



An  
Bord  
Pleanála

## Inspector's Report PI29S.247296.

### Development

Retention of artist's studio to rear and change of use to Pilates/yoga.

Permission to demolish toilet and erect extension and sub-divide unit into two retail units, apartment on the first floor, shopfront change and all associated site works.

### Location

64a St. Agnes Road, Crumlin, D12.

### Planning Authority

Dublin City Council.

### Planning Authority Reg. Ref.

2882/16.

### Applicant(s)

Joe Cully.

### Type of Application

Retention and Permission.

### Planning Authority Decision

Grant Permission.

### Type of Appeal

Third Party

### Appellant(s)

Brendan and Lucia Brady,  
Anna and Philomena Kelly.

### Observer(s)

Rafferty Construction Ltd,  
Ramon Masses Esq.

Deirdre Kelly and Family,  
Bernard and Christina Cullen.

**Date of Site Inspection**

1<sup>st</sup> of December 2016.

**Inspector**

Karen Hamilton.

## 1.0 Site Location and Description

1.1. The subject site is located on the junction at St Agnes Road and Cromwell's Fort Road, Kimmage. The two storey commercial unit is in a neighbourhood centre north of Ashleaf Shopping Centre. There is a detached single storey artist studio to the rear of the site. The ground floor of the main building was last occupied by a hearing specialist and the upper floors were used for office accommodation, the unit is empty at present. There is a 2m high steel gate at the side of the building providing access to the rear via a right of way and there is car parking to the front of the site along the main road.

## 2.0 Proposed Development

2.1. The proposed development includes the following:

- Retention of artist studio (53m<sup>2</sup>) to the rear and change of use to a yoga/ Pilates studio;
- Single storey extension and partial two storey extension to the rear of the rear of the main building and sub division of one retail unit to two units and new shop front;
- Change of use of first floor (82m<sup>2</sup>) of the main building from office to residential and provision of open space over the first-floor extension (14m<sup>2</sup>); and
- New access gate at the side of the premises at the right of way with 2 no parking spaces to the rear.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission. Condition of note includes C. No 8 which restricted the hours of use of the Pilates studio.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission and refers to the following:

- There is sufficient legal interest in the site to make a planning application.
- The mix of uses on the site is acceptable.
- The artist studio is modest in scale and should not have an excessive negative impact on the adjoining residential amenity.
- Four designated parking spaces provided is sufficient.

#### 3.2.2. Other Technical Reports

Roads and Traffic Planning Division – No objection subject to conditions.

Drainage Division- No objection subject to conditions.

### 3.3. **Prescribed Bodies**

None requested.

### 3.4. **Third Party Observations**

Two submissions were received and the main issues have been dealt with in the grounds of appeal.

## 4.0 **Planning History**

3356/14

Decision to refuse permission a similar type development, for reasons relating to substandard apartment development, overdevelopment and substandard access and the removal of an independent access to the upper floors due to the subdivision of the retail unit.

3575/01

Decision to refuse the retention of the bollards to the front because of obstruction to road user and pedestrians and visual amenity.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016-2022.

The site is zoned as Land-Use Zoning Objective **Z3**: “*To provide for and improve neighbourhood facilities*”

Neighbourhood centres provide a limited range of services to the local population within 5 minutes walking distance and provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened, where necessary. Neighbourhood centres may include an element of housing, particularly at higher densities, and above ground floor level. When opportunities arise, accessibility should be enhanced.

**Permissible Uses:** Car park, Cultural/recreational building and uses, Home-based economic activity, Office (max 300 m<sup>2</sup>), Open space, Primary Health Care Centre, Residential, Restaurant, Shop (neighbourhood).

**Indicative Plot Ratio Z3** 1.5 – 2.0

**Indicative Site Coverage Z3** 60%

**Car parking requirement:**

- Retail: Maximum of one car parking space per 75 m<sup>2</sup> GFA
- Residential: Maximum of two car parking spaces

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Two submissions were received for the grounds of appeal, from an adjoining resident and a resident to the rear of the, and the issues raised may be summarised below:

- The applicant did not overcome the previous reasons for refusal in 3356/14 related to overlooking, noise generation and activity and failure to protect existing amenity.
- There is a diminution of open space and residential amenity as the Pilates studio, car parking and balcony to the rear all impact on the adjoining amenity space of the residents.
- The noise assessment submitted in relation to the Pilates studio is not credible.
- The steel balustrade fence dividing the properties will impede sunlight on adjoining properties.
- There is no pedestrian route to the Pilates studio to the rear.
- The rear extension and balcony will cause overlooking of adjoining properties
- The proposed residential development is a material contravention on the plan with regards to Section 17.9.8 and Appendix 25 of the development plan.
- The grant of permission will devalue the property in the vicinity which is a valid planning consideration as per Maher Vs ABP (1993), as overlooking and overbearing where injurious to the property.

## 6.2. Applicant Response

Architectural Construction Technology have submitted a response on behalf of the applicant which may be summarised as follows:

- The Z3 zoning allows for all the uses proposed and the smaller units are required to attract tenants.
- The proposed development complies with the parking requirements of the development plan. The bollards to the front will be removed and the parking will be controlled on the site.
- The submitted documentation shows the land as leasehold with a right of way over to the rear and the appellants' have incorrectly claimed they have rights over the same.

- The outbuilding has been constructed pre-1960 and was previously used as a seamstress.
- The music used in the studio will not be loud but rather soothing and controlled. The submitted noise survey is credible and the use of smartphone apps for measurement is accepted universally.
- There will be no direct overlooking from the site. The objector has a 1.2m high wall which could be either raised by the appellant or the applicant.
- The appellant argues there is no access to the yoga studio illustrated, this is incorrect as access is shown via an entry door in the right of way and another door from the unit into the rear access yard to bicycle parking.
- The proposed development will not devalue the adjoining properties as it will enable a cohesive redevelopment to an unused area.

### 6.3. **Planning Authority Response**

No response was received from the planning authority.

### 6.4. **Observations**

Four observations were received. The issues raised are similar to the grounds of appeal and have been summarised below:

- The electric gates have been erected and are maintained by a private landowner and there is no right of access to the artist studio.
- There is no ownership over the parking to the front of the building.
- The site has a substandard laneway and does not allow for the flow of pedestrians and traffic.
- The proposed development evades the privacy of the adjoining residents.
- The noise and disturbance from the Pilates/ yoga will have a negative impact on the amenities of the adjoining residents.
- The proposed balcony overlooks adjoining properties and obscure glazing is insufficient to protect the privacy.

- The issues raised in the first refusal have not been dealt with.

## 7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of development
- Residential Amenity
- Access and Parking
- Other matters
- Appropriate Assessment

### **Principle of development**

7.2. The proposed development includes extension, subdivision, and alteration to retail units on the ground floor, new residential unit on the first floor and retention of artist studio and change of use to yoga/ Pilates. The site is zoned, Z3 “*Neighbourhood Centre*” in the current development plan which permits all the proposed uses. Therefore, subject to complying with other planning requirements as addressed in the following sections, the principle of the proposal is acceptable.

### **Residential Amenity**

7.3. The subject site is located to the south and east of a residential area within a busy neighbourhood centre which serves a large residential catchment. The grounds of appeal argue the use of the studio for yoga/ Pilates and the apartment balcony on the first floor will have a negative impact on the residential amenity of the surrounding area. I will deal with each of these separately below.

7.4. The yoga/ Pilates unit is 53m<sup>2</sup>. I note the hours of operation are between 9.00 and 21.00, can accommodate 25no students per class and will be accessed via a pedestrian gate to the north of the site. I note the noise survey submitted to the planning authority anticipates that Noise levels would be 50Db following the inclusion of absorbing material and replacement windows which is equivalent to normal conversation from 1m. The adjoining dwelling is located 5 m from the unit. Based on the size of the unit, the restricted capacity for large classes and the location and nature of the proposal I do not consider the proposed yoga/ Pilates studio would



have a significant negative impact in terms of noise disturbance or would otherwise injure the residential amenity of the adjoining properties.

The existing boundary treatment along the north of the side, adjacent to the adjoining residential area, is a 1.2m high iron railing. I note the grounds of appeal makes reference to a steel balustrade fence dividing the boundaries although I find no reference to same in the submitted plans. This aside, based on the use of the rear yard for parking of cars and the northern alley way as a pedestrian access to the yoga/ Pilates studio, I consider it appropriate that the proposed development should include a 2m high boundary wall of appropriate materials in order to protect the privacy in the adjoining residential rear garden. I consider this can be conditioned.

- 7.5. The proposed development includes the provision of a balcony (14m<sup>2</sup>) on the first floor for the 2 bed apartment unit (81m<sup>2</sup>). The grounds of appeal argue the inclusion of the balcony will cause overlooking of adjoining properties. I note the proposed open space is set back behind the proposed first floor extension and faces west towards the commercial studio to the rear of the site. Based on the orientation of the balcony and the screening provided by the first floor extension I do not consider there would be any overlooking or negative impact on the residential amenities to the north east of the site. Based on the distance of the balcony from the property to the north of the site and includes of the yoga studio and mature landscaping, I do not consider there would be any overlooking or negative impact on the residential amenities, in addition I note the commercial property to the west.
- 7.6. Having regard to the lack of detrimental impact on the residential amenities of the neighbouring properties I am of the view that the proposed development would not significantly affect the value of the property in the vicinity.

### **Access and Parking**

- 7.7. The car parking requirement for the retail (108m<sup>2</sup>) and the yoga/ Pilates studio (52m<sup>2</sup>) is a maximum of 3no car parking spaces. 4no spaces have been provided to the front of the building with an additional 2no private spaces for the first floor apartment within the rear yard. I note the auto-track drawings submitted and the report of the Roads and Traffic Section of the local authority and I consider, based on the location and allocation the car parking acceptable for the overall development.

7.8. Vehicular access for the residential units is via a right of way along the west of the site. The grounds of appeal argue the applicant does not have control over this right of way. I note applicant has submitted that they have a legal entitlement to the right of way over along the west of the building and therefore have access to the rear. I am satisfied that applicant has sufficient interest in lands to base my recommendation and any further landownership disputes are not planning related.

#### **Other matters**

7.9. The proposed development includes subdivision of an existing shop, alterations to the shopfront and new disabled access. I note no details have been included for signage on the shop front and I note condition no. 7 of the planning authority decision requires all signage to be subject to a separate planning application. Based on the location of the site facing onto a main road and adjacent to a residential area I consider it reasonable to include a condition requiring signage submitted as part of a separate planning application.

#### **Appropriate Assessment**

7.10. Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, 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 the conservation objectives of any European site.

### **8.0 Recommendation**

8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

### **9.0 Reasons and Considerations**

Having regard to the zoning objective, the design and layout of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity 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.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application to an Bord Pleanála, 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 out in accordance with the agreed particulars.

**Reason:** In the interest of clarity

2. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity

3. The boundary treatment along the north boundary with the pedestrian access shall comprise of a 1.8m high block, capped, and rendered, on both sides, to the written satisfaction of the planning authority.

**Reason:** In the interest of residential and visual amenity.

4. The yoga/Pilates studio shall only be used between 09.00 hours and 21.00 hours, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential amenity

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

6. 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.

7. 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

---

Karen Hamilton  
Planning Inspector

21st of December 2016.