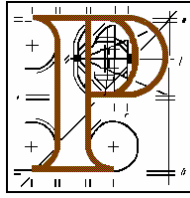


An Bord Pleanála



Inspector's Report

PL 29S. 235281

Development

Description: Construction of 1 no. two storey mews dwelling with screened roof terrace at rear, balcony to internal courtyard and approx. 3 sm solar panels to southwest roof pitch

Address: Rear of 25 Newbridge Avenue, Sandymount, Dublin 4

Planning Application

Planning Authority: Dublin City Council

Planning Authority Reg. Ref.: 2140/09

Applicant: Clare Kelly

Type of Application: Permission

Planning Authority Decision: Refuse

Planning Appeal

Appellant: Clare Kelly

Type of Appeal: First Party

Observers: None

Date of Site Inspection: 17/2/10

Inspector: Louise Kiernan

Appendices: Appendix 1 Site Context Map
Appendix 2: Zoning Map
Appendix 3: Key Map and Associated Photos
Appendix 4: Dublin City Development Plan extracts

1.0 SITE LOCATION AND DESCRIPTION

The site with a stated area of 123 sq.m. is located to the rear of Newbridge Avenue, in Sandymount, Dublin 4, north of the city centre (see appendix 1: site context map). The site is located in the rear garden area of no. 25 Newbridge Avenue, which is a single storey structure mid-terrace dwelling. The site is also located within the River Dodder conservation area (see appendix 2: Zoning Map). There is currently a vehicular entrance to the rear of the site, accessed via a private laneway. To the east there is currently a mews dwelling under construction. There are a number of other mews dwellings located along this laneway. The Lansdowne Village housing development is located on the opposite side of the laneway. Directly opposite the site the form of development at Lansdowne Village consists of a block of back-to-back units. There are balconies at the first floor level of these units. The subject site and surrounding area are further documented in Appendix 3: Key Map and associated photos.

2.0 PROPOSED DEVELOPMENT

The proposed development comprises of the construction of 1 no. two-storey mews dwelling with screened roof terrace at rear, balcony to internal courtyard and approx. 3 sm solar panels to southwest roof pitch. A parking space is proposed at surface level. The total floor area of the proposed development is indicated as 104 sq.m. A plot ratio of 85% and site coverage of 43% is indicated.

3.0 FURTHER INFORMATION SOUGHT AND RECEIVED

On 26/1/09 the Planning Authority sought further information on a number of issues as follows: -

1. The Planning Authority has concerns regarding the water arrangements to serve the proposed development, as there is no indication as to how a suitable potable water supply can be provided for the proposed development. In this regard the applicant should note that it is not acceptable to the Water Division to bring a supply pipe through the no. 25 Newbridge Avenue site, and there is no suitable pipe in the laneway adjacent to the proposed development. In the event that the applicant proposes to lay a pipe along the private laneway, submit
 - (a) A design of the proposed pipe.
 - (b) Copies of all necessary permissions and approvals to lay and maintain this pipe.
2. Submit documentary evidence of legal interest to access the proposed development via the laneway.
3. The Planning Authority has concerns regarding the levels of daylight available to serve the bedroom at ground floor level, which contains a window fronting onto the courtyard parking bay. The applicant is requested to submit revised proposals to improve the level of daylight to this room. Modifications to the internal layout may be considered in revised proposals for increased daylight in this room.

4. (a) Demonstrate how the 3-part fanfold door can be operated.
- (b) Submit a revised front elevation, which shall show the fanfold door when closed.
- (c) Clarify the location of a window serving the storeroom at ground floor level, which is shown on elevation but not on plan.

A response to the aforementioned further information request was received by the Planning Authority on 17/9/09 and is summarised as follows: -

1. Water Main – It was originally intended to build a terrace of 3 no. mews dwellings at the rears of no.'s 21, 23 and 25 Newbridge Avenue. Separate permissions were obtained for each site but changing ownership of no. 25, changing circumstances and economic climate put a temporary halt to the project. It was intended to take a new watermain from Newbridge Avenue to the rear of the site through the side passage of no. 21 to serve the 3 new dwellings. There is every likelihood that the mews at the rear of no. 21 will start very soon allowing the water main to be brought to no. 25. No. 25 is presently unoccupied and extensive upgrading and renovations including treatment for rising damp and wet rot, new insulated ground floor etc. are presently being carried out. The removal of the existing ground floor will enable a new watermain to be laid from Newbridge Avenue through the house to the site at the rear in a suitable trench or by the much used boring technique. Full details of the preferred method will be submitted to the Water Division if permission is granted.
2. Applicant's right to use and access the laneway - No. 25 Newbridge Avenue is contained in the site of lease dated 18/12/1874. Have marked on an enclosed copy of the lease map attached the approximate site divisions of no.'s 21 to 31. Enclose the opinion of Gavin Ralston SC, prepared for planning application for no. 21 but applies equally to no. 25. It is stated that the extract from the lease and the opinion clearly shows the applicants right to use and access the proposed development via the laneway. This was accepted from documentary evidence submitted with the earlier now expired permission ref. 1602/04.
3. Ground floor bedroom window – the window to this room is now moved to the corner of the room beyond the one of the balcony over. The window is also now shown as vertical rather than horizontal and is in excess of 2 sq.m. or more than 20% of the floor area of the room. For security reasons a bedroom with a window directly on the laneway without a setback of some form of shutter or grill is not desirable. The glass block window serving the ground floor bin store is shown on enclosed drawing 322/1/8.
4. The 3-part fanfold courtyard door – This door is shown in its closed position on the enclosed drawing no. 332/1/8. The door will contain a pass door when a vehicle is not needed to be taken in or out. Details of the PC Henderson's Tangent Folding 301 gear, components and mechanisms are also enclosed.

4.0 DEVELOPMENT PLAN

Dublin City Council Development Plan 2005-2011

The site is zoned Z1 'To protect, provide and improve residential amenities'. The site is also located within the River Dodder conservation area. The following Sections also apply to the subject site (appendix 4):

14.4.1 Residential (General) – Zone Z1

15.9.19 Mews Dwellings

15.10.4 Development in Conservation Areas

5.0 PLANNING HISTORY

Subject Site:

1602/04 – permission granted for 1 no. two storey mews dwelling with screened roof terrace at rear of no. 25 Newbridge Avenue.

Other relevant planning applications in the vicinity:

No. 21 Newbridge Avenue:

PL 29S. 215607 (2225/05) – An Bord Pleanála granted permission for the erection of 1 no. two-storey mews dwelling with screened roof terrace at rear of no. 21 Newbridge Avenue.

No. 23 Newbridge Avenue:

PL 29S. 215606 (2223/05) – An Bord Pleanála granted permission for the construction of 1 no. two-storey mews dwelling with screened roof terrace at the rear of no. 23 Newbridge Avenue.

6.0 REPORTS RECEIVED

Water Services Division report dated 2/3/09:

This application cannot be considered as there is no indication from the applicant as to how a suitable potable water supply can be provided for the proposed development. It would not be acceptable to bring a supply pipe through the no. 25 Newbridge Avenue site and there is no suitable pipe in the laneway adjacent to the proposed development. Additional information should be sought from the applicant on this matter. In the event that the applicant proposes to lay a pipe along the private laneway, the additional information should include:

1. A design of the proposed pipe,
2. Copies of all necessary permissions and approvals to lay and maintain this pipe.

Subsequent report on additional information dated 28/9/09:

It is recommended that this application be refused. The additional information submitted by the applicant dated September 17th, 2009 is not acceptable to the Water Services Division. The proposal to bring a water supply pipe to the proposed house through the curtilage of another premises is contrary to the regulations of the City Council and is not acceptable.

Drainage Division report dated 4/3/09 – no objection subject to a number of conditions.

7.0 PLANNING AUTHORITY'S DECISION

Dublin City Council refused permission for the proposed development for 1 no. reason as follows: -

'The proposed development would, if permitted, be premature due to the failure to provide a satisfactory connection to the water supply, thereby resulting in deficiency in the provision of water supply to the proposed development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area'.

8.0 GROUNDS OF APPEAL

This is a First Party Appeal by NA Carroll Architects on behalf of Clare Kelly against the decision of Dublin City Council to refuse permission for the proposed development. The main grounds of the appeal are summarised as follows: -

- A possible watermain to no. 25 could be made available through no. 21 to serve the mews house as detailed on the enclosed drawing prepared by McKenna Pearce, Consulting Structural and Civil Engineers.
- Consent by way of wayleaves and easements from the owners of both no.'s 21 and 23 would be available and letters are enclosed of intent to this end.
- A connection by way no. 21 could be considered a temporary measure until the laneway is taken in charge when it could be taken from the laneway.
- The Village Management Limited has requested the Council to take the laneway in charge and understand that this is being pursued at the moment. Enclose a copy of the letter from the Managements solicitor stating this request.
- As further applications for mews developments for the remaining sites in the laneway may be made due to the demand for such developments, the likelihood is that the Council will take the laneway in charge as soon as possible.

A letter from McKenna Pearce, Consulting Structural and Civil Engineers is included as part of the appeal submissions which details 2 no. potential options shown on an attached drawing for addressing provision of a satisfactory water supply as follows: -

- Option no. 1 – have right of access to the mews laneway, which is under the ownership of the Management Company at Landsdowne Village but are prohibited from cutting a trench and bringing a watermain down this land. It is hoped this lane will be taken in charge by the Council, which would then allow a connection down the laneway connection to the public watermain on the access road.
- Option no. 2 – a proposed new water supply connection at the side of no. 21, which will run to our site at rear of no. 25.
- Option 1 is preferable; however option 2 allows the applicant to make a connection if the lane remains private.

9.0 RESPONSES

Local Authority Response (Water Services Division):

The proposed method of water supply as outlined in the appeal to An Bord Pleanála is to install a watermain through the curtilage of no.'s 21 and 23 Newbridge Avenue and thence to the proposed mews to the rear of no. 25 Newbridge Avenue. The proposal is not acceptable to the Water Services Division for the following reasons:

1. It contravenes the Dublin City Council Waterworks Regulations 1975. Section 25 of the regulations states that 'the service pipe to each premises shall lie wholly within the curtilage of that premises'.
2. The problems which can arise with a pipe going through another premises include
 - Blockage or partial blockage
 - Leakage
 - Accidental damage
 - Wilful damage
 - Difficulty in subsequent access due to the construction of sheds, garages, extensions, garden features etc.
 - The existence of a wayleave is not a panacea in these situations as the option of legal proceedings could be seen as a last resort between neighbours in such situations. This would apply in particular for example if there was a partial blockage in such a pipe. This might result in a reduction in the quality of a water supply and not a total cut off. Dublin City Council has found itself coming under pressure to intervene and remedy such situations in the past.
3. The time involved in resolving situations such as outlined above is substantial and out of all proportion to the scale of the works as such situations are generally unmapped and/or forgotten about. This would apply in particular where premises change hands etc.
4. The proposal to consider a pipe through no. 21 Newbridge Avenue as a temporary arrangement is not acceptable as temporary arrangements tend to not be subsequently altered. In addition, changing the method of supply at some undetermined date in the future would be difficult and disruptive as it would be necessary to undergo new excavations in restored areas.
5. Dublin City Council spends public money on an ongoing basis in undoing similar situations to that proposed in the appeal (which were the norm in certain situations in the historical past). It is not acceptable to allow similar situations to arise again.
6. A precedent has been set on the lane as a 100mm watermain was laid from Newbridge Avenue to the rear of No.'s 1 and 3 Newbridge Avenue and used to supply water to the mews houses built to the rear in this area.
7. There is an onus on the local authority to take an overall look at situations such as this and to have a general policy, which should be applicable in all cases. The view of the City Council is that a 100mm main along the rear lane is the only acceptable method of supplying water to any mews houses, which may be built on the lane.

10.0 ASSESSMENT

I am satisfied that the main issues in this appeal are as follows: -

1. Principle of the Development and Adequate Water Supply
2. Visual and Residential Amenity Impact

I will deal with each of these issues in turn: -

1. Principle of the Development and Adequate Water Supply

The subject development was refused for 1 no. reason by the Local Authority as it was considered that: -

'The proposed development would, if permitted, be premature due to the failure to provide a satisfactory connection to the water supply, thereby resulting in deficiency in the provision of water supply to the proposed development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area'.

In this regard I note that the Water Services Division in their initial assessment of the application (as indicated in their report dated 2/3/09) stated that this application cannot be considered, as there is no indication from the applicant as to how a suitable potable water supply can be provided for the proposed development, that it would not be acceptable to bring a supply pipe through the no. 25 Newbridge Avenue site and there is no suitable pipe in the laneway adjacent to the proposed development. Subsequently additional information was submitted by the applicant dated September 17th, 2009. However in the Water Division's subsequent report on the additional information submitted (report dated 28/9/09) it was again recommended that this application be refused, as the proposal to bring a water supply pipe to the proposed house through the curtilage of another premises is contrary to the regulations of the City Council and is not acceptable.

While the provision of water supply to the site via the installation of a watermain through the curtilage of no.'s 21 and 23 Newbridge Avenue and thence to the proposed mews to the rear of no. 25 Newbridge Avenue is not acceptable to the Water Services Division for a number of reasons, I note that permission has previously been permitted on the site as per 1602/04 for 1 no. two storey mews dwelling with screened roof terrace at rear of no. 25 Newbridge Avenue. Although said permission has subsequently expired and has not been implemented, I nonetheless consider that this establishes the principle of mews type development on this site. Water supply was not an issue in said case. I also note that An Bord Pleanála have accepted the principle of similar type mews development along this laneway on the adjoining sites to the east at no. 21 Newbridge Avenue as per PL 29S. 215607, and at no. 23 Newbridge Avenue as per PL 29S. 215606. Water supply was not considered an obstacle by the Board in the granting of the previous developments. Accordingly applying the same principles, I do not consider that the provision of an adequate water supply is an adequate reason for refusal in the subject case where the precedent of mews type development has already been established.

In relation to the provision of an adequate potable water supply to service the site and proposed development, as part of the First Party appeal submission a letter from McKenna Pearce, Consulting Structural and Civil Engineers is included which details 2 no. potential options shown on an attached drawing for addressing provision of a satisfactory water supply as follows: -

- Option no. 1 – It is hoped the mews lane will be taken in charge by the Council, which would then allow a connection down the laneway connection to the public watermain on the access road.
- Option no. 2 – a proposed new water supply connection at the side of no. 21, which will run to our site at rear of no. 25.

It is submitted by the appellant that a connection by way of no. 21 could be considered a temporary measure until the laneway is taken in charge when it could be taken from the laneway, and that as further applications for mews developments for the remaining sites in the laneway may be made due to the demand for such developments, the likelihood is that the Council will take the laneway in charge as soon as possible. It is submitted by the First Party appellant that the Village Management Limited has requested the Council to take the laneway in charge and understand that this is being pursued at the moment. In this regard a copy of the letter from the Management's solicitor stating this request is enclosed as part of the appeal submission. However I do not consider that this can be taken as a guarantee that said laneway may be taken in charge. The mews laneway is currently under the ownership of the Management Company at Landsdowne Village, and as such the applicant is prohibited from cutting a trench and bringing a watermain down this land. Therefore while option 1 may be the preferable option, I do not necessarily consider that it is achievable.

Accordingly should the Board be mindful to grant permission for the proposed development, the provision of a water supply via the existing dwelling on the site, or alternatively via a wayleave through no 21 and no. 23 may be more realistic (option no. 2). It is submitted by the appellants that a possible watermain to no. 25 could be made available through no. 21 to serve the mews house as detailed on the enclosed drawing prepared by McKenna Pearce, Consulting Structural and Civil Engineers. It is also indicated that consent by way of wayleaves and easements from the owners of both no.'s 21 and 23 would be available and letters are enclosed of intent to this end. Upon site inspection I noted that a trench had been dug in the front garden of no. 21 Newbridge Avenue (see appendix 3: site photos- photos 14 and 15). Accordingly I consider that should the Board be mindful to grant permission for the proposed development, that this should be addressed by way of condition that said wayleave agreements be submitted to the Planning Authority for their written agreement prior to the commencement of any development. Alternatively as indicated in the further information response received by the Planning Authority on 17/9/09 the water supply could be supplied via the existing site as it is indicated that the removal of the existing ground floor will enable a new water main to be laid from Newbridge Avenue through the house to the site at the rear in a suitable trench or by boring technique.

2. Visual and Residential Amenity Impact

In relation to visual impact, I consider that the proposed design is acceptable and is in keeping with designs previously permitted by An Bord Pleanála for other nearby mews

developments on the adjoining sites at no. 21 Newbridge Avenue as per PL 29S. 215607, and at no. 23 Newbridge Avenue as per PL 29S. 215606.

In relation to residential amenity issues, as per the Dublin City Development Plan 2005-2011 the site is zoned Z1 '*To protect, provide and improve residential amenities*'. In this regard I note that the proposed design which contains a first floor balcony area and rear terrace area, is in keeping with similar designs which also contained these elements on the adjoining sites, as previously permitted by An Bord Pleanála for other nearly mews developments on the adjoining sites at no. 21 Newbridge Avenue (PL 29S. 215607), and at no. 23 Newbridge Avenue (PL 29S. 215606). It is also indicated that the first floor balcony area is to have patent glazing to detail, and that the rear terrace is to have an opaque glass screen which is considered acceptable from a residential amenity aspect.

Specifically in relation to the concerns expressed by the Planning Authority regarding the levels of daylight available to serve the bedroom at ground floor level which contains a window fronting onto the courtyard parking bay, the local authority requested by way of further information the applicant to submit revised proposals to improve the level of daylight to this room. By way of further information revised drawing 322/1/8 has been submitted to the Planning Authority on 17/9/09 indicating the window in the ground floor bedroom moved to the corner of the room beyond the balcony over. It is also indicated that the window is now shown as vertical rather than horizontal and is in excess of 2 sq.m. or more than 20% of the floor area of the room, and that for security reasons a bedroom with a window directly on the laneway without a setback of some form of shutter or grill is not desirable. I have examined the design drawings of the developments on the adjoining sites previously permitted by An Bord Pleanála at no. 21 (PL 29S. 215607), and at no. 23 (PL 29S. 215606), and in this regard I note that said developments previously permitted by An Bord Pleanála also had bedrooms with windows at ground floor level which front onto a proposed car parking bay and are overhung by a balcony area. However this arrangement was considered acceptable to the Board, and accordingly as the proposed development is similar in this regard I consider that the precedent for such development is acceptable.

11.0 CONCLUSION

In this case, taking account of the planning history pertaining to the site, and the previous developments previously permitted by An Bord Pleanála along this mews laneway, I consider that the proposed development is acceptable. In order to ensure an adequate potable water supply, I recommend that the development be conditioned that prior to commencement of development details of an adequate potable water supply to service the site be submitted to and agreed in writing with, the planning authority. In default of agreement, the matters in dispute should be referred to An Bord Pleanála for determination.

12.0 DECISION

In the light of the above Assessment, I recommend that permission be granted subject to the following reasons and considerations: -

REASONS AND CONSIDERATIONS

Having regard to the provisions of the Dublin City Development Plan 2005-2011 and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below the proposed development would not seriously injure the visual amenity of the streetscape or the character and residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted the 17th day of September 2009 and by the further plans and particulars received by An Bord Pleanála on the 10th day of November, 2009, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

In default of agreement, the matters in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. Prior to commencement of development details of an adequate potable water supply to service the site, indicating one of the following options below, shall be submitted to and agreed in writing with, the planning authority:-
 - a) A connection to the public watermain via the adjoining laneway to the north,
 - b) A connection to the public watermain via the existing dwelling to the south (no. 25 Newbridge Avenue),
 - c) A way leave agreement ensuring a water supply connection to service the site via the side of no. 21 Newbridge Avenue, and the rear of no. 21 and no. 23 Newbridge Avenue.

Reason: In order to ensure an adequate potable water supply to service the site

3. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Roof colour shall be blue-black, black, dark brown or dark grey in colour only.

Reason: In the interest of visual amenity.

4. The entire premises shall be used as a single dwelling unit.

Reason: To prevent unauthorised development.

5. Where the occupants of the proposed mews house own or use a motor vehicles which is based at the mews house, nothing shall be stored or placed in the proposed courtyard parking bay which would prevent the regular parking of the car in that location.

Reason: To minimise on-street parking.

6. Provision of car parking space shall be in accordance with the requirement of the planning authority.

Reason: To ensure a proper standard of development.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

8. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Louise Kiernan
Inspector
24th February, 2010