



An  
Bord  
Pleanála

## Inspector's Report ABP-300598-18

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<b>Development</b>	Demolition of existing commercial building and construction of a two-storey building containing two apartments
<b>Location</b>	49c Middle Third, Killester, Dublin 5
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4044/17
<b>Applicant(s)</b>	Michael McCarthy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Michael McCarthy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> April 2018
<b>Inspector</b>	Colm McLoughlin

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## **1.0 Site Location and Description**

- 1.1.** The appeal site is located on the northside of Middle Third in Killester, 200m to the north of Killester DART station and approximately 4.7km northeast of Dublin city centre.
- 1.2.** The site contains a single-storey commercial building with a pitch roof and a stated gross floor area (GFA) of 56sq.m. The building is currently occupied by MB Upholstery business and it covers the entire site area. The building fronts directly onto the public footpath and backs onto the side boundary with No.32 Orchard Avenue, which contains a two-storey end-of-terrace house. On the junction of Middle Third and Orchard Avenue, adjacent to the west of the site is a small public green area with a mature tree to the centre. Adjoining to the east is a vacant single-storey pitched-roof commercial building and adjacent to this is a two-storey flat-roof brick-faced building occupied by a hair and beauty salon at ground floor and an own-door apartment at first-floor. On-street parking is restricted along the stretch of Middle Third to the front of the appeal site, with a double-yellow line on the north side of the road and a single-yellow line on the south side.
- 1.3.** The immediate area is characterised by rows of terraced and semi-detached dwellings fronting onto tree-lined streets. Ground levels in the vicinity drop gradually moving south towards Killester DART station.

## **2.0 Proposed Development**

- 2.1.** The proposed development comprises:
  - Demolition and removal of the existing commercial building with a stated GFA of 56sq.m;
  - Construction of a two-storey flat-roof building with a stated GFA of 120sq.m and comprising 2 no. two-bedroom apartments.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to ten conditions, most of which are of a standard nature, but also including the following condition:

- Condition No.3: The development shall be revised as follows:
  - a) The development shall be amended to be 2 no. one bedroom units only, one per floor, with the relevant floor areas, storage, bedroom floor areas and any other requirements for such development to be complied with, as set out in Section 16.10.1 of the Dublin City Development Plan.
  - b) The windows to the bathrooms shown on the northern elevation shall be omitted in their entirety.
  - c) The glass blocks beneath first floor windows shall be replaced with brick.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

**Reason:** In the interest of residential amenities and to ensure the development complies with Development Plan requirements including minimum floor areas for apartment dwellings.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the Planning Authority.

The Planning Officer notes the following:

- removal of the existing building would not impact on the visual qualities of the immediate streetscape;
- building would be similar in design and appearance to No.49e Middle Third, which is approximately 6m to the east of the appeal site;

- proposals for both apartments fall short of the minimum standards with regard to the total floor area of the apartments, the double-bedroom floor areas, the aggregate bedroom floor areas and the storage areas;
- introduction of windows onto the northern elevation with No.32 Orchard Avenue would result in undue overlooking of this property and, therefore, the proposed windows should be omitted;
- a commensurate provision of car parking and private open space is not provided, but would be acceptable given the proximity to Killester DART station and village, as well as green areas located in the vicinity;
- the tree in the small public green area to the west of the site should be protected during construction with a condition attached to this effect;
- rather than refuse permission for the development outright, given the substandard size of the two-bedroom apartments, the apartments should be amended to form one-bedroom units that meet the minimum standards.

#### 3.2.2. Other Technical Reports

- Engineering Department (Drainage Division) - no objection subject to conditions.

### 3.3. Prescribed Bodies

- Irish Rail - no response.

### 3.4. Third-Party Submissions

3.4.1. None.

## 4.0 Planning History

### 4.1. Appeal Site

4.1.1. None.

## **4.2. Surrounding Sites**

4.2.1. There has been numerous recent planning applications for infill development and domestic extensions on neighbouring sites, including the following:

- No.72 Killester Avenue (DCC Ref. 3267/16) - Permission granted on this property 70m to the southwest of the appeal site in January 2017 for extensions to a dwellinghouse;
- No.34 Middle Third (DCC Ref. 3579/15) - Permission granted on this property 10m to the south of the appeal site in December 2015 for a single-storey rear extension and retention permission for a garage;
- Site at junction of La Vista Avenue and Orchard Avenue (ABP Ref. PL29N.244584 / DCC Ref. 3118/14) - Permission granted on this site 50m to the west of the appeal site in June 2015 for a detached single-storey one-bedroom dwellinghouse, which is currently under construction;
- No.49e Middle Third (DCC Ref. 2482/03) - Permission granted on property 6m to the east of the appeal site in December 2003 for demolition of a single-storey beauty salon and construction of a two-storey building with a ground-floor beauty salon and a one-bedroom apartment at first floor.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities'. Properties directly to the south along Middle Third have a zoning objective 'Z2 – Residential Neighbourhood (Conservation Areas)' with a stated objective 'to protect and/or improve the amenities of residential conservation areas'. The general objective for these neighbouring lands is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

- 5.1.2. Relevant planning policies for the proposed development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan. Policy QH1 of the Plan seeks to build upon and enhance standards outlined in 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007), amongst other National Guidelines. Policies QH18 and QH19 of the Plan are relevant to the appeal, as these support the provision of high-quality apartments and promote the optimum quality and supply of apartments.
- 5.1.3. Design principles for infill development are set out in Section 16.2.2.2 of the Development Plan. Design standards for apartments are set out in Section 16.10.1 of the Plan and matters to be considered in assessing public open space provision arising from proposals are outlined under Section 16.3.4 of the Plan. In this part of the city a maximum of one car parking space per unit is allowed for, based on standards listed in Table 16.1 of the Plan. BRE Site Layout Planning for Sunlight & Daylight (revised 2011) is relevant in assessing potential impacts of a development on light to proposed apartments, as well as neighbouring properties.

## **5.2. National Guidelines**

- 5.2.1. Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, published in March 2018 by the Department of Housing, Planning & Local Government (DHPLG) under Section 28 of the Planning and Development Act 2000, as amended (hereinafter 'the Act'), update and supersede the previous 2015 document and are relevant to this appeal. The Guidelines include Specific Planning Policy Requirements (SPPRs) that take precedence over any conflicting, policies and objectives of statutory plans. Chapter 3 of the Guidelines includes a host of standards relating to apartment design, many of which are consistent with those of the Dublin City Development Plan 2016-2022.

## **6.0 The Appeal**

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

6.1.1. A first-party appeal has been lodged against the decision of the Planning Authority to grant planning permission. The following grounds of appeal are raised:

- altering the floor plans to facilitate additional storage space would reduce kitchen/living room area;
- bedroom sizes are satisfactory;
- both two-bedroom units, measuring 600sq.ft (56sq.m), would have sufficient space;
- proposals would enhance the area and would follow the building line set by No.49e Middle Third.

### **6.2. Planning Authority Response**

6.2.1. None.

### **6.3. Observations**

6.3.1. None.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. The proposed development would involve the demolition of the existing single-storey building on site and the construction of a two-storey building to provide for 2 no. two-bedroom apartments. This is a first-party appeal against the Planning Authority's decision to grant permission. The grounds of appeal do not specifically state that they contest a condition of the Planning Authority's decision, but they do outline that there is sufficient room to allow for the originally proposed 2 no. two-bedroom apartments. Condition no.3 of the Planning Authority's decision requires both of the two-bedroom apartments to be revised to form 2 no. one-bedroom apartments, as



well as the omission of two bathroom windows to the rear and the glass blocks below the first-floor windows. Therefore, if implemented, Condition no.3 would have the effect of significantly altering the internal layout of the apartments and it is this element of the decision that the grounds of appeal appear to focus on.

- 7.1.2. At this juncture, the Board have two options in considering the appeal. The first option would be to consider the appeal solely against Condition no.3 under Section 139 of the Act, having regard to the nature of the condition and where they consider that the determination of the application would not be warranted. The second option open to the Board would be to decide on the application *de novo*, as if it had been made to the Board in the first instance.
- 7.1.3. Having reviewed the planning application in its entirety, there are unresolved issues around the quality of the apartments proposed. Within the assessment of the proposals submitted with the planning application, the Planning Authority noted numerous shortcomings with regards to the internal layout of the apartments. While the attachment of a condition to reduce the number of bedrooms in each apartment to create one-bedroom units would resolve some of the shortcomings, further consideration of the development with respect to the provisions of the Dublin City Development Plan 2016-2022 and Apartment Guidelines 2018 is also required. Therefore, I recommend that the Board do not limit the appeal to consideration of Condition no.3 of the Planning Authority's decision under Section 139 of the Act, but rather consider the application as if it had been made to the Board in the first instance and my assessment proceeds accordingly. At the outset, I am satisfied that the site is suitable for redevelopment to allow for a residential use based on the land-use zoning objectives of the Development Plan and a two-storey structure of limited height would not result in undue impacts on the residential amenities of neighbouring property, including No.32 Orchard Avenue to the rear. Consequently, the remaining and substantive issues that arise in my *de novo* assessment of the planning application solely relate to the design and layout of the proposed development, and the Board may wish to consider these as new issues, as discussed further below.

## **7.2. Design & Layout**

- 7.2.1. The grounds of appeal assert that the proposals provide sufficient space for each of the apartments. The Planning Authority note that the minimum residential floor area

for both apartments would not be achieved with regard to the total floor area of the apartments, the double-bedroom floor areas, the aggregate bedroom floor areas and the storage areas. To address these shortcomings, the Planning Authority suggested attachment of a condition, part of which would reduce the apartments to one-bedroom apartments and I consider that there would be significant merit in attaching such a condition. The Apartments Guidelines 2018 and the Development Plan include a host of complementary minimum standards for apartments. Policies QH18 and QH19 of the Development Plan support the provision of high-quality apartments and promote the optimum quality and supply of apartments.

7.2.2. Based on standards in Section 16.10.1 of the Development Plan, a minimum of 7sq.m of private amenity space is required for a two-bedroom apartment (5sq.m in the case of a one-bedroom apartment). The proposed apartments would not be provided with any private amenity space. The Planning Authority considered this aspect of the development to be acceptable in the context of neighbouring green areas. There is a small public green area measuring approximately 20sq.m adjacent to the west of the appeal site and there is another larger public green area 50m to the east of subject site. It would not be in the interest of orderly development to facilitate access to public green space as an alternative means of offsetting the necessity for private amenity space, particularly given the immediacy of similar sites in the vicinity. In the absence of private amenity space directly serving the apartments, the proposed development would result in a substandard quality of residential amenity for future residents and would set an undesirable precedent for similar development in the area. I recommend that the proposed development is refused permission in relation to this matter.

7.2.3. Specific Planning Policy Requirement 5 (SPPR5) of the Apartment Guidelines 2018 states that for a 'ground level apartment, floor to ceiling heights shall be a minimum of 2.7m'. The ground-floor apartment would have a floor to ceiling height of approximately 2.45m and would therefore not meet the standards set within the Guidelines. The Development Plan standards require glazing to all habitable rooms to be more than 20% of the floor area of the room that they serve. I note that at approximately 1.05m the width of the window serving the first-floor dining/kitchen/living area, as illustrated on the floor plan drawing (No. 200 Revision P), does not correspond with the c.1.6m width of this window on the elevation

drawing (No. 201 Revision P). Nevertheless, taking the greater width for the window and excluding the glass blocks, the area of the window (c.1.92sq.m) serving the dining/kitchen/living area to the first-floor apartment, measuring approximately 19sq.m, would fall significantly short of the 20% requirement (c.3.8sq.m). A more significant shortfall in glazing would arise for the ground-floor dining/kitchen/living area, which would measure approximately 23.5sq.m and would be served by a window measuring approximately 1.92sq.m, where c.4.7sq.m of glazing would be required. While the aspect for the dining/kitchen/living areas would be from the south, the shortfall in glazing serving these reasonably deep rooms (c.6.6m) would result in inadequate levels of natural lighting serving both apartments, and when taken in conjunction with the shortfall in floor to ceiling height for the ground-floor apartment, I consider that this aspect of the development design would warrant a refusal of the proposed development.

7.2.4. Section 16.10.1 of the Development Plan suggests that where ground-floor apartments are proposed to be located adjoining the back of a public footpath, consideration may be given to the provision of a 'privacy strip' of approximately 1.5m in depth. The proposed development would be constructed onto the back edge of the public footpath following the existing building line on site and that of the existing buildings to the east along Middle Third. The ground-floor apartment would feature two habitable room windows directly onto the footpath and as a result this layout would not provide a suitable level of privacy or security for the ground-floor apartment. The grounds of appeal assert that the proposals would enhance the area and would follow the building line set by No.49e Middle Third. The building at No.49e was granted permission in December 2003 under DCC Ref. 2482/03 and this building comprises a hair and beauty salon at ground-floor and a one-bedroom apartment at first-floor. Whilst I would consider that there is merit in replacing the existing building on site and following the existing building line, I do not consider that No.49e provides sufficient justification for introducing a residential use at ground floor on the appeal site particularly given my concerns in relation to privacy and security for the proposed ground-floor apartment.

7.2.5. The proposed development would not be served by dedicated car parking or public/communal open space. However, given the infill nature and scale of the proposed development and the site context, including proximity to Killester DART

station, neighbouring public green spaces and Killester village, dedicated car parking would not be necessary and a condition could be attached to a grant of permission, to request a financial contribution in lieu of the open space shortfall, as provided for under Section 16.3.4 of the Development Plan.

7.2.6. In conclusion, the proposed development would not provide a suitable level of residential amenity or standard of accommodation for future residents, by virtue of the absence of private amenity space and the insufficient extent of glazing serving habitable rooms, the insufficient floor to ceiling height of the ground-floor apartment and the siting of windows at ground floor directly onto the public footpath. Consequently, the proposed development would not be compliant with Policies QH18 and QH19 and the provisions of Section 16.10.1 of the Development Plan, as well as the provisions of the Apartment Guidelines 2018.

7.2.1. As stated above, the issues that I have raised in my *de novo* assessment of the planning application above are new issues, as they have not been raised in the grounds of appeal. If the Board agree with my approach and choose not to use its discretion to limit its assessment solely to consideration of Condition no.3 under Section 139 of the Act, and to consider the application, as if it had been made to the Board in the first instance, the Board may wish to seek the comments from the first-party appellant in respect of the issues raised in the recommended reason for refusal.

## 8.0 **Appropriate Assessment**

Having regard to the minor nature of the proposed development, the existing development on site, the location of the site in a serviced urban 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.

## 9.0 **Recommendation**

9.1. I recommend that permission is **refused** in accordance with the following reasons and considerations.

## 10.0 Reasons and Considerations

1. Having regard to the layout and design of the proposed development, including the absence of private amenity space, the insufficient area of glazing serving habitable rooms, the insufficient floor to ceiling height of the ground-floor apartment and the lack of privacy and security for the ground-floor apartment as a result of the positioning of windows directly onto the public footpath, it is considered that the proposed development would constitute a substandard form of development, would be seriously injurious to the residential amenities of future occupants of both proposed apartments, would be contrary to the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2018 and would be contrary to the provisions of Section 16.10.1 and Policies QH18 and QH19 of the Dublin City Development Plan 2016-2022, which support the provision of high-quality apartments. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Colm McLoughlin  
Planning Inspector

11<sup>th</sup> April 2018