first floor windows of 2 storey dwellings but this can be relaxed if it is demonstrated that the development is designed to preserve the amenities and privacy of adjacent occupiers.
- 5.1.7. Section 15.13.3 relates to infill/ side garden housing developments. It states that infill housing should comply with all relevant development plan standards for residential development including unit sizes, dual aspect requirements, internal amenity standards and open space requirements. In certain limited circumstances, the planning authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land is developed.
- 5.1.8. Section 15.13.3 further states that “*larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent*”

dwellings. A modern design response may, however, be deemed more appropriate in certain areas and the Council will support innovation in design.”

- 5.1.9. It also states that the planning authority will have regard to a number of criteria when assessing proposals for the development of corner/ side garden sites including: character of the street, compatibility of the design and scale with adjoining dwellings, accommodation standards, development plan standards, impact on residential amenities, open space standards, access, landscaping and boundary treatments, maintenance of building lines, level of visual harmony, variation in design and opportunities for passive surveillance.
- 5.1.10. Policy QHSN6 states that it is the policy of Dublin City Council *“to promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaption of existing housing stock and use of upper floors, subject to the provision of good quality accommodation”*.
- 5.1.11. Policy QHSN10 states that it is the policy of Dublin City Council *“to promote residential development at sustainable densities throughout the city in accordance with the Core Strategy, particularly on vacant and/or underutilised sites, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.”*

Car Parking

- 5.1.12. Section 4 in Appendix 5 in Volume 2 outlines the car parking standards. The site is located in parking zone 2. Section 4 states that a relaxation of maximum car parking standards will be considered in zone 2 for any site located within a highly accessible location.
- 5.1.13. Table 2 states that there is a maximum requirement of 1no. parking space per dwelling in zone 2.

5.1.14. Bicycle Parking

- 5.1.15. Section 3 in Appendix 5 in Volume 2 outlines the bicycle parking standards. Table 1 identifies that 1 bicycle parking space should be provided per residential dwelling.

Conservation Areas

- 5.1.16. Section 15.15.2.2 states that Conservation Areas include Z2 (Residential Conservation Areas). Section 15.15.2.2 outlines criteria for development in Conservation Areas.
- 5.1.17. Policy BHA7 in relation to Architectural Conservation Areas states that it is the policy of Dublin City Council:

(a) To protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA 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. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA. Please refer to Appendix 6 for a full list of ACAs in Dublin City.

(b) Ensure that all development proposals within an ACA contribute positively to the character and distinctiveness of the area and have full regard to the guidance set out in the Character Appraisals and Framework for each ACA.

(c) Ensure that any new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA. Contemporary design which is in harmony with the area will be encouraged.

(d) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

(e) Promote sensitive hard and soft landscaping works that contribute to the character and quality of the ACA.

(f) Promote best conservation practice and encourage the use of appropriately qualified professional advisors, tradesmen and craftsmen, with recognised conservation expertise, for works to buildings of historic significance within ACAs.

All trees which contribute to the character and appearance of an Architectural Conservation Area, in the public realm, will be safeguarded, except where the tree is

a threat to public safety, prevents universal access, or requires removal to protect other specimens from disease.”

5.2. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)

Separation Distances

- 5.2.1. SPPR1 states that *“when considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces.”*
- 5.2.2. SPPR1 further states that *“there shall be no specified minimum separation distance at ground level or to the front of houses, duplex units and apartment units in statutory development plans and planning applications shall be determined on a case-by-case basis to prevent undue loss of privacy. In all cases, the obligation will be on the project proposer to demonstrate to the satisfaction of the planning authority or An Bord Pleanála that residents will enjoy a high standard of amenity and that the proposed development will not have a significant negative impact on the amenity of occupiers of existing residential properties.”*

Private Open Space

- 5.2.3. SPPR 2 states that 4 bed + houses require a minimum of 50 sq. m of private open space. It further states for building refurbishment schemes on sites of any size or urban infill schemes on smaller sites (e.g. sites of up to 0.25ha) the private open space standard may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality and proximity to public open space.
- 5.2.4. Section 5.3.2 in relation to private open space, states that the open space must be directly accessible from the unit it serves, and a principal area of open space should be directly accessible from a living space.

Car Parking

5.2.5. SPPR 3 relates to car parking and states the following:

- i. *“In city centres and urban neighbourhoods of the five cities, defined in Chapter 3 (Table 3.1 and Table 3.2) car-parking provision should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 no. space per dwelling.*
- ii. *In accessible locations, defined in Chapter 3 (Table 3.8) car- parking provision should be substantially reduced. The maximum rate of car parking provision for residential development, where such provision is justified to the satisfaction of the planning authority, shall be 1.5 no. spaces per dwelling.*
- iii. *In intermediate and peripheral locations, defined in Chapter 3 (Table 3.8) the maximum rate of car parking provision for residential development, where such provision is justified to the satisfaction of the planning authority, shall be 2 no. spaces per dwelling.”*

Cycle Parking

5.2.6. SPPR 4 relates to cycle parking and states that all new housing schemes should include safe and secure cycle storage facilities to meet the needs of residents and visitors.

5.3. Natural Heritage Designations

5.3.1. The site is positioned approximately 0.5km to the west of the South Dublin Bay Special Area of Conservation (side code 000210), the South Dublin Bay proposed Natural Heritage Area (side code 000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (site code 004024).

5.3.2. The site is positioned approximately 2.6km to the south of the Grand Canal proposed Natural Heritage Area (site code 002104).

5.4. EIA Screening

5.4.1. See completed Forms 1 and 2 in Appendix 1.

5.4.2. Having regard to the limited nature and scale of the proposed development in a serviced urban area and the absence of any connectivity to any sensitive location, I have concluded at preliminary examination stage that there is no real likelihood of significant effects on the environment arising from the proposed development having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended). I conclude that 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. A First-Party appeal has been lodged in this instance. The grounds of the appeal can be summarised as follows:

- Size, Scale, Height and Character
 - The Planner's Report overly relies on the previous decision.
 - Character: There is no uniformity to the building line along Sydney Avenue Parade. The house provides passive surveillance.
 - The gable wall of the Merrion Court Apartment block appears visually prominent in the streetscape. The siting of the house would provide visual relief to the streetscape.
 - There is variety in the design along Sydney Parade Avenue. Two storey houses with pitched dormer windows area are a feature.
 - The height of houses is consistent with no. 6 Sydney Parade Avenue and the height of the Merrion Court Apartment block.
 - The material palette is consistent with the character of the area.
- Accommodation Standards and Compliance with Development Plan Standards
 - The development has a density of 18 units per hectare, which is below the density range for outer suburbs at 60 – 120 units per hectare.
 - The site coverage is 35% which below the indicative range of 45 – 60%.

- The plot ratio is 0.35 which is below the permissible standard of 1 to 2.5.
- All rooms exceed the room sizes stated in Table 5.1 of the Quality Housing for Sustainable Communities Guidelines.
- No. 162 Merrion Road will be provided with 512 sq. m of private amenity space. The proposed dwelling will be provided with 150 sq. m of private garden space.
- The development complies with section 15.13.3 of the *Dublin CDP*.
- Impact on Residential Amenities
 - Windows at first and second floor will be separated by approximately 18.8 m and 19.2 m from the application site boundary and south facing windows at no. 164 Merrion Road. A similar relationship already exists between no. 6 Sydney Parade Avenue and nos. 1 and 3 Sydney Parade Avenue.
 - The design has sought to address overlooking from the second-floor level by omitting the previously proposed dormer window and roof lights. The primary windows of the bedroom are directed towards the garden of the subject house. The windows at second floor level could be conditioned to be fitted with obscured glazing.
 - The development complies with SPPR 1 in relation to separation distances in the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (*Sustainable and Compact Settlement Guidelines*). These Guidelines came into effect after the previous refusal and represent a material change in policy resulting in a relaxation of separation distances from 22 m to 16 m.
 - Overlooking to no. 164 Merrion Road will be mitigated by mature trees and the height of the side boundary wall of no. 164 Merrion Road.
- Open Space and Refuse Standards
 - No. 162 Merrion Road and the proposed dwelling will be served by adequate private gardens with space for refuse storage.

- There is space for external refuse storage for the dwelling without impeding pedestrian movements from the Merrion Court complex.
- A letter of consent has been submitted from Merrion Court Management CLG confirming that pedestrian and refuse access for the apartments will not be adversely impacted by the development.
- The Provision of a Safe Means of Access and Egress from the Site
 - Dublin City Council's Transportation Report confirms that the proposed zero parking provision, space for cycle parking and bin storage are acceptable.
- Landscaping and Boundary Treatments
 - The application addresses the second reason for refusal under ref. **3596/23** as 3no. trees will be required to be felled from within no. 162 Merrion Road and there will be no impact on trees outside the site.
 - A condition could be included in any grant of planning permission regarding the restoration of the boundary wall on Merrion Road following the completion of construction works.
 - A condition could be included requiring a step back from the western side boundary where the development adjoins the Merrion Court refuse storage shed to provide for an alternative form of boundary treatment.
- Planning Precedent and Property Values
 - The development meets relevant standards and will not set an undesirable precedent or devalue property in the vicinity.
- Drainage
 - The Board is invited to attach conditions which would reflect the Drainage Planning Report from the Planning Authority.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:

- It is requested that the Board uphold the decision of Dublin City Council to refuse permission.
- The Planning Authority request that if permission is granted, that a condition is applied requiring the payment of a section 48 development contribution.
- The Planning Authority request that if permission is granted, that a condition is included requiring the payment of a development contribution in lieu of the open space requirement not being met (if applicable).

6.3. **Observations**

6.3.1. Three observations were received from Hugh and Sinead Mohan, Ailesbury Park Residents Association and Ivan Murphy. Most of the issues raised by the observers were raised in the initial observations submitted to the Planning Authority. Additional issues can be summarised as follows:

- Planning History
 - The scale, form and massing of the current application is almost identical to that refused under ref. **3596/23**.
- Design
 - The reference in the First-Party appeal to site coverage and plot ratio are not appropriate when assessing the application as the private amenity space is wholly located at the corner of the site.
 - Two-storey, semi-detached, red brick Edwardian houses are a characteristic feature of the street. Whilst pitched dormer windows did feature in Edwardian times, they were confined to the rear of houses on Sydney Parade Avenue.
 - The dormer window should be omitted.
 - Concern that the site encompasses public ground.
- Impact on Visual Amenities
 - The grassed area on Sydney Parade Avenue will be compromised by the development. The new dwelling will be overbearing on this space as it is set back by only 2m from the existing boundary wall.

- Conservation
 - The development is too big given the size of the site and its relationship no. 162 Merrion Road, which is located in a protected conservation area.
- Trees
 - Concern that the development would impact the roots of the trees along Sydney Parade Avenue.
- Transport
 - The commentary about the Transportation Planning Division being supportive of the application should be disregarded as it is not relevant to the reason for refusal.
- Drainage
 - The report from the Drainage Department has no relevance to the reason for refusal.
- Nature of the Development
 - Concern that the application will be used for shared student accommodation. It is requested that a condition is included preventing such a use from operating at the dwelling.

7.0 **Assessment**

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

- Principle of Development
- Compliance with Development Standards
- Visual Amenity
- Residential Amenity
- Conservation – New Issue

- Material Contravention
- Parking
- Trees and Open Space
- Drainage
- Access
- Other Matters

7.2. Principle of Development

- 7.2.1. The proposed development is located on land which is subject to 2 no. zonings. The western portion of the site is zoned Z2 – Residential Neighbourhoods (Conservation Areas), which has the objective “*to protect and/or improve the amenities of residential conservation areas*” in the *Dublin CDP*. The eastern portion of the site is zoned Z1 – Sustainable Residential Communities, which has the objective “*to protect, provide and improve residential amenities*” in the *Dublin CDP*. I note that residential development is permissible on both Z2 and Z1 zoned land. Generally, the principle of constructing a new dwelling is acceptable under the zoning objectives for the site. However, the configuration of the site is not standard and the impact of the development on the residential conservation area and amenities of adjacent properties must be considered. As such, there are a number of other considerations which must be examined, and these are addressed below.

7.3. Compliance with Development Standards

Size and Siting

- 7.3.1. The observations raise concerns regarding the overdevelopment of the site and the failure for the design to respond to the prevailing scale, mass and architectural design which exists along Sydney Parade Avenue.
- 7.3.2. In the reason for refusal, the Planning Authority stated concerns regarding the size, scale, height, orientation and proximity to the rear boundary which it was considered did not accord with the standards for infill development outlined in Chapter 15 and Appendix 18 of the *Dublin CDP*.
- 7.3.3. In the grounds of appeal, the First-Party notes that the development is below the development standards for plot ratio, density and site coverage.

- 7.3.4. Having regard to the size of the site and its location in proximity to public transport, there is an argument that a higher density development could be delivered on the site. However, noting the site's location in the rear garden of no. 162 Merrion Road, I consider that the construction of an infill house, subject to the assessment of several other design criteria, to be acceptable.
- 7.3.5. I note that Appendix 18 relates to ancillary residential accommodation. As such, I do not consider that it is relevant to this assessment. Section 15.13.3 of the *Dublin CDP* states that when assessing infill applications, the compatibility of design and scale with adjoining dwellings should be examined.
- 7.3.6. I note the positioning of the dwelling, which is marginally set back from the eastern and south-eastern boundaries of the site. Notwithstanding the size of the site, given the height, roof design and size of the dwelling and the limited separation distances to the Merrion Court apartments along the northern boundary, the development appears cramped. This is not in keeping with the surrounding development. As such, I consider the development constitutes overdevelopment of the site. This is evident in the Computer-Generated Images included in appendix B in the First-Party appeal.
- 7.3.7. I therefore concur with the Planning Authority that the development does not accord with Chapter 15 of the *Dublin CDP* in relation to infill development. I also consider that the development would set a highly undesirable precedent for infill development in the vicinity and due to the cramped design has the potential to devalue property in the vicinity. Furthermore, I consider that the development has not overcome the first reason for refusal under ref. **3596/23**. Under ref. **3596/23**, the dwelling was refused due to the size, scale, height, orientation and proximity to the site boundaries, and given that the development would impact residential amenity, erode character and the distinctiveness of the area. The impacts on residential amenity are discussed in section 7.5 below.

Accommodation Standards

- 7.3.8. I note the dimensions and sizes of the proposed rooms as identified on the submitted floor plans. Having regard to the standards set out in *Quality Housing for Sustainable Communities*, I consider that the proposed room sizes are acceptable and in excess of the minimum standards.

Private Open Space

- 7.3.9. I note that the proposed development allocates approximately 512 sq. m. as private amenity space to no. 162 Merrion Road. The proposed dwelling is provided with approximately 150 sq. m. of private garden area which is accessible off the open plan kitchen and living area and is located to the western side of the house. The garden would be enclosed by the existing wall along with a new timber fence within the garden.
- 7.3.10. I note that the Planner's Report from Dublin City Council does not specifically address the open space provision. In the Planning Authority's response to the grounds of appeal they requested that if permission is granted, that a condition is included requiring the payment of a development contribution in lieu of the open space requirement not being met (if applicable).
- 7.3.11. I am satisfied that the provision of 150 sq. m. meets the requirements of Section 15.11.3 in the *Dublin CDP* which requires 10 sq. m. of private open space per bedspace.
- 7.3.12. SP2PR 2 of the *Sustainable and Compact Settlement Guidelines* requires a minimum of 50 sq. m. for a 4 bed + dwelling. Whilst the private open space is located to the side of the dwelling, it is directly accessible from the kitchen/ dining and living space and would offer future residents' privacy. I therefore consider that the proposed design of 150 sq. m. exceeds the private open space requirements. Should the Board consider granting planning permission, I do not consider that a development contribution is required in lieu of the open space provision.

7.4. Visual Amenity

- 7.4.1. Concerns have been raised by the observations regarding the impact of the development on the residential conservation area and the streetscape by way of overbearing and due to the proposed design.
- 7.4.2. I note that the proposed dwelling is to measure 11.1 m in height. The site layout plan identifies that the proposed dwelling is set back 1.2 m from the south-eastern boundary wall and is built right up to the northwestern boundary of the site.
- 7.4.3. The First-Party states that the design and scale of the dwelling are consistent with adjacent houses and are not out of character with the surrounding area. The First-

Party notes that the height of the dwelling is consistent with no. 6 Sydney Parade Avenue and the Merrion Court Apartments and that there is no uniformity in the building line along the northern side of Sydney Parade Avenue. I accept that there is no uniformity in the building line and that the height may be consistent with adjacent properties. Furthermore, I note that the design elements including the proposed pitched roof, dormer window and the use of brick are in keeping with adjacent properties. Nonetheless, the subject dwelling is positioned closer to Sydney Parade Avenue than no. 6 and the Merrion Court apartments. Given the reduced setback from Sydney Parade Avenue, in combination with the size of the dwelling, its tight positioning between the Merrion Court apartments and the boundary wall of Sydney Parade Avenue, its pitched roof design and the proposed height, I consider that the dwelling would negatively impact the visually amenities of the streetscape by way of overbearing.

7.4.4. I understand the Planning Authority's concerns regarding the design of the development, as set out in their reason for refusal. Having reviewed the drawings, undertaken a site visit and having regard to the contents of the appeal and observations, I consider that the primary issue is the design of the house and its proximity to the Merrion Court Apartment block.

7.4.5. I note Section 15.13.3 from the *Dublin CDP* which states that "*larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas and the Council will support innovation in design.*"

7.4.6. Having regard to the size of the site at 0.037 ha, I consider that there is an opportunity for a more innovative design on the subject large corner site, which would be in sympathy to the Merrion Court apartments.

7.5. Residential Amenity

Overshadowing

7.5.1. I note the concerns raised by the observations that no shadow analysis has been submitted. Noting the positioning of the Merrion Court apartments to the north, that no fenestration is present on the southern elevation of the Merrion Court apartment block and the use of the land to east for refuse storage, I do not consider that the

development will impact the residential amenities of the Merrion Court development by way of overshadowing.

- 7.5.2. Furthermore, having regard to the positioning of the proposed dwelling to the north-west of no. 164 Merrion Road, I do not consider that the development will overshadow no. 164 Merrion Road. I am therefore satisfied that the development will not impact the residential amenities of adjacent properties by way of overshadowing.

Overlooking

- 7.5.3. The observations have raised concerns regarding the potential for the development to overlook nos. 164 and 166 Merrion Road, from the window on the southern elevation on the second floor.
- 7.5.4. I note the Planning Authority's reason for refusal which stated that the development would have significant negative impacts on adjoining residential amenity.
- 7.5.5. The First-Party has outlined that the separation distances from the proposed dwelling to no. 164 Merrion Road comply with SPPR 1 in the *Sustainable and Compact Settlement Guidelines*. The First-Party outlines how the primary window on the second floor is directed towards the garden and that if required the windows on the second floor could be conditioned to be fitted with obscured glazing. The First-Party also states that any overlooking will be mitigated by mature trees and the side boundary wall at no. 164 Merrion Road.
- 7.5.6. I note SPPR 1 in the *Sustainable and Compact Settlement Guidelines* states that there shall be no specified minimum separation distance to the front of houses and that applications shall be determined on a case-by-case basis to prevent undue loss of privacy.
- 7.5.7. Noting that the window on the second floor on the western elevation overlooks the private amenity space of the proposed dwelling, I consider there to be no overlooking concerns in relation to this window.
- 7.5.8. I note the window on the southern front elevation of the dwelling is set back approximately 19.2m from the windows on the northern side elevation of no. 164 Merrion Road. Having regard to the location of no. 164 Merrion Road, across the public road of Sydney Parade Avenue from the proposed site, in addition with the fenestration of the proposed dwelling, I do not consider that the window on the

second floor on the southern front elevation of the dwelling would result in an undue level of overlooking.

7.6. Conservation – New Issue

- 7.6.1. Section 15.15.2.2 of the *Dublin CDP* states that development in Conservation Areas shall respect the existing setting and character of the surrounding area and be complementary to the existing scale, building height and massing of the surrounding context. As addressed above in section 7.3, I do not consider the development to respect the setting and character of the surrounding area, which is a residential conservation area. I therefore consider that the development does not accord with the Z2 zoning objective on the site which seeks “*to protect and/or improve the amenities of residential conservation areas*”. Furthermore, I consider that the proposed development would not accord with Policy BHA7 which seeks to protect the special interest and character of ACAs. I note that the impact on the residential conservation area is a new issue in the context of this appeal and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal as set above, it may not be considered necessary to pursue the matter.

7.7. Material Contravention

- 7.7.1. The Planning Authority in their refusal stated that the development would materially contravene the provisions of the *Dublin CDP*. The reason for refusal states that by reason of its size, scale, height, orientation and proximity to the rear northeast boundary the development does not accord with the standards for infill or side garden development outlined in Chapter 15 and Appendix 18 of the *Dublin CDP*. It further states that the development would have significant negative impacts on adjoining residential amenity, would erode the character and distinctiveness of the area, would set a highly undesirable precedent for infill and side garden developments in the locality and would devalue property in the vicinity.
- 7.7.2. As addressed above in section 7.3, I consider that the development does not accord with chapter 15 of the *Dublin CDP* in relation to side-garden development and development in Conservation Areas. I note that Appendix 18 relates to ancillary residential accommodation which I do not consider relevant to the proposed development, which is for a new dwelling. I have also addressed above in section

7.6, that I do not consider the development accords with the Z2 zoning objective for the site. Section 7.5 above examines the impact on residential amenities, which I do not consider to be impacted by the development. I therefore consider that the development accords with the Z1 zoning objective on the site. However, in my opinion Chapter 15 and the Z1 and Z2 zoning objectives for the site are not sufficiently specific so as to justify the use of the term “*materially contravene*” in terms of normal planning practice. As such, I consider that no material contravention arises.

7.7.3. Notwithstanding this conclusion, should the Board consider that the development does materially contravene the *Dublin CDP*, I have assessed the development against the four criteria outlined under Section 37(2)(b) of the Planning and Development Act 2000, as amended. The four criteria outlined under Section 37(2)(b), are the criteria that allows the Board to grant permission in the event of a material contravention.

i. The development is of strategic or national importance.

7.7.4. The *Sustainable and Compact Settlement Guidelines* highlights the importance of infill development in order to achieve compact growth. However, I consider that the proposed development is not in itself of strategic or national importance.

ii. There are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned.

7.7.5. I do not consider that there are conflicting objectives in the *Dublin CDP*, as the proposed development is concerned. This is evident in policies QHSN6 and QHSN10 which support infill development and Section 15.13.3 which sets out the development standards and criteria which should be examined in infill applications.

iii. Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.

7.7.6. The *Sustainable and Compact Settlement Guidelines* support the development of infill development in order to achieve compact growth. However, having regard to the

contents of these documents, I do not consider that they would warrant an overriding of the *Dublin CDP* policies and objectives regarding the protection of residential amenities.

- iv. Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.7.7. The *Dublin CDP* took effect in December 2022 and having regard to the pattern of development in the area, I note that there are no permissions granted in the area for similar development.

7.7.8. As stated above, I do not consider that the development materially contravenes the provisions of the *Dublin CDP*. Notwithstanding my concerns in relation to the design of the development and its negative impact on the visual amenities of the area, should the Board consider that the development does materially contravene the provisions of the *Dublin CDP*, including the zoning objectives and Chapter 15, and wish to grant planning permission, I consider that the Board is constrained from doing so.

7.8. Parking

7.8.1. The observations state that there is a requirement for 1 no. car parking space for the dwelling. They also raise concerns that the applicant proposes to utilise on-street vehicular parking in the immediate area.

7.8.2. I note from the *Dublin CDP* that there is a maximum requirement for 1 no. car parking space for the site, which is located in zone 2. I further note that Section 4 in Appendix 5, in Volume 2 of the *Dublin CDP* outlines that a relaxation of maximum car parking standards will be considered in zone 2 for any site located within a highly accessible location. I have reviewed the report from the Transportation Planning Division which stated that the provision of zero car parking spaces was acceptable when having regard to the design of the garden which will have space for cycle parking and the location of the site adjacent to public transport.

7.8.3. I understand the concerns raised by the observers with regards to the potential for the dwelling to utilise on street parking on Sydney Parade Avenue. However, having regard to the size of the garden with ample space for cycle parking, the location of

the site adjacent to 2no. bus stops, approximately 170m from the Sydney Parade Dart stop, and within walking distance to a range of services and sources of employment, I consider that the provision of zero parking spaces on the site is acceptable.

7.9. Trees and Open Space

- 7.9.1. The observations have raised concerns that the development may impact the roots of the trees along Sydney Parade Avenue.
- 7.9.2. I note from the Arboricultural Assessment Impact and Tree Protection Report that the development will require the removal of 2 no. category C and 1 no. Category B tree from within the site. The Report outlines that where construction access is in close proximity to potential tree roots, tree protection matting is to be installed. The locations of tree protective matting and fencing are shown on the Tree Protection Drawing. Having regard to the location of the proposed dwelling, the construction access and the positioning of the trees along Sydney Parade Avenue, I am therefore satisfied that the development will not impact the trees along Sydney Parade Avenue. Furthermore, I consider that the removal of 3no. trees on site is acceptable in order to provide for an infill dwelling in an urban location.
- 7.9.3. The report from the Planning Authority outlines how the development addressed refusal reason no. 2 under ref. **3596/23**. Under ref. **3596/23**, the development proposed to provide a gravel surface on an area of open space located to the south of the house which would lead to a double garage. The second reason for refusal under ref. **3596/23**, related to the removal of 2 no. semi-mature trees in an area of public realm/ open space. It was considered that these trees contribute to the established line of trees along Sydney Parade and are of importance due to their visual amenity value. Noting that no works are proposed in the open space located to the south of the site, I agree with the Planning Authority, that the applicant has addressed refusal reason no. 2 under ref. **3596/23**.

7.10. Drainage

- 7.10.1. The site is located in flood zone A as identified in the *Dublin CDP*. I note the contents of the Flood Risk Assessment which has been submitted. I also note the report from the Drainage Division in the Planning Authority which has no objection to the proposed development subject to the inclusion of 5 no. conditions. Should the Board consider granting planning permission, I recommend that these conditions are included in any grant of planning permission.

7.11. Access

- 7.11.1. Pedestrian access to the dwelling is proposed via the Merrion Court Complex and the Sydney Parade Avenue gated entrance. I note that a letter of consent has been submitted from the Merrion Court Management Company confirming that this proposal is acceptable. I also note the location of the existing refuse area in the Merrion Court Complex. I consider that the proposed pedestrian entrance to the site is acceptable and will not impact the refuse storage facilities for the Merrion Court apartments.
- 7.11.2. The development seeks permission for temporary construction access off Merrion Road. I note the report from the Transportation Planning Division which states that the applicant should seek approval from the National Transport Authority to ensure that the works comply with the requirements for the Core Bus Corridor. Should the Board consider granting planning permission, I recommend that this is addressed by way of condition.
- 7.11.3. I note concerns were raised in the observations that the application includes public land. I note that pedestrian access to the site is along an existing footpath across an existing area of open space which provides pedestrian access to the Merrion Court apartments. Noting that this footpath already exists and the letter of consent from Merrion Court Management CLG, I consider the proposed access to be acceptable.

7.12. Other Matters

Planning Drawings

- 7.12.1. I note an observation raised concern that there were discrepancies in the red line between the site location map and the proposed site layout. I note that on the site

location map, the red line is shown to immediately adjoin the southern façade of the Merrion Court apartments. This corresponds with the contiguous elevations which identify the northern façade of the dwelling adjoining the southern façade of the apartments. The site layout plans however identifies that the red line is set back 1.8m from the southern façade of the Merrion Court apartments, in line with the northern façade of the proposed dwelling. Should the Board be minded to grant planning permission, it is recommended that they consider this matter further. While land title may need to be resolved, the applicant will be aware that in accordance with 34 (13) of the Planning and Development Act, 2000, as amended, a person shall not be entitled solely by reason of a permission, to carry out development.

Nature of the Application

- 7.12.2. A concern has been raised in an observation that the development may be used for student accommodation. I note that a letter in support of the application accompanied the First-Party appeal from the owners of no. 162 Merrion Road. The letter outlines that the applicants are their son and daughter in law. Having regard to the contents of the letter and the proposed drawings, I am satisfied that the development is not seeking to provide student accommodation.

8.0 AA Screening

- 8.1. Having regard to the nature and scale of the development proposed and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, either individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

10.0 Reasons and Considerations

1. The proposed development by reason of its traditional design, does not accord with the standards for infill or side garden development outlined in Chapter 15 of the Development Plan. The proposed dwelling would have significant negative impacts on visual amenity, would erode the character and distinctiveness of the area, would set a highly undesirable precedent for infill and side garden developments in the locality and would devalue property in the vicinity. 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.

Catherine Hanly
Planning Inspector

18th February 2025

11.0 Appendix 1 - Form 1

EIA Pre-Screening

An Bord Pleanála	ABP-320643-24		
Case Reference			
Proposed Development Summary	Construction of two-storey plus attic level house with 6 double bedrooms, alterations to boundary wall with Sydney Parade Avenue and temporary removal of boundary wall with Merrion Road for works access.		
Development Address	Lands to rear of 162 Merrion Road, Dublin 4, D04 P8W8		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	X	Class 10 (b) (i) of Part2: threshold 500 dwelling units	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	X	The threshold is 500 dwelling units and the proposed development is for 1 no. dwelling.	Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	X	The threshold is 500 dwelling units and the proposed development is for 1 no. dwelling.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP- 320643-24
Proposed Development Summary	Construction of two-storey plus attic level house with 6 double bedrooms, alterations to boundary wall with Sydney Parade Avenue and temporary removal of boundary wall with Merrion Road for works access.
Development Address	Lands to rear of 162 Merrion Road, Dublin 4, D04 P8W8
<p>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.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The subject development comprises the construction of an additional dwelling in the garden.</p> <p>The proposed development would not be exceptional in the context of the existing environment.</p> <p>During the construction phases, the proposed development would generate waste during excavation and construction.</p>

	<p>However, given the moderate size of the proposed house and the portion of the existing house to be demolished, I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the demolition, construction or operational phase due to the nature of the proposed use.</p>
<p>Location of development</p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The application site is not located in or immediately adjacent to any European site.</p> <p>The closest Natura 2000 site is the South Dublin Bay Special Area of Conservation (side code 000210), the South Dublin Bay proposed Natural Heritage Area (side code 000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (site code 004024) which are located approximately 0.5km to the east of the site.</p>

<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Localised construction impacts will be temporary. The proposed development would not give rise to waste, pollution or nuisances beyond what would normally be deemed acceptable.</p>
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Conclusion		
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Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	X - EIA is not required.
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.	
There is a real likelihood of significant effects on the environment.	EIAR required.	

Inspector: _____ **Date:** _____
DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)