



An  
Bord  
Pleanála

## Inspector's Report 302839-18.

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<b>Development</b>	Split level dwelling to rear of existing house.
<b>Location</b>	121, Strand Road, Sandymount, Dublin 4.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	2064/18.
<b>Applicant(s)</b>	Ceanna Walsh.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to 10 conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	Avril and David Fassbender Stephen Gately and Mary Tubridy Emma Harney and Christiaan de Vries
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	1 <sup>st</sup> February 2019.
<b>Inspector</b>	Des Johnson.

## 1.0 Site Location and Description

- 1.1. The site is located off the western side of Strand Road, Sandymount, a short distance north west of the Martello Tower and the junction with St John's Road. The site is towards the end of a narrow private laneway currently providing access to two mews dwellings. On the opposite side of Strand Road is the seafront linear park and promenade.
- 1.2. The site is to the rear of no. 121, Strand Road – a two storey over basement end of a terrace of three dwellings. To the north of the appeal site, and to the rear of no. 119 Strand Road, is a single storey mews (which appeared vacant at the time of inspection); this has fenestration facing south and the appeal site. Adjoining to the north of this, and to the rear of no. 117, is a two-storey mews. To the west of the appeal site is Westwood Club, tennis courts and parking. To the south, and on the opposite side of the laneway is a two-storey dwelling fronting on to Strand Road (no. 123, Strand Road).
- 1.3. No. 121, Strand Road was undergoing refurbishment and 3 storey extension to the rear at the time of inspection. Materials, which appear related to the works to no. 121, were stored on the appeal site.
- 1.4. I attach photographs taken at the time of inspection.

## 2.0 Proposed Development

- 2.1. The proposal is described as follows:
  - Provision of a one/two/three-storey, three bedroom split level dwelling to the rear of existing house
  - Provision of one off-street parking space with access from existing private laneway via existing vehicular access to Strand Road
  - All associated landscaping, roof lights, refuse store, bicycle storage and site works and boundary wall revisions
  - Widening of existing vehicular access from the private access lane onto Strand Road.

2.2. The gross floor area of the proposed development is stated to be 138.6m<sup>2</sup> and the site area to be 175.1m<sup>2</sup>. The existing house would retain an area of 308m<sup>2</sup>. The plot ratio is stated to be 1:0.79 and the site coverage to be 36.89%.

2.3. It is stated that the site was flooded in 1954 and 2002.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

Grant permission subject to 10 conditions.

The conditions generally relate to standard matters. Condition 1 relates to compliance with submitted plans and particulars, as amended by additional information submitted on 07/09/18. Condition 8(ii) states that there shall be no vehicular access to the site as part of this development in the interest of the proper planning and sustainable development of the area.

The decision was made following the submission of additional information on 7 September 2018 and unsolicited additional information date stamped 12 September 2018 and 20 September 2018. The additional information submitted (7 September 2018) included the following changes to the original proposal:

- Omission of car parking space
- Brick façade in lieu of timber cladding
- Omission of windows facing the lane
- Omission of third floor leaving a two-storey mews house
- Reduction in height and provision of a flat roof
- The site boundary and extent of application site marked in red is extended to include the existing lane

The unsolicited information date stamped 12 September 2018 shows an amendment to the site boundary outlined in red compared to the site plan submitted with the 7 September submission, in that the site includes the portion of the lane along the frontage of the mews at 119A but does not include the section of lane in front of the

mews at 117A. The unsolicited information submitted on 20 September 2018 makes a further alteration to the site boundary by excluding the portion of the lane along the frontage of 119A.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Report (02/10/18).

Permission was previously refused, by the planning authority and on appeal, for a two-storey mews residence to the rear of 121, Strand Road for reason of its impact on the neighbouring single storey property, overlooking, roof profile and poor residential amenity.

Additional information submitted on 07/09/18 addressed ownership of the laneway between 121 and 123, Strand Road (by way of a solicitor's letter), revised site location plan and the omission of the car parking space. The omission of the car parking space is considered acceptable in this instance. Revised drawings omit the proposed second floor and a reduction in the overall height by using a flat roof. This is considered acceptable.

The additional information includes a Flood Risk Assessment. The site lies within Zone B as per the Flood Risk Management Guidelines for Planning Authorities. This concludes that the risk of flooding from coastal and tidal events is not considered significant. The site lies within a defended area.

#### ***Objections:***

Received from the following:

- Nigel Tuite, 119a, Strand Road.
- Stephen & Mary Gately, 119, Strand Road.
- Avril & David Fassbender, 123, Strand Road.
- Emma & Christiaan Harney de Vries, 117a, Strand Road.
- William Harney

3.2.2. Other Technical Reports:

*Roads and Traffic Management Planning:* No objection subject to conditions.

*Engineering Department – Drainage Division:* No objection subject to conditions.

## 4.0 Planning History

### **Appeal site**

**Reference 4250/16:** Permission granted for development including change of use from 10 bedsits to single dwelling, replacement of three-storey return and extension to the rear of 121, Strand Road.

**Reference 2785/18:** Permission granted for revisions to previously granted three-storey return extension at 121, Strand Road and permission refused for retention and revision of a setback, dormer room at the 2<sup>nd</sup> floor/roof level of previously granted three-storey return. The reason for refusal of this element refers to visual obtrusiveness and dominance when viewed from adjacent properties by reasons of scale and mass.

**E0233/18:** Enforcement file relating to works undertaken but not in accordance with 4250/16.

**Reference 29S.218979:** Permission refused on appeal for two-storey mews dwelling to the rear of 121, Strand Road. The reason for refusal refers to the restricted nature of the site and pattern of development in the area, and concludes that the proposal would have an overbearing impact on the adjoining single storey mews (n0. 199a) and an unacceptable level of overshadowing, overlooking of properties to the east, inadequate separation between houses on Strand Road, and substandard quality and quantity of private open space. (Permission had been granted by the Planning Authority under reference 3037/06).

### **Adjacent sites**

**Reference 3536/02:** Permission granted for first floor extension to mews at 117A Strand Road.

**Reference PL 29S.223327:** Permission granted for two-storey dwelling to the rear of 119 Strand Road.

**Reference 2180/14:** Permission granted for use of entire of 117 Strand Road as a single dwelling.

## 5.0 Policy Context

### 5.1. Development Plan

The site is zoned Z2 with the objective 'to protect and/or improve the amenities of residential conservation areas.

Section 16.10.16 relates to Mews Dwellings. Provisions include the following:

- Generally confined to 2 storeys
- Should complement the character of both the mews lane and main building in terms of scale, massing, height, building depth, roof treatment and materials
- Innovative architectural response encouraged
- One off-street car parking space per mews subject to conservation and access criteria
- Potential mews lanes must have carriageway width of 4.8m (minimum) or 5.5m where there are no verges or footpaths
- Private open space provision should generally be not less than 7.5m in depth for the full width of the site. Where this is provided the standard of 10m<sup>2</sup> may be relaxed
- The distance between opposing windows should generally be a minimum of 22 metres. This may be relaxed due to site constraints but subject to innovative and high quality design.

### 5.2. Natural Heritage Designations

South Dublin Bay SAC (Code 000210) with conservation objectives relating to tidal, mudflats and sandflats.

South Dublin SPA (Codes 04024) relating to intertidal habitat.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

These are submitted on behalf of the following:

- Emma Harney & Christiaan de Vries
- Stephen Gately & Mary Tubridy
- Avril & David Fassbender

The grounds of appeal are summarised as follows:

- There is a requirement under the Planning and Development Act for new mews developments to provide off-street parking within the site boundary.
- The proposed wall to the south elevation of the mews is excessive in height and is liable to cause health and safety issues for residents and pedestrians using the lane.
- There is no evidence that the laneway is owned by the applicant. A solicitor's letter is submitted stating that investigations were unable to ascertain ownership.
- The additional information submitted should have warranted a new application process with new notices etc.
- In 2006 a two-storey mews development was rejected by the Board; this was for a smaller building than that now proposed. Also, a broadly similar proposal in respect of the rear of no. 117, Strand Road was refused by the Board under reference 29S.218979; the reason for refusal referred to the restricted nature of the site and the existing pattern of development in the area, and concluded that there would be an overbearing impact, unacceptable level of overshadowing, overlooking, inadequate separation between houses and substandard quality and quantity of private open space.
- Under reference 2785/18, the planning authority recently decided to grant permission for changes to a three-storey extension to the existing dwelling on these lands and refuse permission for the retention of a new top floor.



- The proposal represents overdevelopment of this site, having regard to the three-storey extension approved to the rear of the main house.
- The proposed development would be visually overbearing arising from its excessive bulk and flat roof, and would result in serious overshadowing of its neighbour on its north side. The proposal is for an outsized and misplaced building.
- Infill housing policies should not apply in this case. This is a private garden within a residential conservation zone.
- The established pattern of development in the area is set by no. 119. There is no justification for a bulky two-storey house as proposed. The proposal is out of tune with the Z2 zoning. The laneway is too narrow to qualify as a mews laneway.
- The adjoining mews at no. 119 has a low profile and multiple windows facing south catching sunlight and daylight. The proposed development would have very damaging consequences for the residential amenity of this mews.
- The residential amenities enjoyed by the proposed development would be poor due to orientation and design. Excessive reliance on baffles to reduce overlooking indicates the incompatible nature of the proposal.
- The applicant did not provide satisfactory responses to queries raised by the planning authority relating to traffic safety issues.
- The provision of minimum sized private open space is unacceptable having regard to the conservation area status for the area.

## 6.2. Applicant Response

Response on behalf of the applicant is summarised as follows:

- The owner of no. 119A, Strand Road has not appealed. Permission was previously granted for a two-storey mews at 119A.

- The proposal complies with the zoning objective and policy objectives for the area. It is for a high quality mews house on an inner urban site with good services and amenities and public transport.
- No. 123 Strand Road is at a remove from the proposed mews. Nos. 123 and 121 are separated by a laneway, and 123 is almost in line with the main house at 121 Strand Road. Any windows on the northern elevation of 123 are of obscure glazing. The appeal site is screened by a boundary wall, screen hedging and trees. The nearest point of the proposed mews to no. 123 is 23m. There are no directly overlooking windows.
- No. 119 faces onto the mews at 119A and is already set within the context of mews development. The nearest point of the mews to the main rear building line of 119 is approximately 22m. The mews at 117A is separated from the subject site by the existing mews at 119A.
- All concerns were taken on board by the planning authority and dealt with through additional information. The proposed height and setback from the northern boundary mitigate against impacts on neighbouring properties.
- The height of the proposed mews at 5.5m would be significantly lower than the main house at no. 121. The proposal is for a modest structure appropriate in scale.
- The proposed garden depth of 8.2m and open space provision of 81.6m<sup>2</sup> both exceed minimum standards.
- The previous refusal for mews at the rear of 121 should not be considered in isolation of more recent planning history in the area. Permission was granted for a substantial two storey mews at the rear of no. 119.
- The omission of parking obviates the need for a 4.8m wide laneway. There is excellent accessibility to public transport. However, on-site parking can be provided if required by the Board.
- The First Party has sufficient legal interest to carry out the proposed development.

### 6.3. **Planning Authority Response**

None on file.

### 6.4. **Observations**

None.

### 6.5. **Further Responses**

A response submitted on behalf of *Stephen Gately & Mary Tubridy* comments on the other appeals lodged. This concurs that there are important questions raised in regard to the contents of the public notice, the material extension of the scheme outside the declared site boundary, and material conflict with the other concurrent application (Ref: 2785/18) on the same overall parcel of land. The submission supports the other grounds of appeal.

A response on behalf of *Avril and David Fassbender* states that no. 119A is currently rented and it is of no import that the owners are no objectors to the current proposal. The proposed mews would be visually obtrusive when viewed from the rear garden of 123, Strand Road. Screening trees are subject to removal or alteration. Obscure windows can give rise to a perception of overlooking. The substantial three storey extension to the main house should be taken into account, and the setback distance from this extension is seriously below the 22m standard. The previous refusal for this site should be taken into account. The proposal represents overdevelopment of a limited site and would be seriously injurious to the amenities of adjoining residential properties by virtue of overlooking and visual obtrusiveness.

A response on behalf of *Emma Harney and Christiaan de Vries* notes that the planning permission relating to 119A has lapsed and cannot be used as an argument in support. The laneway was not part of the sale of no. 121 in 2016 and the owners of no. 121 have the same rights as the appellants. Pembroke Estates appear to be

the rightful owners of the laneway (copy of letter from Pembroke Estates Management Limited attached to submission) and no works should be carried out in the laneway servicing the proposed development. The site map submitted shows incorrect boundaries and the application should be declared null and void. The Board should not assume ownership. The submission supports the appeals made by the Gatelys and Fassbenders.

## 7.0 **Assessment**

7.1. This is an appeal by three Third Parties against a decision to grant permission for a mews development. I submit that the key issues in this appeal are as follows:

- Legal/procedural issues
- Principle of development
- Residential amenities
- Car parking provision

7.2. I draw the Boards' attention to the fact that there are notable differences between the original proposal submitted to the planning authority on 12 January 2018 and the development for which permission was granted subject to conditions. These differences emerged during the processing of the application by the planning authority and through the submission of additional information. The key differences relate to the omission of a storey from the proposed building and the provision a flat roof, the omission of windows facing south on to the laneway, and the revision of the site (outlined in red) to include the stretch of laneway adjoining the appeal site and the site of the main dwelling.

7.3. The planning authority did not seek the re-advertisement of these changes by way of new public notices. The planning authority's decision in condition 1 requires the development to be carried out in accordance with the plans and particulars submitted with the application, as amended by additional information submitted on 7<sup>th</sup> September 2018. The Board should note that this includes a small section of the laneway which was later omitted in the submissions of unsolicited information. The

ownership of the laneway is a matter of dispute between the applicant and appellants

- 7.4. On balance, I consider that the re-advertising of the proposed development would serve little purpose in this case. I come to this conclusion for the following reasons:
- There is already significant engagement of property owners in the vicinity of this site as evidenced in the grounds of appeal and response submissions
  - The inclusion of the area of the laneway as part of the development site is not critical to the assessment of this proposal in the context of proper planning and sustainable development
  - The amendments made to the design of the proposed development by way of additional information would reduce impacts on existing development in the vicinity compared with the original proposal submitted to the planning authority
  - The issue of the ownership of the laneway is in dispute and the resolution of this matter is beyond the remit of the Board and may be ultimately be a for the Courts. The ownership of the laneway is not essential to the carrying out of this development in the event of permission being granted.
  - Section 34(13) of the Planning and Development Act 2000, as amended, would apply to any permission granted by the Board.
- 7.5. Should the Board not agree with my conclusion on this issue, I recommend that the Board request the applicant to re-advertise the amended proposal through site and public newspaper notices.
- 7.6. Having regard to the zoning objective for the area, national policy to maximise the development of serviced sites on appropriate sites, the recent planning history in the vicinity and the existing pattern of development including two mews dwellings served by the same laneway, I consider that the proposal for a mews dwelling on this site is acceptable in principle. In coming to this view, I note the historic refusal relating to this site and the reasons for that refusal, and also the recent grant of permission for a two-storey dwelling on the adjoining site to the north.
- 7.7. The issue of residential amenities is raised by the appellants, both in relation to existing development in the vicinity and the proposed development. In particular, it is

contended that the proposed development would give rise to unacceptable overshadowing and overlooking, inadequate separation space between the proposed mews and existing dwellings, overdevelopment of a restricted site and inadequate open space provision. In assessing these issues, I note that the scale on the Site Plan drawing PA/001/B submitted by way of additional information on 7<sup>th</sup> September 2018 appears to be incorrect; the correct scale would appear to be 1:250.

- 7.8. The original submission to the planning authority included an overshadowing study for 21<sup>st</sup> March, 1<sup>st</sup> July and 1<sup>st</sup> September. This study relates to the original proposal with a parapet level of 8090 compared with ridge levels for 117A of 7580 and 119A of 3810 respectively. The study shows limited additional overshadowing of the single storey mews at 119A on 21<sup>st</sup> March (10.00 – 1600), and minor additional overshadowing on 1<sup>st</sup> September (10.00 – 1600). The proposal for which permission was granted by the planning authority has a reduced parapet level of 5500 (2590 lower than the original) and it is argued by the First Party that this would reduce the impact of overshadowing. I agree with this and consider that it would be unreasonable to refuse permission based on the level of overshadowing likely to occur from the permitted development. I also note that permission was previously granted by the Board for a two-storey dwelling to the rear of 119 Strand Road under reference 29S.223327.
- 7.9. In assessing the potential for overlooking I draw the Boards' attention to the depiction of the rear of 123 Strand Road on the submitted drawings. The fenestration shown appears incorrect and I refer the Board to photographs taken at the time of inspection in this regard. Notwithstanding this observation I consider that the potential for overlooking from the development under appeal is minimal. The only windows at first floor level serve bedrooms and an obscured bathroom window. The bedroom windows are designed with baffles and would not give rise to any significant overlooking.
- 7.10. Private open space provision is stated to be 61.6m<sup>2</sup> to the rear of the proposed mews, and an external area of 20.5m<sup>2</sup> is also shown to the front. The main private open space area has a depth of approximately 8m measured from the main wall and approximately 7.2m from the first-floor overhang. I consider this to be reasonable

and would provide for an acceptable level of residential amenity for residents of the proposed mews.

- 7.11. The separation distance between the proposed mews and the main rear wall of the main house (no. 121) is approximately 22 metres, and the separation distance to the return extension to the rear of 121 is approximately 13.8m. Having regard to the existing pattern of development in the vicinity I consider this to be acceptable and that the overall extent of development on the combined site of 121 and the appeal site is acceptable.
- 7.12. The proposal permitted by the planning authority, following the submission of additional information, does not include provision for an on-site car parking space. The planning authority has included a condition prohibiting vehicular access to the site as part of this development for reason 'in the interest of the proper planning and development of the area'. Given the very restricted nature of the laneway, and in the absence of a detailed assessment of safety issues which could arise from any increase in the vehicular use of the laneway, I consider that a condition prohibiting vehicular access to the proposed development is reasonable. I note that the area is particularly well served by public transport.
- 7.13. *EIA*. Based on a preliminary examination of the nature, size and location of the proposed development there is no real likelihood of significant effects on the environment and *EIAR* is not required.
- 7.14. *AA*. Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity of the nearest European sites, no *Appropriate Assessment* issues arise. The proposed development would not 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. I recommend that planning permission be granted.

## 9.0 Reasons and Considerations

Having regard to the zoning objective for the area as set out in the current Dublin City Development Plan 2016-2022, the recent planning history for the area, the nature, extent, design and layout of the proposal, and to the existing pattern of development of the area, it is considered that the proposed development would not be injurious to the residential amenities of property in the vicinity and would 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 further plans and particulars submitted to the planning authority by way of additional information on 7 September 2018, except as may otherwise be required 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 the 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. Before development commences details of the following matters shall be agreed with the planning authority:
  - Materials, colours and textures of all external finishes
  - Water supply and drainage arrangements
  - Construction Management Plan, including details of construction traffic management, hours of working, noise management measures and off-site disposal of construction waste



- Revised flood risk assessment carried out to the requirements of the planning authority

**Reason:** In the interests of visual and residential amenity, orderly development and the proper planning and sustainable development of the area.

3. Notwithstanding the provisions of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, no extensions, garages, stores, offices or similar structures, shall be erected without the prior grant of planning permission.

**Reason:** In the interests of residential amenity and in order to ensure sufficient private open space be retained for the occupants of the proposed dwelling.

4. There shall be no vehicular access to the site as part of this development.

**Reason:** In the interest of the proper planning and sustainable development of the area.

5. The developer shall pay to the planning authority a financial contribution of Euro 9,417.60 in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided 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 the commencement of development or in such payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any

indexation required by this condition 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.

**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.

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Des Johnson  
Planning Inspector

11 February 2019