



An Bord Pleanála

Development: Demolition of existing building and construction of part 2 storey, 3 storey and 4 storey over basement building and all associated and ancillary site works at 32 Infirmary Road (at junction of Montpellier Hill), Dublin 7.

Planning Authority: Dublin City Council

Planning Authority Reg. Ref: 2797/12

Applicant: Irene May

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant(s): Suzanne Prendergast & Martina Prendergast

Type of Appeal: 3rd-v-Grant

Site Inspection: 28<sup>th</sup> March 2013

Inspector: Colin McBride

## **1. SITE DESCRIPTION**

1.1 The appeal site, which has a stated area of 0.0203h, is located to west of Dublin city centre at the junction of Infirmary Road and Montpellier Hill. The site is occupied by a two-storey over basement structure with a retail use at ground and basement level and residential accommodation at first floor level. The existing structure has limited road frontage along Infirmary Road with the bulk of structure located along Montpellier Hill. Immediately east of the site on Montpellier Hill is a two-storey dwelling (no. 4) part of a terrace of similar dwellings fronting Montpellier Hill. Where the site adjoins the boundary with no 4 there are existing single-storey storage sheds. To the south of the site and fronting Infirmary Road is a two-storey dwelling, one of a pair of semi-detached dwellings fronting onto Infirmary Road and located on the north side of De Burgh Road.

## **2. PROPOSED DEVELOPMENT**

2.1 Permission is sought for the demolition of an existing two-storey plus basement building (208sqm) and the construction of a part two-storey, part three-storey and part four-storey over basement mixed use development with a gross floor area of 842sqm. The structure consists of retail use (342sqm) at ground and basement levels and office use (480sqm) at part of ground floor level and all of the first second and third floor levels.

## **3. LOCAL AUTHORITY AND EXTERNAL REPORTS**

3.1

- a) Engineering Dept, Drainage Division (13/11/12): No objection subject to conditions.
- b) Water Services (18/07/12): Conditions to be attached in the event of grant of permission.
- c) City Archaeologist (31/07/12): Conditions to be attached in the event of grant including a requirement for archaeological monitoring.
- d) Roads & Traffic Planning Division (13/08/12): No objection subject to conditions.
- e) Planning Report (14/08/12): Further information required including concerns raised regarding the design and visual appearance, scale and volume relative to Montpellier Hill, clarification of materials to be used, submission of photomontages and submission of a shadow analysis due to concerns regarding overshadowing. The applicant was also requested to submit cross-sections and information regarding boundary treatment.
- f) Planning Report (28/11/12): It was considered that alterations to the elevation are satisfactory in regards to visual impact. It was also considered that the scale and impact

of the proposed development relative to the existing streetscape was satisfactory. It was considered that the applicant had demonstrated that the proposal had limited impact in regards to overshadowing over the adjoining properties. It was considered that the proposal would not result in overlooking of adjoining properties and the existing boundary treatment to the east and south of the site is satisfactory. It was considered that the proposal was consistent with land use zoning policy. A grant of permission was recommended subject to the following conditions.

#### **4. DECISION OF THE PLANNING AUTHORITY**

4.1 Permission granted subject to 24 conditions. Of note are the following conditions...

Condition no. 2: A number of revisions required to the glazed entrance, signage and the brick facade on the eastern elevation at third floor level.

Condition no. 5: A screen to be provided to prevent overlooking from external stairs.

#### **5. DEVELOPMENT PLAN POLICY**

5.1 The relevant plan is the Dublin City Development Plan 2011-2017. The site is zoned Z5 with a stated objective “to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic character and dignity”.

5.2 The site is located within the Conservation Area designated along the quays.

#### **6. PLANNING HISTORY**

6.1 No planning history.

#### **7. GROUNDS OF APPEAL**

7.1 A third party appeal has been lodged by Suzanne & Martina Prendergast, 4 Montpellier Hill, Dublin 7. The grounds of appeal are as follows...

- The proposal represents over-development of the site and is excessive in density and plot ratio with no regard to the existing architectural scale on adjoining sites.
- The proposal would result in a loss of light and privacy to adjoining properties along Montpellier Hill.
- The appellants note concern regarding the structural impact of the proposed development on adjoining properties.
- The appellants express concern regarding traffic impact referring to the location of an entrance at point where there is existing traffic congestion. The appellants note that there is an existing shortage of parking in the area due to proximity to the Criminal Courts with the proposed development exacerbating this issue.

- The proposal is in breach of a number of Development Plan policies. These policies relate to noise sensitive developments, changes to residential property, demolition of habitable houses, density and quality urban design, standards for basements.

## **8. RESPONSES**

### 8.1 Response by JFOC Architects on behalf of the applicant Irene May.

- The applicant notes that the design and scale is an appropriate response to the site due to its corner site and street frontage on two streets. It is noted that the proposal has had adequate regard to the adjoining streetscape in terms of scale and external finish.
- The height of the structure takes into account the existing streetscape and the change in levels between the appeal site and adjoining properties. It is considered that the potential for loss of light has been kept to a minimum.
- In regards to loss of light reference is made to the shadow analysis diagrams submitted and it is noted that it demonstrates that the proposal has limited impact on the adjoining dwellings along Montpellier Hill.
- In regards to overlooking it is noted that the ground floor windows are screened by existing boundary treatment and the one window at first floor level and one at second floor level serve circulation areas and are to have opaque glazing. It is considered that the proposal would not result in overlooking of adjoining properties.
- The applicant does not consider that there will be any impact upon the structural integrity of the adjoining properties, notwithstanding such it is intended to appoint a qualified structural engineer in consultation with the neighbours in regards to construction.
- In relation to traffic, a construction management plan is to be produced to ensure the safe and efficient construction including dealing with construction traffic.
- It is noted that the construction management plan will; have regard to noise management. It is noted that the proposal is not contrary development policy regarding residential development and the nature of uses is consistent with Development Plan zoning.
- The basement area provides for ancillary and service accommodation.

## **9. ASSESSMENT**

Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development/nature of use  
Development Standards  
Design/visual amenity  
Residential amenity  
Miscellaneous

### **9.1 Principle of the proposed development/nature of use:**

9.1.1 The proposal is a mixed use development consisting of retail at ground and basement level and office use on the upper floors. The site is zoned Z5 under the City Development Plan with a stated objective “to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity”. Office, Shop (district), Shop (neighbourhood) and Shop (major comparison) are included under the list of permissible uses for this zoning. The proposed uses are therefore consistent with development plan zoning policy.

9.1.2 The existing structures on site are currently vacant with the site underutilised having regard to its proximity to a major public transport corridor. I consider that the principle of the proposed development is acceptable in the context of the use of a city centre site with good public transport links which is currently vacant and underutilised.

### **9.2 Development Standards**

9.2.1 Chapter 17 of the City Development Plan relates to development Standards. In regards to plot ratio the indicative plot ration permitted within the Z5 zoning is 2.5-3.0. The plot ratio of the proposed development (gross floor area divided by site area) is 2.7 and is consistent with the indicative standard set out for development within this city centre area.

9.2.2 The proposal does not entail the provision of any off-street car parking. The dimensions of the site make it unrealistic to provide for off-street car parking on the site. Notwithstanding such the site is located in a city centre location and within close proximity (walking distance) to the Luas Red Line and as such is serviced by existing public transport infrastructure In this regard I consider that the lack of off-street car parking is acceptable.

### **9.3 Design/visual amenity**

9.3.1 The approved development is in part two-storey, three-storey and four-storey in scale. The site is a corner site at the junction of Infirmary Road and Montpellier Hill with levels on Infirmary Road falling in a southerly direction and levels on Montpellier Hill falling in westerly direction. The approved structure where it adjoins existing development along Infirmary Road is three-storeys in height rising to four-storeys at the corner while along Montpellier Hill the structure is two-storeys stepping up to four-storeys with the bulk of the four-storey element running along Montpellier Hill. The structure is a flat roofed structure, contemporary in style and feature an external finish mainly of brick with a high degree of glazing. In regards to visual impact the scale and transition between existing streetscape along Infirmary Road is not abrupt, the change in scale between the existing two-storey brick dwellings and the three-storey section of the

structure facing Infirmary Road is gradual with the same being the case where it steps up to four-storeys. I consider that the photomontages accurately illustrate the visual impact of the proposed development along Infirmary Road. I am satisfied based on the design and scale and the measured transition in heights, that the proposed development would have an acceptable visual impact at this location. Along Montpellier Hill the transition between the existing two-storey dwellings is much more abrupt with the proposed structure being two-storey where it adjoins the existing dwellings, but stepping up quickly to four-storeys. Despite the more abrupt transition along Montpellier, Hill, the fall in levels along Montpellier Hill down to corner is such that the transition in scale would not be so severe as to be detrimental to the visual amenities of the area. The scale of the proposed development is not grossly out of scale with the streetscape along Montpellier Hill with the adjoining dwellings to the east being quite small in scale even in comparison to existing development further to the east. I consider that the change in levels along Montpellier Hill in conjunction with the fact that the appeal site is a corner site lends itself to a structure of the scale proposed. I am satisfied that overall design and scale of the proposed development is appropriate at this location and would not be detrimental to the visual amenities of the area. I would also note that given the scale, design and location, the proposed development would not be detrimental to the integrity of the Conservation Area along the quays designated under the City Development Plan.

#### **9.4 Residential Amenity:**

9.4.1 The issue of residential amenity is raised in the appellants' submission, in particular the loss of light and privacy. A shadow analysis was submitted in response to further information. The shadow analysis illustrates the impact of the proposed development on four days throughout the year, 21st March, 21st June, 21st September and 21st December at various times throughout the day. The shadow impact analysis illustrates that there is no significant additional impact in regards to overshadowing outside the winter months. This is due to the south facing orientation of the rear of the dwelling fronting Montpellier Hill and in part to the fact that the Criminal Courts building overshadows the appeal site and adjoining buildings to west due to its location, proximity and scale and that the proposed development does not result in overshadowing over and above that caused by the existing structure. There is some additional overshadowing caused during the winter months, such is confined to later in the day (15:00 hours and later). I would consider that the level of additional overshadowing experienced at the adjoining properties is not of an unacceptable level. I would note that given the city centre context of the site and the fact that the rear garden has south facing orientation which will not be interfered with means the adjoin dwellings will not suffer from a significant loss of light as a result of the proposed development. In addition I would note that the garden areas of the dwellings immediately to the east of site are located at much lower level than the public road and that the western boundary of no. 4 and its amenity space consists of a high block wall which in itself, reduces the impact of the proposed development when viewed from the adjoining garden.

9.4.2 In relation to the issue of privacy there is a window on the eastern elevation facing the appellants' property at first floor level and one at second floor level. The two windows serve circulation areas within the building and are proposed to be fitted with

opaque glazing. There are no other windows on any of the elevations facing towards the east or south where there are adjoining residential properties. I am satisfied based on the plans submitted that the proposed development would result in no loss of privacy subject to the windows in question being fitted with opaque glazing. If the Board is not satisfied with such a restriction, these windows could also be omitted by way of condition.

Condition no. 5 requires the provision of screening at the external stairs to prevent overlooking to the rear garden of no. 4 Montpellier Hill. I consider that such a condition is appropriate based on the cross section shown in drawing no. 10.100.A101 which shows that it may be possible to see over the existing wall at the top of the stairwell. I am satisfied that a condition is sufficient to deal with this issue. In general I am satisfied that subject to appropriate conditions, the proposed development would not result in a loss of privacy for any of the adjoining properties.

### **9.5 Miscellaneous:**

9.5.1 Concern is expressed regarding the impact of construction in the form of construction traffic and structural impact. In regards to construction traffic I would note that the construction period is a temporary period and that measures such as the provision of a construction management plan and restriction on construction hours should be adequate to minimise disruption. In regards to structural issues, I would note that the onus is on the applicant/developer to ensure that development is carried out without any impact upon the structural integrity of adjoining properties. I would consider that there is no reason why construction cannot take place on such a project without impact upon the structural integrity of adjoining properties.

9.5.2 The appellant notes that the proposed development is not in accordance with a number of polices of the City Development Plan. Having inspected the site, the plans submitted and the relevant planning policy for the area, I am satisfied that the proposal is consistent with Development Plan policy. In regards to the basement area this would appear be ancillary space to serve the retail unit and as such does not appear to be of a standard that would be inconsistent with proper planning. The demolition of the existing building is satisfactory as it does not result in the loss of habitable residential development. The existing property is a shop unit with residential accommodation overhead. The site is located within a city centre location and is serviced by excellent public transport links. In this regard the proposal to maximise the use of the site is consistent with Development Plan policy. In regards to the issue of noise sensitive locations, the proposal is for a retail and office use which are permitted uses within the zoning at this location and very much consistent with a city centre location such as this. The only potential noise impacts that may arise are during construction and such can be controlled through an appropriate construction management plan and conditions.

### **CONCLUSION:**

The proposed development and the mix of uses are consistent with Development Plan zoning policy. The proposal entails a more efficient use of a city centre site with excellent public transport links and as such is consistent with Development Plan policy. The design and scale of the proposed development is satisfactory and has adequate regard to the existing streetscape and the visual amenities of the area. The proposal also has adequate

regard to the amenities of adjoining properties. I am satisfied that the proposed development would be in accordance with the proper planning and development of the area.

### **RECOMMENDATION**

I recommend a grant of permission subject to the following conditions...

Having regard to the city centre zoning of the site as set out in the current development plan for the area, and the nature and extent of the proposed development, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, and would 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 and amended by the plans submitted on the 01<sup>st</sup> day of November 2012, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2.

a) A screen shall be provided at the side of the landing area of the external stairway from the proposed office entrance lobby to the rear yard to prevent overlooking from this area, details of which shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of development.

b) The two windows located at first and second floor level on the eastern elevation shall be fitted with obscure glazing.

**Reason:** In the interests of residential amenity.

3. Prior to commencement of construction of the development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to the planning authority for agreement.

**Reason:** In the interest of orderly development and the visual amenities of the area.

4. Details of all external shopfront and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** in the interest of visual amenity.

5. Details of all lighting or illumination of any part of the buildings and site, including direction of illumination and intensity, shall be submitted to and agreed in writing with the planning authority. All external lighting shall be cowled and directed away from the roadway and residential properties.



**Reason:** In the interest of residential amenity, orderly development and traffic safety.

6. Security roller shutters, if installed, shall be recessed behind the perimeter glazing shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' or perforated type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

7. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennae or equipment, unless authorised by a further grant of planning permission.

**Reason:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

8. Water supply and drainage arrangements, including the attenuation and 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.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. **Reason:** In the interests of visual and residential amenity.

11. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

12. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in

13. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

14. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 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.

15. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice

for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interest of amenities and public safety.  
particular recyclable materials, in the interest of protecting the environment.

16. 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.

Colin McBride  
28<sup>th</sup> March 2013