



An
Bord
Pleanála

Inspector's Report ABP-320710-24

Development

PROTECTED STRUCTURE:

Retention of modular residential unit to rear of house (a protected structure).

Location

65 Morehampton Road, Dublin 4.

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3837/24

Applicant(s)

Iarla Morehampton Teoranta.

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

As above

Observer(s)

None

Date of Site Inspection

21st November 2024

Inspector

Kenneth Moloney

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1.0 Site Location and Description

The appeal structure is a single storey two-bedroom modular residential unit located to the rear of an existing residential property, no. 65 Morehampton Road, a protected structure. The principle building, no. 65 Morehampton Road, is a terraced three-storey Georgian property dating from the early 1800's.

The residential unit the subject of this appeal has a floor area of approximately 37 sq. metres and is situated to the rear of the back garden associated with no. 65 Morehampton Road.

The rear garden of no. 63 Morehampton Road, the adjoining property to the appeal site, is truncated as a motorcycle driving school business operates in the southern part of the rear garden and is therefore in a commercial use. The motorcycle driving school business has a separate access to a rear, accessing onto Morehampton Terrace.

The rear garden boundary of no. 65 Morehampton Road adjoins the gable elevation of no. 13 Marlborough Road.

2.0 Proposed Development

The proposed development is for the **retention** of a single storey detached two-bedroom residential unit located to the rear and within the curtilage of an existing 3-storey house, which is a protected structure.

The proposed floor plan comprises of kitchen / living area to the front of the unit and two bedrooms situated to the rear of the unit.

The apex roof height of the proposed unit is approximately 3.5 metres, and the unit is finished in painted timber / composite cladding. The subject residential unit has access to the front of the structure with no access to the rear.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority **refused** planning permission for the following reasons.

1. Having regard to the location of a dwelling in the rear garden of an existing dwelling and the provisions of the Dublin City Development Plan 2022 – 2028, it is considered that the proposed layout would conflict with the established pattern of development and character of the area, would provide poor quality accommodation and private open space for the future occupiers and would cause a significant loss of residential amenity to the existing property by way of fragmented private amenity space, loss of privacy and loss of outlook. The proposed development would, therefore, be contrary to Section 15.13.4 Backland Development of the Dublin City Development Plan, 2022-2028, would devalue property in the vicinity, would set an undesirable precedent for similar type development and would be contrary to the proper planning and sustainable development of the area.
2. Taking into account the policies and objectives of Dublin City Development, 2022-2028, including Policy BHA2 'Development of Protected Structures', the proposed retention of the residential unit, by way of its design, materials and siting, is considered to be incongruous and visual obtrusive and has resulted in causing serious injury to the special architectural character of the Protected Structure and its setting. The proposed retention would devalue property in the vicinity and would create an undesirable precedent for similar type development. The proposed retention is contrary to the Dublin City Development Plan, 2022-2028, and the proper planning and sustainable development of the area.

3.2. Prescribed Bodies

- None

3.3. Third Party Observations

The following is a summary of a third-party observation from an occupant of the modular residential unit.

- The existing residential unit provides accommodation near workplace.
- It is not possible to find alternative accommodation within reasonable distance to work.

4.0 Planning History

- None

4.1. Planning Authority Reports

4.1.1. The Planner's report, in summary makes the following points;

- Floor area fails to comply with space standards outlined in Table 5.1 of the Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).
- Proposal fails to comply with private open space standards or separation distances outlined in CDP.
- Contrary to the pattern of development in the local area.
- Would negatively impact on the protected structure.
- The proposal would devalue the main property on the site and set an undesirable precedent for poor quality development.

4.1.2. Conservation Officer's Report, in summary makes the following points;

- Concerns in relation to significant detrimental impact that the structure has had on its setting and curtilage.
- The structure is considered incongruous to the special architectural character of the protected structure and its setting and would set an undesirable precedent for other such developments.

4.1.3. Transportation Planning Division

- Further information requested for the following; (a) clarify access to the proposed unit in line with development plan standards, and (b) submit revised plans providing for cycle parking to development plan standards.

4.1.4. Engineering Department – Drainage Division

- Additional information sought. Applicant is requested to demonstrate appropriate SuDS in all new development.

5.0 Policy Context

5.1. National Guidelines

The Architectural Heritage Protection Guidelines for Planning Authorities, 2004, offers guidance to planning authorities on determining planning applications in relation to protected structures.

Chapter 2 of the Guidelines deals with Protected Structures, while Chapter 3 deals with Architectural Conservation Areas.

Chapter 6 deals with Development Control in relation to Protected Structures. This outlines the requirements in relation to the content of applications involving protected structures, notification of prescribed bodies (para 6.6), and the advisability of requiring applicants to submit, with their proposals, an architectural heritage impact assessment (para 6.4.15). Advice is given on the framing of conditions, including recording where the dismantling of part of a protected structure is permitted. It is noted that the demolition of a protected structure, or of elements which contribute to its special interest, may only be permitted in exceptional circumstances (Section 57(10)(b) of the 2000 Act).

5.2. Development Plan

The appeal site is zoned objective Z2, in the Dublin City Development Plan, 2022 – 2028, the objective which is *‘to protect and improve the amenities of residential conservation areas’*.

The relevant policy provisions in relation to the proposed development include the following;

- Policy Objective BHA2 Development of Protected Structures
- BHA9 Conservation Areas

The following provisions in Chapter 15 (Development Standards) are relevant to the appeal.

Section 15.11.1 – ‘Floor Areas’.

Houses shall comply with the principles and standards outlined in Section 5.3: ‘Internal Layout and Space Provision’ contained in the DEHLG ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007)

Section 15.11.3 ‘Private Open Space’

refers to the following considerations (in summary)

- A minimum of 10 sq. m. per bedspace is normally required.
- Generally, 60-70 sq. m. is sufficient for houses in the city.
- Proposals in the inner city, a standard of 5 – 8 sq. m of private open space per bedspace will be applied.

Section 15.13.4 ‘Backland Housing’

refers to the following considerations (in summary)

- Compliance with design standards in relation to private open space, unit size and room size.
- Adequate separation distances to ensure overlooking is minimised.
- Appropriate access.
- The interrelationship, with established development, of the proposed backland unit.
- The impacts on existing properties in terms of sunlight, daylight and visual impact.
- Materials and finishes with regard to existing character of the area.
- Proposed backland unit shall be located not less than 15 metres from the rear façade of existing dwelling, and with a minimum rear garden of 7 metres.
- Relaxation of rear garden length, once private open spaces standards are met.

5.3. Natural Heritage Designations

- None relevant.

5.4. EIA Screening

Having regard to the nature and limited scale of the development and the separation of the site from the nearest sensitive receptor, 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. Refer to Form 2 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

- Unit meets the technical standards of the Building Regulations, whereas the main building does not.
- The main property would not be devalued by the subject development as is supported by the fact that no submissions were received.
- Unit has replaced poorly constructed sheds. The floor area of the subject unit replaces the floor area previously lost.
- Modular construction means that the unit can be dismantled and removed meaning minimal impact on the environment.
- Unit is not visible from the public road resulting in no visual impact.
- The buildings immediately adjoining the site to the mews lane are modern industrial structures which counters the local authority opinion that the subject unit is not within the normal parameters of proper planning and development.
- Unit allows staff to dwell at their place of work consistent with proper planning and development.

- Unit allows for a high standard of residential amenity without any permanent change to the protected structure.

6.2. **Applicant Response**

- None

6.3. **Planning Authority Response**

The planning authority's response is summarised as follows;

- ABP are requested to uphold the Council's decision to refuse permission.
- Should permission be granted conditions in relation to development contribution, social housing and naming and numbering are requested to be attached.

6.4. **Observations**

- None

7.0 **Assessment**

Having examined the application details and all other documentation on file, carried out a site inspection, and having regard to the relevant local/regional/national policies and guidance, I consider that the key issues on this appeal are as follows:

- Principle of Development and Compliance with Policy
- Architectural Heritage
- Other Matters

7.1. Principle of Development and Compliance with Policy

The appeal site is zoned 'Residential Neighbourhoods (Conservation Areas)' and contains a protected structure. Therefore, having regard to the zoning objective of

the appeal site the proposed residential unit on the subject site is acceptable in principle.

The Development Plan defines backland development as the development of land that lies to the rear of an existing property or building line, which would therefore apply to the proposed development. Accordingly, the relevant criterion for assessing the proposed development is Section 15.13.4 'Backland Housing' of the Dublin City Development Plan, and I have summarised the relevant criteria in paragraph 5.2 above. This includes relevant requirements in respect of compliance with residential amenity standards, provision of adequate separation distances to ensure residential privacy is maintained, and adequate depth of rear gardens. I will address each of the criteria in turn.

- *Compliance with design standards in relation to private open space, unit size and room size.*

In terms of assessing amenity for future occupants, I note that Section 15.11.1 'Floor Areas' of the Dublin City Development Plan, 2022 – 2028, outlines that houses shall comply with the principles and standards outlined in Section 5.3: 'Internal Layout and Space Provision' contained in the DEHLG 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007).

The Department of Environment, Heritage and Local Government publication 'Quality Housing for Sustainable Communities' (2007), in Table 5.1 provides space provision and sizes for typical dwellings and for a single storey 2-bed unit the target floor area is 70 sq. metres.

I note from the submitted planning application form that the floor area of the proposed residential unit is 37 sq. metres which is an inadequate provision of floor area and as such an unacceptable level of residential amenity for the future occupants contrary to the DoEHLG Guidelines 'Quality Housing for Sustainable Communities' (2007) and in turn Section 15.11.1 'Floor Areas' of the City Development Plan, and would therefore set an undesirable precedent for a similar type of development in the area.

In respect of private open space provision, I would note that Section 15.11.3 'Private Open Space' of the City Development Plan indicates that a minimum private open space provision of 10 sq. metres per bedspace will be required. The proposed development includes 4 no. bedspaces, and as such the minimum required private open space is 40 sq. metres for the proposed development.

There is a rear garden space situated behind the proposed housing unit, which measures approximately 24.75 sq. metres. I noted from my site inspection, also evident from the submitted drawings, that there is an existing timber shed located in this rear space which would reduce the amenable space further. The proposed rear amenity space would therefore be contrary to Section 15.11.3 'Private Open Space' of the City Development Plan and would provide poor quality amenity for future occupants and set an undesirable precedent for a similar type of development in the area.

- *Provision of adequate separation distances to ensure privacy is maintained and overlooking is minimised.*

In terms of the proposed impacts on established residential amenities I would consider, based on a visual observation of the area, that the inadequate size of the rear amenity space, outlined above, for the proposed residential unit results in overdevelopment of the restricted site and would therefore have an overbearing impact on the neighbouring residential amenities at no. 67 Morehampton Road in terms of visual overbearance.

The proposed development, given its single storey height, would not give rise to any overlooking directly towards no. 67 Morehampton Road. However, as I have outlined below, under a separate criterion, the inadequate separation distance from the proposed housing unit to the principle house (no. 65 Morehampton Road) results in overlooking of the amenities and rear garden space of the existing house given the inadequate separation distances as required in Section 15.13.4 of the Development Plan.

- *That safe and secure access for car parking and service and maintenance vehicles is provided.*

The proposed development includes no associated car parking provision, and I note that car free developments may be considered acceptable, in accordance with the Development Plan provisions, at this location. The report from the Transportation Planning Division, dated 22nd July 2024, outlined that the Division has serious concerns with the proposed access through the existing house, no. 65 Morehampton Road, and recommended further information to address this issue. The Planning Authority decided not to pursue this issue having regard to the substantial issues in relation to planning and conservation. I would consider that this would be a new issue and having regard to the substantial issues I would recommend to the Board that this issue is not pursued.

- *The scale, form and massing of the existing properties and interrelationship with the proposed backland development.*

The gable elevation of no. 13 Marlborough Road abuts the rear boundary to the appeal site and therefore the rear garden boundary associated with the proposed housing unit. On average the rear garden depth of the proposed unit is approximately 3.5 metres, which is below the minimum required garden depth distance of 7 metres. Furthermore, having regard to the orientation of no. 13 Marlborough Road relative to the proposed housing unit, the proposed rear amenity space would be overshadowed which would diminish its amenity value.

- *The impacts on either the amenity of the existing properties in terms of daylight, sunlight, visual impact etc. or on the amenity obtained with the unit itself.*

As referred above the location and positioning of no. 13 Marlborough Road would cause overshadowing, and therefore diminish residential amenities for the proposed housing unit. However, given the single storey nature of the proposed housing unit the proposed development is unlikely to adversely affect any existing adjacent properties in terms of daylight and sunlight. Nevertheless, as outlined above and

given the overdevelopment of this restricted site I would consider that the proposed development would have an overbearing impact on the neighbouring residential amenities at no. 67 Morehampton Road in terms of visual overbearance given its scale on a restricted site and its proximity to neighbouring boundaries.

- *The materials and finishes proposed with regard to existing character of the area.*

In paragraph 7.2 below I outline the locational context of the appeal site in terms of conservation merit. The appeal site contains a protected structure, adjoins protected structures and is located within an Architectural Conservation Area. Therefore, the subject development is located in an area of special architectural character.

The proposed single storey modular structure, for retention, is generally a timber / composite cladding finished structure, however I consider in paragraph 7.2 below that the scale of the proposed development on a restricted site coupled with the size of established rear gardens in the immediate area has the potential to undermine the special architectural character setting of the area and further has the potential to set an undesirable precedent for other such development and therefore would adversely affect the special architectural character.

- *A proposed backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.*

The proposed unit is set back 13.5 metres from the principle residential house, no. 65 Morehampton Road, and on average approximately 3.5 metres from the property to the rear, no. 13 Marlborough Road, which adjoins the rear boundary of the appeal site. The proposed residential unit would therefore not meet this criterion in respect of minimum separation distances and minimum rear garden depth and therefore, due to consequential overlooking and visual overbearance, by reason of inadequate separation distances, the proposed housing unit would adversely affect the established residential amenities of no. 65 Morehampton Road.

- *A relaxation in rear garden length, may be acceptable, once sufficient open space provided to serve the proposed dwelling and the applicant can demonstrate that the proposed backland dwelling will not impact negatively on adjoining residential amenity.*

As outlined above the proposed backland dwelling has insufficient private open space provision in accordance with Section 15.11.3 of the City Development Plan, as such a relaxation of the rear garden length would not be considered favourable in the interest of residential amenities for future occupants.

Overall I would consider that the proposed residential development by reason of the inadequate quality and quantity of private open space provision, the limited length of the proposed rear gardens, for both the principle house and the residential unit for retention, would offer a poor form of residential amenity for future residents, would represent overdevelopment of a restricted site, would be visually obtrusive, giving rise to overbearing and would result in overlooking and loss of privacy to the properties in the immediate vicinity of the site, and would therefore be contrary to Section 15.13.4 'Backland Development' of the Dublin City Development Plan, 2022-2028.

The proposed development would set an undesirable precedent for other such development in the area, seriously injure the residential amenity of the area by reason of not meeting the relevant amenity standards of the Development Plan and would, therefore be contrary to the proper planning and sustainable development of the area.

7.2. Architectural Heritage

The single storey residential unit, the subject of the appeal, is situated within the curtilage of a protected structure, no. 65 Morehampton Road, and is also located within a residential Conservation Area in accordance with the provisions of the Dublin City Development Plan, 2022 – 2028. In addition, the adjoining properties either side of no. 65 Morehampton Road are protected structures, and the property to the rear of the appeal site, no. 13 Marlborough Road, is also a protected structure. I would consider therefore that the subject development is located in an area of special architectural character.

I would note the Conservation Officer's report recommends refusal on the basis that the structure, by way of its design, materials and siting, is considered incongruous to the special architectural character of the protected structure and its setting, and therefore would set an undesirable precedent for other such developments.

In considering the proposed development I would note development plan policy objective BHA2 'Development of Protected Structures', in particular the following provisions.

'Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials'.

'Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure'.

The proposed single storey modular structure, for retention, is generally a timber / composite cladding finished structure. The width of the proposed structure is approximately similar to the width of the existing rear garden, and the height of the structure extends over the neighbouring boundary wall with no. 67 Morehampton Road and is therefore visible from the rear of this property.

I noted from my site inspection that many of the original rear elevation features of no. no. 65 Morehampton Road, including windows, downpipes and roof tiles have been replaced. Notwithstanding the modern interventions, the scale of the proposed development is significant having regard to the size of the established rear garden and its proximity to adjacent properties, all protected structures, including no. 13 Marlborough Road. I would consider that the scale of the subject development would have the potential to undermine the special architectural character of the area and further has the potential to set an undesirable precedent for other such developments contrary to policy objective BHA2 'Development of Protected Structures' of the City Development Plan.

7.3. Other Matters

In relation to the appellants point that the proposed development complies with the technical standards of the Building Regulations, whereas the principle house is non-compliant. The Building Regulations relate to a separate code, therefore, if planning permission were obtained, the applicant must ensure that the proposal complies with the above legislation separately.

8.0 **AA Screening**

Having regard to the nature and small scale of the proposed development 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, individually, or in combination with other plans or projects, on a European site.

9.0 **Recommendation**

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

10.0 **Reasons and Considerations**

1. The proposed residential development by reason of the inadequate quality and quantity of private open space provision, and the limited length of the proposed rear gardens, for both the principle house and the residential unit for retention, would offer a poor form of residential amenity for future residents, would represent overdevelopment of a restricted site, would be visually obtrusive, giving rise to overbearing and would result in overlooking and loss of privacy to the properties in the immediate vicinity of the site, and would therefore be contrary to Section 15.13.4 'Backland Development' of the Dublin City Development Plan, 2022-2028. Furthermore, the proposed housing unit, the subject of this appeal provides an inadequate provision of floor areas and therefore an unacceptable level of qualitative standard in which would be contrary to the DoEHLG Guidelines 'Quality Housing for Sustainable

Communities' (2007). The proposed development would therefore set an undesirable precedent in the area, seriously injure the residential amenity of the area and would, therefore be contrary to the proper planning and sustainable development of the area.

2. It is considered no. 65 Morehampton Road contributes positively to the historic urban form and character of the area forming part of an area of special architectural character. The proposed retention of the residential unit, by way of its design, materials and siting, would have a detrimental effect on the character and setting of the special architectural character of the Protected Structure and its setting, would be contrary to Policy BHA2 'Development of Protected Structures' of the Dublin City Development Plan, 2022 – 2028, and would seriously injure the visual amenities and the architectural and historical interest of the area and would therefore be contrary to the proper planning and sustainable development of the area.

Kenneth Moloney
Senior Planning Inspector

15th January 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320710-24		
Proposed Development Summary	Retention of modular residential unit to rear of house (a protected structure).		
Development Address	65 Morehampton Road, Dublin 4.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
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	✓		
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No	✓		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓		
5. Has Schedule 7A information been submitted?			

No	✓	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-320710-24
Proposed Development Summary	Retention of modular residential unit to rear of house (a protected structure).
Development Address	65 Morehampton Road, Dublin 4.
<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).	No impacts.
Location of development (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).	No impacts.

Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	No impacts.	
Conclusion		
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.	No
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)