



An
Bord
Pleanála

Inspector's Report ABP-300719-18

Development	The development will consist of the change of use of two garages to a 2 bed 2 storey townhouse residence.
Location	Garage Numbers 1 and 2, Ardoyne House, Pembroke Park, Ballsbridge, Dublin 4
Planning Authority	Dublin City Council Sth
Planning Authority Reg. Ref.	4095/17
Applicant	Philip Harley
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant	Philip Harley
Observers	Kathy & OJ Francis 3 Ardoyne Mews Glenhome Enterprises Ltd Philip Kelly 12a Penbroke Park Ardoyne House Management Ltd
Date of Site Inspection	17/5/2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The appeal site is within an established residential development situated to the rear of main roads, in heartland, in Ballsbridge. It is located immediately adjacent to Herbert Park with vehicular access from Pembroke Park. The access drive is between St. Mary's Home and No. 2 Pembroke Park and is 5.5 metres wide with a footpath on one side. Along the entrance road there is a more recent development of two storey terraced houses with first floor terraces set within the building line in a line along the north west of the site where it backs onto Clyde Lane. These are of contemporary design and treatment. A line of garages extends beyond the new terrace along the north western boundary, which continues along Clyde Lane. A line of similar garages extends along the south western boundary, which bounds the rear of property fronting Pembroke Park. The subject site comprises the two nearest the entrance roadway. Ardmore House, a single 12 storey apartment block set out in a north south alignment, slightly cranked, is located centrally within the grounds.
- 1.1.2. The area surrounding the apartment block and the entrance is laid out as a green and for car parking. Single-storey, flat-roofed garages (already referred to) flank the parking area. To the northeast and southeast the grounds bound Herbert Park and is screened from view from the park by mature landscaping.
- 1.1.3. Vehicular access to Clyde Lane from the development via a pair of timber gates is locked and little used. As previously referred to, the entrance is provided from Pembroke Park via a tree lined avenue.
- 1.1.4. The grounds of Ardoyne House include an area the width of a roadway for the extent of the boundary with No 2 Pembroke Park, where it widens out, initially as a small landscaped area partly to the rear of the subject garages, and then to its full width. There is a small green area with landscaping and a bench seat to the rear of numbers 2, 4 and 6 Pembroke Park. The subject site mainly bounds this area. The subject site comprises two adjoining single storey flat roofed garages, which are at the end of a line of similar buildings. The line of garages have up and over doors and similar proportions and finishes. At the south eastern end of the line of garages there is an electricity substation of similar height to the garages and beyond that a small garden shed set behind the uniform line of garages. Between the substation and the garages a narrow passage way, the level of which is higher than that to the front,

appears to access a narrow strip of ground which runs between the garages and the boundary with No. 12 A Pembroke Park. To the north of the subject site a timber door accesses an outdoor area the width of the pedestrian door, which extends the depth of the garage. This small area is enclosed by the wall of the garage, a wall to the rear and a wall parallel to the garage. Several banks of electrical metres and gas metres are located within this area, attached to the north western wall. The rear of the subject site faces largely towards the amenity space to the rear of 2-6 Pembroke Park, but partly faces towards the garden of No 12A Pembroke Park which has trees and bushes at this end of the garden.

1.1.5. The site is given as 38 sqm.

2.0 Proposed Development

2.1.1. The development will consist of the extension in height, refurbishment and change of use of two garages, to a 2 bed 2 storey townhouse residence, including a new first floor, with a new entrance and kitchen dining living space on the ground floor, and 2 bedrooms and a bathroom on the new first floor; and all associated site works

2.1.2. It should be noted that the windows are all in boundary walls. The windows to the south west are in the boundary wall to the passageway, those to the north west are in garage wall bounding the narrow yard which has electricity and gas metres, both therefore bound areas in other ownership. Those to the front are in the boundary wall with a driveway which is part of the car park.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse permission for two reasons:

- 1) The proposed development for the conversion of 2 no. garages to 1 no. 2 bed dwelling located in an area zoned Z1, is not in accordance with development Plan policy standards as set out in Section 16.10.2 – Private Open Space as it

would not result in a sufficient quantum or quality of private open space for the amenity of the dwelling as required by the Development Plan.

- 2) The location and design of the proposal would also result in an unsatisfactory level of residential amenity for future occupants and would be seriously injurious to existing residential amenity by virtue of the visual impact and piecemeal design approach. It would therefore not be in the interest of proper planning and sustainable development.

3.1.2. The decision was in accordance with the planning recommendation.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- Ardoyne House is a 12 storey apartment block between St Mary's nursing home and No 2 Pembroke Park.
- Only suitable for 2 single bedrooms
- No open space
- No defensible space to front
- No consent from freehold interest, leaseholder does not consent
- Roads and Traffic Planning Division expresses concerns and requests additional information.
- The mews development on the northern side shows that development of this type could be accommodated if it was designed as part of a comprehensive proposal rather than a piecemeal approach and resulted in no diminution of the existing residential amenity.
- Does not meet DP requirements for private open space and/ or defensible space. Not a sufficient standard of residential amenity.

3.2.2. **Other Technical Reports**

Roads and Traffic Planning Division

It is unclear if the existing garages are used to store/park a car, and if they are associated with the existing apartments of Ardoyne House or Ardoyne Mews.

Noting objections they request further information on the previous point and also to clarify whether the applicant has an existing right of way through the estate to the subject site, noting that the blue line does not extend beyond the boundary of the subject site.

Engineering Department Drainage Division – conditions including:

Where it is proposed to connect to an existing private drainage system, the developer must comply with the relevant building Regulations, obtain permission from all the owners of this private system and satisfy themselves as to the adequacy of the private network. If permission cannot be obtained a new connection(s) to the public sewer(s) must be made

3.3. Third Party Observations

3.3.1. Third party observations have been read and noted.

4.0 Planning History

The history relates to the line of houses within the Ardoyne House grounds northwest of the subject site and including the subject site .

PL 29S.119212 (Reg. Ref. 0400/00) decision by the planning authority to grant permission for 10 no. 2 bedroom duplex apartments and 1 no. 3 bedroom duplex apartment in 2 storeys on an enlarged site at the existing apartment development at Ardoyne House, Pembroke Park, Ballsbridge. The proposal involved the demolition of an existing structure comprising of 1 disused apartment and 9 no. garages.

The Board decided to grant permission for eight number two bedroom duplex apartments on an enlarged site at the existing apartment development and the demolition of an existing structure comprising one disused apartment and nine number garages; and

To refuse permission for two number two bedroom duplex apartments and one number three bedroom duplex apartment in the block to the south of the entrance driveway from Pembroke Park for the reason of proximity to site boundaries.

PL29S.118728 (Reg. Ref. 4031/99) – The Board issued a split decision granting permission for 8 no. apartments, but refusing a second block of 3 no. apartments on the basis of zoning, amenity and traffic issues. Similar to PL 29S.119212 except that it involved an underground parking area of 27 spaces, giving a total parking provision of 110 spaces.

PL 29S.112838 (Reg. Ref. 1842/99) – The Board refused permission for 5 two-storey townhouses on the basis that the proposed development would constitute over-development of a restricted site.

PL 29S.100808 (Reg. Ref. 969/96) – Permission sought to demolish 8 no. garages and 1 apartment and erect 2 no. mews houses with access from Ardoyne House. Permission was granted by Dublin Corporation. This permission was the subject of a third party appeal to the Board and also the subject of High Court proceedings. The decision of the High Court quashed the decision of Dublin Corporation and the appeal to An Bord Pleanála was, therefore, declared invalid.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan 2016-2022 is the operative plan, relevant provisions include:

The site is zoned Z1 ‘to protect, provide and improve residential amenities’.

- 1) Z1 16.10.2 private open space

A minimum standard of 10 sq.m of private open space per bedspace will normally be applied. A single bedroom represents one bedspace and a double bedroom represents two bedspaces. Generally, up to 60-70 sq.m of rear garden area is considered sufficient for houses in the city. In relation to proposals for house(s) within the inner city, a standard of 5 – 8 sq.m of private open space per bedspace will normally be applied.

5.2. **Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities**, Department of the Environment, Heritage and Local Government Published 2007.

The area of a single bedroom should be at least 7.1m² and that of a double bedroom at least 11.4m². The area of the main bedroom should be at least 13m² in a dwelling designed to accommodate three or more persons. The recommended minimum unobstructed living room widths are 3.3 metres for one bedroom, 3.6 metres for two bedroom and 3.8 metres for three bedroom dwellings, and the minimum room widths for bedrooms are 2.8 metres for double bedrooms and 2.1 metres for single bedrooms.

All dwellings should have clearly defined private open space. Provision for private open space should take account of the requirements of the Development Plan for the area.

5.3. **Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities**, Department of Housing, Planning and Local Government March 2018

Aspects of previous apartment guidance have been amended and new areas addressed .

Planning authorities may consider a two-bedroom apartment to accommodate 3 persons, with a minimum floor area of 63 square metres, in accordance with the standards set out in Quality Housing for Sustainable Communities

The requirement for car-parking, in certain circumstances where there are better mobility solutions and to reduce costs, can be removed.

New standards 2 bed apt 3 person - minimum size 63 sq m, 2 bed apt 4 person 73 sq m, 2.4m minimum height, and 2.7m minimum height at ground level.

Minimum aggregate bedroom areas: two-bedroom 3 persons 20.1 sq m, two-bedroom 4 persons 24.4 sq m

Minimum bedroom width and floor area: double 2.8m and 11.4 sq m, and twin 2.8m and 13 sq m.

Minimum living dining width and floor area: two-bedroom 3 persons 3.6m and 28 sq m and two-bedroom 4 persons 3.6m and 30 sq m.

Minimum storage space two-bedroom 3 persons 5 sq m, two-bedroom 4 persons 6 sq m.

Minimum area for private amenity space – two-bedroom 3 persons – 6 sq m, two-bedroom 4 persons – 7 sq m

Minimum area for communal amenity space two-bedroom 3 persons – 6 sq m private, two-bedroom 4 persons – 7 sq m

1 cycle storage space per bedroom + 1 visitor space per 2 units.

5.4. Natural Heritage Designations

- 5.4.1. The South Dublin Bay SAC site code 000210 and South Dublin Bay and River Tolka SPA site code 004024, are the nearest Natura sites, located c 1.6km away.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal has been submitted by Des Maguire Architects on behalf of the first party, Philip Harley.
- 6.1.2. The grounds includes:
- ABP previous decisions:
 - PL 29S.100800
 - PL 29S 112838
 - PL 29S 118728
 - PL 29S.119212
 - In the most recent: PL 29S.119212, the PA decision to grant permission was appealed. The Board granted 8 duplex apartments and refused permission for 3 duplex apartments.
 - Mr Harley owns these two garages. He does not own any other property here and the development is therefore not piecemeal.

- The Ardoyne House site is extensive with a substantial entrance driveway 85+ car parking spaces, lots of bicycle parking and extensive well maintained private open space. The CDP open space requirements are satisfied with the existing private open space at Ardoyne House.
- It does not adversely affect residential amenity, it is quite small and surrounded by significantly larger houses.
- Herbert Park provides acres of public open space.
- Minimum floor area is provided per Quality Housing for Sustainable Communities Best Practice Guidelines for Quality Housing for Sustainable Communities Delivering Homes Sustaining Communities, table 5.1, for a 2 bed house is 70 sq m (2 bed, 2 storey, 3 person).
- The back of the house is well screened.
- This inner suburban area is well served by transport and public amenities. They hope that if the Board overturns the decision that other individual unit owners will be encouraged to take a similar approach.

6.2. Planning Authority Response

6.2.1. The Planning Authority has not responded to the grounds of appeal.

6.3. Observations

6.3.1. Observations on the appeal have been received from:

- Brendan Williams Architects on behalf of Kathy & OJ Francis, 3 Ardoyne Mews.
- Future Analytics Consulting Ltd on behalf of Glendine Enterprises Ltd (owners of 111 Ardoyne House).
- Kieran O'Malley & Co Ltd on behalf of Philip Kelly 12a Penbroke Park, Ballsbridge.
- Ardoyne House Management Ltd.

6.3.2. The observations include:

- Development would be substandard

- Development would cause overlooking
- No road or consent of the owner
- Drainage proposals outside site, no consent of the owner
- Doesn't comply with development plan standards
- Floor areas fail to comply with the minimum standards in Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities. If the development is for a 2 bed 4 person house it fails to comply with 4 of the 5 standards – overall floor area 75.4 sq m, aggregate living area 23 sq m and aggregate bedroom area 19.78 sq m, (bedroom 2 is less than 10 sq m). If for a 2 bed 3 person house, it fails to comply with 3 of the 5 standards.
- It would be substandard re. private open space per development plan, where 40 sq m would be required.
- It would be substandard re. car parking per development plan 1 space per unit would be required; and would involve a loss of spaces to Ardoyne House.
- Traffic safety
- Inappropriate design
- ACA
- No open space
- Shadowing of Ardoyne Mews
- Applicant is a leaseholder and has no consent from freeholder to make the application. The lease contains an express restriction on use other than garage.
- The property has a right of way over Ardoyne House estate. As owner of the estate, Ardoyne House Management Ltd does not and will not consent to the use of the right of way for the property for any use other than as garage. The property does not have any easements or rights of way over the estate for services. Ardoyne House Management Ltd, as owner of the estate, will not

grant permission to allow access to any of the estate's services such as drainage or water.

- Out of keeping with the original house and approved mews buildings.
- Reduction in parking
- Occupants would exit directly to a busy driveway.
- Substandard: 10m² main bedroom 2m² storage and 0m² private open space.

7.0 Assessment

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, standard of development, impact on residential amenities of the area, and legal issues and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

7.3. Standard of Development

7.3.1. In contrast to the line of townhouses to the north, which back onto Clyde Lane, the subject site backs to a passage way which is a narrow strip of private ground, and adjoins private ground to the north. The proposal to place windows in the boundary walls: two to the kitchen / living area at ground level and one to the shower room at first floor level facing north west; and one facing south west, to the landing at first floor level, is of some concern in relation to establishing rights to light and prejudicing the development of adjoining land, and also in relation to maintenance of the exterior of the building, since there is not proven right to access these areas. In addition the building regulations restrict the extent of unprotected areas (e.g. windows) in boundaries, having regard to the need to limit the spread of flames; and it is not clear if the windows comply with these requirements. It is worth noting that there is a bank

of electricity metres and gas metres close to and facing these windows within the small yard area adjoining. In my opinion the placement of windows in walls that form site boundaries is disorderly development, would prejudice the development of adjoining lands, and is a reason to refuse permission.

- 7.3.2. In the elevation facing towards the Ardoyne House site, the townhouses have a first floor terrace set within the building line; the subject development proposes no private open space. The development plan requirement is for 10 sq m per bedspace, i.e. 40 sq m.
- 7.3.3. The refusal reason refers to the lack of a defensible space to the front of the proposed dwelling. The development plan refers to the need for defensible space where dwellings have little or no front gardens in urban settings, that a defensible space should be created behind the public footpath. The proposed development is even more deficient as there is no footpath to the front of the existing garage / proposed dwelling. This poses a hazard to residents stepping directly into the driveway serving the Ardoyne House parking, which has been raised by observers.
- 7.3.4. Observers refer to deficient standards of accommodation being provided, in terms of minimum floor area standards.
- 7.3.5. The guidance document Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities, sets out the standards for dwellings, which include minimum aggregate living areas¹ of 28sq m (23 sq m provided) minimum storage of 3 sq m (2 sq m provided) and private open space to be provided per development plan, 40sq m required, none provided; therefore the minimum standards are not achieved.
- 7.3.6. The current apartment standards, dated earlier this year, Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, Department of Housing, Planning and Local Government, could also be taken into account, regarding the issue of minimum standards, since the layout, including the absence of a back door, is more akin to an apartment.
- 7.3.7. Those guidelines set out minimum standards for bedroom areas, livingroom/kitchen areas and private and communal open space. The relevant standards include

¹ Based on a two bedroom 3 person house, although the layout shown indicates a two bedroom 4 person house.

minimum floor areas for aggregate living area of 28sq m (23 sq m provided)
minimum storage of 5 sq m (2 sq m provided) and private open space, a minimum of 6 sq m is required, none provided. Those minimum standards are not achieved. There is also a requirement for a minimum of 2-3 bike spaces, whereas none is provided.

- 7.3.8. The proposed development is clearly deficient in terms of standards. In particular the deficiencies which are cited in the refusal reason: the lack of open space and the absence of a footpath or defensible space to the front of the unit; and the placement of windows in site boundaries; and this is a reason to refuse permission.

7.4. Impact on the Residential Amenities of the Area

- 7.4.1. The impact on the residential amenities of the area from overshadowing and overlooking is referred to by observers.
- 7.4.2. In relation to the concern that the development would cause overlooking, as is pointed out in the grounds of appeal the back of the house is well screened. It faces mainly a landscaped area which is part of the Ardoyne House estate, where its presence could prejudice future development but does not at this time impact on residential amenity. It faces also the end of the garden of 12a Penbroke Park, which is well screened. I do not consider that there is any impact on privacy but if the Board were to have a contrary view, obviation methods of protecting privacy of adjoining property could be implemented.
- 7.4.3. In relation to the concern of observers re. overshadowing of Ardoyne Mews. Ardoyne Mews is some distance from the proposed development which would involve only a modest increase in the height of the building; I do not consider that any impact of overshadowing will occur. This should not be a reason to refuse permission.
- 7.4.4. It is of concern to observers that the design is out of keeping with the original house and the mews buildings. It is stated in the application drawings that the coloured natural stone panels and coloured plaster render will match Ardoyne Mews. Apart from the scale and particularly the height of the building, which is out of keeping with the original house and the mews buildings, the design treatment is not particularly jarring but the proposed development of two of the 19 garages would have the appearance of piecemeal development.

7.5. Legal Issues

- 7.5.1. Access to services – the management of the apartment block states that there is no permission in the lease of the garages for any use other than garage and that they do not intend to permit access to the services necessary for connection to the proposed development.
- 7.5.2. Although this is largely a legal matter and is not a matter that the Board can finally determine and Section 34 (13) of the Planning and Development Act, which states that the granting of permission does not entitle a person to carry out development covers the eventuality that the development cannot be implemented for legal reasons, it is of some concern that there is an apparent absence of the necessary legal interest to carry out the development.

7.6. Other Issues

- 7.6.1. It is of concern to observers that the proposed development involves a reduction in the parking available to the Ardoyne House apartments and Ardoyne Mews scheme.
- 7.6.2. The question arises as to how someone became the owner of the garages independently of being a resident in the apartments. The address of the applicant is not given but it is stated that he does not own any other property in the estate.
- 7.6.3. The most recent guidelines in relation to residential accommodation, the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, March 2018 state that the requirement for car-parking, in certain circumstances where there are better mobility solutions and to reduce costs, can be removed. It may be desirable to maintain the level of car parking in this estate, but it does not appear to me to be essential, and this should not be a reason to refuse permission.

8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1 Having regard to the confined nature of the site where all of the windows would be located on site boundaries and the front door would exit onto a driveway where no footpath exists, the proposed development would comprise seriously substandard development, which would endanger the safety of future occupants, would prejudice the development on adjoining lands and be contrary to the proper planning and sustainable development of the area.

2 Having regard to the severely restricted accommodation proposed, with limited space provision for livingroom areas, storage and particularly the absence of any private amenity space or communal open space, the proposed development would constitute a substandard form of residential development which would provide poor amenities for future residents and be contrary to the proper planning and sustainable development of the area.

3 The location and design of the proposal would be injurious to the amenities of property in the vicinity by virtue of the visual impact and piecemeal design approach and would, therefore, be contrary to the proper planning and development of the area.

Planning Inspector

11 June 2016

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022
- 3 Extracts from Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities
- 4 Extracts from Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities