



An
Bord
Pleanála

Inspector's Report ABP-302059-18

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| Development | Permission for retention of change of use of garage to habitable use. |
| Location | 31 Royal Terrace West, Dun Laoghaire, Co. Dublin. |
| Planning Authority | Dun Laoghaire Rathdown County Council |
| Planning Authority Reg. Ref. | D18A/0357 |
| Applicant(s) | Karen Furlong |
| Type of Application | Permission |
| Planning Authority Decision | To Refuse Permission |
| Type of Appeal | First Party v. Decision |
| Appellant(s) | Karen Furlong |
| Observer(s) | No observers. |
| Date of Site Inspection | 25.09.2018 |
| Inspector | Erika Casey |

1.0 Site Location and Description

- 1.1. The subject site forms part of Royal Terrace West, one of two such terraces constructed in the mid 19th century in Dun Laoghaire. The terrace comprises 32 no. two storey over basement houses served by rear gardens which abut Royal Terrace Lane. The existing laneway is in poor condition, has an inadequate surface and no public lighting or footpaths.
- 1.2. No. 31 is located at the western end of the terrace. A two storey mews building in accordance with that permitted under Reg. Reg. D13A/0125 has been constructed to the rear. The permitted use of the structure is as a garage and conservatory at ground floor and as a playroom at first floor level and that these uses be ancillary to that of the main dwelling.

2.0 Proposed Development

- 2.1 The proposed development comprises the retention of the change of use of the existing garage/playroom and conservatory in the mews structure to habitable accommodation. No amendments to the external fabric of the building are proposed. It is stated in the application that the mews building will remain ancillary to the main dwelling and will be used by a family member (the applicant's niece). The floor plans submitted with the application indicate that a kitchen is located at ground floor level.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 To Refuse Permission for 2 no. reasons:

1. *The development to be retained would result in an additional independent dwelling being provided on the site contrary to Condition no. 5 of planning application reg. ref. D13A/0125 which required that the two storey building to the rear shall be used solely for use ancillary to the enjoyment of the dwelling house and shall not be used as a dwelling or for the carrying on of any trade*

or business. The development to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

2. *Having regard to the existing condition of the adjoining laneway, which is inadequate in terms of surface, alignment, footpath provision and public lighting to service the development and to the possibility of redevelopment of adjoining properties in a similar manner, and having regard to Section 8.2.3.4 (x) – Mews Lane Development – of the Dun Laoghaire Rathdown County Development Plan 2016-2022, regarding the comprehensive redevelopment of mews lanes generally, it is considered that the development to be retained would contravene the current County Development Plan, would result in piecemeal development and would be premature, by reference to the existing deficiency in the access road. The development to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Report (15.06.2018)

- The mews building is effectively functioning as a separate, independent dwelling contrary to condition no. 5 of planning application reference D13A/0125 and contrary to the policies of the County Development Plan which state that detached habitable rooms shall not be used to provide residential accommodation for a family member.
- Whilst a mews dwelling on the site may be permissible in principle, having regard to the previous planning applications for mews dwelling on the lane and the need for the planned provision of public services and access on the lane specifically, it is considered that this form of development would be premature pending the preparation of a comprehensive scheme for mews development along this laneway.
- The development does not accord with the requirements for family member/granny flat extensions as it is not interlinked with the primary dwelling.

- It is considered that the development if permitted would set an undesirable precedent for similar type of development along a mews lane, whereby independent dwelling units would be provided without the benefit of the necessary off street car parking along a lane which does not have the benefit of an appropriate road surface or public lighting and as such would seriously impact on the residential amenity of the area.

3.2.2. Other Technical Reports

Drainage Planning (22.05.2018): No objection.

Transportation Planning (30.052017): No objection subject to a condition that the mews structure be occupied by members of the same extended family and not be let or sold separately.

Conservation Report (22.05.2018): No objection and noted that the works to be retained have no impact on the character and appearance of the Royal Terrace Architectural Area or the setting of the existing protected structure.

3.3. Prescribed Bodies

- No reports received.

3.4. Third Party Observations

3.4.1 There were two third party observations on the application and the issues raised can be summarised as follows:

- The proposal contravenes conditions attached to the permission granted under D13A/0125. In particular, the requirement that the structure shall not be used to provide residential accommodation.
- Consider that the laneway is unsuitable for residential development in its current condition.
- The development would set an undesirable precedent for further developments of this nature on a piecemeal basis resulting in the erosion of the attractive character of Royal Terrace Lane.

- The proposed development would contravene its status as a protected structure within an ACA. The use of the structure should be confined to its original purpose and not residential use.
- The laneway is unsuitable for car parking and increased use would impact negatively on the amenity of the laneway, create a traffic hazard, cause noise nuisance and impede access.

4.0 Planning History

Subject Site

Planning Authority Reference D13A/0125

- 4.1 Permission granted to demolish the ruins of an existing two storey coach house at the rear of the dwelling and erect a new two storey detached building at the rear with garage and conservatory on ground floor and playroom at first floor. Condition 5 of this permission is of note and states:

“The proposed two storey building to the rear shall be used solely for use ancillary to the enjoyment of the dwelling house and shall not be used as a dwelling or for the carrying on of any trade or business.

Reason: To prevent unauthorised development and to clarify the extent of this permission.”

- 4.2 The planner’s report in respect of this application stated:

“The laneway to the rear of Royal Terrace West, which provides access to the site, is in very poor condition. It is narrow, poorly surfaced and has no footpaths or public lighting. I would not consider the laneway suitable for residential development in its current condition.”

Adjoining Sites

Planning Authority Reference D14A/0539

- 4.3 Permission granted at 22 Royal Terrace West for the conversion of an existing detached garage to provide gym and studio accommodation. Condition 3 attached to this permission required that the use of the structure be restricted to residential use

associated with the existing house and not be used for the carrying on of any trade or business.

Planning Authority Reference D08A/0293

- 4.4 Permission granted for the refurbishment of an existing mews at no. 8 Royal Terrace West. Condition 5 specified that the mews structure may not be used for human habitation or as a dwelling.

Planning Authority Reference D06A/0642

- 4.5 Permission refused for the erection of a 3 storey mews house within the curtilage of 10 Royal Terrace Lane, annexed to 10 Royal Terrace West. The second reason for refusal noted that the development would prejudice the future planning of a comprehensive scheme for a mews development along this laneway.

Planning Authority Reference D00B/0815

- 4.6 Permission granted for a double garage with playroom and conservatory to the rear of no. 25 Royal Terrace West. Condition 3 stated that the garage shall be used solely for use incidental to the enjoyment of the dwelling house and shall not be used for the carrying on of any trade or business.

5.0 Policy Context

5.1. Development Plan

- 5.1.1 The operative Development Plan is the Dun Laoghaire Rahdown County Development Plan 2016-2022. The site is zoned 'A' with the objective 'to protect and/or improve residential amenity.'

- 5.1.2 No. 31 Royal Terrace West is a protected structure (ref. 1374) and located within the boundary of the Royal Terrace Architectural Conservation Area.

- 5.1.3 Policies of particular relevance include:

Section 8.2 sets out standards for residential development including open space etc.

Section 8.2.3.4 (iii) addresses **Family Member/Granny Flat extensions**. It states:

“A ‘Family’ or ‘Granny’ flat refers to a temporary subdivision of a single dwelling - often by adding an extension to the dwelling or converting an attached garage - for a subsidiary element, for use by a member of the immediate family (e.g. elderly parent) but not as a fully independent dwelling. These will be assessed against the criteria applied to ‘normal’ domestic extensions.

Proposals should be:

- *Interlinked with the primary dwelling and capable of being readily subsumed back into same.*
- *Such that the Planning Authority is satisfied that there is a valid justification for the proposal in use terms.*

Permission will normally be on condition that:

- *The flat can be subsumed back into the main dwelling when it is no longer required.*
- *It shall not be let or sold, other than as an intrinsic part of the overall property.*
- *Where the owner wishes it to remain subdivided on a permanent basis, an application shall be made for sub-division which will be assessed on the more demanding criteria as would be applied to a separate dwelling house.*

8.2.3.4 (iv) Detached Habitable Room: The plan notes:

“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.”

8.2.3.4 (x) Mews Lane Development: The plan provides extensive guidance regarding mews development and notes the following key points:

“The principle of mews development will generally be acceptable when located on a lane that:

- *Is already adequately serviced and surfaced from the site to the public road, with a suitable underlying base to cater for the expected traffic volumes.*
- *Has a legally acceptable agreement between owners or interested parties who intend to bring the laneway to standards and conditions - particularly in terms of services, road surfacing and public lighting - suitable to be taken-in-charge by the Council. The onus will be on the applicant(s) to demonstrate that they have a consensus of owners or interested parties.*
- *Where the Council is likely to be able to provide services and where owners can be levied to allow the Council to service the sites.*
- *Has been identified as being suitable for such development on the County Development Plan Maps or within a Local Area Plan.*

Where the Planning Authority accepts the principle of residential development on a particular laneway, the following standards will generally apply:

- *Development will be confined to single units in one or two storeys of modest size and the separation distance between the rear facade of the existing main structure (onto the front road) and the rear mews structure should normally be a minimum of 20 metres and not less than 15 metres, or not less than 22 metres where first floor windows of habitable rooms directly face each other.*
- *All parking provision in mews laneways should be in off-street garages, integral garages (car ports), forecourts or courtyards, and conditions to 'de-exempt' garage conversions will normally be attached. At least one off-street parking space per dwelling will generally be required. Where two spaces can be reasonably accommodated these should be provided. Part set-backs of frontage for on-street parallel parking may be considered depending on lane width and structure types.*
- *Each dwelling shall generally have a private open space area of not less than circa 48 sq. m. exclusive of car parking area.*

The plan sets out minimum lane width requirements depending on the number of dwellings served and notes that all mews laneways will be considered to be shared surfaces and footpaths need not necessarily be provided.

5.2. Natural Heritage Designations

5.2.1 The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (site code 004024) and the South Dublin Bay SAC (site code 000210) located c. 1.5 km to the north of the site.

6.0 The Appeal

6.1. Grounds of Appeal

- The existing mews building has been constructed to a high standard having regard to the integrity of the ACA. Note that the Conservation Officer has no objection to the proposal.
- Condition no. 5 of application D13A/0125 precluded the use as a dwelling. A dwelling is typically self-contained with its own services, own title and has clearly defined boundaries. The mews is within the curtilage of the main house, does not have its own boundaries and is not independently serviced. The building does not have its own title.
- The building remains ancillary to the main dwelling house and is occupied by the applicant's niece.
- The decision of the Council assumes the mews is a separate dwelling. The Planning Authority cannot dictate how and where a family member can sleep, cook or dine within the curtilage of their own property.
- Existing parking on the laneway has no negative impact on exiting residential amenities. The lane is 6.375 metres wide and the Transportation Section had no objection to the proposal.

6.2. Planning Authority Response

- It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.3. Observations

- No observations.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment and EIA screening also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Appropriate Assessment.
- EIA Screening.

7.2 Principle of Development

7.2.1 The proposed development comprises the change of use of an existing mews structure to habitable use. Permission for the development of the mews was granted in 2013. The mews structure as permitted accommodated a garage and conservatory at ground floor and a playroom at first floor level. There was a specific condition attached to this permission which stated that the structure shall be used solely for use ancillary to the enjoyment of the dwelling house and shall not be used as a dwelling.

7.2.2 The applicant is now seeking to use the mews structure as habitable accommodation for a family member. It is argued that the structure remains ancillary to the main house and does not constitute a dwelling.

7.2.3 As observed on site, the mews structure currently accommodates a kitchen and living room at ground floor level and a bedroom and bathroom at first floor level. It has its own independent access from the mews lane to the rear. It is, therefore, in my opinion, a fully functioning and independent residential unit.

7.2.4 Notwithstanding the planning history of the site, and the specific condition precluding the residential use of the structure, the applicant has sought retention of the

habitable use of the mews. In this context, the proposal must be considered having regard of the provisions of the current County Development Plan. The two most relevant provisions of this to the proposal are policies relating to family member and granny flat accommodation and that pertaining to mews development.

7.2.5 Policy regarding family member accommodation is set out in section 8.2.3.4 (iii) of the Plan. The guidance notes that such accommodation is typically a subsidiary element to the main house and not as a fully independent dwelling. It further details that such proposals would be interlinked with the primary dwelling and capable of being subsumed back into the principal dwelling. As the mews structure is a completely separate, stand-alone and independent dwelling, it does not meet these criteria. The development would thus be contrary to the provisions of the development plan in this regard.

7.2.6 It is considered that the most pertinent policy pertaining to the development is that relating to mews development set out in section 8.2.3.4 of the Plan. The plan is clear that to facilitate such development the mews lane must be of such a standard that it can accommodate the additional traffic associated with such development. It notes that an agreement is required between the relevant landowners to ensure that the laneway is to a taking in charge standard with appropriate services, road surfacing and public lighting. It is stated that the onus will be on the applicant to demonstrate that they have the consensus of owners or interested parties. The applicant has submitted no evidence of such agreement. The existing laneway serving the mews is of poor standard, with inadequate surface treatment and no public lighting. I would concur with the view of the Planning Authority that the development is premature pending the preparation of a comprehensive scheme for mews development along the laneway and the lane itself being brought up to an appropriate standard to facilitate such development.

7.2.7 The Development Plan also set out specific quantitative standards for such mews development. The mews structure is set back 27 metres from the main façade of the existing dwelling and in this context, the separation distance is adequate. It is further detailed that parking provision should be provided in off street garages or car ports and that at least one off street car park space is required. The development

provides for no parking provision. Mews dwelling should be provided with a private open space area of not less than 48 sq. Metres. The applicant has not demonstrated how such private open space can be provided. The development thus fails to comply with the relevant standards set out in the plan.

7.2.8 In conclusion, I am satisfied that the current use of the mews structure would constitute a dwelling due to its self-contained nature and is a use that is not ancillary to the main dwelling. The now habitable use of the mews does not accord with the relevant quantitative standards set out in the Development Plan and is clearly in contravention of condition no. 5 of D13A/0125. In this regard, I consider that the development would set an undesirable precedent for other such residential development along the laneway, and in the absence of a co-ordinated plan for such development, including the necessary upgrade to the access laneway to a sufficient standard, the development in my view, is piecemeal and contrary to the proper planning and sustainable development of the area. Furthermore, I consider that potential for additional vehicular traffic associated with such a residential use, in the absence of adequate parking, has the potential to impede access to the lane causing negative impacts to the residential amenities of neighbouring dwellings.

7.3 Appropriate Assessment

7.3.1 Having regard to the nature and scale of the proposed development, the change of use of an existing mews building to habitable use within an established urban area, and the 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.

7.4 EIA Screening

7.4.1 Having regard to nature of the development comprising the change of use of an existing mews building to habitable use and the urban location of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. It is recommended that permission be refused permission for the reasons set out below.

9.0 Reasons and Considerations

1. The development to be retained would result in the change of use of the existing structure to a habitable mews dwelling. The development as proposed does not meet with the quantitative standards for such mews development as set out in Section 8.2.3.4 (x) of the current Dun Laoghaire Rathdown County Development Plan 2016 – 2022 due to the absence of adequate parking provision and private open space. The development would set an undesirable precedent and is considered to be contrary to the proper planning and sustainable development of the area.
2. Having regard to the existing condition of the rear laneway serving the mews which is inadequate in terms of surface condition, alignment and public lighting, and in the absence of a comprehensive redevelopment proposal for the mews lane as a whole including a legally acceptable agreement between owners or interested parties, it is considered that the development to be retained would set an undesirable precedent, result in a piecemeal development and would be premature, by reference to the existing deficiencies in the access lane. The development to be retained would, therefore, have a negative impact on the residential amenities of adjacent properties and be contrary to the proper planning and sustainable development of the area.

Erika Casey
Senior Planning Inspector

25th September 2018