



An
Bord
Pleanála

Inspector's Report PL06D.249306



Development	Retention of two sleeping pods and one studio.
Location	5 Churchtown Avenue, Dublin 14.
Planning Authority	Dún Laoghaire-Rathdown
Planning Authority Reg. Ref.	D17A/0598
Applicant	Ger Cannon
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant	Ger Cannon
Observer	Frank Taite
Date of Site Inspection	6/12/17
Inspector	Siobhan Carroll

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.2 hectares is located at Churchtown Avenue in south County Dublin. This is a mature residential area comprising terraced dwellings built in the first half of the twentieth century. Churchtown Avenue is a cul-de-sac located to the eastern side of Churchtown Road Lower. It contains 12 no. dwellings. The site is situated circa 480m from Windy Arbour Luas stop.
- 1.2. The subject site contains a two-storey end of terrace dwelling. The site extends by between 68m and 75m from the northern to the southern boundary. The eastern site boundary adjoins the Luas line. This is defined by a low stone wall sheet metal fencing. The northern and western site boundaries are formed by mature hedging and trees.
- 1.3. The subject studio and 2 no. sleeping pods are situated circa 20m – 30m to the north of the dwelling and are adjacent to the boundary with the Luas line. They are sited to the east of group of trees located in the centre of the garden which screens them from view from the dwelling. The sleeping pods are of timber construction with a height of 2.4m and a floor area of circa 15sq m. Due to the siting, low profile of the structures and existing trees they are not directly visible from adjoining properties or the public road. The pods contain a bedroom with a small bathroom with a W.C. and shower.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of two sleeping pods and one studio.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following reason;

1. The structures subject to the application for retention do not comply with the provisions of Section 8.2.3.4 (Additional Accommodation in Existing Built-up

Areas) (iv) (Detached Habitable Room) of the County Development Plan 2016-2022. Further, the zoning objective for the site is 'Objective A; to protect and-or improve residential amenity' under the Plan and it is considered that the use of the property for short-term lettings is a commercial activity that would adversely affect residential amenity in the vicinity. Therefore the development does not comply with the relevant provisions of the County Development Plan 2016-2022, would contravene materially a development objective indicated in the development plan for the zoning of land, would seriously injure the amenities of property in the vicinity, would set an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the Planning Officer reflects the decision of the planning authority.

3.2.2. Other Technical Reports

Drainage Planning Section: No objections subject to condition.

Transportation Section: Further information requested regarding the number of bedrooms available for paying guest, number of bedrooms on the property for residential usage and drawings/details indicating the number of parking spaces provided on the property.

3.3. Third Party Observations

- #### **3.3.1.**
- The Planning Authority received 2 no. submissions/observations in relation to the application. The main issues raised are similar to those set out in the observation to the appeal.

4.0 Planning History

- None on site

5.0 Policy Context

5.1. Development Plan

5.1.1. The site is governed by the provisions of the Dún Laoghaire – Rathdown County Development Plan 2016-2022.

5.1.2. The site is identified as being Zoned Objective A ‘to protect and/or improve residential amenity’.

5.1.3. Chapter 3 – Enterprise and Employment Strategy

Section 3.1.2.14 - Policy E14: Tourism and Recreation

It is Council policy to co-operate with the appropriate agencies in promoting sustainable tourism and securing the development of tourist and recreation orientated facilities in the County.

5.1.4. Chapter 8 – Principle of Development

Section 8.2.3.4 – refers to Additional Accommodation in Existing Built-up Areas

(iv) Detached Habitable Room

This can provide useful ancillary accommodation such as a playroom, gym or study for the main residence. It should be modest in floor area and scale, relative to the main house and remaining rear garden area. The applicant will be required to demonstrate that neither the design nor the use of the proposed structure will detract from the residential amenity of adjoining property or the main house.

Any such structure shall not be to provide residential accommodation for a family member/ granny flat.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal was submitted by Dr. Diarmuid O’Grada on behalf of the applicant Ger Cannon. The main issues raised concern the following;

- It is proposed to retain two small units of dormitory accommodation which are described as pods. In combination the pods along with a small studio have an area of circa 33sq m. The pods are connected to the piped services of the house apart from the surface water which is disposed within the extensive site.
- The rear garden of the house has a length of 65m. The closest pod is 22m from the house. The pods are located a minimum of 26m and 27m from the closest neighbouring dwelling no. 4 Churchtown Avenue.
- The Planning Authority refused permission on the basis that the proposal is for a commercial use which would adversely affect the residential amenity of the area and would not comply with Section 8.2.3.4 of the Development Plan.
- The site is zoned Objective A where infill housing is permitted. It is noted that there are a range of different accommodation types which are permitted in principle and several categories of commercial development which are open for consideration. The appellant queries the adequacy of the Council's analysis having regard to the types of development permitted and open for consideration in areas zoned Objective A and the very modest floor area.
- Section 8.2.3.4 of the Development Plan sets out the Council's policies in relation to additional accommodation in existing built-up areas. It is considered that the proposal is most similar to category (iv) Detached Habitable Room. As set out in the Plan this type of space can provide useful ancillary accommodation such as a playroom, gym or study for the main residence. It is noted that any such structure shall not be provide residential accommodation for a family member/granny flat.
- In relation to the two observations/submissions made to the application it is stated that Mr. Taite incorrectly referred to studio apartments. The proposal is for convenient overnight accommodation. There are no catering facilities. Occupants usually arrive in the late afternoon and leave in the early morning. Approximately 90% of guest arrive on foot from the Luas or by taxi.
- The pattern of use means the pods are not occupied during the day. There is no disturbance to neighbouring properties or gardens. The house plot is

extraordinary due to its extent and configuration. Due to existing tree planting the units are not visible from neighbouring gardens.

- The subject pods and studio do not cause any overshadowing, overbearing or overlooking. There is ample remaining private open space. There is a generous set back from other garden boundaries and the Luas line abuts the site to the east.
- Section 8.2.3.4 (ii) of the Development Plan refers to the sub-division of existing dwellings into two or more dwelling units in circumstances where it would contribute to maintaining a viable community. The maximum number of units in any proposed subdivision will depend upon the characteristics of the area, suitability of the dwelling for subdivision, private amenity space, privacy and other factors.
- There are four car parking spaces on site, however there is usually little need for them by guests.
- Section 8.2.3.4(vi) of the Development Plan refers to backland development which provides for residential development to the rear of smaller more confined sites within existing built-up areas. Preference is given to single storey units to avoid overlooking. While it is noted that the subject development does not exactly fit with the categories as set out in Section 8.2.3.4 of the Development Plan, the appellant requests that the Board exercise their discretion where the plan is vague, contradictory or inadequate.
- The application is for low impact tourist accommodation the modified proposal is for a three year term only.
- It is stated in the Planner's report dated the 23/8/17 that this is a modest and secluded low-profile development. It is also stated in the report that the three structures are located within the garden area and are not visible from the public realm. The reports from the Transportation Section and the Drainage Planning Section had no objections to the proposal. The sole reason given by the Planning Authority refers to the perceived technical infringement of the Development Plan. This is considered unfounded.

- The appellant requests that the Board grant a temporary permission for a three year period.

6.2. Planning Authority Response

- It is now proposed to seek a temporary permission for a three year period.
- The appeal refers to Section 8.2.3.4 (Additional Accommodation in Existing Built-Up Areas) (iv) (Detached Habitable Room) of the Development Plan. The subject development are not and cannot be considered to be consistent with this subsection in their current format. The Development Plan specifically excludes any residential use for any such structures.
- The appeal states that ‘any question of creating a precedent is unfounded’ because of the pattern of use. The proposal is for overnight residential accommodation on a commercial basis which if granted permission would create a precedent for further similar development.
- As the development is not for a domestic extension or the subdivision of a dwelling Section 8.2.3.4(i) (Additional Accommodation in Existing Built-Up Areas (Extensions to Dwellings) or (ii) (Sub-Division of Dwellings) of the Development Plan are not relevant. Reference to Section 8.2.3.4(vi) (Backland Development) is also not relevant.
- The Planning Authority would not agree with the statement in the appeal that the decision to refuse permission was based on a perceived technical infringement of the Development Plan.
- The Planning Authority considers that the decision to refuse permission is appropriate. The content of the Planning Report should also be taken into consideration in the assessment of the appeal.

6.3. Observations

An observation to the appeal was submitted by Mr Frank Taite. The main issues raised concern the following;

- Mr Taite is a resident of no. 1 Churchtown Avenue. He states that he objects to the subject pods being used as habitable structures for commercial gain.

- The proposed development is considered contrary to the zoning of the site.
- As stated in the appeal the applicant considers that the proposal is most closely related to Section 8.2.3.4(iv) of the Development Plan which refers to 'Detached Habitable Room'. The appeal refers to the use of the structures and states that they shall not be for residential accommodation for a family member/granny flat.
- It is also stated in the appeal that they intend to use the 'pods' for 'convenient overnight accommodation' and that 'occupants when staying generally arrive late in the afternoon and leave in the early morning.
- The use of the structures for rental is having a negative impact on the neighbourhood due to additional pedestrian and vehicular traffic.
- Should permission be granted it would set a precedent for similar commercial development.
- Should the Board decide to grant permission the Observer requests that a condition be attached restricting the use to a playroom, gym or study ancillary to the main use of the dwelling.

7.0 Assessment

I consider that the main planning issues in the assessment of the proposed development are as follows:

- Principle of Development
- Pattern of Development and Impact on Amenity
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The application site is zoned Objective A "To protect and/or improve residential amenity". The subject proposal is for the retention of two sleeping pods and one studio. As detailed in the appeal the sleeping pods provide dormitory accommodation for paying guests. In terms of the zoning objective residential

development is permitted in principle while the following uses associated with accommodation for paying guests are open for consideration Caravan Park-Holiday, Caravan Park-Residential, Guest House and Hotel/Motel. The proposal with two separate sleeping pods being a niche type of accommodation is not a specific use within the use classes listed in the Development Plan. I would consider that it is most similar to Guest House or Caravan Park-Holiday, however the scale is not directly comparable.

- 7.1.2. It is set out in the appeal that the proposal is for low impact tourist accommodation and that the proposal is modified and that permission is sought for a three year term only. In relation to Development Plan policy concerning tourism, Section 3.1.2.14 and Policy E14 refers to Tourism and Recreation. It states that it is Council policy to co-operate with the appropriate agencies in promoting sustainable tourism and securing the development of tourist and recreation orientated facilities in the County, that the Council recognises the employment potential of tourism and recreation in the local economy and that they will encourage the development of the tourism potential of the DART and Luas Green Line to facilitate and attract 'day trippers' from Dublin City and elsewhere to visit either the coastal areas of the County or its inland upland areas.
- 7.1.3. The Planning Authority in their assessment of the proposals considered that it did not comply with the provisions of Section 8.2.3.4 (vi) the Dún Laoghaire-Rathdown County Development Plan 2016-2022 which refers to (Detached Habitable Room) and that it would adversely affect residential amenity in the vicinity. I will examine the impact on amenity in the subsequent section of the report.
- 7.1.4. The Planning Authority have referred to Section 8.2.3.4 (vi) Detached Habitable Room in terms of their assessment and in the response to the appeal have stated that Section 8.2.3.4 (i) Extensions to Dwellings, Section 8.2.3.4 (ii) Sub-Division of Dwellings and Section 8.2.3.4(vi) Backland Development are not relevant.
- 7.1.5. I would concur with the Planning Authority that the subject proposal does not directly correlate with a residential extension, the sub-division of a dwelling or residential backland development. Regarding Section 8.2.3.4 (vi) which refers to a Detached Habitable Room as set out in the Plan this is described as ancillary accommodation to the main residence for use as a playroom, gym or study and that it shall not be

used to provide for residential accommodation for a family member/granny flat. Therefore, the subject sleeping pods which are proposed for the accommodation of guests is not a use directly comparable to Section 8.2.3.4 (vi).

7.1.6. Accordingly, I consider that the proposed use which the applicant is seeking to retain is of a small scale commercial nature akin to a number of bedrooms within a dwelling being provided for B&B/Guest house type accommodation. The only difference being that the two bedrooms are completely independent of the main of the residence and in that regard there is a similarity with Caravan Park-Holiday use.

7.1.7. Having regard to the uses including Caravan Park-Holiday, Caravan Park-Residential, Guest House and Hotel/Motel which are open for consideration within the provisions of Objective 'A' zoning, I would conclude that the subject proposal would be open for consideration at this location. In order to determine whether it is an appropriate use for this residential location then it is necessary to examine specific characteristics of the site.

7.1.8. The site has an area of 0.2 hectares and it contains the main residence a two-storey end of terrace dwelling with a separate converted garage which provides ancillary residential accommodation for the occupants of the house. The site which comprises the plot of no. 5 Churchtown Avenue due to its' corner location and the layout and configuration of dwellings within the cul-de-sac means that it has a significantly larger rear garden than those of the neighbouring dwellings within Churchtown Avenue. It is therefore on the basis of the site size and the limited scale of the proposal i.e. two sleeping pods which is equivalent to two B&B/ Guesthouse bedrooms that I would consider it acceptable in principle.

7.2. Pattern of Development and Impact on Amenity

7.2.1. The sleeping pods are located circa 22m and 29m respectively from the main dwelling. They each has a footprint of circa 15sq m. The studio which is situated to the north of the sleeping pods have an area of circa 15sq m and appears to be used to store bedding and laundry associated with the sleeping pods.

7.2.2. The sleeping pods are situated 2.5m and 1.5m from the eastern site boundary which adjoins the Luas line. I consider that the three structures which are single storey and which have a maximum height of 2.4m are well screened from the adjoining properties by the existing boundary walls, fencing and planting which includes a

copse of mature trees immediately to the west. The sleeping pods are situated 20m from the closest adjoining rear garden to the west and 30m from the closest rear gardens to the north.

7.2.3. The subject sleeping pods and studio by reason of their height, scale and setback from boundaries would not impact unduly on the amenities of adjoining residential properties by way of overlooking or overshadowing. Furthermore, I consider they are well set back from the neighbouring dwellings to not cause any undue noise and disturbance.

7.2.4. Details of the pattern of use by guests were provided in the appeal. It was stated that generally guests arrive in the late afternoon and that they predominantly travel there by public transport (i.e. to the Luas stop at Windy Arbour) or by taxi. The guests generally leave in the early morning.

7.2.5. Table 8.2.4 of the Development Plan refers to Car parking requirements for non-residential land use. For a guesthouse it is one space per bedroom. Therefore, the two sleeping pods would generate the requirement for 2 no. car parking spaces. In relation to the on-site provision of car parking it is stated in the appeal that there are four car parking spaces on site, however that generally these are not used by guests as they arrive on foot after taking public transport. Therefore, I am satisfied that the proposed use would not generate significant additional traffic movements to the site.

7.2.6. Having regard to the residential nature of the location I consider that it would be appropriate to attach a condition limiting the duration of the permission to a period of three years in order that the impact of the development can be re-assessed.

7.2.7. Furthermore, I consider it appropriate to attach a condition to restrict the use of the sleeping pods for short-term tourist accommodation only, and that the units shall not be used as a place of permanent residence.

7.3. Appropriate Assessment

7.3.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, the location of the site in a serviced suburban area and the 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 a European site.

8.0 Recommendation

- 8.1. In view of the above assessment retention permission for the proposed development is recommended.

9.0 Reasons and Considerations

Having regard to the nature and scale of the subject development and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development for which retention is sought would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would, therefore, not be contrary to the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. This permission shall apply for a period of three years from the date of this order. The two sleeping pod structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

Reason: To enable the impact of the development to be re-assessed.

3. The proposed development shall be used for short-term tourist accommodation only, and shall not be used as a place of permanent residence.

Reason: The occupation of the proposed development on a permanent basis is unsustainable having regard to the overall layout of the site.

4. 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 within three months of the date of this order 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.

Siobhan Carroll
Planning Inspector

13th of December 2017