



An
Bord
Pleanála

Inspector's Report ABP-303580-19

Development	Demolition of the Existing Single Storey Office and Construction of a New Office.
Location	Newcourt House, Strandville Avenue East, Clontarf, Dublin 3.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4307/18
Applicant	Jim & Tom McMahon
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	1 st Party vs Refusal
Appellant	Jim & Tom McMahon
Observer	Mr J. Suttle – 'Dollymount Gardens'
Date of Site Inspection	16 th May 2019
Inspector	L. W. Howard

1.0 Site Location and Description

- 1.1. The stated 0.9ha application site, known as 'Newcourt House' is located along the western frontage of Strandville Avenue East, c.80m north of its junction with Clontarf Road, within the residential suburb of Clontarf, north Dublin City (see location mapping attached).
- 1.2. Contextually, Strandville Avenue East / Hollybrook Grove is a well-established, low density residential neighbourhood, comprising large 2-storey semi-detached dwellinghouses of a mix of type, on large properties. Many of the properties have been significantly modified over the years, including the application site – 'Newcourt House'.
- 1.3. Existing development on site comprises an elevated single storey office building, with a flat roof to the rear, pitch roofs to the front, and extensive fenestration, fronting onto Strandville Avenue East. This single storey building on site was understood constructed in the early 1900's as the football pavilion for the local protestant school. In 1949 the building was converted to office use. Subsequently in 1980, "alteration, reconstruction and extension" works for offices was completed (ref.**2207/80** – rear L-shaped single storey extension) and the building has continued in office use to the present (total floor area understood as 355m²). Reference – "Newcourt House Planning Application, Traffic Appraisal, October 2018", completed by MDM McMahon Design and Management Ltd (copy included on the appeal file).
- 1.4. Direct vehicular access off Strandville Avenue East is enabled via an entrance in the east facing site frontage. On site car parking capacity exists to the front of the building (8no. car park spaces). In principle, good sightline visibility is available to both the northern and southern approach, along Strandville Avenue East. Such visibility would however be subject to restriction due to on-street car parking along the road frontage
- 1.5. Adjoining lands to the rear, west of the application site comprise an infill site, c.0.75acres, with vehicular access via an extended laneway off Hollybrook Grove. This site is currently in use as a landscaping business.

- 1.6. The Clontarf Garda Station complex is located to the southeast of the site and across the road, at the junction of Strandville Avenue East and Clontarf Road.
- 1.7. Contiguous to the local commercial node, the application site is less than 500m from the nearest DART station, and c.70m from a QBC stop.

2.0 Proposed Development

- 2.1. Demolition of the existing single storey office (ie. existing bungalow with rear, single storey L-shaped extension).
- 2.2. Construction of a new 569.65m² gross floor area office, along with associated site and infrastructural works including –
 - foul and surface water drainage
 - car parking
 - landscaping
 - boundary treatment
 - footpaths
- 2.3. The proposed new building is to comprise 2-storeys to the front, and a single storey to the rear.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Decision to 'Refuse' planning permission, for 1no. 'refusal reason' as follows –

“The proposed ‘office’ development is not a permissible use or an open for consideration use under the ‘Z1’ residential land-use zoning objective for the area, and it would detract from the amenities of adjacent property due to overbearing and overlooking. The proposed development would, therefore, contravene materially a

development objective indicated in the Development Plan for the zoning of land, be an intensification of a non-conforming use, seriously injure the amenities of property in the vicinity, and be contrary to the proper planning and sustainable development of the area”.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key planning issues considered as follows -

Proposed Development

- Demolition of existing single storey bungalow (355m²).
- Construction of a part 2-storey, part single storey office building (570m²).

Principle of Development

- On lands zoned with the ‘Z1’ Zoning Objective, offices are not ‘permissible uses’. Nor are offices ‘open for consideration’ on such ‘Z1’ zoned lands.
- Accordingly, the proposed development is contrary to the ‘Z1’ zoning objective for the area.
- Note applicants’ statement that the existing building on site is currently used as an ‘office’.
- Section 14.6 – ‘Non-Conforming Uses’ of the City Development Plan 2016, enables consideration of the proposed development “... *on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area*”.
- Proposed development thereby assessed on its merits as set out below.

Access and Parking

- Note proposed use of existing vehicular access off Strandville Avenue.
- 8no. car parking spaces proposed. This exceeds the City Development 2016 requirements of 3no. bays. Table 16.1 permits a maximum of 1no. space per

200m². Thereby, a maximum of c.3no. spaces would be permitted to serve the proposed development.

- City Transport Planning Division notes the 8no. spaces provided significantly exceeds the maximum Standards.
- Whilst acknowledge 8no. existing spaces within the site, the layout appears haphazard, and not all spaces appear fully accessible.
- No justification for the number of parking spaces proposed, has been made by the applicant.
- Consider that a reduction in the total number of bays is necessary, in accordance with Development Plan 2016 Standards. A reduction would also resolve concerns regarding the layout, and the arrangement of car parking spaces.
- The proximity of spaces no. 3 and 4 to the entrance / exit would give rise to potential conflict.
- No clarity as to how the spaces along the western boundary would manoeuvre within the site, in order to exit in a forward motion.
- Note cycle parking located adjacent the entrance to the office building. The number of cycle parking spaces proposed, exceeds Development Plan 2016 Standards.
- Note shower and changing facilities have also been provided.
- The City 'Transport Planning Division' requests 'additional information' regarding the concerns raised.

Impact on the Character of the Area, and the Residential Amenities of Adjoining Sites

- Reference 3rd party concerns regarding 'overbearing' impact of the proposed development on adjacent property (ie. a part 2-storey, part single storey building)
- The proposed office development is –
 - 2-storeys along Strandville Avenue East, and
 - Single storey to the rear of the site
 - 1.5m set back from the shared lateral boundary with the house to the North
 - c.0.9m – c.6.0m set back "from the adjacent house to the South"

- a maximum height of c.8.0m
- the south and east facing elevations comprise
 - large panels of glazing
 - 2-storey panels of curtain walling
- a coloured roof cladding system is proposed, comprising several mono-pitched roof planes of various angles
- having regard to design, scale and bulk, have serious concerns regarding the “overbearing nature of the development on adjacent property and on the character of the area”.
- Note taken of the 8.0m wide west facing window proposed at 1st floor level.
- Accordingly, serious concerns proposed development “will unduly overlook adjoining property”
- 3rd party concerns noted regarding –
 - access from the application site to the adjacent lands to the west, and
 - the provision of linkages to Strandville Avenue East, thereby enabling potential residential use of these lands
- the application site and the adjacent lands to the west are designated with the ‘Z1’ Zoning Objective – “to protect, provide and improve residential amenities”.
- Having regard to the national ‘housing crisis’ and national policy towards delivery of houses (residential development), consider that the application site and adjacent lands to the west represent opportunity “to address the shortfall in housing provision on appropriately zoned lands”.

Flood Risk Assessment

- Application site is located within ‘Flood Zone C’
- Note the City Drainage Division has no objection to the proposed development, subject to Condition.

Appropriate Assessment

- Confirm proposed development screened for ‘Appropriate Assessment’
- 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.

- A full 'Appropriate Assessment' therefore not required.

Conclusion

Having regard to –

- the 'Z1' Zoning Objective, and
 - the interests of proper planning and sustainable development,
- consider that the proposed office development is –
- an intensification of a non-conforming use which,
 - is likely to have a detrimental impact on the residential amenity of adjacent property,
- would prejudice the proper planning and sustainable development of the area, and should therefore be refused.

3.2.2. **Other Technical Reports**

Drainage Division	No Objection, subject to Conditions (Report – 13/11/2018)
Transport. Planning Section	Additional Information requested re. total number of on-site car parking spaces, on-site car parking space layout and on-site vehicular manoeuvrability and a 'Mobility Management Plan' (Report – 11/12/2018).

3.3. **Prescribed Bodies**

Irish Water No Report
 Irish Rail No Report

3.4. **Third Party Observations**

3.4.1. 3no. third party submissions noted received by the Planning Authority.

3.4.2. The issues argued include -

- overbearing impact in relation to adjoining property.
- negative impact on the character of the area
- increased traffic flow passed residential development

- the infill site to the rear is suitable for residential development
- the proposed development should provide links to the infill site to the rear, in order to enable future access to these lands.

Planning Authority confirm the above issues taken into account in their assessment of the proposed development.

4.0 Planning History

4.1. Having regard to Planning Authority documentation submitted, no relevant planning history apparent on the application site.

However, having regard to all of the information available, the following planning history is apparent –

- 1949** Understood year in which original football ‘Pavilion’ building on site converted to ‘office’ use
- 2207/80** Permission granted for “alteration, reconstruction and extension works” for offices (ie. the rear L-shaped single storey extension)
Reference – “Newcourt House Planning Application, Traffic Appraisal, October 2018”, completed by MDM McMahon Design and Management Ltd (copy included on the appeal file).

4.2. Lands adjacent, and to the rear / west of the application site

- 4059/10** Application made by John Suttle (i) for “relocation /widening of vehicular entrance driveway to front and demolition of garage / shed to side to facilitate widening of existing shared access laneway to side of 24 Hollybrook Grove, to facilitate access to the commercial site to the rear at 24A Hollybrook Grove”, all at 24 & 24a Hollybrook Grove, Clontarf, Dublin 3.
Decision – ‘Split Decision’.
Permission **granted** for the relocation / widening of the vehicular entrance driveway to the front, subject to 7no. Conditions.

Permission **refused** for demolition of the garage and shed to the side, to facilitate access to the commercial site located to the rear, for 1no. 'refusal reason' as follows –

“1. The Drainage Division have stated in their report that there is an existing sewer running under the buildings proposed in this development. It is not permitted to build over the sewer and Drainage Division will not allow the sewer to be diverted or re-located. Permission should be refused”.

(see copies of relevant case history documentation included on file).

(i) John Suttle 3rd party 'Observer' in current 1st Party Appeal **ABP-303580-19** (Planning Authority ref. **4307/18**)

5.0 Policy Context

5.1. Dublin City Development Plan (2016-2022):

Relevant provisions incl. –

Ch. 14 Land Use Zoning Objectives

14.6 Non-Conforming Uses

(see attached copies of Ch.14 'Land use Zoning Objectives').

Of relevance to the current application / 1st party appeal is the following extract –

“When extensions to or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area”.

14.8 Primary Land Use Zoning Categories

Zoning Objective “Z1” – Sustainable Residential Neighbourhoods

Objective: *“to protect, provide and improve residential amenities”.*

Vision: The 'Vision' is one "*where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres*".

Use Classes related to 'Z1' Zoning Objective

'Permissible' Uses – 'Residential' and others

'Open for Consideration' Uses – 'Bed and breakfast' and others

Notably, 'Offices' as currently proposed, are neither 'permissible' or 'open for consideration' land use classes.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. 1st Party Appeal – Jim & Tom McMahon (Newcourt House, Strandville Avenue East, Clontarf, Dublin 3)

In a detailed and comprehensive submission dated 28th January 2019, the applicants (c/o O'Neil Town Planning), substantiate the grounds of appeal as follows –

6.1.1. Grounds of Appeal

- **Planning Authority Comment –**
 - "... applicant proposes to demolish the existing single storey bungalow ... and to construct a ... office building ... on the site."

Applicant response –

- In failing to recognise the existing building on site as an established, authorised office building, “the Planning Authority failed to adjudicate on the proposed development in terms of the non-conforming established and authorised use on the site”.
- There will be no change of use on the site.
- The over 70year, established commercial use on the site will be retained and enhanced, by bringing it up to modern building standards, with enhanced energy efficiency and mitigation of potential threat of flooding.

• **Planning Authority Comment –**

- When “extension to or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity ...”
- Within the ‘Z1’ residential Zoning Objective, proposed ‘office’ development is not a ‘permissible’ use, or a ‘open for consideration’ use.
- Having regard :
 - to the Appendix 21 of the City Development Plan 2016, definition of a ‘office’, and
 - to ‘offices’ being neither ‘permissible’ uses or ‘open for consideration’ uses on lands with the ‘Z1’ Zoning Objective, the proposed development “would therefore be contrary to the land use zoning objective for the area”.
- Note taken of applicant’s statement that applicant states the existing building on site is used as an office.

Applicant response –

- Section 14.6 ‘Non-Conforming uses’ of the City Development Plan 2016 recognises the existence throughout the City of ‘uses’ that do not conform to the Zoning Objective for the area.
- “When ‘extensions to’ or ‘improvements of premises’ accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not

adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area”.

- In substantiation of the applicants arguments submitted on appeal, reference inclusion of a document highlighting the way the new office building sits into the surrounding streetscape, and details of the screen walls to the first floor which clearly show that there cannot be any overlooking of adjoining properties or private open spaces.

- **Planning Authority Comment –**

- Note proposal :
 - to utilise existing vehicular access off Strandville Avenue.
 - for 8no. car parking spaces on site.
- Reference :
 - Development Plan 2016 Standards require a maximum of c.3no. spaces to serve the proposed development.
 - The City ‘Transportation Planning Division’ note :
that the 8no. car parking spaces proposed, significantly exceeds the maximum Standards, and
no justification submitted for the ‘quantum’ (8no. spaces) of car parking proposed.
- Consider that the number of spaces proposed be reduced :
 - in accordance with Development Plan 2016 Standards.
 - in order to resolve concerns regarding the layout and arrangement of car parking spaces.
- Note :
 - location of cycle parking spaces adjacent to the entrance to the office building
 - the quantum of cycle parking proposed, exceeds Development Plan 2016 ‘Standards.

- **Applicant’s Response –**

- Clarity that “the eight car parking spaces on site were Conditioned as part of the Planning permission granted in 1980 for an extension to the offices to the rear.

- **Planning Authority ‘Refusal Reason’ –**

- Negative impact on adjacent amenities “due to overbearing and overlooking”.
- Serious concerns regarding threat of overbearing impacts on adjacent property, and on the character of the area, due to the design, bulk and scale of the development.
- Note the 8m wide west facing window proposed at 1st floor level.
- Concern that the proposed development will unduly overlook adjoining property.

Applicant’s Response –

- Referencing supplementary documentation to the appeal submission, clarify that “the type of glass at 1st floor level to the side and rear is U glass, which is frosted and obscure, and from which no overlooking can occur.
- Affirm there will be no overlooking of adjacent residences.

- **Planning Authority ‘Refusal Reason’ –**

- “...proposed office development is not a permissible use or an open for consideration use, under the Z1 ‘residential zoning objective for the area...”
- “... the proposed office development is an intensification of a non-conforming use which is likely to have a detrimental impact on the residential amenity of adjacent property, would prejudice the proper planning and sustainable development of the area, and should therefore be refused.”

Applicant’s Response –

- As clearly demonstrated, the continuation of office use at this location would not prejudice the proper planning and sustainable development of the area.
- The new building, on the existing footprint, will not increase any perceived disamenity created by the office use.
- The scale, location and design of the building, a significant improvement on that existing, will improve the streetscape, without unduly impacting adjacent residential properties.

- **Planning Authority ‘Refusal Reason’ –**
 - The proposed development “would, therefore, contravene materially a development objective indicated in the Development Plan for the zoning of land, be an intensification of a non-conforming use ...”

Applicant response –

- Reference this issue as being addressed under the applicant’s “opening statement with regard to procedural issues”.

- **Conclusions –**

- The Planning and Development Act 2000 (as amended) requires the Planning Authority (incl. An Bord Pleanála), in deciding any application, to be restricted to considering the proper planning and sustainable development of the area, as provided for by the statutory Development Plan, and where relevant by the ‘policy’ of the Government, the Minister, or any other Minister of Government.
- The proposed development is compliant with the relevant provisions of the Dublin City Development Plan 2016-2022, in particular the policies and objectives set out for “established authorised non-conforming uses”.
- The key issue to be determined is the impacts, the small increase in size might have on –
 - adjoining residents, and
 - the streetscape of the area.
- With respect to ‘residential amenity impacts’ –
 - Proposed design does not diminish privacy or residential amenity, as there will be no overlooking
 - Due to the location and domestic scale of the office building, “there can be little increase in the impacts of its size”.
 - Having regard to the orientation of the ‘private amenity spaces’ of each of the two adjacent residential properties, “there will be a very small decrease in the amount of sunlight to the rear of those houses and to their private open space”.
 - The increase in height to the front, is in line with the 2-storey elements of the two dwellinghouses on either side

- The office building is set back from the lateral site boundaries, thereby reducing any real or perceived appearance of overbearing or overshadowing.
- Nothing proposed by the applicants “will reduce the wellbeing of residents in the area”.
- Proposed development conforms with the Planning Authority policies to do with “reasonable extensions to existing non-conforming uses under the Statutory Development Plan for the area”.
- The existing and proposed use could not be considered as a ‘Bad Neighbour’
- Emphasise that the need for the proposed development is consequent of the applicant’s desire to “upgrade the approved offices at this location”, and from a cost benefit perspective “to build a facsimile rather than painfully attempt to refurbish an office building that was clearly outdated and noncompliant with current building regulations”.
- The attractive domestic scaled office building –
 - is in keeping with the scale and design of existing adjacent residential properties
 - will improve the streetscape without impacting on the prevailing residential amenities in the area.
- The proposed ‘office’ development must be considered as fully compliant with –
 - the Statutory Development Plan for the area,
 - the Development Control Standards, and
 - the proper planning and sustainable development of the area.
- Continuance of use on the site will take place in the existing or proposed form.
- The size and scale of the proposed development will not give rise to any concerns to do with residential amenity or property devaluation.
- The proposed development must be seen as consistent with the proper planning and sustainable development of the area.
- Request that the Board “support this appeal by granting planning permission for the proposed development, subject to whatever Conditions they deem appropriate ...”.

6.2. Planning Authority Response

6.2.1. None Apparent

6.3. Observations

6.3.1. Observer – John Suttle (20/02/2019, ‘Dollymount Gardens’, 24A Hollybrook Grove, Clontarf, D3)

- Emphasise reference to the Planning Authority’s decision to refuse planning permission based on the consideration that the proposed development was a significant exacerbation of an existing non-compliant development, and where that site is designated under the Dublin City Development plan 2016-2022, for residential development and use.

The proposed development is for a larger commercial development.

The exacerbation still remains.

- As the leaseholder of the ‘infill / backland’ property to the west / rear of the application site, point out the underutilisation of their property, particularly in relation to the Development Plan objective for residential use.
- Request that the Board have regard to their property and its potential for residential use.

There is “virtually no social and affordable housing in Clontarf”. Provision of social and affordable housing is to be welcomed.

- Having regard to the large back gardens of surrounding houses, emphasise the “real potential to develop some significant housing”.
- Reference and affirm the ‘planning observations’ submitted understood as part of 3rd party observations to the Planning Authority (ie. received by the Planning Authority date stamped 06/12/2018, c/o Peter P. Gillet & Associates – see copy included on the appeal file). The principal points are summarised as follows –
 - No objection ‘in principle’ to the proposed redevelopment of the existing office premises, “but wishes to request that the Planning Authority seek to open up the development potential of his premises for housing by way of a vehicular connection through Newcourt House”.
 - subject to provision of suitable access, the lands “offer the potential for a small infill housing scheme”, providing an attractive location to live.

- redevelopment of the lands for a small housing scheme would enable a 'planning gain' by way of removal of a commercial use in a residential area.
- Having regard to shortage of housing supply, emphasise need to facilitate and develop underutilised zoned land
- site represents an ideal infill site if necessary access arrangements can be made.
- History application **4059/10** – proposal to widen access laneway from Hollybrook Grove refused planning permission.
- Other than purchase of a house on Hollybrook Grove or Strandville Avenue, the current proposal for office redevelopment of Newcourt House "will be the only opportunity to open up our clients backlands".
- express willingness to co-operate and co-ordinate with the current applicant in this regard.
- Request the Planning Authority seek a vehicular entrance to the rear of the application site, into the backland property.
- Securing such an entrance would require omission of part of the southern side of the single storey rear extension to provide for an entrance of c.5m.
- "While it would be up to both parties to agree financial terms, the Planning Authority could initiate such a situation by way of additional information request to explore this option".

6.4. Further Responses

6.4.1. None.

7.0 Assessment

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal

submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Principle and Location of the proposed 'Office' development
- Appropriate Assessment.

7.2. Principle and Location of the proposed 'Office' development

- 7.2.1. The site is zoned “**Z1** – Sustainable Residential Neighbourhoods”, with the objective to “protect, provide and improve residential amenities” and protect and improve residential amenity. The ‘Vision’ prescribed for these “**Z1**” zoned lands at Strandville Avenue East and Hollybrook Grove is one “*where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres*”.
- 7.2.2. The applicable zoning matrix designates ‘office’ land use as being neither a ‘Permissible’ or an ‘Open for Consideration’ use.
- 7.2.3. Therefore, having had careful regard to the historical use of the application site for ‘office’ use, understood since approximately 1949 with the original conversion, and sustained through the “alteration, reconstruction and extension” works for ‘offices’ completed in 1980, to the present time, I have had regard to the current ‘office’ usage of the application site as a ‘non-conforming’ land use.
- 7.2.4. Section 14.6 ‘Non-Conforming Uses’ of Chapter 14 ‘Land Use Zoning Objectives’ of the City Development Plan 2016-2022, enables consideration of applications for planning permission to do with such ‘non-conforming uses’.
- Specifically, having accepted the existing ‘non-conforming’ office use as both “legally established” and “in existence longer than 7-years”, Section 14.6 provides such that “When extensions to, or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development both –

- Does not adversely affect the amenities of premises in the vicinity, and
- Does not prejudice the proper planning and sustainable development of the area.

7.2.5. In the first instance therefore, the proposed 'office' development is not inevitably contrary to the prevailing "Z1" zoning objective. Clearly, I understand the historical, sustained office use of the application site enables the discretionary consideration of the proposed 'office' development, as a 'non-conforming' land use under the qualified considerations set out at Section 14.6 of the City Development Plan 2016-2022.

7.2.6. Therefore, having literal reference to the qualified provisions set out at Section 14.6, I note the clear description of the proposed development set out in all of the planning application documentation, the statutory site and other public notices, as being for the "demolition of the existing single storey office", and for construction of "a new 569.65m² gross floor area office".

7.2.7. In my understanding this description of the proposed development by way of "demolition" of the existing office building on site and construction of a "new" office building, does not qualify for consideration as being the type of "extensions to, or improvements of", the existing 'office' building on site, envisaged for consideration 'on its merits' under Section 14.6.

7.2.8. Accordingly therefore, and notwithstanding the applicants transparent reference to their detailed considerations of their development options between "the practicalities of refurbishing the existing office building", versus the option "to demolish the existing structure and build a new office building", I am left to conclude that in their decision to go forward with the proposed "demolition" and construction of a "new replacement office building", their proposed new "office" build and anticipated sustained use of their site for their "offices", now sits outside of and beyond the safety of the provisions of Section 14.6 for the ongoing sustained 'non-conforming' use of the application site.

7.2.9. In my view, instead of being enabled by the "extension" and "improvements" provisions of Section 14.6, their decision to go ahead with "demolition" and "new replacement build" option renders the proposed development now as a "prohibited" use.

Consequently, I believe that the responsibility of the Planning Authority, and including An Bord Pleanála in the current instance, is to enforce the provisions of the City Development Plan 2016-2022 for this local area of Clontarf as determined and envisaged under the “Z1” Zoning Objective. Under the “Z1” zoning objective, “office” usage of the application site is neither “permissible” or “open for consideration”, and having regard to the opinion that the provisions of Section 14.6 “Non-Conforming Uses” do not now enable the proposed development as argued at length by the applicants, it must now be considered as a “prohibited” land use within the “Z1” zone. Accordingly, I am left to conclude that the proposed development would be in ‘material contravention’ of the provisions of the “Z1” zoning objective and therefore contrary to the proper planning and sustained development of the area.

7.2.10. Notwithstanding, I do note the applicants reference in their 1st party appeal submission, to the provisions of Section 37 of the Planning and Development Act 2000 generally, and Section 37(2)(a), (b)(i)-(iv) and (c) specifically, in response to the inclusion by the Planning Authority in their stated ‘Refusal Reason’, that their proposed ‘Office’ development would be in “material contravention” of the relevant (ie. “Z1”) zoning objective. Unfortunately, as referenced in some detail above, I do not believe the provisions of particularly Section 37(2)(b)(i)-(iv) of the Planning and Development Act 2000, are of assistance to the applicants in enabling the limited discretion of An Bord Pleanála towards deciding to grant planning permission in this instance.

7.2.11. Specifically, I believe there to be no conflict, contradiction or otherwise between and amongst the relevant provisions of the City Development Plan 2016-2022 (see Section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended)). Section 14.6 and the “Z1” zoning objective would be the principal relevant provisions in this regard. In my view the logical deduction outlined above, clarifies that the proposed “office” development is neither an “extension to” or an “improvement of” the existing dated premises on site, and which would have enables continuance of the existing ‘non-conforming’ office use. Rather, the applicants proposed “demolition” and construction of a “new replacement ‘office’ building” which I am left to conclude would be a “prohibited” use, in material contravention of the relevant provisions of the City Development Plan 2016-2022, and therefore the proper planning and sustainable development of the area.

7.2.12. Having thoroughly inspected the application site, and in local context, I further believe that neither does the existing pattern of development, or the planning permissions granted by the Planning Authority locally, enable the limited favourable discretion of An Bord Pleanála under Section 37(2)(b)(iv) in this instance. Rather, in fact in my view by enforcing the “Z1” zoning objective locally sustained consolidation of the ‘sustainable residential development of the area’ would be ensured, inclusive of the underdeveloped backland infill site in the ownership of the 3rd party Observer (Mr J. Suttle). In my view, such an approach would ensure the proper planning and sustainable development of the area, for set out and provided for in the Dublin City Development Plan 2016-2022

7.2.13. Further, due to my conclusion that neither Section 14.6 – ‘Non-Conforming Uses’ of the Dublin City Development Plan 2016-2022, or Section 37(2)(b)(i)-(iv) of the Planning and Development Act 2000 (as amended) are relevant in my view to consideration of the proposed development, and therefore of assistance to the applicants in progressing an enabling consideration of their proposed development, I am of the view that consideration and assessment of the planning merits, as enabled by Section 14.6 particularly, would not in this instance be necessary.

7.2.14. Having regard to all of the above, I conclude that the Planning Authority decision to ‘Refuse’ planning permission for the proposed development be sustained, for the amended single ‘Refusal Reason’ as set out at 9.0 – ‘Reasons and Considerations’ below. I recommend to the Board accordingly.

7.3. **Appropriate Assessment**

7.3.1. Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway 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. I recommend that planning permission be Refused for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the provisions of the “Z1” Zoning Objective for the area, and to Section 14.6 ‘Non-Conforming Uses’ all of the Dublin City Development Plan 2016-2022, the proposed ‘office’ development is neither a ‘permissible’ use, or an ‘open for consideration’ use under the “Z1” Zoning Objective for the area. Further, having regard to the proposal “to demolish the existing structure and build a new ‘office building’, the proposed development cannot be considered as an “extension to, or improvement of” the existing premises on site accommodating the ‘non-conforming’ office use, as provided for at Section 14.6 ‘Non-Conforming Uses’ of the Development Plan 2016-2022. Rather, the proposed new ‘office’ development is considered as a ‘prohibited’ use within the “Z1” Zone.

Accordingly, the proposed new ‘office’ development is considered to be in ‘material contravention’ of the provisions of the “Z1” zoning objective for the sustainable residential development of the area, and would therefore be contrary to the proper planning and sustainable development of the area.

L. W. Howard

Planning Inspector

13th July 2019