



An
Bord
Pleanála

Inspector's Report ABP-302733-18

Development	To amend a permission for development of a retirement home/nursing home currently under construction
Location	Cabra Farm, 132/134, Navan Road, Cabra, Dublin 7
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2873/18
Applicant(s)	Brashaw Construction
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Fergal Altman; Anna and Garry Carroll and others
Observer(s)	None.
Date of Site Inspection	15 th January 2019
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1.1. The appeal site is located at the junction of the Navan Road and Nephin Road in Dublin. The Navan Road is classified as the N3 national primary road. It functions as a major arterial distributor road and comprises a Quality Bus Corridor with cycle lanes. The Nephin Road is also an important traffic route in the distribution of traffic, serving residential areas. The area is predominately residential in character.
- 1.1.2. The site, 0.188ha in area, comprises a permitted nursing home, currently under construction. Upon site inspection, I noted the building is complete and ground works/internal works are outstanding. The Navan Road borders the northeastern boundary of the site and the Nephin Road forms the northwestern boundary. The site is bounded to the east by a two storey end of terrace dwelling, no. 130 Navan Road. The southwest is bounded by a two storey semi-detached dwelling, no. 58 Nephin Road, and the corner rear garden of no. 48 Croaghpatrick Road. On the opposite side of the Navan Road is Cabra Garda Station and on the opposite side of Nephin Road are the rear gardens serving a terrace of bungalows fronting the Navan Road.

2.0 Proposed Development

- 2.1. The proposed development comprises the following amendments to the permitted scheme:
- increase the number of en-suite bedrooms from 51 No. to 56,
 - amendment and relocation of the permitted basement (including a reduction of 26 sq m and the relocation of the permitted kitchen, insertion of a second lift serving basement to first floor and relocation of the permitted bin storage area),
 - extension of escape stair landings (to comply with Part B (Fire) Regulations),
 - omission of the permitted rooflight,
 - ancillary amendments to the facades to reflect new bedroom reconfigurations including amendment to a number of permitted windows primarily to the basement courtyard and the entrance area approach,

- amendment to external materials,
- signage,
- ancillary rooftop plant arrangements,
- hard and soft landscaping including the external wall treatment and relocated pedestrian entrance at Nephin Road.

2.2. The overall permitted gross floor of the building would increase by 67 sqm, from 3,468 to 3,535 sqm, with a minor increase in part of the roof profile by an increase of up to 0.35m due to lift overruns.

3.0 Planning Authority Decision

3.1. Decision

Permission GRANTED, subject to 13 conditions, including the following:

C2: Development contribution.

C3: To comply with parent permission PL29N.237694, as extended under reg ref 4527/09/x1.

C4: Permission to cease to have effect on date reg ref 4527/09/x1 expires.

C5: Amendments – omission of windows on south-west elevation at second floor level which serve stairwell no. 1; omission of windows on south-east elevation at second floor level which serve stairwell no. 2.

C6: No additional plant equipment at roof level until such time as additional drawings are provided to confirm the location and extent of same and an accompanying engineering report is provided.

C12: The totem sign shall comprise of individually mounted letters.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Officer's report generally reflects the decision of the Planning Authority. Further information was requested to clarify the extent of amendments

proposed on the drawings as the extended areas were not clearly demarcated; and to clarify if permission or retention permission is required given the development had commenced on site.

3.2.3. The applicant responded with floor-by-floor drawings highlighting the changes and clarifying floor area errors in the original permitted drawings. It was stated that a total of 67sqm of additional floorspace is being applied for, of this 43sqm related to miscalculated space and 24sqm related to additional floorspace. The overall height change provides for a reduction in maximum height at the northern most corner of the site and increases in the range of 100mm to 800mm elsewhere. The information received was deemed to be significant and the applicant readvertised the development.

3.2.4. **Other Technical Reports**

Drainage Division – No objection, subject to conditions relating to previous grant 5685/05 being complied with.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

A number of observations were received and the main issues raised are addressed in the grounds of appeal hereunder.

4.0 **Planning History**

PL29N.237694 (DCC ref 4527/09) – Permission GRANTED for a two to three storey over basement retirement home, consisting of 51 en-suite bedrooms, and administration and support.

C3: No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

C7: The site shall be landscaped in accordance with a scheme of hard and soft landscaping, details of which shall be submitted to the planning authority for written agreement, and such agreement obtained, before development commences. The scheme shall include a timescale for its implementation.

C16: The projecting glazed area of staircase 02 as defined in the drawings received by the planning authority on the 11th of August, 2010 shall be fitted with opaque or frosted glass.

4527/09/X1 – Permission for Extension of Duration GRANTED, with permission valid until 2021.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

- Z1 Zoning objective, 'to protect, provide and improve residential amenities.'
- Section 16.7 – Building Height in a Sustainable City – buildings heights of up to 16m permitted in 'outer city' locations.
- Section 16.19 – Nursing Homes

5.2. Environmental Impact Assessment

- 5.2.1. Having regard to the minor nature and scale of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, 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.

5.3. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

6.0 The Appeal

6.1. Grounds of Appeal

Third party appeals have been lodged by residents of 48 Croaghpatrick Road and others, and also from Apartment 22, The Chandler, Arran Quay (owner of no. 130 Navan Road, adjoining the appeal site). The grounds of appeal are summarised as follows:

- The application should have been for retention and not permission. The works have been undertaken. The applicant has built without lawful permission and has not sought lawful retention permission.
- Concerns are raised in relation to overshadowing of no. 130 Navan Road. The amended plans show that overshadowing will be less even though the building is higher.
- The applicant states the roof profile is 0.35m higher, with the drawings showing a height increase of 0.65m. The lift shaft overrun appears to be greater, and is estimated to be 2.5m higher than permitted, above the second floor flat roof profile. This tower is illegal and is out of character with the streetscape. No noise abatement conditions have been applied to this lift shaft. This element is in breach of An Bord Pleanála condition 3 of PL29N.237694 in relation to roof level plant and equipment.
- Condition 6 states that plant at roof level will not be permitted until drawings indicating the location and extent of same are submitted to and agreed by the planning authority. This is unfair to third party rights. Condition 3 of ABP decision PL29N.237694 specified any roof level plant had to form part of a separate application and although applied for the applicant has not submitted their proposal on the plans on submission of the application or at further information stage.
- A number of existing conditions have been breached, in particular, conditions 4, 6, 7, 8, 9 and 16.
- The amendments proposed amount to a substantial departure from the original permission, which results in excessive height and visual impact, with

elevation changes visually obtrusive and damaging to the residential amenity of the area.

- The planner's report did not consider all submissions at further information stage. Five were received but only one was referenced.
- The addition of balconies which overlook Roosevelt Cottages on Nephin/Navan Road were added outside the normal planning process and do not have permission. These balconies overlook and detract from privacy/amenity of nearby properties and would be hazardous for future residents. It is requested that all these balconies have opaque/obscure glass.
- Concern is raised in relation to lack of soil depth in rear garden as it may not support planting of adequate screening. The landscaping plan submitted and agreed by way of compliance is less dense than the original plan submitted. The Board is requested to confirm what is required and ensure clarity of same.
- The landscaping plan submitted in this application shows less screening along the rear garden of the nursing home and adjoining properties.
- Concern in relation to light pollution.
- The stairwell on the east side of the site have been moved closer to neighbouring properties. Light through the proposed opaque glass should be conditioned so as not to cause light nuisance.
- It is requested that the balcony on the rear first floor level have an opaque or non-transparent railing to protect the dignity of residents using this balcony and the amenity of neighbouring properties.
- A condition in relation to odours from cooking is welcomed, however there is no condition in relation to potential odours from the relocated bin storage area which could cause gross intrusion and loss of amenity to the surrounding properties.
- The level of parking for future staff and residents is of concern and could result in additional parking pressures on the surrounding street network. The planner's report notes that 20 spaces are permitted and that the scheme

could have 29 under the development plan. Parking spaces should be increased. It is noted only one disabled space is proposed in the basement.

- DCC refer to start times of 7am to 6pm on weekdays. The previous decision by An Bord Pleanála permitted an 8am start.
- The front building line is forward of the line of the houses on the Navan Road and it is queried if this is accurate and whether this should have been in line with houses on Navan Road.
- The drainage division report referred to an incorrect development.

6.2. Applicant Response

The applicant's response to the grounds of appeal is summarised as follows:

- The significant further information was addressed appropriately by the planner. The Council violated article 35(1)(c) in allowing extra time for observations and accepting those observations. It is noted no new issues were raised in these observations.
- No significant further overshadowing on surrounding dwellings will take place. A remodelled shadowing analysis is hereby submitted to ensure no inaccuracies. There was a minor error and this is now rectified.
- Condition 6 does not contravene ABP's condition 3 of PLN.237693. The only additional rooftop plant being sought is in relation to the extended stairwell and lift, which forms part of this application. However, the applicant has no objection to a similar condition to condition 3 being applied.
- The bin store, which remains located in the basement, will not have a material affect on residential amenity.
- The revised hours of operation are a standard condition by DCC.
- The 0.3m increase in height will not adversely impact on the Appellant.
- The statutory notices stated work had commenced on site.
- No additional balconies are proposed as part of this application and they do not overlook Roosevelt Cottages.

- The soil depth in the rear garden will not be altered from that in the previously permitted development.
- Car parking provision is in accordance with the Development Plan.
- The planner's report contains a recommendation. The Notification of Decision is correct in not referencing a retention permission as this was not applied for.

6.3. **Planning Authority Response**

The planning authority response refers to the planner's reports on file. A further submission received noted there was an administrative error in relation to the file which resulted in the file timeline being extended, which the planner was unaware of, and resulted in three additional comments not being taken into account in the planner's report at RFI stage. The planning authority has reviewed the appeal and the three 3rd party submissions and it is considered that no further issues were raised to those in the original submission. The planning authority has no further comments.

6.4. **Observations**

None.

6.5. **Further Response**

A further response from Apt 22 The Chandler (owner of 130 Navan Road), and 48 Croaghpatrick Road and others, was received in response to the applicant's response to the grounds of appeal. This is summarised as follows:

- The application should have been for retention as the elements involved have been constructed. If ABP grant permission, this sets precedence that permission can be granted for works already completed.
- There were additional signatories to one of the submissions which the applicant has not recognised.
- Third party observations were submitted within a correct timeframe, as determined by DCC following an administrative error.

- The provision and increase in height of lift shaft is not a fire requirement or HIQA requirement. These changes will result in increased overshadowing on no. 130, which ABP sought to protect by way of condition 3 of the original permission.
- Shadow analysis is questionable as an error was admitted to by TPA in response. Rear garden of no. 130 will be in shadow for large parts of the evening.
- The applicant has incorrectly named the cottages opposite the site and stated no objections were received from Roosevelt Cottages. The balconies will impact on these cottages.
- Concerns in relation to the relocated bin store remain. The proper use of doors to contain odours is unreliable.
- The standard construction hours differed from what ABP previously applied and the applicant has been continually in breach of both.
- In relation to the plans originally submitted to Dublin City Council on the parent permission there were 3 balconies identified. ABP requested the building line be amended in accordance with a previous permission on the site and revised drawings were not made available to the public. Two of the balconies overlook four of the Roosevelt Cottages.
- Two further long balconies on the Nephin Road and Navan Road were not on the parent permission. These further increase overlooking of Nephin Road and are excessive in the context of a nursing home.
- Provision and success of tree planting proposed is questioned, with very little screening provided for with 48 Croaghpatrick Road.
- In terms of parking, while well serviced by buses, the buses are over capacity and the new feeder bus linking to the Luas at Broombridge will add to capacity issues on the Luas. It is probable that many of the staff and residents will choose private transport, adding congestion to the local streets.
- One disabled space is insufficient within the scheme.

7.0 Assessment

The subject site is located within zoning objective Z1, the objective of which is 'to protect, provide and improve residential amenities.' The nursing home development, which I noted upon site inspection was complete (with groundworks and internal works remaining), was permitted on this site by An Bord Pleanála under reference PL29N.237694. The principle of this use on this site is therefore established.

I consider the relevant issues in determining the current appeal before the Board are as follows:

- Procedural Matters
- Design & Impact on Amenity
- Signage
- Car Parking

7.1. Procedural Matters

- 7.1.1. I have considered all submissions received on both the original application and the grounds of appeal.
- 7.1.2. The grounds of appeal considers the planning application should be for retention and not permission. I note the planning authority queried this by way of Further Information. The applicant in response stated that the fact the development had commenced was stated in the statutory notices and the elements relating to the amendments were not material. The planning officer in the report dated 14th August 2018 stated the development should have included reference to 'retention' of the element for which permission was not previously granted but for which construction had commenced and recommended that the applicant re-advertise. The subsequent planner's report dated 17th September 2018 accepted the readvertisement, which I note did not include the word retention. I note the planner's recommendation was to grant retention permission and permission. The order issued by the planning authority was a decision to grant permission.
- 7.1.3. The applicant has applied for planning permission for certain works, therefore the application must be assessed on the basis of those proposed works. Upon site

inspection I note the works applied for have been clearly undertaken and completed. The Board may wish to consider this matter further, in conjunction with my assessment hereunder and with reference to Section 132 of the Planning and Development Act 2000 as amended, which gives the Board power to invite and enable an applicant to submit revised plans or other particulars and Section 142 subsection 4 which specifically refers to further notices.

- 7.1.4. Concerns raised in relation to suspected unauthorised elements of the development, including balconies and the building line, which are outside the remit of what is proposed in this application, is a matter which should be pursued with the planning authority. Matters of enforcement are outside the remit of An Bord Pleanála.
- 7.1.5. I note the Drainage Division report incorrectly referred to a previous grant 5685/05, which is unrelated to this site. The planner in reviewing all supporting reports, applied a condition in relation to water services from the correctly referenced parent permission, which is appropriate and acceptable to this development.

7.2. Design and Impact on Amenity

- 7.2.1. Concerns have been raised by third parties in relation to the amendments proposed, specifically the overall height of the eastern liftshaft, the eastern stairwell, and the visual impact and potential for light nuisance from these elements. It is also contended that the amendments to the façades will detract from the visual and residential amenity of the area.
- 7.2.2. I have reviewed the increased height to staircase number 2, located on the eastern side of the building. The staircase is approx. 800mm higher than previously permitted and 1.2m deeper. I note that additional windows are proposed and have been constructed on the side elevation at the upper roof level, facing the gable of no. 130, which were not previously proposed. I do not consider the increase in height and depth of this element of the scheme will result in a significant impact on the residential amenity of the neighbouring residential dwelling to the east, no. 130 Navan Road, in terms of outlook and/or overshadowing given the limited scale of the amendments and distance from the boundary. The additional windows on the side elevation do have the potential to result in additional overlooking and I note the planning authority has conditioned that these windows be omitted. Having regard to

the fact that these windows serve a stairwell, I consider a condition in relation to opaque glazing being applied to the side windows at this upper level would be sufficient. I note that upon site inspection that these windows exist and appeared to be frosted/opaque. I note upon site inspection that windows referred to on the southwest elevation at second floor level serving stairwell 1 and omitted by the planning authority by way of condition, have not been constructed/inserted in the façade.

- 7.2.3. I consider the overall height increase to the building of up to 300mm acceptable, from a visual and amenity perspective. I consider this corner site can accommodate visually this increase and the proposal will not result in significant additional overshadowing of neighbouring properties.
- 7.2.4. An additional liftshaft is proposed at the eastern side of the building, which projects above the two-storey flat roof section of the building by approx. 800mm and is 2m wide. The measurements indicated on the plans appear to reflect what exists on site. Given the position of the liftshaft relative to gable of no. 130 and the oblique view of this element of the scheme from the streetscape, I consider this amendment to be acceptable in terms of visual and residential amenity. I do not consider it necessary or appropriate to reduce the height of the liftshaft as suggested in a third party submission.
- 7.2.5. The proposed amendment to the entrance was omitted at further information stage and the original entrance as permitted was reverted to. This is acceptable.
- 7.2.6. The amendments to the internal arrangements to relocate the kitchen and provision of additional bedrooms with associated façade changes are considered acceptable and in keeping with the external design of the building. The amendments to stairwell no. 1 are modest and in my view acceptable from a visual and residential amenity perspective.

7.3. Landscaping

- 7.3.1. The third party raises a query in relation to the landscaping plan submitted as part of the original application and the plan subsequently agreed by way of compliance. The current submission is less dense than the original. The Board is requested to clarify which landscaping plan applies.

- 7.3.2. I note the applicant in the description of development refers to amendments to hard and soft landscaping including the external wall treatment and relocated pedestrian entrance at Nephin Road. The applicant contends that no changes are made in this plan other than to the wall and consideration of the entrance, which relates to the hard landscaping elements. I consider that reference to amendments to the landscaping plan 'including' specified elements results in this plan overriding the previously permitted landscape plan. I note that the location of soft planting elements in this plan are not consistent with that agreed by way of compliance. In the interests of clarity, the landscape plan submitted as part of this application replaces the previously agreed landscaping plan and I consider the plan as now submitted lacks detail in relation to planting proposed at the southern boundary with no. 130 Navan Road, no. 48 Croaghpatrick Road, and no. 58 Nephin Road. To protect the residential amenity of neighbouring properties, I consider it reasonable, should the Board be minded to grant permission, that a condition be attached to agree landscaping proposals for the rear garden area of the site, with specific attention to planting along the boundaries with adjoining residential properties.
- 7.3.3. I note that the third parties raise concerns in relation to bin storage at the boundary with no 48. From review of the plans submitted, I note the bin storage is located in the basement level and not at ground level and therefore in my view will not impact negatively on the amenity of neighbouring properties.

7.4. Roof Level Plant

- 7.4.1. The applicant in the description of development proposes ancillary rooftop plant arrangements. The planning authority attached a condition requiring no additional roof plant without the submission of drawings and details in relation to any proposed plant being agreed. The third parties have raised concerns in relation to this approach. The applicant clarifies that the additional rooftop plant being applied for is that of the lift and stairwell and no other plant/equipment is proposed.
- 7.4.2. The amendments to the rooftop level as proposed in this application and discussed earlier in this report are in my view acceptable and in the interests of clarity no additional elements above those permitted by way of this permission and the parent permission should be allowed without a separate grant of permission. I consider it reasonable to apply a condition similar to condition 3 of PL29N.237694 granted by

ABP which stated 'No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission'.

7.5. Parking

- 7.5.1. The appeal site is located in parking area 3, where 1 car space per two patient beds is required. The proposed development will result in an increase of five bedrooms, from a permitted 51 to 56 bedrooms. The development plan parking standards are maximums. Given the location of the site in a highly accessible location well served by bus and luas, I am of the view that the permitted level of 20 parking spaces is sufficient to cater for the overall development. No evidence has been submitted to support the view that the existing bus and luas network is at such a capacity that it cannot cater for additional passengers.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any 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. It is recommended that permission is granted.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016-2022, and the nature and scale of the amendments subject of this application, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the

vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 01st day of August 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The windows on the eastern elevation at second floor level serving staircase 02 shall comprise obscure glazing.
 - (b) The windows on the south-west elevation at second floor level serving staircase 01 shall be omitted.

Reason: In the interests of residential amenity.

3. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 15/02/2011, planning register reference number PL29N.237694, as extended under reg ref 4527/09/x1, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

4. The site shall be landscaped, using only indigenous species, in accordance with an overall landscaping scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of

development. This scheme shall include the following:

- (a) details relating to planting along all of the boundaries of the site, specifically the boundaries within the rear courtyard/garden area;
- (b) a timescale for the implementation of the planting and landscaping.

Reason: In the interest of visual and residential amenity.

5. The totem sign hereby permitted shall comprise of individual mounted letters.

Reason: To ensure a satisfactory standard of development.

6. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

7. 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 prior to commencement of development 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.

Una O'Neill
Senior Planning Inspector

11th February 2019