



An
Bord
Pleanála

Inspector's Report 306026-19.

Development	2 no. apartments with balcony and private open space and parking and ancillary works.
Location	56 Fassagh Avenue, Cabra East, Dublin 7.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3943/19.
Applicant	Michael Munnelly.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellants	Michael Munnelly.
Observer	None.
Date of Site Inspection	17 th March 2020.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site comprises the plot to the rear of a commercial unit, a bookmakers at 56 Fassaugh Avenue in Cabra. The site is accessed by way of a private gated laneway, which provides access to the rear of the commercial strip for servicing purposes. The subject neighbourhood centre comprises a planned retail/commercial area, which was developed at the time of construction of this area of housing. To the south is Fassaugh Avenue, which is an important distributor road in the area. There is car parking which serves the neighbourhood centre. To the north, south, east and west of the neighbourhood centre is two-storey residential development. The uses in the immediate vicinity of the subject site include a constituency office, fast-food outlet and a large public house. There appears to be upper floor use for residential purposes at a number of the commercial premises.
- 1.2. Photographs of the site and surrounding area which were taken by me at the time of inspection are attached.

2.0 Proposed Development

- 2.1. The proposed development provides for:
 - Construction of 2 no. two storey apartments.
 - Amenity space and parking.
 - Ancillary works.

3.0 Planning Authority Decision

- 3.1. Decision

The planning authority decided to refuse permission for the reasons summarised below:

- Fails to provide a high quality residential environment for future occupiers arising from close proximity of the site to the Fassaugh Avenue Neighbourhood Centre and associated noise, odours and general disturbance generated by existing commercial operations and the poor environment of

adjoining rear service yards and the rear service lane. Would also have an unacceptable impact on an existing residential unit, which contains a window within 2 m of the proposed development and on the adjoining properties at 54 – 52 arising from close range overlooking from the first floor unit and the roof level private amenity spaces.

- Fails to provide an internal layout and configuration which accords with the minimum requirements of Sustainable Urban Housing and the development plan and in particular the open space fails to have a functional relationship with the living areas or fails to provide adequate privacy and security.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report notes that:

- The site has been subject of a number of previous applications for similar forms of development all of which have been refused. The issues of concern included the form and standard of development, the quality of residential environment for future occupiers and impact on residential amenity of nearby properties.
- The development is acceptable in principle under the Z3 zoning.
- Since the most recent decision to refuse permission, the form and shape of the proposed building has not been significantly altered but minor amendments have been made in relation to the depth of building, width of building, increase in balcony sizes and internal layout and individual room sizes.
- The Neighbourhood Centre provides a variety of commercial and community uses including a public house, fast-food restaurants and a number of convenience retail stores all of which provide services to the community and routinely involve late-night opening and some of which generate noise and / or odour in close proximity to the proposed apartments. The location would not provide a high quality residential environment for future occupiers.

- The first floor of the existing building at 56 appears to be in residential use and the proposal would have a significant and unacceptable overbearing impact representing a permanent and imposing feature.
- The internal layout of the apartments complies with the relevant internal minimum standards and requirements under the Sustainable Urban Housing and development plan.
- The quantum of open space is adequate but its location is disconnected from the main living area of the apartment. The location and layout of balconies is likely to impede daylight penetration into the main bedroom. The ground floor balcony does not incorporate features to ensure privacy and security.
- The roof level amenity space for each apartment does not overcome the previously outlined concerns.
- The level of overlooking to the houses to the north is not of particular concern given the separation distance. Overlooking of the adjoining residential properties to the east at 54 and 52 would be at close range and would adversely impact on the amenity of the occupiers.
- The local authority records indicate that the laneway was closed in 2009 and it is noted that it is gated. In the event of a grant of permission it would be necessary to require the applicant to confirm legal right to utilise the private laneway as a means of access to the application site.
- Permission should be refused.

3.2.2. Other Technical Reports

Drainage Division - no objection subject to standard conditions.

Transportation Planning Division - the laneway is less than the minimum carriageway width of 4.8 m required for potential mews laneways and is used to provide service access to the rear of commercial properties. Vehicular access by way of the existing laneway to serve the proposed development is considered acceptable in this instance. The maximum car parking standard for the area is one space per dwelling. Clarification is required in relation to emergency vehicular access.

3.3. Prescribed Bodies

TII - the site is within the area covered by the levy scheme for light rail. A condition should be attached.

3.4. Third Party Observations

None.

4.0 Planning History

Under reg. ref. 3248/18 an application for a similar type of development at this site was refused permission for reasons substantially the same as in the current case.

There is also more extensive planning history related to this site which includes refusal of permission for residential/mixed-use development. These applications predate the case mentioned above by a considerable period.

5.0 Policy Context

The site is zoned Z3 under the **Dublin City Development Plan**. The importance of Neighbourhood Centres is described in the development plan as providing for the day to day needs of local communities. Residential use is acceptable in principle.

Sustainable Urban Housing: Design Standards for New Apartments

Amongst the requirements set out herein are space standards and qualitative standards relating *inter alia* to location and layout and relationship between private open space and living accommodation.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of this appeal are:

- Regarding the public house and fast-food restaurants within 40 m of the site all of these are closed by midnight. These existing uses will not cause undue impact on the residential amenity of the proposed units. In addition it is noted

that the planning authority generally supports the provision of residential units above ground floor commercial units. The proposal constitutes efficient use of land within 1 km of high quality public transport.

- The architectural drawings have been revised to illustrate the first floor rear facing window serving 56 Fassaugh Ave which it is considered will not be unduly affected by the proposed development. The existing unit is served by rooflights to the rear and the shadow analysis shows that it will not be subject to any undue shadow impacts. A separation distance in excess of 2 m is provided to limit any associated overbearing impacts.
- The daylight and shadow study which has been prepared as part of this application indicates no undue impact on adjacent properties to the east.
- The proposal provides each apartment with a 6 m² balcony and the development complies with all requirements regarding room sizes and floor areas. It is accepted that on urban infill sites private amenity space requirements may be relaxed on a case-by-case basis.
- The current proposal is not considered to result in direct overlooking to the two-storey houses.
- The national policy context and requirements to increase development on brownfield sites refers. This unit reflects the type of compact sustainable development which is sought through national policy.
- Regarding the fast-food restaurant and public house these are 15 m/20 m away and the apartments are appropriately separated from any nuisances.
- References made to a permitted development close to a restaurant (ABP – 304700 – 19). References made to a change of use of an upper floor residential unit adjacent a fast-food takeaway and another residential development permitted by the planning authority. These are all relevant precedents which justify a grant permission in this case.
- The minimum area of required private open space is 5 m² which is greatly exceeded in the current application. The guidance to which the planning authority refers is not a policy requirement.

- Minor alterations to ensure a high standard of residential amenity are offered as part of this appeal including in relation to the ground floor amenity space which is now revised to read as a winter garden space with a bifold glazed window, revision to the existing first-floor window serving 56 Fassaugh Ave which is to be relocated to the east by 825mm to mitigate potential overbearing impacts, revision of the Eastern elevation to incorporate a louvred glass screen of 0.4 m height above the existing 1.4 m high timber clad screen to mitigate against overlooking of two-storey houses.

6.2. Planning Authority Response

The planning authority response was received late and was returned.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 **Assessment**

I consider the main issues in this case relate to:

- principle
- impact on existing residential amenity
- residential amenity for future occupants of house and proposed house
- access and traffic safety
- other matters.

7.1. Principle

In terms of the principle of development the planning authority has referred to the fact that residential development is acceptable in principle under the Z3 zoning

objective. While that is the case, the planning authority also considered the detailed reality of the existing commercial units and in particular the proximity of the proposed development to a relatively large public house and 2 no. number fast food outlets, within about 20 m of the proposed residential units.

Regarding the precedent cases which were cited by the appellant I note that none of these are directly comparable in terms of the location of the site within a very small plot to the rear of the neighbourhood centre. The proposed development would result in the introduction of a relatively substantial amount of residential development to the rear of the commercial strip. In terms of the principle of the development my concern is that a residential use of this nature could undermine the operation and/or expansion of the neighbourhood centre uses and thus undermine the zoning objective.

I note that the appellant has made comments regarding the low-grade nature of the commercial units. I am not convinced that the proposal would serve to enhance this neighbourhood centre. I would have concerns that the use of this service lane for residential purposes is a matter that requires careful consideration within the context of the neighbourhood centre as a whole. The proposed piecemeal approach is undesirable.

In conclusion, in relation to the principle I consider that notwithstanding that residential use is permitted in principle, the proposed development by reason of its residential use and the position of the site could undermine the commercial functions.

7.2. Impact on existing residential amenity

In relation to the modifications proposed as part of the appeal submission, I note that it would be open to the Board to require amendment of the fenestration at the rear of no. 56, which is outlined in blue on the application documents. That amendment would go some way to addressing the issue of the overbearing appearance of the development. In my opinion, it would not resolve the issue adequately. I share the opinion expressed by the planning officer in addition that the development would be of oppressive appearance when viewed from other residential properties including first floor uses in the neighbourhood centre.

In relation to the impact on residential amenity of existing properties, I again refer to the principle of developing this site as a piecemeal solution to the provision of further residential accommodation. I do not consider the two-storey development at this site, which is perpendicular to the main rear façade of the neighbourhood centre, is compatible with the protection of existing residential amenities.

7.3. Residential amenity - future occupants

Regarding open space provision, I consider that the provision of a 6 m² balcony and a large separate roof terrace to serve each of the apartments provides adequately for future occupants and adequately complies with guidance and policy.

Regarding the future residential amenity for future occupants I consider that the apartment layout and the floor area provides adequately for the residential needs of the future occupants. I consider that the relationship of the living accommodation and open space areas is acceptable in the context of the level of provision.

Regarding the location of the site adjacent a service laneway which may be used late at night in connection with existing facilities, I consider that the matter raised by the planning authority in relation to noise have not been resolved and may not be open to resolution. Furthermore in relation to odours the standard approach is to vent to the rear and above roof level – no details are provided in relation to this matter.

I conclude that the development is not acceptable in terms of residential amenity for the future occupants.

7.4. Access and traffic safety

The planning authority notes that records indicate that the laneway was closed in 2009 and it is noted that it is gated. Amongst the issues raised in the internal reports are requirements relating to confirmation by the applicant of legal right to utilise the private laneway as a means of access to the application site and to issues related to emergency access. I consider that the latter is a matter for certification under separate code. Regarding the right to access the laneway, I share this concern, which emphasises my earlier point that the proposed development could militate

against the proper functioning and servicing of the neighbourhood centre and thereby undermine its purpose.

7.5. Procedures and Part V

The requirement to comply with social and affordable housing provisions may be addressed by standard condition in the event that permission is granted.

7.6. Environmental impact Assessment Screening

The project falls within the class of development which requires EIA. Based on the nature, size and location of the proposed development there is no real likelihood of significant effects on the environment. No EIAR is required.

7.7. Appropriate Assessment

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and proximity to the nearest European sites, I am satisfied that 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.

8.0 **Recommendation**

8.1. I recommended that the decision of the planning authority to refuse permission be upheld for the reasons and considerations on subject to conditions below.

9.0 **Reasons and Considerations**

The proposed development is located in an area for which the stated zoning objective in the current Dublin City Development Plan is 'to provide for and improve neighbourhood facilities', is situated to the rear of commercial and residential developments and would be accessed by way of a private service laneway which serves a public house and fast food outlets. Furthermore the proposed development

would be highly visible from and proximate to first floor residential development at this neighbourhood centre.

It is considered that this piecemeal development would constitute a form of development which would be out of character with the area and would constitute an overbearing form of development, which would interfere with existing residential amenities. It is considered that the proposed development by reason of noise and disturbance would provide a substandard level of residential amenities for future occupants.

The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Senior Planning Inspector

17th March 2020