



An
Bord
Pleanála

Inspector's Report ABP-301633-18.

Development	Change of use from commercial / office use to live/work unit.
Location	22 Robinhood Road, Drimnagh, Dublin 12.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD18A/0058.
Applicant(s)	Luke Keeler.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Luke Keeler.
Observer(s)	None.
Date of Site Inspection	11/07/2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located to the south of the Naas Road, approximately 0.8km to the east of the Red Cow Interchange on the M50 and off the Long Mile Road. The site is located within a heavily industrialised area and is accessed off Robinhood Road. The area also includes a number of residential properties, some of which are currently used for commercial purposes, but also some that still maintain their residential use.
- 1.2. The existing house comprises a detached bungalow on a large site which has operated as an office premises. The existing house on the site has a stated area of 193m². The site has a stated area of 0.055ha and there are existing services available in the building.

2.0 Proposed Development

- 2.1. Permission is sought to change the use of existing bungalow from commercial/office use to live/work unit. The existing attic and storage space will be converted with new skylights for 2 bedrooms proposed at first floor. The existing detached storage shed to rear garden will also receive a skylight and the attic space will remain in use for storage purposes ancillary to the workshop and studio use proposed below. A separate office space will be retained in the rear of the existing bungalow for business purposes with direct access to rear garden and work shop proposed. The front boundary wall of the property will be stepped back to create a footpath externally and include a new vehicular entrance and boundary wall treatment to front and side garden. All associated works and landscaping included, all at 22 Robinhood Road, Drimnagh, Dublin 12.
- 2.2. The proposed development will provide for a residential area of 116.5m² and a work – commercial area of 76.5m².

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for the following 2 reasons:

1. In the South Dublin County Development Plan 2016-2022 under the Zoning objective 'EE', use class 'live-work unit' is Not Permitted. The proposed development would materially contravene this zoning objective and therefore not be in accordance with the policies and objectives of the South Dublin County Development Plan 2016-2022 and would not be in accordance with the proper planning and sustainable development of the area.
2. The proposed change of use from commercial to 'live-work unit' use would be out of character with the surrounding predominantly industrial area, including the close proximity of SEVESO sites, would impact on the residential amenity of any future residents by way of conflict of use and would therefore seriously injure the amenities or depreciate the value of property in the vicinity and would not be in accordance with the policies and objectives of the South Dublin County Development Plan, 2016-2022 and would not be in accordance with the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report formed the basis for the planning authority decision to refuse permission for the development. The report notes the proximity of SEVESO sites and that the vast majority of the surrounding bungalows are either in commercial use or lying vacant and derelict.

3.2.2. Other Technical Reports:

Roads Section: No objection subject to conditions

SDCC Water Services Section: No objection subject to conditions.

4.0 Planning History

PA ref SD17A/0420: Permission refused for a change of use of existing bungalow from commercial / office use back to residential use. The reason for refusal for this solely residential proposal was as follows:

‘Under Zoning objective ‘EE’ use class ‘residential’ is Not Permitted. The proposed development would materially contravene this zoning objective and therefore not be in accordance with the policies and objectives of the South Dublin County Development Plan 2016-2022 and would not be in accordance with the proper planning and sustainable development of the area.

The proposed change of use from commercial to residential would be out of character with the surrounding area, would impact on the residential amenity of any future residents by way of conflict of use and would therefore seriously injure the amenities or depreciate the value of property in the vicinity and would not be in accordance with the policies and objectives of the South Dublin County Development Plan 2016-2022 and would not be in accordance with the proper planning and sustainable development of the area.’

Recent planning applications and decisions in the wider area have all been associated with intensifying or expanding existing industrial and employment uses.

5.0 Policy Context

5.1. Development Plan

The South Dublin County Development Plan 2016-2022 is the relevant policy document pertaining to the subject site. The site is zoned ‘EE’ and the zoning objective seeks ‘to provide for enterprise and employment related uses.’ Live-Work Units or Residential are not permitted uses within the EE zoning.

Section 4.3.0 of the Plan deals with Employment Location Categories and it is the overarching policy of the Council, ET Policy 1 refers, ‘to support sustainable enterprise and employment growth in South Dublin County and the greater Dublin Area, whilst maintaining environmental quality.’

Section 4.4.0 of the Plan deals with Home Working and it is the stated policy, ET Policy 4, 'to support small scale home-based economic activities at appropriate locations.' ET4 Objective 2 seeks 'to support and encourage the provision of ground floor live-work units as part of mixed use and residential developments in appropriate locations, as a means of enlivening streets and to provide flexible accommodation for small businesses.'

The existing industrial site to the north of the subject site, includes Irish Distillers, is designated as a Lower Tier SEVESO Site.

5.2. Natural Heritage Designations

Not relevant given the brownfield nature of the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party has submitted an appeal against the decision of the Planning Authority to refuse permission for the proposed change of use. The grounds of appeal are summarised as follows:

- There are existing houses in the vicinity and the proposed change of use back to residential is in character with the surrounding area. The two next door neighbours cottages are in use as dwellings.
- There were no objections to the proposed change of use.
- The applicant has struggled to find suitable housing for him and his family and was informed that the change of use application would have a high chance of success given the shortage of supply in SDCC. He, and his family are currently living with his parents in a single bedroom.
- The refusal does not take into account the recent government announced initiative to allow changes of use of commercial properties back to residential where they previously operated as residential.
- The SEVESO site referred to is not a sufficient reason to refused permission.

- The applicant will construct a footpath as required.
- It is submitted that there was a previous application for change of use from commercial to residential which was refused. The application for a workshop and studio to the rear garden shed and office to the rear of the house is ancillary to the primary residential use and is not commercial, rather ancillary to the dwelling.
- The planning application fee with SDCC was for a residential development and it is noted that the Board sought the higher fee due to the mentioning of commercial use. It is requested that the prescribed fee be reduced to the original €200 for a residential appeal application.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

7.1. Having regard to the nature of this appeal, and having undertaken a site visit, as well as considering the information submitted, and proposed development, I suggest that it is appropriate to assess the proposed development under the following headings:

- The principle of the development and compliance with policy
- Other Issues
- Appropriate Assessment

7.2. Principle of the development and compliance with policy

7.2.1. The subject site is located within an area South Dublin County Council which has been zoned 'EE', enterprise and employment. The zoning matrix for this specific zoning specifically excludes residential and 'live-work units'. Therefore, and notwithstanding the previous use of the property, or the presence of existing houses

in the immediate vicinity, the proposed development does not comply with the zoning objective afforded to the site.

7.2.2. The County Development Plan supports the provision of 'live-work units' in a variety of circumstances including as follows:

- Policy ET2 Objective 2: but only as part of a mixed use development, or residential development in appropriate locations. Having regard to the zoning objective afforded to the subject site, the location is not deemed appropriate.
- Within REGEN zoned lands: this does not apply in this instance.

7.2.3. In terms of the above, it is clear that the current County Development Plan does not provide for the proposed development and if permitted, the development would materially contravene the zoning objectives afforded to the site. I empathise with the appellant in this case as, notwithstanding the presence of small to large industrial buildings in the wider area, the adjacent properties are in residential use, with other residential uses evident in close proximity. I also note the previous use of the building and fact that the change of use would appear to be a straight forward, uncomplicated build.

7.2.4. I note the provisions of Section 37(2) of the Planning & Development Act, 2000 as amended, and should the Board be minded to consider a positive decision with regard to the proposed development, it is necessary to consider if there are material planning matters arising which would justify the setting aside of the Development Plan zoning objective for the site.

7.2.5. Section 37(2) of the Planning & Development Act, 2000 as amended, states as follows:

37(2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,
(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, ABP-300277-17 Inspector's Report Page 10 of 16

or

(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.

Should the Board be minded to grant permission for the proposed development, the requirements of S37(2)(b) need to be established and the Board must satisfy itself that the stated criteria are met.

7.3. Other Issues

7.3.1. The Board will note the reference to the government announcement regarding the change of use of commercial properties to residential without requiring planning permission. The Planning & Development (Amendment)(No.2) Regulations 2018 was enacted on the 8th February 2018 and will remain in place until the 31st of December, 2021. The Board will note that there are a number of exemptions for changing the use of an existing commercial unit to residential unit including as follows:

1. The relevant commercial uses that can be changed to residential are the uses listed in Classes 1,2, 3 and 6 of the Planning Regulations and the structure must have previously used for one of the uses.
2. The structure concerned must have been vacant for a period of 2 years or more immediately prior to the commencement of development.
3. Any related works shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.
4. The development cannot conflict with an objective of the Development Plan.
5. There are further restrictions relating to Article 9, SAAOs, SPCs and sites in proximity to Seveso sites.

In terms of the above sample of restrictions, it would appear that the subject site may not satisfy a number of them. That said, the Board does not have full details and it is a matter for the Planning Authority should the appellant choose to decide this route.

7.3.2. In terms of the proximity of the site to a SEVESO site, the Board will note that the closest SEVESO Site is located across the road from the site to the north west. This is the Irish Distillers site. A second SEVESO site is located to the west of the site, approximately 500m and is Oxigen Environmental. BOC Gases Ireland is an upper tier site located within the Bluebell Industrial Estate off the Naas Road, approximately 1km as the crow flies, and 2km by road from the subject site. The proposed development site is no closer to these sites than existing residential development in the vicinity.

7.3.3. I am satisfied that the development, if permitted, would be acceptable in terms of servicing, roads and traffic as well as visual impacts.

7.3.4. The Board will also note the indication by the appellant that the application relates to a residential proposal and that the 'live-work' element, studio and workshop are all ancillary to the residential use and not commercial in its nature. It is requested that the appeal fee be reduced from the commercial rate paid, to the €200 residential fee. The description of the development indicates that the office to be

retained in the rear of the existing bungalow will be for business purposes and will have direct access to rear garden and workshop proposed. In addition, the application form distinguishes between the residential and commercial uses and in this regard, I am satisfied that the appropriate fee has been applied in this instance given the development description.

7.4. Appropriate Assessment

Having regard to the location of the subject site within an established and built up area, together with the nature and scale of the proposed development, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

8.0 Recommendation

8.1. It is recommended that permission be refused for the following stated reason.

9.0 Reasons and Considerations

The proposed development seeks a change of use of an existing bungalow from commercial/office use to live/work unit in an area zoned 'EE' in the South Dublin County Council Development Plan 2016-2022, and where it is the stated objective of this zoning 'to provide for enterprise and employment related uses.' Live-Work Units or Residential uses are explicitly noted as 'not permitted uses' within the EE zoning. The proposed development would, therefore, materially contravene this zoning objective and would be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
30th July, 2018