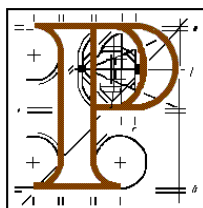


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL29N.246416

Development: Change of use of existing medical/doctor's surgery to solicitor's office and associated works at No. 72 Brookville Park, Coolock, Dublin 5.

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 2121/16
Applicant: Aidan O'Beirne
Planning Authority Decision: Refuse permission

Planning Appeal

Appellant(s): Aidan O'Beirne
Type of Appeal: First party
Observers: None
Date of Site Inspection: 8th July 2016

Inspector: Donal Donnelly

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site is located in Brookville Park, Coolock approximately 6km to the north-east of Dublin City Centre. Brookville Park comprises a row of semi-detached dwellings located to the north of the junction of Malahide Road (R107) and Oscar Traynor Road (R104). Brookville Park faces onto Malahide Road but is accessed off Oscar Traynor Road.
- 1.2 No. 72 Brookville Park is situated at the north-eastern end of the row of dwellings beside a “T” junction and cul de sac on Old Malahide Road. The site is roughly semi-circular shape and has a stated area of 296 sq.m.
- 1.3 The building on the appeal site is a 2-storey structure with hipped roof and part single part 2-storey flat roof extension to the north-eastern side. There are steps up to the front access and an enclosed triangular unused open space to the side.
- 1.4 Internally, the building comprises 2 no. consulting rooms, a reception and waiting room at ground level and a 2-bed apartment, which forms no part of this planning application, at first floor level. The floor area of the proposed change of use is 128 sq.m. and the apartment above is 63 sq.m.

2.0 PROPOSED DEVELOPMENT

- 2.1 Planning permission is sought for the change of use of an existing medical/ doctor's surgery within the ground floor of the premises to a solicitor's office.
- 2.2 The existing public entrance is to be retained and the remaining residential component of the building at first floor level with its own separate access from street level will be unaffected by the proposal.
- 2.3 The proposed change of use does not include any material alterations to the building or site. Planning application drawings do not show a revised internal layout for office use.

3.0 PLANNING HISTORY

- 3.1 No planning history on the appeal site.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

- 4.1.1 Under the assessment of the application, it is noted that the current use as doctor's surgery (medical and related consultants) is a permissible use under the residential zoning for the site but office use is not listed as permissible or open for consideration. The Case Planner therefore has reservations that the proposed change of use would not be in accordance with the land use zoning objective.
- 4.1.2 It appears to the Case Planner that the upper floor may have been lived in by the practitioner of the existing vacant doctor's surgery but this seems to no longer be the case. Reference is made to the Development Plan which states the Planning Department *"will normally permit conversion of part of a dwelling to a medical or related consultancy provided the dwelling remains as the main residence of the practitioner and where a local need has been demonstrated."*
- 4.1.3 It is considered that the proposed change of use is likely to have a detrimental impact on the residential amenity of occupants of the upper floor and neighbouring property in this predominantly residential estate. The proposal is therefore considered to be contrary to the zoning objective and the proper planning and sustainable development of the area.

4.2 Planning Authority Decision

- 4.2.1 The Council issued notification of decision to refuse permission for the proposed development for two reasons. Under the first reason, it is stated that the proposed office use is deemed as being not permissible or open for consideration under the Z1 zoning objective for the site.
- 4.2.2 It is considered under the second reason for refusal that the proposal would detract from the existing residential amenities of the area by reason of the general activity and noise associated with an office, and would create an undesirable precedent.

5.0 GROUNDS OF APPEAL

- 5.1 A first party appeal against the Council's decision has been submitted on behalf of the applicant. The submission includes photographs of the area, an infrastructural map and letters of support from a solicitor who wishes to occupy the premises and the

residents of the apartment above. The grounds of appeal and main points raised in this submission are summarised as follows:

- The established pattern of use was reason for the applicant to believe that continuance of a similar level of use would not constitute a major problem for the Planning Authority – established use was local and largely pedestrian.
- Minor change of use to actual core business within the property is of minimal significance.
- Residential zoned areas in the locality have already been greatly diluted with other activities, including shops, dental and medical surgeries, beauty therapists and other businesses.
- Decision takes no account of the “peninsular” nature of this Z1 area surrounded by other zones.
- Property faces onto a busy dual carriageway, high quality bus corridor and important arterial route.
- Property is beside the Cadbury’s factory, and near the cinema complex.
- cursory glance at the location contradicts the idea that the property is set within a quiet residential area.
- Section 15.1 of the Development Plan states that *“the rigorous interpretation of the zoning can result in traditional single-use zoning which can be 2-dimensional in nature... and a mix of uses is often more appropriate in urban areas... particularly in close proximity to public transport and main radial transport uses.”*
- Section 15.2 of the Development Plan states that *“land use zoning must reflect the overarching objective to achieve sustainable development where the aim is to advance mixed use neighbourhoods in proximity to employment, local services and high quality public transport...”*
- Proposed solicitor’s office demonstrates a commitment to the local area covering employment and family advice on medical negligence matters.
- The first floor of the building is in residential tenancy and it is not a huge leap to describe the building as a home based economic activity.

- Legal practice involves work of employment, injury/ medical negligence and other health matters and could be at least partially described as medical and other related consultancies.
- Live-work unit is open for consideration and building is split between a residential component and a work unit.
- It is stated in the Development Plan that “...it is not intended to rule out development other than housing development, but simply to add a test that the new development should be compatible with or reinforce the residential function as a whole.”
- There has been no history of bad neighbour activity.
- Frequency of visitor is envisaged to be substantially less than that which has been the norm during the operation of the medical facility – there will be a reduction in intensification of use.

6.1 Planning Authority response

6.1.1 No response.

7.0 POLICY CONTEXT

7.1 Development Plan

7.2 Within the Dublin City Council Development Plan, 2011-2017, the appeal site is zoned Z1, where the objective is “to protect, provide and improve residential amenity.”

7.3 “Medical and related consultants” is a permissible use under the zoning objective and “offices” are not listed as being permissible or open for consideration.

8.0 ASSESSMENT

8.1 In my opinion, the main issues to be addressed in this appeal are as follows:

- Development principle;
- Impact on residential amenity;

- Locational factors.

Development principle

- 8.2 The appeal site is zoned Z1 where it is the objective “to protect, provide and improve residential amenity.” The existing “medical and related consultants” use at this location is a permissible use and the proposed “office” use is not listed under the zoning objective as being either permissible or open for consideration. Therefore, the proposed change of use would not be acceptable in principle as office uses are precluded from Z1 zoned lands.

Impact on residential amenities

- 8.3 It is stated in the Development Plan that the general objectives for primarily residential areas are to provide a measure of protection from “bad neighbour” developments that are incompatible with the overall residential function of the area.
- 8.4 I would be in agreement with the first party appellant that office use of the scale proposed would not bring about any intensification of use or significant adverse impacts on surrounding residential amenities, over and above the pre-existing use.
- 8.5 The appellant also considers that the proposal for office use at ground level below an apartment unit has the characteristics of a live-work unit or a home-based economic activity. These types of uses are acceptable within Z1 zoned lands as a subordinate use to the dwelling, or where an apartment is provided where the resident works at this location. Similarly, as is the case with the established medical and related consultants use on site, the practitioner must also be the occupier of the dwelling.
- 8.6 The proposed use would be completely separate to the apartment use above and those employed in the office would not be resident on site. There are benefits for the occupier in the case of live-work units or home-based economic activity such as the elimination of the commute to work and a daily presence at the location.
- 8.7 I do not have any significant issues with respect to impact on residential amenity from the proposed use. However, I do not consider that a ground floor office with unrelated apartment unit above could be acceptable as a live-work unit or home-based economic activity. I would therefore be concerned that the granting of planning permission for a separate office use in a residential area would set a precedent for this type of development.

Locational factors

- 8.8 The appellant refers to the zoning principles of the Development Plan which state that a mix of uses is often more appropriate in urban areas, particularly in close proximity to public transport and main radial transport uses. Reference is also made to Section 15.2 of the Development Plan which states that *“land use zoning must reflect the overarching objective to achieve sustainable development where the aim is to advance mixed use neighbourhoods in proximity to employment, local services and high quality public transport...”*.
- 8.9 The vision for residential development under the Z1 land-use zoning objective is one where residents are within easy reach of services, facilities and amenities. Uses that are permissible or open for consideration within Z1 zoned land reflect the desired mix of uses and support services for residential development. These include childcare facilities, open space, local shops, public houses, etc. Medical and related consultants would also be seen as a support service that would be appropriately located within a residential area.
- 8.10 Mixed uses centres have been identified on the land use zoning map and appropriate uses that are not permissible within residential areas can be channelled into these locations. There is a Z4 District Centre zoning approximately 150m to the north-east of the appeal site and lands zoned Z3: Neighbourhood Centre approximately 220m to the south-west. An office with a maximum floor area of 300 sq.m. is a permissible use within Z3 zoning and within Z4 zoning, offices up to 600 sq.m. are permissible.
- 8.11 In my opinion, the proposed office use at a residential location between a neighbourhood and district centre would have the potential to undermine the diversity of uses that should be promoted to maintain the vitality of the nearby district centre. In addition, the location of an office use in a neighbourhood centre can contribute to the range of services and amenities for the residential area it serves.
- 8.12 I would also refer to the zoning principle that *“zoning should be designed to promote particular classes of land-uses in appropriate locations, to reduce conflict of uses, to protect resources both natural and man-made and to give residents, businesses and developers a degree of certainty.*
- 8.13 Finally, it is explicitly stated in the Development Plan that uses not listed under the permissible or open for consideration categories in zones Z1, Z2, Z8, Z9, Z11 and Z15 are deemed not to be

permissible in principle. Permission should not therefore be granted where a use contravenes the zoning of the site.

Appropriate Assessment

- 8.14 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an suburban and fully serviced location, no appropriate assessment issues arise

9.0 CONCLUSIONS AND RECOMMENDATION

- 9.1 It is considered that the proposed development should be refused for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

The appeal site is zoned “Z1” where the objective is “*to protect, provide and improve residential amenities*”. Having regard to the zoning of the site where offices are not listed as being “*permissible*” or “*open for consideration*” under this zoning category, and to the location of the site between a district and neighbourhood centre where such a use is permissible/ open for consideration, it is considered that the proposed change of use would be contrary to the zoning objective and would undermine the nearby mixed use centres. The proposed development would, therefore, set an undesirable precedent for similar development and would be contrary to the proper planning and sustainable development of the area.

Donal Donnelly
Planning Inspector
Date: 14th July 2016