



An
Bord
Pleanála

Inspector's Report PL09.248786

Development

An additional storey containing 5 no. one bedroom apartments on second floor. Convert apartments no. 3+6 into one bedroom apartments and 3 additional car parking spaces.

Location

Silken Gardens, Dublin Road
Maynooth, Co. Kildare.

Planning Authority

Kildare County Council.

Planning Authority Reg. Ref.

17/380.

Applicant(s)

Minbay Limited.

Type of Application

Permission.

Planning Authority Decision

Refusal.

Type of Appeal

First Party v. Refusal

Appellant(s)

Minbay Limited.

Observer(s)

Joe Conway

Date of Site Inspection

27th September 2017

Inspector

Susan McHugh

1.0 Site Location and Description

- 1.1. The appeal site is located on the eastern side of Maynooth Town, approximately 155 metres east of the Main Street. It comprises a two storey building containing 10 no. residential apartment units, a semi private communal roof terrace and associated car parking and access. The latter runs between two residential properties 'Nurseries' and 'Laburnam Lodge', a two storey and dormer house respectively.
- 1.2. To the east the site adjoins the rear gardens of terraced houses in O'Neills Park. To the immediate north of the site is Carton Avenue, a 1 kilometre-long tree lined avenue that leads up to the Carton Estate, from the main street in Maynooth. To the south west of the existing apartment block there is a terrace of two storey houses with attic accommodation known as Leinster Court. To the rear of Leinster Court is a single storey house known as Leyton.
- 1.3. Two no. bus stops are located approximately 45 metres from the entrance laneway to the site and Maynooth Train station is located approximately 500 metres to the south west.
- 1.4. The site is located within the town centre zoning and has a stated area of 0.1708 Ha.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of an additional floor at second floor level. The additional floor incorporates 5 no. one-bedroom apartment units, associated balconies, and internal lift.
- 2.2. Permission is also being sought for the conversion of apartment no. 3 at ground floor level and apartment no. 6 at first floor from two-bedroom units to one bedroom units. It is proposed to provide 3 no. on site car parking spaces in addition to the existing 15 no. spaces.
- 2.3. The overall development comprises a total of 8 no. two bedroom apartments and 7 no. one bedroom apartments.
- 2.4. As well as drawings, a Flood Risk Assessment Report accompanied the planning application.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for four reasons which can be summarised as follow;

1. The proposed development, by reason of its massing, scale, location and the size of the site, and the inadequacy of public and private open space would result in unacceptable overdevelopment of the site, would act as an undesirable precedent for further such development.

2. The proposed development, by reason of its scale design and location would seriously injure the amenities and depreciate the value of property in the vicinity due to an unacceptable degree of overlooking of the adjoining properties and would be contrary to the policies of the planning authority, which seeks to preserve and improve residential amenities of existing residential properties.

3. The proposed development would represent a substandard form of residential development by reason of lack of adequate public/private open space and car parking provision. The development would, therefore be contrary to the development management standards, as set out in Chapter 17 of the Kildare County Development Plan 2017-2023, and would result in a substandard residential amenity

4. The proposed development by reason of its scale and location in close proximity to Carton Avenue which is an historic designed landscape feature and recreational amenity, would be contrary to the policies and objectives of the Maynooth Local Area Plan 2013-2019 where it is the policy to protect trees along the Avenue (NH 4) and to protect the axial view along the Avenue (AR 10). The proposed development would therefore be seriously injurious to the visual and recreational amenities of this area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner's Report dated 1st June 2017 is the basis for the planning authority decision. It includes;

- The policy context in terms of the Natural and Archaeological Heritage and Green Infrastructure.
- The proposal accords with the County Development Plan with regards minimum floor areas and storage requirements. The balcony area to apartment No. 13 is significantly below the 5sqm requirement.
- Due to overshadowing caused by the increase in height to the building and the existing perimeter walls, the use and value of the open space to the rear of the apartment complex will diminish as a result of the development.
- The second floor will exacerbate the extent of overlooking of adjoining residential properties.
- The shortfall in car parking will result in residents using on street parking along the laneway serving the site which would give rise to road safety issues.
- The three storey building will be excessively large and bulky when compared to neighbouring developments and would be out of character with existing development in the vicinity.

3.2.2. Other Technical Reports

Transportation Department: Recommends further information in relation to the shortfall in parking.

Water Services Section: Recommends no objection subject to conditions.

Environment Section: Recommends no objection subject to conditions.

EHO: Comments on natural ventilation to the apartments.

3.3. Prescribed Bodies

Irish Water: Report recommends no objection.

3.4. Third Party Observation

One no. third party submission was made to the planning authority objecting to the proposed development. The issues raised are similar to those raised in the observation on the appeal summarised in section 6.4 below.

3.5. Planning History

PA Reg. Ref. 04/880 ABP Ref. PL09.210865 Parent permission **granted** 21/07/2005 for demolition of existing boiler house, partial demolition of existing house and construction of single / two storey extension to side / rear of existing house, 10 no. apartments in two storey building of 720 sq.m. with 15 parking spaces. Permission granted subject to 13 no. standard conditions with no restrictions limiting future development.

PA Reg. Ref. 02/1574 Permission **refused** 10/10/2002 by the planning authority for a proposal to demolish the existing dwelling and construct 16 apartments on the site. It was refused for reasons of, inter alia, excessive density and overlooking of adjoining properties in O'Neill's Park. This decision was not appealed.

4.0 Policy Context

4.1. Development Plan

4.1.1. Maynooth Local Area Plan 2013-2019

Section 2 refers to Maynooth Historic Development and Urban Context. Section 3 refers to the Town Function and Role, Section 4 to the key challenges facing the town and Section 6 Future Development Strategy. Section 7 forms Part B of the Plan and contains the policies and objectives, and Section 8 forms Part C and refers to Specific Objectives.

Section 7.1 refers to Housing Units Policies:

***HP 1:** To facilitate sustainable development in Maynooth in line with its designation as a Major Growth Town II in the RPGs and the CDP and to ensure that this development reflects the character of the existing and historic town in terms of structure, pattern, scale, design and materials with adequate*

provision of open space, and which also protects the amenities of existing dwellings.

HP 2: *To ensure that the density and design of development respects the character of the existing and historic town in terms of structure, pattern, scale, design and materials with adequate provision of open space.*

HP 3: *To encourage appropriate densities for new housing development in different locations in the town while recognising the need to protect existing residential communities and the established character of the area.*

HP 6: *To restrict apartment developments generally to the University campus and town centre locations or suitably located sites adjoining public transport connections. Apartments will not be permitted where there is an over concentration of this type of development. Higher density schemes will only be considered where they exhibit a high architectural design standard creating an attractive and sustainable living environment. Duplex units shall not generally be permitted.*

Section 7.1.3 refers to Housing Objectives:

HPO 1: *To promote a high standard of architecture in the design of new housing developments and to encourage a variety of house types, sizes and tenure to cater for the needs of the pollution and facilitate the creations of balanced communities.*

HPO2: *To encourage the appropriate intensification of residential development in existing residential areas and the town centre, subject to compliance with relevant development management criteria and the protection of residential amenity of adjoining properties.*

Map 2 identifies the area as being located within an area which requires applicants to prepare a specific Flood Risk Assessment.

Section 7.10 refers to the Architectural and Archaeological Heritage of the town.

Section 7.10.7 refers to Nature Conservation Outside of Designated Areas.

The policies include:

NH 4: To seek the protection of the following trees and groups of trees of special amenity value at the following locations; (See Map 4 attached)

- On amenity zoned lands to the south of Carton Avenue.

Map 4. Natural and Archaeological Heritage identifies protected trees along the Avenue to Carton Estate located to the rear of the site.

Map 4a identifies 2 views and prospects to be preserved in the vicinity of the site. (See Map 4 attached).

Section 7.11 refers to recreation, amenity and open spaces.

The policies include:

AR 10: To protect the following views and prospects;

- Along Carton Avenue / Main Street Axis.

Part C Section 8 lists the Land Use zonings. The site is zoned A1 Town Centre which is:

To provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic use. The purpose of this zone is to protect and enhance the special character of Maynooth town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town. It will be an objective of the Council to encourage the full use of buildings, backlands and especially upper floors. Warehousing and other industrial uses will not be permitted in the town centre.

4.2. **Kildare County Development Plan 2017 – 2023**

Chapter 17 of the Plan refers to Development Management Standards.

Section 17.2 provides the general development standards applicable to the appeal site.

4.3. **Natural Heritage Designations**

The site is located approximately 0.92km from the Rye Water Valley/Carton SAC (Site Code 001398).

5.0 **The Appeal**

A First Party appeal against the Planning Authority's decision to refuse permission has been submitted.

5.1. **Grounds of Appeal**

The applicant provides commentary on the reasons for refusal and also provides an alternative design solution. The main grounds can be summarised as follows:

- The subject site is zoned for residential development subject to the need to provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic uses.
- The proposed development will make provision for high quality residential apartments resulting in the intensification of a residential development in an existing residential area in Maynooth town centre that is deficient in apartment units, and is well served by amenities and high quality public transport, consistent with the housing policies HP 2, HP 3, HP 6, HP, 7, HPO 1 and HPO 2 as set out in the Maynooth Local Area Plan 2013-2019.
- The proposed development is consistent with the various quantitative standards set out in the Kildare County Development Plan 2017-2023.
- The proposed development will not give rise to any negative impacts on the protected trees and protected axial view along Carton Avenue in accordance with polices NH 4 and AR 10 of the Maynooth Local Area Plan 2013-2019.

The alternative design solution includes a number of modifications to minimise the perceived massing. These include;

- Reduction in the overall floor area of the proposed second floor level;

- Omission of 1 no. one bedroom apartment unit from the proposed second floor level and reconfiguration of internal layout to allow 4 no. apartments;
- Stepping back of the north, east and western elevations of the proposed second floor level from the elevations of the existing Silken Gardens;
- Removal of 3 no. balconies from the northern elevation serving apartment Nos. 13 and 14.
- Stepping in of balcony from front (south) (apartment No. 15 of the initial proposal now apartment No. 14).

5.2. Planning Authority Response

The Planning Authority responded to the appeal as follows:

- The secondary design option submitted to the Board when considered against the requirements of the Kildare County Development Plan and the physical context of the site, is unacceptable.
- The parent permission for this apartment block was clearly designed to respect its context adjacent to single storey and two storey buildings. The introduction of a third floor is out of character and would appear excessively large and bulky.
- The alternative design option results in a car parking shortfall of 6 no. spaces, and earlier comments regarding on -street car parking and the resultant road safety issues still apply.
- The excessive use of cladding is considered to be out of character with the predominant external finishes in the area.
- The application site occupies a highly sensitive location as it is sited to the rear of and orientated towards the private amenity space of existing residential properties. The introduction of 2nd floor balconies along the southern elevation will exacerbate the extent of overlooking particularly to 'Laburnam Lodge House'.

- The proposed balconies meet the minimum standards in terms of depth and floor space area, however, the combination of 1.6m high opaque glazing and the roof will undermine the intended open nature of these spaces and therefore reduce the quality of the private amenity space proposed.
- The assertion by the applicant that the existing building is only visible through a small gap in the trees along Carton Avenue and, therefore, the proposal will not result in a loss of visual amenity of the Avenue is not acceptable. The trees are deciduous and in winter there would be uninterrupted views of the three storey building from Carton Avenue.

5.3. Observations

An observation on the appeal has been submitted by Joe Conway. The issues raised can be summarised as follows;

- The proposed development would seriously injure the amenities and depreciate the value of property in the vicinity by reason of over looking at O'Neill Park.
- Existing and proposed levels of public and private open space are substandard.
- Design, scale, bulk and massing would result in an incongruous and visually overbearing and obtrusive development when viewed from adjacent properties and detract from Carton Avenue.
- Does not comply with car parking standards, and lack of available car parking would result in traffic congestion and road safety issues.
- Proposed new car parking spaces are located in an area designated for access of emergency services and refuse trucks, and is also used as a turning circle.
- Lack of external refuse storage space.
- Structural capacity of the existing building to take the extra loading would result in infrastructural deficiencies.

6.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. I am satisfied that the principle of development is in compliance with the relevant statutory plans and guidelines. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Scale Design and Mass of Development
- Residential Amenities
- Private Open Space and Car Parking
- Impact on Carton Avenue
- Appropriate Assessment

6.1. Scale Design and Mass of Development

- 6.1.1. The site of the proposed development as previously outlined is a backland site located in a town centre zoning. It is council policy to encourage residential expansion in the town centre in a sustainable manner by utilising backlands.
- 6.1.2. As noted the existing two storey apartment block is located to the rear of existing two storey detached, terraced and dormer style houses. The applicant in their appeal has proposed a reduction in scale of the proposed development from five to four number one-bedroom apartments at second floor level. This results in a mix of 8 no. two bedroom apartments and 6 no. one bedroom apartments with a total of 14 no. apartments.
- 6.1.3. In my opinion this reduction in the number of units goes some way to addressing the first reason for refusal with regard to overdevelopment of the site. I note the residential density has reduced from approximately 87 units per ha to approximately 82 units per ha. I note Table 12 of Maynooth LAP indicates indicative densities for town centre sites which generally promotes higher densities e.g. 50 units per ha. I consider the residential density proposed appropriate to this town centre location.
- 6.1.4. The design of the proposed development has been modified on appeal with a reduction in the area of the second floor element. The design has been modified to

provide a stepping back of the north, west and eastern elevations of the additional floor level by approximately 1m. I would concur with the applicant that this will allow for an additional floor that is more subordinate to the existing building at Silken Gardens, and creates a more subtle transition in scale with the existing buildings adjacent to the site, particularly the single storey house Leyton to the west. It also allows for increased separation distances between the proposed second floor level and the neighbouring dwellings to the east and west.

- 6.1.5. I note that the planning authority did not consider the cladding finish proposed as acceptable. In my opinion, the proposed finish is appropriate given the mix of house types and styles in the vicinity and I consider the contemporary design is appropriate at this location.
- 6.1.6. I consider that the proposed scale design and massing of the proposed development is acceptable, and with the omission of an apartment unit as proposed, would not constitute over development of the site.

6.2. Residential Amenities

- 6.2.1. The second reason for refusal refers to overlooking of the adjoining residential properties. As noted above this is a backland site and, in my opinion, the addition of an additional floor will not give rise to overlooking significantly greater than that which exists at present at first floor level. I would also note that there is already an element of overlooking from the existing roof garden which it is proposed to omit. I also note the separation distances to adjoining residential properties of the modified proposal of approximately 32m to the rear building line of 'Laburnam Lodge' to the south, approximately 14m to the side elevation of Leyton to the east, and approximately 30m to the rear elevation of the existing terraced houses in O'Neill Park.
- 6.2.2. I have also considered the two interventions proposed by the applicant with the removal of 3 no. balconies from the northern elevation serving apartment Nos. 13 and 14 and the stepping in of the balcony from front (south) (apartment No. 15 of the initial proposal now apartment No. 14). I also note the combination of 1.6m high opaque glazing and the roof to these balconies which will provide further screening.

In my opinion the proposed modifications combined substantially address this reason for refusal.

- 6.2.3. I am satisfied that subject to these modifications as proposed by the applicant the proposed development is acceptable and would not give rise to undue overlooking of private rear gardens of adjoining residential properties.

6.3. Private Open Space and Car Parking

- 6.3.1. The third reason for refusal was in relation to the lack of adequate public/private open space and car parking.
- 6.3.2. The omission of apartment no. 15 as proposed on appeal reduces the required provision of communal open space to 86 sqm. The plans submitted indicate the provision of 260sqm of public open space to the rear of the building and 160 sqm landscaped area to the north.
- 6.3.3. I share the Planning Authority's concerns with respect to the design of the open space, in particular, the fact that the area to the north is in shadow for quite a lot of the time by virtue of the scale of the existing trees along the Avenue. However, I am satisfied that, as the site is located within a town centre location, which benefits from its proximity to public open spaces, including Carton Avenue, the provision of communal open space meets the requirements of the County Development Plan and is acceptable.
- 6.3.4. In terms of private open space, I consider that, as three of the apartments No.s 11, 13 and 14 will benefit from private balconies with a south facing orientation, each exceeding 5.1sqm in area, that they meet development plan standards. The balconies which will be designed to include opaque screening and roofs are acceptable in terms of providing private open space. The fourth apartment No. 12 will include a balcony with a generous area of 7.4sqm and is also considered acceptable. I also note that the apartment sizes proposed are generous one bedroom units.
- 6.3.5. There are currently 15 no. car parking spaces serving 10 no. apartments. It was initially proposed to provide 18 no. car parking spaces to serve the existing and proposed development of 15 apartments. The car parking standards as set out in

Table 17.9 of the County Development Plan requires 1.5 spaces per apartment plus 1 visitor space per 4 apartments which equates to 26 no. spaces. There were concerns raised by the planning authority regarding the number of spaces proposed. The planning authority considered that there was a shortfall of 30% that could not be justified. I note the report of the Transportation Section of the planning authority which recommended further information in relation to the shortfall in car parking.

6.3.6. The applicant now proposes to omit an apartment thereby resulting in 14 no. apartments, with a reduction in the car parking requirement to 24 no. spaces. I also note that it is proposed to reconfigure two of the existing two bedroom apartments to one bedroom apartments. Section 17.7.6 of the Kildare County Development Plan allows for some relaxation of the car parking standards for sites that are in proximity to public transport and town centres and public car parks. I note the proximity of the site to the town centre, public transport and large car park located within the adjoining Carton Retail Park. I consider that 18 no. car parking spaces proposed is sufficient to serve the 14 no. apartments. I consider that a shortfall of 6 no. spaces which represents 25% of the required total no. of spaces can be justified in this instance.

6.3.7. In conclusion, I am of the opinion that a total of 18 car parking spaces for the existing and proposed development is acceptable, as the site is located in the town centre of Maynooth, is in close proximity to third level institutions, and given the availability of public transport to Maynooth. I consider that the level of car parking proposed would not merit refusal in this particular instance.

6.4. Impact on Carton Avenue

6.4.1. The fourth reason for refusal was in relation to the impact on Carton Avenue. As mentioned above, Carton Avenue, which runs to the north of the site, includes trees of special amenity value identified for protection under Policy NH4. The applicant has provided photographs of the existing apartment building, but has not provided photomontages of the revised design option as viewed from Carton Avenue.

6.4.2. The elevation facing Carton Avenue, is in my opinion, the most visually sensitive. Policy AR 10 protects views along Carton Avenue / Main Street Axis. I noted from my site inspection the scale and height of these trees which provide a backdrop to

the development. I also noted the existing tree planting in the area of open space to the rear of the existing apartments. I agree with the planning authority that the provision of an additional floor will be visible during the winter months as the screening provided by the existing deciduous trees is only for certain months of the year. However, I am of the opinion that the stepping back of the elevation of the additional floor which is above the existing first floor will help to reduce the visual impact. I am satisfied that the proposed development will not interfere with the existing trees and will still respect the character of Carton Avenue. I also note that there are existing trees within the open space to the rear of the existing apartments which provide some screening to the development also.

6.4.3. In conclusion, I am of the opinion that the proposal is in accordance with a number of policies of the Maynooth Plan which seeks to protect the character and setting and amenities of nature conservation areas, in particular policies NH4 and AR 10.

6.5. Appropriate Assessment

6.6. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

7.0 Recommendation

I recommend that planning permission be granted, for the reasons and considerations as set out below.

8.0 Reasons and Considerations

Having regard to the location of the site on town centre zoned lands and to the acceptable scale and design of the proposed development, it is considered that subject to compliance with 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. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 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 received by An Bord Pleanála on the 14th July 2017, except as may 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 permitted development is for an additional storey containing four no. one bedroom apartments on the second floor and the conversion of apartments no. 3 and 6 into one bedroom apartments.

Reason: In the interest of clarity.

3. No additional development shall take place above the roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennae or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

4. All service cables associated with the proposed development (such as electrical and telecommunications cables) shall be located underground.

Reason: In the interests of visual and residential amenity.

5. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted

management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

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. A plan containing details for the management of waste (and, in particular, recyclable materials) with this development, including the provision of facilities for the storage, separation and collection of waste and, in particular, recyclable materials, and for the ongoing operation of these facilities, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be management in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment

8. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 1000 to 1600 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.

9. 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 hours of working and noise management measures.

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

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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.

Susan McHugh
Planning Inspectorate

3rd October 2017