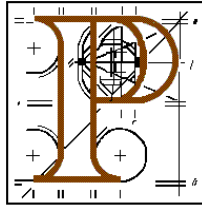


An Bord Pleanála



Inspector's Report

PL06D.245779

DEVELOPMENT:- Construction of 4 no. houses, entrance and car parking at site to rear of 31-33 Northumberland Avenue, Dun Laoghaire, Co. Dublin

PLANNING APPLICATION

Planning Authority: Dun Laoghaire Rathdown County Council

Planning Authority Reg. No.: D15A/0322

Applicant: Brendan Smyth

Application Type: Permission

Planning Authority Decision: Grant Permission

APPEAL

Appellant(s): David Dundon and family

Type of Appeal: Third v Grant

Observers: None

DATE OF SITE INSPECTION: 13th February 2016

INSPECTOR: Mairead Kenny

SITE LOCATION AND DESCRIPTION

The site at Northumberland Avenue comprises a plot of stated site area of 0.099 hectares. Northumberland Avenue is in a central location in Dun Laoghaire, within a few minutes' walk of the town centre. It is lined with large period houses on relatively large plots of land. The street is subject to a one way traffic system, running from the town centre at Georges Street Upper to the more residential district to the south. The street slopes upwards from north to south. There is on-street parking on both sides and a pay parking system is in operation.

The site is located to the rear of three large terraced dwellinghouses all of which have paved front gardens providing parking to the front. Two of these houses nos. 31 and 32 are in the applicant's ownership while no. 33 which adjoins the access lane is separately owned. The access laneway which is intended to serve the site is finished in gravel and is defined by high granite walls. The majority of houses at Northumberland Avenue have a vehicular entrance from the lane. There are no vehicular entrances onto the lane from houses at Corrig Avenue to the east.

There are two mews houses near the site – neither has a vehicular entrance from the lane and both are at Sydenham Mews which is to the north of the site. No. 13 Sydenham Mews is situated to the north-east of the site close to the junction of the laneway. The other mews house is 14 Sydenham Mews, which is to the rear of 34 Northumberland Avenue and owned by the appellant in this case. There is a pedestrian gate from the lane into that house.

Within the site are structures which are likely to be the remnants of former mews buildings. The site is separated from the existing houses by high stone walls.

Photographs of the site and surrounding area are attached to this report.

DESCRIPTION OF PROPOSAL

Permission is sought for:

- 4 no. two storey three bedroom terraced mews houses of 130 square metres each
- access from shared access laneway
- 8 no. parking spaces in total
- associated site development works including
 - watermains, gas and electrical,
 - foul and surface water drainage
 - landscaping

- reconstruction of northern boundary wall to shared access lane
- communal refuse store and bike store.

Further information submitted by the applicant on 28th September 2015 includes:

- confirmation that the client owns the entire laneway and will bring it to necessary standards suitable to be taken in charge
- separate report regarding taking in charge
- report relating to turning circles and emergency vehicles
- lighting and services information.

Documentation includes a copy of an application for exemption from Part V.

PLANNING HISTORY

This is the fourth appeal related to mews development at this site all of which have been refused for reason relate to the laneway / traffic hazard. Two other applications to the Planning Authority were withdrawn. In brief the details of the three previous decisions of the Board are below. All three files are attached.

PL06D.217462 refers to an application to the rear of 31, 32 and 33 Northumberland Avenue for 3 no. mews houses. The reason for refusal may be summarised as follows:

- served by laneway which is substandard by reason of its restricted width at the 'pinch point' at the gable of no. 33 Northumberland Avenue – turning movements generated by the development including conflicting vehicular and pedestrian traffic along the lane would endanger public safety. The development by itself and by the precedent it would set would be contrary to the proper planning and sustainable development of the area.

In the Direction the Board noted the existing and proposed improvements to the lane since the Board's previous decisions but considered that by reason of the narrow width of the lane at the pinch point the development, by itself and the precedent it would set for further such development would be unacceptable in traffic safety terms.

PL06D.129994 refers to an application to the rear of 31 and 32 Northumberland Avenue for 4 no. mews houses. The Board upheld the decision of the Planning Authority to refuse permission. The reason for refusal may be summarised as follows:

- served by a laneway which is substandard by reason of its restricted width at the entrance from the public road and along its length – turning movements at the

junction with the public road and along the laneway would endanger public safety.

PL06D.129885 refers to an application to the rear of 33 Northumberland Avenue for 2 no. mews houses. The Board upheld the decision of the Planning Authority to refuse permission. The reason for refusal may be summarised as follows:

- served by laneway which is substandard by reason of its restricted width at the entrance from the public road and along its length – turning movements at the junction with the public road and along the laneway would endanger public safety.

PLANNING POLICY CONTEXT

Policy RES4 refers to policy to increase density in existing built-up areas and to maintain and to improve residential amenities in existing residential developments.

Policy RES6 refers to facilitating measured and proportionate mews lane housing. Evaluation of such proposals will be in accordance with criteria set out in Chapter 16.

Section 16.3.4(ix) sets out criteria for mews lane development.

SELECTED INTERNAL AND OTHER REPORTS SUBMITTED TO PLANNING AUTHORITY

The report of the **Transportation Planning Section** dated 1st July 2016 recommends that further information be sought in relation to:

- road construction details
- turning circle to accommodate fire tenders – otherwise hazardous reversing would take place onto Northumberland Avenue
- lighting and services details.

The report of the **Transportation and Water Services** dated 2nd July 2016 indicates no objection.

The report of the **Case Planner** dated 6th July 2016 comments as follows:

- laneway has been widened
- planning history case referenced pinch point
- in pre-planning consultation the applicant was advise to show how the reason for refusal under PL06D.217462 can be overcome

- section 16.3.4(ix) is relevant
- the proposed new wall between no. 33 and the laneway is to be moved so that the width at entrance will be 5.339
- a turning circle is proposed and the lane will have a tarmacadam finish
- there is no legal agreement regarding the laneway and further information is required
- Policy RES4 is noted and residential development is acceptable in principle
- the 19-23m separation to existing houses is acceptable as is the area of gardens
- lane width required for mews developments of up to 20 houses is achieved
- given the 10m distance there will not be overlooking of third party's property.

The report of the **Transportation Planning Section** dated 21st October indicates that there is now no objection to the proposal subject to conditions relating to the road structure and services / infrastructure including lighting and to the implementation of measures during the construction phase.

The report of the **Case Planner** dated 23rd October 2015 notes the report of the Transportation Planning Section and on the basis that the further information request has been adequately considered permission is recommended.

DECISION OF PLANNING AUTHORITY

The Planning Authority decided to grant permission subject to conditions including:

- restriction on development which would normally be exempted under Class 1 and Class 3
- details regarding road structure and other matters to be agreed
- insurance bond or cash sum
- contributions.

GROUND OF APPEAL

The appeal has been submitted on behalf of the owners/occupiers of 34 Northumberland Avenue / 14 Sydenham Mews. The grounds of appeal are:

- inappropriate development which will set an unwelcome precedent

- it is not clear how the reason for refusal under PL06D.217462 is overcome
- the pinch point of 3.7m and concerns relating to traffic safety remain
- a number of previous applications and appeals are referenced
- the development is contrary to the zoning in its failure to protect and improve existing residential amenity
- fails to comply with quantitative standards under section 16.3.2(iv), section 16.3.4(ix) and should be refused for these reasons
- the planner's report indicates that the development was assessed against section 16.3.4(ix) but did not discuss the requirement for a rear garden of 11m, did not analyse the pinch point, did not properly address the overlooking and underestimated by 2m the separation distance to Sydenham Mews
- the laneway is not within the site boundary despite proposals to upgrade
- while all gardens are over 48 square metres the garden depths are deficient and are indicative of overdevelopment
- the turning point conflicts with residential amenity of future and existing gardens
- the proposed master bedroom at house A will overlook the houses and gardens of 34 Northumberland Avenue and 14 Sydenham Mews
- vehicular and pedestrian traffic conflicts would endanger public safety
- the manoeuvring of emergency and refuse vehicles is inappropriate and is suggestive of a constrained site – lack of turning facility for fire tender vehicles is not acceptable
- sightlines at the junction of the mews lane and Northumberland Avenue are severely restricted - this was referenced in a previous decision and is not resolved
- the turn at the laneway creates a restricted traffic environment
- the generation of 24 vehicle trips per day along the laneway would impact on the nature of the laneway and the operation of other sites that back onto it
- if the other sites were developed there would be a potential for 20 mews developments
- the proposal would create an unsustainable precedent for mews lane development that would ultimately represent improper development
- concerns relating to integrity of the wall and basement of the appellant's property
- the application mentions reconstruction of this wall – consent will not be given
- permission should be refused.

RESPONSES TO APPEAL

Planning Authority

The Planning Authority has indicated it has no further comments.

Applicant

The response on behalf of the applicant includes the following comments:

- the appellant has no right of way over the access lane and the access from 14 Sydenham Mews is boarded up for that reason
- the proposal is fully in compliance with the development plan
- the development plan policy relating to rear gardens is misinterpreted – it is open to the Planning Authority to relax these standards subject to high quality standards
- the report of the planning officer noted the 19-23m and considered it acceptable
- bin collection and traffic will not interfere with enjoyment of houses and gardens
- the views from the master bedroom will be at an angle and the separation distance to the nearest point of the appellant's garden is in excess of 11m
- the width of the lane has not been an issue
- regarding the pinch point page 176 of the development plan allows for minimum width of 3.1m for 6 houses for a short distance, which is comfortably achieved
- the appellant quotes the minimum standards for 6-20 houses but this development is for 4 no. dwellings only
- policy has changed since the previous decision of the Board and DMURS has been published
- since the re-opening of Dun Laoghaire main street to traffic levels are reduced at Northumberland Avenue
- reflecting the above point traffic safety issues at Northumberland Avenue were not mentioned in the most recent decision of the Board
- any future applications would be considered on their merits

- the development is some distance from the boundary wall and basement referred to in the appeal and there will be no impact on either structure
- re-surfacing of the lane is exempted development and is subject to conditions 1,3 and 4
- the Board is urged to uphold the decision of the Planning Authority.

ASSESSMENT

I consider that the main issues in this appeal relate to:

- planning policy
- access and traffic safety
- other issues.

Planning policy

I agree with the conclusion of the Planning Authority that in principle the site is suitable for development in accordance with policy RES4 which relates to 'Existing housing stock and densification'.

I consider that the rear garden lengths (over 7.4m) are adequate in view of the overall size of the gardens proposed (60-70 square metres) and the separation from the main houses at 31-33 Northumberland Avenue, which generally complies with or exceeds 22m. I consider that the general thrust of the policy set out in section 16.3.2(iv) which relates to private open space is that privacy be achieved and it is in this context that 22m and 11m rear rear gardens are mentioned. I do not agree that 11m is a fixed requirement. Clearly it is not intended to apply to mews lane developments as the specific policy provision under section 16.3.4(ix) refers to separation distances of 20m or even 15m between the main and mews rear facades.

I consider that the Planning Authority has appropriately exercised the flexibility inherent in the development plan policy on the matter of rear garden lengths. The result secures an appropriate balance between the existing large houses at Northumberland Avenue and the proposed houses in terms of private open space and ensures a high level of amenity. All houses would be adequately served in terms of private open space. I am satisfied that the development complies with the relevant policy regarding open space and rear garden length.

The appellant states that the proposal fails to protect residential amenity and is thus contrary to the zoning objective. Regarding overlooking I agree with the assessment of

this issue by the Planning Authority. The Case Planner comments on the oblique nature of any views from the rear first floor bedroom window. I agree with the conclusion that the most likely potential impact would be on the rear garden of 34 Northumberland Avenue, which is at least 11m from the window. I do not consider that the development would adversely affect the amenity of that house having regard to the layout and separation. In the event that the Board has concerns on this matter a condition could be attached to amend the first floor fenestration in Unit A, but I do not consider that this is appropriate or necessary.

In relation to the potential for overlooking of 13 Sydenham Mews to the north-east I note that the views from that house are in the direction of the lane and would not directly opposed the windows of Unit A. I refer the Board also to the indicative 9m guideline for opposing windows – under that distance it is recommended that habitable room windows be set out to minimise direct overlooking. The minimum distance between no. 13 and Unit A is over 12m. I consider that the development would not adversely impact on no. 13 Sydenham Mews by reason of overlooking.

Having regard to the layout and orientation of the proposed houses I do not consider that significant overshadowing would arise.

There are no architectural heritage policies relevant to the site. The houses at Corrig Avenue to the east are protected structures. There will be no impact on the architectural character of those houses or the associated boundary features.

I conclude that the development is in accordance with the prevailing planning policy.

Access and Traffic

The adequacy of the lane is considered below in relation to:

- width and capacity to accommodate the development
- entrance sightlines
- the pinch point referenced in the Board's previous decision
- turning circle for emergency vehicles.

Overall width and capacity

I note that the most recent decision of the Board to refuse permission (in 2006) at this site did not refer to the width of the overall laneway as a constraint.

I consider that the laneway, which is for the most part over 5m wide is suitable to accommodate the proposed development. Drawings submitted with the application show turning manoeuvres for a car and demonstrate the general suitability of the lane in my opinion. The lane provides for a wider area at the ninety degree turn adjacent the site. I consider that the lane is generally suitable in terms of its width.

Entrance sightlines

I note that the two decision of the Board to refuse permission (in 2002) for mews development along this lane referred to its substandard nature by reason of its restricted width at the entrance, as well as along the lane. I consider that the entrance is materially altered in the interim.

The first party notes that the Board's most recent decision (in 2006) did not raise any issues relating to traffic safety at the junction. In addition the one-way system in operation and the reduced traffic on the street are referenced in support of the development.

I agree with the submissions made by the first party and I do not consider that there are any material issues arising in relation to the entrance width or sightlines or the junction with Northumberland Avenue, which I consider are suitable to serve the proposed development.

Pinch point

The Board's previous decision explicitly referred to the 'pinch point' which is close to the western end (Northumberland Avenue) of the lane. I repeat the salient part of the Direction:

- the Board noted the existing and proposed improvements to the lane since the Board's previous decisions but considered that by reason of the narrow width of the lane at the pinch point the development, by itself and the precedent it would set for further such development would be unacceptable in traffic safety terms.

The facts are as follows:

- for a length of 8m the lane width is reduced to 3.75m
- in total the lane width is under 5m for a length of 15m of lane at or near the pinch point
- it widens on both sides of the pinch point to a width of over 5m

- at the entrance from Northumberland Avenue it will be 5.33m
- to the rear of the proposed unit A it will be 8.1m.

The Board may wish to consider whether there is a material difference in the prevailing planning policy, which might warrant consideration of a grant of permission. The current policy requirements for mews laneways are quite specific. There is an allowance for narrowing of laneways (to 3.1m) for short distances beside gable walls, where the development comprises up to 6 no. houses. That policy is revised since the Board's previous decision. The development accords with that policy.

I advise the Board that I do not have details of the date of commencement of the one-way traffic system on Northumberland Avenue or re-arrangements of traffic in the town centre, both of which are stated to have improved traffic conditions on Northumberland Avenue.

Having inspected the site and taking into account the conditions at the junction with Northumberland Avenue and the width of the lane at either side of the pinch point I consider that the development does not constitute a traffic hazard at the junction or elsewhere.

Having regard to the prevailing policy and to the existing and proposed improvements to the laneway, to the one-way system on Northumberland Road and the low traffic levels, I do not consider that the pinch point should preclude the Board from granting permission.

Turning circle

The application drawings show a turning circle suitable for a small vehicles of 5.6m and which shall be maintained free of parked vehicles under measures described in the further information submission. Regarding emergency vehicles the applicant's further information submission indicates that a full turnabout manoeuvre for a fire tender vehicle is not reasonably achievable but a reversal onto Northumberland Avenue can be undertaken.

I agree with the applicant's submissions on this matter and consider that the proposals are acceptable. Emergency events are rare and personnel would be on hand to assist a driver if necessary. In addition I accept the applicant's statement that the one-way system on Northumberland Road decreases hazard. I do not consider that the lane is deficient in terms of its ability to cater for emergency vehicles. Similarly I consider that there are no significant concerns relating to other mid-sized vehicles associated with the construction and occupation of the houses.

Conclusion

I conclude that the development of 4no. houses can be adequately served by the laneway subject to works described in submissions to the Planning Authority. I do not consider that the traffic movements generated would give rise to conflicting vehicular and pedestrian traffic along the lane or endanger public safety by reason of traffic hazard and obstruction of road users. I consider that the development is acceptable in terms of traffic safety.

Other issues

The appellant refers to the failure to include the laneway within the site boundary or within the land holding. I note that the Planning Authority was satisfied that the applicant had full ownership and attached conditions relating to the lane upgrade. In view of the recommendation for a bond or cash deposit and to the plans and particulars submitted, I consider that the Planning Authority has sufficient powers of enforcement to ensure completion.

The appellant refers to potential damage to the boundary wall at his property and the proposal to reconstruct the wall. Such matters would be private legal issues to be resolved between the parties.

In view of the access arrangements and the proximity to residential property it would be reasonable to require a construction management plan, as suggested by the applicant.

The precedent established by a grant of permission is raised in the appeal. Any future applications would be considered on their merits. Further, I note that the policy context for over 6 houses under the current development plan is different to requirements for less than 6 no. dwellinghouse. I do not consider that precedent is a material issue in the appeal.

The development incorporates SuDS proposals.

There is no known flooding in the immediate site context and the risk of flooding is stated to be low.

Regarding the pedestrian gate entrance to 14 Sydenham Lane I do not consider that the development would adversely affect the use of that gate. Any dispute over its legal status is not a matter for the Board.

External finishes are adequately specified on the application drawings. I consider that the design and finishes are compatible with the area and that the development would be acceptable in terms of visual amenity and character.

Lighting on the lane is shown to be designed to prevent overspill.

I consider it appropriate to attach the condition recommended by the Planning Authority in relation to exempted development.

RECOMMENDATION

I recommend that the Board uphold the decision of the Planning Authority to grant permission for the reasons and considerations and subject to the conditions below.

REASONS AND CONSIDERATIONS

Having regard to the nature, scale and design of the proposed development including the proposals to upgrade the laneway, to the residential zoning of the site, to the specific provisions relating to mews lane development as set out in section 16.3.4(ix) of the Dun Laoghaire Rathdown County Development Plan 2010-2016, to the character of the area and the traffic arrangements on Northumberland Avenue, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic safety and convenience. The proposed development 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 on the 28th day of September, 2015, 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. The internal road network and access serving the proposed development shall be in accordance with the detailed requirements of the planning authority for such works.

Reason: In the interest of amenities and public safety.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or

amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants.

4. 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.

5. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

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

6. 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 commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures, on site car parking for construction vehicles and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

7. Prior to commencement of development, proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development.

8. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

9. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

Mairead Kenny

Senior Planning Inspector

22nd February 2016