



An
Bord
Pleanála

Inspector's Report PL 29S 248260.

Development	Permission for retention of change of use from residential to office use. (Amendment to Condition No 5 of grant of permission under P. A. Reg. Ref. 0008/93)
Location	The Mews, 1 Charlemont Place, Dublin 2.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	2019/17
Applicant	Tadhg Campion.
Type of Application	Permission for Retention.
Decision	Grant Permission for Retention
Type of Appeal	Third Party
Appellant	Declan Ryan
Date of Site Inspection	26 th June, 2017.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site of the proposed development has a stated area of sixty-six square metres and is that of one of a pair of two storey mews dwellings constructed during the 1990s. The adjoining dwelling was unoccupied at the time of inspection. (Both dwellings were subject of a grant of permission in 1993.) The site is subdivided from the lower section of the rear garden of No 9 Harcourt Terrace, a semi-detached Regency house with front and rear gardens in separate ownership. This house has recently been extended at garden/ground floor level at the rear. At the end of the rear garden adjacent to the boundary forming the subdivision with the appeal site there is dense tree and vegetation planting. There is a rear access passage from the rear garden extending along along the southern side of the appeal site as far as a lane via a pedestrian entrance gate with fencing overhead leading to Charlemont Mall. This lane serves as a vehicular, cycle and access route to the site and it also serves office blocks located along both sides which face onto Charlemont Mall and a vacant site at the northern end.
 - 1.1.1. At the time of inspection, the two floors of the mews building on the appeal site were laid out as open plan office space and it was occupied by employees of Burke Kennedy Doyle, Architects (current tenants of the applicant) which occupies No 6 Harcourt Terrace at present. It is understood that this firm formerly occupied the building, vacated it for a period and then resumed occupancy.
 - 1.1.2. On the elevation facing towards the rear garden towards the fencing, trees and shrubs and rear of No 9 Harcourt Terrace there are two windows at first floor and at two ground floor level off which there is also a rear access door. The front curtilage of the appeal site is located behind a gate is used for cycle parking and serves as the main entrance to the building and cycle park. There is a small rear garden enclosed by fencing, walling and dense planting. At the centre of this space there is a large evergreen pittosporum tree. There is dense tree and shrub planting at the lower end of the garden of No 9 Harcourt Terrace.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for permission for the retention of the change of use for the mews dwelling which it is stated has

been in intermittent office and residential use for over twelve years and that during this period included occupation for some time by an architect's practice based at buildings on Harcourt Terrace.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated, 2nd March, 2017, the planning authority decided to grant permission for retention of the change of use subject to standard conditions which include a development contribution condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer in his report note the planning history (See para 4 below), the zoning objective and car parking standards. (See para 5 below.) He observes that office hours are primarily outside of evening and weekend time, that there are separate access arrangements unrelated to Harcourt Terrace or the residential properties on it and that the roads department in its report has confirmed that it has no objection to the proposed change of use.

3.3. Third Party Observations

- 3.3.1. Objections were submitted to the planning authority by the owner/occupiers of No 9 Harcourt Terrace (Appellant) and No 2 Harcourt Terrace. The issues raised relate to the adequacy of the application drawings, the consistency of the use with the zoning objective, intensity of development and impact on residential amenities due to overlooking and overshadowing.

4.0 Planning History

- 4.1.1. P. A. Reg. Ref.0008/93: According to the planning officer report, Permission was granted for the development of two mews houses at the rear of No 9 Harcourt Terrace. Condition No 5 is reproduced below:

“The proposed mews houses shall be used as single dwellings only and in particular shall not be used as offices or for any other residential purposes.”

Details are not available in hard copy or in electronic form on the planning authority website and the reason for the decision are unavailable.¹

- 4.1.2. According to the planning officer report, the planning authority has an enforcement file open in relation to the use

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022.

The site is primarily within a location is subject to the zoning objective Z8:” *Georgian Conservation Area: to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.”* A

small area of the site (the front curtilage) is within a location subject to the zoning objective Z4 “*District Centres: to provide for and improve mixed services facilities”*.

Office use is permissible within lands subject to the Z8 zoning objective subject to a maximum floor area of 600 square metres and within lands subject to the Z4 zoning objective exclusive of retail banking and building societies.

The Harcourt Terrace area is a Conservation Area. Section 11.1.5.6 would apply along with development management guidance and standards are in Chapter 16.

Carparking standard for locations within “Area 1” is for one space per 400 m square.

No 9 Harcourt Terrace, is included on the record of protected structures. (The site of the building subject of the application is subdivision of the historic rear garden.

¹ . A search of the electronic records at An Bord Pleanála’s offices by this writer for documentation in relation in relation to “PL 29s 091281 referred to in the appeal indicated no record of an appeal file under PL 29S 091281 However there is a reference on the registry maps held by the Board.

6.0 The Appeal

6.1. Third Party Appeal.

6.1.1. An appeal was received from Marston Planning on behalf of Declan Ryan of No 9 Harcourt Terrace on 28th March, 2017. It is stated that Mr Ryan purchased the property in 2014 and relatively recently took up occupation after completion of some construction works. According to the appeal:

- None of the three conditions attached to an original grant of permission (following appeal under PL 091281) specifically restrict the use but residential use indicated in the notices is the permitted use. However, the reasoning for the grant of permission included references to the rear garden length of No 9 Harcourt Terrace and trees and vegetation.
- Grounds for refusal of permission, (for retention) are clear and unambiguous: There is negative impact on the architectural character and setting of No 9 Harcourt Terrace. The proposed development is entirely contrary to the aim of the Z8 Zoning objective is to increase the residential use within the southern Georgian core in which the site is located. The application should solely be viewed in the context of the Z8 zoning objective which seeks to protect architectural character and design and overall setting within conservation areas. Change of use can only be accepted if there is a positive contribution on the character, function and appearance of conservation area and their settings.
- The nature and intensity of the use results on carparking by occupants of the premises takes place on the access lane and on Harcourt Terrace to the detriment of residential amenities in the area and on the Georgian Conservation Area. Eight to twelve employees are based on the building and this is considerably greater intensity of use than use as a single dwelling unit. There is a five metres long yard as far as the boundary and large rear windows at first floor level and French windows at ground floor level directly and unrestrictedly overlook the gardens and rear rooms of No 9 Harcourt Terrace. The distance between the extension to the rear of No 9 Harcourt Terrace and the rear elevation is nineteen metres. The intensification of the

unauthorised use (in 2016) negatively affects the amenity and privacy of the dwelling at No 9 Harcourt Terrace. beyond a reasonable level. The impact is far greater than that of use of the Mews as a two-bedroom dwelling.

- Continuous intensive office use between 8.00 am and 18.00 pm week days in terms of overlooking is far greater in adverse impact on residential amenity. It is not accepted that the prevalence of office buildings, (in areas subject to different zoning objectives) in the area as stated by the planning officer justifies the proposed development
- The unauthorised use, irrespective of how long the use has been in place is no reason for legitimisation of the use or establish conformity to proper planning and sustainable development. The length of time in unauthorised use is inconsequential.
- The claim made on behalf of the applicant that residential use is no longer appropriate for the location is rejected. Removal of a permitted residential use and replacement with office use which is unauthorised is contrary to the Z8 zoning objective policies.
- It is requested that the planning authority decision be overturned and that permission for retention be refused.

6.2. Applicant Response

A submission was received from Brock McClure on behalf of the applicant on 27th April, 2017. According to the submission:

- Office use is not at odds with but is complementary to existing uses and permitted in principle under the Z8 zoning objective.
- The access off a lane which is primarily an office precinct with recently constructed office developments which include a new block adjacent to the site. Activity associated with office use takes place on Charlemont Place and there is no undue adverse impact on the properties on Harcourt Terrace.
- Impact on residential amenities at Harcourt Terrace are minimised. Screen planting separating the building from Harcourt Terrace has been in place for several years. The intensity of office use would not result in greater

overlooking impact than residential use. As noted in the planning officer report potential for overlooking is lessened in evening and weekends which are outside core office hours. Appropriate setback distances between the existing office use and residential use are achieved. The proposed use as adequate separate and screened form the residential use.

- No works are proposed for the building so there is no change to the appearance of the building or the context of the conservation area involved
- The appellant's claim that the use is contrary to the Z8 zoning objective is misleading as it is a clearly a use that is, "permitted in principle".

It is requested that the decision to grant permission for retention be upheld.

6.3. **Planning Authority Response**

In a letter received from the planning authority it is stated that there are no further comments to be made on the proposed development.

7.0 **Assessment**

- 7.1.1. There are two broad headings under which the issues central to the determination of a decision can be considered which are discussed below. They are:

Impact on residential amenities of the adjoining property

Impact on architectural character and integrity of the area.

- 7.1.2. Impact on residential amenities of the adjoining property.

Office use, (up to a maximum floor area of 600 square metres) and residential use are "permissible" within areas zoned "Z4" and office use, (excluding retail banking or building society use) and residential use are permissible within areas zoned "Z8".

The issue to be considered therefore is as to whether the proposed office use results in negative impact relative to that of the permitted residential use. It is necessary to consider whether the application of Condition No 5 of the grant of permission (under P. A. Reg. Ref. 0008/93 whereby the use was confined to use as a single dwelling unit and not for use as offices, in which office use was excluded remains justified.

- 7.1.3. In this regard it should be noted that the site configuration and reciprocal relationship between the permitted, (residential) mews development and the existing building at No 9 Harcourt Terrace, exclusive of the recently permitted and constructed extensions and patio area was deemed satisfactory by virtue of the grant of permission.
- 7.1.4. The separation distance between the directly opposing windows at the appeal site and in the rear elevation of No 9 Harcourt Terrace is circa nineteen metres, a shorter distance than the recommended standard of twenty-two metres at first floor level according to the development plan and strategic guidance. There are two upper floor windows and window and patio door at ground floor level which open onto the small area of rear private open space. The rear elevation of No 9 Harcourt Terrace can be glimpsed through foliage of trees within the rear private open space of the mews dwelling and within the rear garden of No Harcourt Terrace from the upper floor windows. (It would appear that most of the trees and vegetation area evergreen.) At ground level it is necessary for an individual to stand and lean slightly over boundary and look through gaps in the foliage in order to gain a view of the rear garden and patio area of No 9 Harcourt Terrace.
- 7.1.5. It is agreed with the appellant that the office use of the mews building is more intensive than use as a single dwelling unit in that there is capacity to accommodate circa twelve employees in open plan space along with ancillary facilities. However, the use as a work place, primarily during core hours five days a week results in enhanced privacy and amenity in evening and weekend time relative to residential use. Furthermore, there is little or no use of the building or associated front or rear curtilage as amenity space which is in contrast to general amenity use associated with a dwelling unit.

By reason of the sole access to the building for all pedestrian, cycle and vehicular traffic being via the lane inclusive of any trips between the building (and from the main office of the current occupant being via the lane and public road) there is no interconnectivity with the building at No.9 Harcourt Terrace. A change in tenancy would not result in any alteration to the separation from the property at No 9 Harcourt Terrace in this regard. Furthermore, adverse impact of residential amenity of possible use of the gate, the location of which is beside the rear wall of the building

onto the shared side entrance and pedestrian gate off the lane leading the rear garden of No 9 would be marginal.

7.1.6. It is concluded that while the nature of the use is different to use as a single dwelling unit, it can be concluded that the proposed development does not result in significant undue or substandard levels of attainable residential amenity at No 9 Harcourt Terrace relative to the attainable standards of the permitted use of the building as a dwelling unit.

7.1.7. With regard to traffic and parking, it is considered that any change or variation in impact with regard to residential amenity is marginal. Some properties on Harcourt Terrace have on site curtilage parking whereas others are fully reliant on paid parking facilities on Harcourt Terrace, and the adjoining immediate road network as well as possible residential permit parking. (It has been observed that available parallel parking spaces are seldom one hundred percent occupied in day or evening time hours.) It is understood that the permitted development includes one space within the front curtilage which although not marked, appears usable in conjunction with cycle parking facilities although access and egress in forward gear would not be possible.

7.1.8. Impact on architectural character and integrity of the area.

With regard to contentions as to adverse impact on the context and setting of No 9 Harcourt Terrace, having regard to the zoning and related architectural objectives of the development plan, it should be borne in mind that the subdivision of the gardens of No 9 Harcourt Terrace to facilitate the mews building development is fully authorised and is not a material consideration open to consideration other than association with the proposed change of use.

7.1.9. While the application does not include not changes or alterations to the exterior of the building or external space at the site, the use as a workplace rather than a dwelling unit is apparent in views into the front curtilage and building at the entrance from the lane leading to Charlemont Mall. The policies for encouragement of residential use provided for under the policy objective for the Z8 zone are noted but a relaxed approach in the current instance is reasonable, given the contribution of the residential use of No 9 Harcourt Terrace, along with the combined residential and other land-uses within the Conservation Area in which Harcourt Terrace is located to

the achievement of this objective. The appeal site is arguably very transitional in that it is substantively severed from the historic site curtilage of No 9 Harcourt Terrace. the site frontage and use addresses, marginally overlaps and identifies with the office uses of the blocks on both sides of the lane which are prevalent but combined with other development in the Canal Corridor area.

8.0 Conclusion and Recommendation

- 8.1. In view of the foregoing, it is recommended that permission for retention be granted in that it is considered that the proposal for retention of the change of use to office use is acceptable and that Condition No 5 attached the original grant of permission as no longer fully warranted, in that the proposed use is permissible in principle within the Z4 and Z8 zoned lands, that the variation between the proposed retention of office use and the permitted residential use with regard to impact on the residential amenities of the adjoining properties and on the architectural character and land uses within the conservation area is negligible and insignificant.

9.0 Reasons and Considerations

Having regard the size and configuration of the site and the permitted mews building relative to the existing adjoining property at No 9 Harcourt Terrace, to the transitional site location within areas subject to zoning objectives in which office use of the scale and nature of the proposed office at the site is permissible in principle, to the nature of the proposed office use relative to the permitted residential use and to the entrance and frontage, off street cycle and vehicle parking off the lane connected to Charlemont Mall, it is considered that subject to compliance with the conditions below, the proposed retention of change of use would not seriously injure the residential amenities of adjoining property, would not adversely affect the architectural integrity of the conservation area in which Harcourt Terrace is located, would be in accordance with the development objectives for the area and with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be in accordance with the plans and lodged with the application except as may otherwise be required 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.

Reason: In the interest of clarity.

- 2 The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in 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 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. The application of any indexation required by this condition 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.

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.

Jane Dennehy
Senior Planning Inspector.
26th June, 2017.