



An  
Bord  
Pleanála

## Inspector's Report PL 29S 248907

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| <b>Development</b>             | Demolition of toilet block, extension to retail unit, new shop front and entrance ramp. Subdivision of existing unit to two retail units. First floor apartment and kitchen extension and site works. |
| <b>Location</b>                | No 64A St. Agnes Road, Crumlin, Cross, Dublin 12.   |
| <b>Planning Authority</b>      | Dublin City Council   |
| <b>P. A. Reg. Ref.</b>         | 2817/17   |
| <b>Applicant</b>               | Joe Cully,  |
| <b>Type of Application</b>     | Permission  |
| <b>Decision</b>                | Grant Permission.   |
| <b>Type of Appeal</b>          | Third Party   |
| <b>Appellant</b>               | Brendan Brady.  |
| <b>Date of Site Inspection</b> | 27 <sup>th</sup> October, 2017  |
| <b>Inspector</b>               | Jane Dennehy.   |

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## 1.0 Site Location and Description

The site is that of a two storey building and a detached building to the rear which is located at the end of a parade of units within a small neighbourhood centre at the corner of St. Agnes Road adjacent to the crossroads with Cromwells Fort Road, Kimmage Road. At the time of inspection, the building was unoccupied and works were being carried at the front which was enclosed by fencing. The front curtilage was also subdivided and separated from the neighbourhood communal parking area. Bollards are erected along the footpath edge. There is a side entrance with access to the rear which was closed off by steel gates at the time of inspection.

- 1.1. The appeal site adjoins residential development which is located along the road frontage over the short distance to Crumlin village. The neighbourhood centre and properties adjoining the cross roads are characterised by mixed use and residential development and is a short distance from Crumlin village and from the Ashleaf Shopping Centre on the opposite side of Crommells fort Road.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for minor modifications to development previously permitted under PL 29S 247296/ P. A. Reg. Ref 2882/16 details of which are set out under section 4 below.
- 2.2. Provision is made on the current application for:

A connecting link between two previously permitted retail units (subdivided from the original single unit)

Changing room, bathroom and kitchen and storage facilities,

An increase in size to a first-floor extension to provide for a kitchen and dining area and a three-bedroom residential unit with private open space provision in a roof level balcony which has a stated area of 18. 8 square metres in substitution for the permitted residential unit.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated, 26<sup>th</sup> June 2017 the planning authority decided to grant permission subject to eight conditions that are generally of a standard nature and include the requirements, under Condition No 8 for the terms and conditions of the prior grant of permission under P. A. Reg. Ref.2882/16 to be complied with except where there are modifications in the current application.

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

#### **3.2.1. Planning Reports**

The planning officer indicates satisfaction with the proposed development. She also points out the disputed matters over the access and right of way over the lane to the side are not material to the application and are regarded as a civil matter.

#### **3.2.2. Other Technical Reports**

There is no objection to the proposed development, subject to conditions according to the report of the Drainage Division, Engineering Department

No other reports are available on file.

### **3.3. Third Party Observations**

Issues raised in submissions received at application stage relate to the identity of the intended future occupant of the proposed development, access to and rights of way over the lane to the side, obstruction of traffic and parking attributable to the bollards to the front of the site and demand for parking generated by the proposed development and, potential adverse impact on residential amenity at adjoining property from the proposed upper floor private open space provision.

## **4.0 Planning History**

PL 29S 247296/ P. A. Reg. Ref 2882/16: The planning authority decision to grant Permission and permission for retention was upheld following third party appeal.

The permitted development comprises retention of with change of use of an artist studio to yoga/Pilates studio use. Extensions part one storey and part two storey to the rear, Subdivision of existing unit to two retail units and change of use from office to residential at first floor level and an access gate at the side. The Board's file is attached.

P. A. Reg. Ref 0267/14: According to the planning officer's report, Permission for extensions, subdivisions and change of use to accommodate retail units and residential accommodation was refused on the basis of substandard residential development which would be seriously injurious to the amenities of future occupants , overdevelopment attributable to the proposed extension , and adverse impact on the amenity of the public realm through elimination of upper floor access though subdivision of the at ground floor affecting the public realm.

## **5.0 Policy Context**

### **5.1. Development Plan**

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site is subject to the zoning objective Z3: *to provide for and improve neighbourhood facilities*". The purpose of neighbourhood centres is to provide for limited services and facilities for a population catchment which comes with five minutes walking distance of the location. Provision is made for consideration on residential development at higher densities above the ground floor and enhanced accessibility is encouraged.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

An appeal was received from Brendan Brady of No 64 St. Agnes Road on 21<sup>st</sup> July, 2017 attached to which is a copy of a page from an Indenture, stated to have been submitted to the Board by the applicant in connection with the prior application to support the claim as to right of way over the laneway. According to the appeal,

- The sole reason for the proposed modifications to the original grant of permission is to accommodate the requirements of Cheeverstown House which has agreed to the lease purchase of the completed development as proposed. The proposed development is an intensification of use of the permitted development. However, there are unresolved issues relating to legal entitlement to Wayleaves for the applicant to traverse the laneway to the lands to the rear.
- The applicant has not demonstrated that a grant of permission can be implemented as the applicant does not have a right of way over the laneway to the side of the building and to the land at the rear which is in third party ownership. The single page document submitted by the applicant in connection with the prior application does not include any reference to rights of way over the laneway. The applicant (a copy of which is provided with appeal) The dimensions on the one-page document do not fit the area on the Title document which has been viewed by the appellant's agent.
- There are many instances where documentary evidence verification of claimed ownership of lands or matters to do with management and/or occupation are such as legal agreement with management companies are required by a planning authority. In the current instance, such information in respect of Cheeverstown House may have included requirements such as specialist bathroom facilities that cannot be provided in the development. Therefore, the original permitted use would stand instead of the intended use for which permission was granted.
- There is no vehicular access to the rear of the property via the lane to the side of the building and the gate is always locked. The application is therefore misleading with regard to the claim over the lands to the side and rear and therefore the grant of permission cannot be implemented. Permission should be refused.

## 6.2. Applicant Response

A submission as received from the applicant's agent on 11<sup>th</sup> August 2017 in which it is contended that the appeal is vexatious, without substance and should be dismissed. According to the submission;

- It is the intention of, Cheeverstown House to occupy the entire property.
- The intensification of use amounts to the proposed subdivision of the ground floor unit into two units but they are to be as a linked entity and used by a single operator. The yoga studio is also to be under the control of the same operator. The kitchen and bathroom accommodation to the rear is ancillary/support accommodation for the retail units.
- The details of the agreement between the applicant and the prospective landlord is commercially sensitive information and is not open to public review or in connection with planning matters.
- The issues as to landownership and rights of way were previously addressed. The applicant does not claim ownership over the laneway and does not dispute claims as to third party ownership of lands. The appellant, despite a visit to the Property Registration Office fails to disprove any of the information provided on behalf of the applicant. No documents identifying registered rights of way were provided.
- The only person having an interest in the appeal site property (No 65A) including the exclusive use of the parking area to the front is the applicant and his predecessor. The applicant, since 1951 has rights of way, over areas as shown on the drawings and details made in connection with the previous application, for that permitted development. The documents submitted in connection with the previous application and appeal include a declaration from the previous owners confirming exclusive ownership and use over a period of forty years.
- The current applicant does not include any proposed alterations to bollards at the front of the property which are subject of complaints by the appellant. They are statute barred and it is understood that the carparking spaces to the front of the property have been in the exclusive use of the property for over forty years.
- The detached structure at the rear is not a new building and it was part of the out offices for the shop and residential unit at No 65A s when it was transferred to the Ms O'Brien who ran a seamstress business.

## 7.0 Assessment

- 7.1. The application provides for some modifications to the development previously permitted under PL 29S 247296/ P. A. Reg. Ref 2882/16 and facilitates the needs of Cheeverstown House which intends to occupy the property as a single operator.
- 7.2. The existing development is that of a terraced two storey building which was constructed along with the single storey building to the rear over forty years ago within a local neighbourhood centre which accords with the Z3: zoning objective which provides for the protection and improvement of neighbourhood facilities. The adjoining property to the north is a dwelling house subject to the zoning objective Z1: which provides for protection of residential amenities. The transitional nature of the two properties which are adjacent to zoning boundaries should be considered. .
- 7.3. Cheeverstown House as the prospective tenant therefore has a requirement for the proposed link to facilitate it in operating the two retail units as linked entities with the ancillary bathroom and kitchen facilities at the rear on the ground floor and the proposed alterations at first floor level to which provide for a three-bed residential unit The proposed residential unit, as indicated in the report of the planning officer provides for three instead of the two previously permitted bedrooms and satisfies the minimum standards for the size and standard of internal accommodation. The private open space provision the total are of which is 13.8 square metres is west facing and is marginal in size.
- 7.4. The proposed modifications to the previous permitted development are therefore considered to amount to a marginal intensification of use relative to the permitted development and to involve limited changes of a material nature. There are no concerns as to potential for adverse impact on the commercial properties in the area, the residential amenities of properties to the north side or the interests of the proper planning and sustainable development of the area. The proposed development, having regard to the previously permitted development, gives rise to no variations or concerns that would warrant reconsideration of the planning authority to grant permission from the planning perspective.
- 7.5. The matters as to rights of way and land ownership have been satisfactorily addressed in connection with the prior application and there is no evidence in the appeal that demonstrates that development, if permitted could not be implemented,



the disputed access over the laneway being immaterial to the operation of the proposed development. The provisions of Section 24 (13) of the Act however should be noted in that it confirms that a grant of planning permission does not include any confirmation as to entitlement to carry out development. Resolution of the disputed entitlements over rights of way is a matter for the legal system.

- 7.6. In view of the foregoing it is recommended that the planning authority decision to grant permission be upheld and that permission be granted. Draft Reasons and Considerations and Conditions follow.

## 8.0 Reasons and Considerations

- 8.1.1. Having regard to the prior grant of permission and permission for retention under P. A. Reg. Ref. 2882/16 (PL 29S 247296), to the Dublin City Development Plan, 2016-2022 according to which the site is subject to the zoning objective Z3 the purpose of which is to provide for and improve neighbourhood facilities and, to existing development in the area, it is considered that subject to compliance with the conditions set out below, the proposed modifications to the permitted development would not seriously injure the amenities of properties in the vicinity, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area

## 9.0 Conditions

1. The development shall be carried out in accordance with Condition Nos.17 attached to the grant of permission under Planning Authority Register Reference 2882/16 except as amended to conform with the provisions indicated in the plans and particulars lodged in connection with the application.

**Reason:** To ensure that the proposed development conforms with the development previously permitted.

**Jane Dennehy**  
Senior Planning Inspector  
30<sup>th</sup> October, 2017.