



An
Bord
Pleanála

Inspector's Report ABP-304234-19

Development	Construction of two dwellings
Location	Rear of Glencormac, 1 Elton Park, Sandycove, Co. Dublin A96 E186 (A Protected Structure)
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/1108
Applicant(s)	M. Gallagher
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Ronbow Management CLG.
Observer(s)	None
Date of Site Inspection	11 th July 2019
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.0425ha is located to the rear of 'Glencormac', no. 1 Elton Park, a protected structure and forms part of the rear garden of this plot. The site is bounded by Elton Court laneway to the north/northeast of the site and by Castlepark Road to the east/southeast. There is an existing vehicular access from the laneway serving the site from both the Elton Court Laneway and Castlepark Road.
- 1.2. There are a number of mews dwellings existing along the laneway in addition to Elton Court residential development comprising 37 dwellings.

2.0 Proposed Development

- 2.1. Permission is sought for the:
 - Demolition of existing garden store.
 - Construction of 2 no. two storey mews dwellings with internal car parking spaces and respective vehicular access to Castlepark Road and Elton Court, with associated site works.
- 2.2. The proposed dwellings are semi-detached houses reflecting a contemporary design approach with integrated garage. The external finishes include the use of natural granite stone at ground floor level to match the adjoining mews dwellings and boundary walls. A brick finish is proposed at first floor level with large timber frame vertical emphasis window openings and natural slate and a sedum roofs.
- 2.3. The proposed dwellings will reflect the building line of the adjoining mews dwellings fronting Elton Court and will be set back from the rear of no. 1 Elton Park, by 12.4m – 17.5m at ground floor level and 16.3m – 21.6m at first floor level. The rear private open space for each dwelling is 53.6sqm.
- 2.4. A revised vehicular entrance and new pedestrian entrance are proposed fronting Castlepark Road, to serve mews A. Similarly, a revised vehicular entrance and new pedestrian entrance are proposed fronting Elton Court to serve mews B. A rear boundary wall is

proposed to the rear of no. 1 Elton Park separating the protected structure from the mews dwellings.

2.5. The application was accompanied by an Architectural Heritage Impact Report.

3.0 **Planning Authority Decision**

3.1. **Decision**

Dun Laoghaire Rathdown County Council issued a notification of decision to grant permission subject to 13 standard conditions.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

Initial Planning Officer's report notes the zoning provisions of the area and references the recent planning history. Further information was requested in relation to the impact on the adjoining protected structure, car parking and access, in addition to details regarding right of way/wayleaves serving the site. It was concluded following receipt of the further information that, subject to certain conditions the development was acceptable and in accordance with the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Drainage Department – Drainage Division - No objection subject to standard conditions as set out in report dated 13th March 2019.

Transportation Planning - No objection subject to conditions as set out in report dated 7th March 2019.

Conservation officer - No objection to the proposed development as set out in report dated 11th March 2019

3.2.3. **Prescribed Bodies**

None

3.2.4. **Third Party Observations**

Two no. third party submissions were received by the planning authority relating to applicant's 'right of way' and impact of construction traffic.

4.0 Planning History

Site

D18A/0209 – Permission refused in 2018 for 3 no. two storey mews dwellings including car parking spaces with vehicular access to Elton court.

The reason for refusal referred to the excessive scale of the development and substandard private open space provision.

D17A/1030 – Permission granted for the provision of a vehicular access and a single car space to the front garden with a new gate to match existing railings at 'Glencormac', Elton Road (A protected structure).

Adjoining

D09A/0020 – Permission granted for a two storey mews house with attic studio/storage including vehicular access from Elton Court (off Castlepark Road) and associated site works to the rear.

5.0 Policy and Context

5.1. Development Plan

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

5.1.2. Section 8.2.3.4 Additional Accommodation in Existing Built-up Areas

(x) Mews Lane Development

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

- Is already developed to such an extent that further development would have to be regarded as infill.
- Is already adequately serviced and surfaced from the site to the public road, with a suitable underlying base to cater for the expected traffic volumes.
- Has a legally acceptable agreement between owners or interested parties who intend to bring the laneway to standards and conditions - particularly in terms of services, road surfacing and public lighting - suitable to be taken-in-charge by the

Council. The onus will be on the applicant(s) to demonstrate that they have a consensus of owners or interested parties.

- Where the Council is likely to be able to provide services and where owners can be levied to allow the Council to service the sites.
- Has been identified as being suitable for such development on the County Development Plan Maps or within a Local Area Plan.

The principle of mews development on a particular laneway will NOT generally be accepted where:

- The length of all or most of the adjoining rear gardens on the side of the lane concerned is less than 25 metres, or
- Where, particularly in a commercial area, the lane is likely to be required by the frontage buildings for access or the area adjoining the lane is required for expansion.

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

- Development will be confined to single units in one or two storeys of modest size and the separation distance between the rear facade of the existing main structure (onto the front road) and the rear mews structure should normally be a minimum of 20 metres and not less than 15 metres, or not less than 22 metres where first floor windows of habitable rooms directly face each other.
- Setting back of dwellings and boundary walls may be required dependant on existing building lines, lane width, character and parking/access.
- Dwellings and boundary walls may be required to reflect the scale, height, materials and finish of existing walls and buildings, particularly where old coach houses and two storey structures are involved.
- All parking provision in mews laneways should be in off-street garages, integral garages (car ports), forecourts or courtyards, and conditions to 'de-exempt' garage conversions will normally be attached. At least one off-street parking space per dwelling will generally be required. Where two spaces can be reasonably accommodated these should be provided. Part set-backs of frontage for on-street

parallel parking may be considered depending on lane width and structure types.

- Each dwelling shall generally have a private open space area of not less than circa 48 sq.m. exclusive of car parking area. A financial contribution in lieu of public open space provision may be required.
- Vehicular entrance widths shall be a minimum but sufficient to provide for proper vehicular turning movements allowing for laneway width and for pedestrian visibility.

Minimum lane width requirements are:

All mews laneways will be considered to be shared surfaces and footpaths need not necessarily be provided. If external street/security lighting is warranted, only a minimal level and wall-mounted type(s) may need to be provided. Opportunities should be undertaken to improve permeability and connectivity to and from the development as part of the Development Management process.

Reduced standards from the above may be acceptable, particularly in cases of conversion of existing two storey structures in sound condition and of particular architectural and/or townscape value.

Applications should clearly state the requirements and method statement for bin storage and collection, car parking, access and similar details.

5.1.3. Section 2.1 Residential Development.

Policy RES 4 -It is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

Policy RES 6 -It is Council policy to facilitate measured and proportionate mews lane housing development in suitable locations

5.1.4. Section 6.1.3.1: Policy AR1:Record of Protected Structure

5.1.5. Section 8.2.11.2 Architectural Heritage – Protected Structures (iii) Development in proximity to a Protected Structures

5.2. **Natural Heritage Designations**

There are two designed sites within 1.5km of the site.

- Dalkey Island SPA (Site code: 004172)
- Rockabill to Dalkey Island SAC (Site code: 003004)

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of Appeal

The third party appeal was made by Feargall Kenny Architect on behalf of Ronbow Management CLG. The principle grounds of appeal can be summarised as follows:

- It is set out that Ronbow Management CLG are the management company whose members are the residents of Elton Court and who are the owners of the roadway at Elton Court.
- The works to the boundary wall of the protected structure were not publicised and, accordingly the conditions of the planning authority relating to the boundary wall are ultra vires. No section 57 declaration was issued for these works and such works are not exempt. The boundary wall should be retained, and the development erected behind the wall.
- The construction of the two mews dwellings will result in a serious diminution of the amenities of the residents of Elton Court by virtue of traffic congestion and nuisance during construction works. All construction should access the site via Castlepark Road and not Elton Park.
- Condition no. 2 of the planning decision requiring the applicant to repair any damage to the adjacent public roadway arising from the development cannot be enforced as this is private property.

- The applicant is not entitled to any other access point to Elton Court other than the existing gateway to the rear of no. 1 Elton Court.
- The development is contrary to the zoning objective 'to protect and/or improve residential amenities'

6.2. Applicant Response

- The development will provide the opportunity for the elderly occupant of no. 1 Elton Court to down size.
- The appeal relates to Mews B only as Mews A is accessed via Castlepark Road.
- Public notices relating to the planning application referred to the protected structure, no. 1 Elton Court.
- The boundary wall in question is a modern insertion and not of noted merit. The wall was built in ca. 2000 to facilitate the Elton Court Mews development.
- It is set out that the applicant has a right-of-way to and from Elton Park via Elton Court roadway and the proposal maintains the existing points of access to the premises, in order to impact as little as possible the existing road condition. It is also set out that construction traffic can access the site from Castlepark road.
- The proposed development complies with the zoning objectives and the consolidation of the vehicular and pedestrian access follows the precedent set by the neighbouring mews developments. Setting back the building behind the boundary wall would have a negative impact on the aesthetic quality of the area and would be out of character in the area.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

None

7.0 Assessment

7.1. Introduction

The main issues in this appeal are those raised in the grounds of appeal. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Public notices and Impact on Architectural Heritage
- Impact on Residential Amenity
- Legal Interest and Right-of-Way
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The site is zoned *Objective A* where the objective is to protect and/or improve residential amenity. Residential is a permissible use within this zoning category. As such the proposal is acceptable in principle, subject to the detailed considerations below.
- 7.2.2. The proposed mews dwellings are located to the rear of no. 1 Elton Park, a protected structure. The site is accessed via a rear lane which serves four existing mews dwellings and the Elton Court housing development.
- 7.2.3. With respect to the proposed infill dwellings Policy RES4: *Existing Housing Stock and Densification* of the Dun Laoghaire Rathdown County Development Plan 2016-2022 deals with Infill development– encouraging densification of the existing suburbs in order to help retain population levels – by ‘infill’ housing. Infill housing in existing suburbs should respect or complement the established dwelling type in terms of materials used, roof type, etc. Furthermore, policy RES 6 states that it is Council policy to facilitate measured and proportionate mews lane housing development in suitable locations. Section 8.2.3.4 (x) Mews Lane Development sets actively encourages Mews dwellings which provide a unified approach to the development of residential mews lanes and where consensus between all property owners has been agreed.
- 7.2.4. Site inspection indicated that the general character of the area has been altered over time with the insertion of other infill mews dwellings adjoining the site. I note the design

and layout of the development is consistent with the established pattern of development and reflects the general character of the adjoining mews dwellings in terms of scale and mass, front building line and height. I consider the principle of the development is in line with Section 8.2.3.4 Additional Accommodation in Existing Built-up Areas (x) Mews Lane Development of the Development Plan.

7.3. Public Notices and Impact on Architectural Heritage

7.3.1. It is asserted in the appeal that the works to the boundary wall of the protected structure were not publicised and the decision of the planning authority to grant planning permission, which includes the demolition of the rear boundary wall fronting Elton Park, is ultra vires. It is set out that no section 57 declaration was issued for these works and as such the works are not exempt. The appellants assert that the boundary wall should be retained, and the development erected behind the wall. In this regard, I note public notices including the site notice, newspaper notice, and the relevant planning documentation submitted with the application referenced the protected structure no. 1 Elton Park in the development description. The requirements of *Part 4 Control of Development Chapter 1* of the Planning and Development Regulations 2001, (as amended) whereby an applicant is required to reference a protected structure in their development description, where applicable, are therefore satisfied.

7.3.2. In response the applicant sets out that boundary wall is a modern insertion and not of noted merit and that the wall was built in ca. 2000 to facilitate the Elton Court Mews development. From my site inspection this appears to be the case and the use of cement mortar would also suggest the wall is a later addition and not original to the house. I am satisfied that the rear boundary wall was not of significant architectural merit.

7.4. Impact on Residential Amenity

7.4.1. The proposed Mews dwellings are located to the rear of no. 1 Elton Park, a protected structure. The site is accessed via a rear lane which serves the four existing Mews dwellings and Elton Court housing development.

7.4.2. The third-party grounds of appeal assert that the development would result in a serious diminution of the amenities of the residents of Elton Court by virtue of traffic congestion and nuisance during construction works and suggest that all construction should

access the site via Castlepark Road and not Elton Park. In this regard, I note the applicant's submission states that construction traffic can access the site from Castlepark Road.

- 7.4.3. With regard to the issue of traffic congestion and noise nuisance during construction. Mews developments by their nature are located in built-up urban areas and will undoubtedly give rise to some level of vehicular movements and associated construction noise as a result of site development works. The increased levels of vehicular movement and noise that would occur in this instance would be temporary and subject to specified working hours, and in my view therefore, would be acceptable.

7.5. **Legal interest and Right of Way**

- 7.5.1. The appellants challenge in two ways whether the applicant has sufficient **legal interest** to carry out the proposed development. It is argued by Ronbow Management CLG, who are the management company for the Elton Court residents, who are the owners of the roadway at Elton Court, that the applicant has insufficient interest in the laneway to carry out necessary works to facilitate the development such as works to the boundary wall and landscaped area fronting the site. In addition, the applicant is not entitled to increase the width of the existing vehicular access to accommodate the proposed pedestrian access and vehicular access serving mews B. Furthermore, the planning condition requiring the applicant to repair any damage to Elton Court, namely the roadway and landscaped area fronting site B, cannot be enforced as this is private property and not in the ownership of the applicant. In response, the applicant has submitted land registry deeds setting out an indenture establishing the applicants 'right of way' over the existing laneway to the rear of Elton Park.
- 7.5.2. Further to the above I note that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted, and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

7.6.

7.7. **Appropriate Assessment**

- 7.7.1. Having regard to the nature and small scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the 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**

I recommend that planning permission be GRANTED for the proposed development having regard to the reasons and considerations and subject to conditions as set out below.

9.0 **Reasons and Considerations**

Having regard to the nature and scale of the proposed development, the pattern of development in the vicinity, the existing development on site and the policies of the Dun Laoghaire Rathdown County Development Plan 2016-2022, 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 and would not detract from the character or setting of the adjacent Protected Structure. 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 on the 30th January 2019, 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 mews dwellings shall be used as single dwelling units only.

Reason: To ensure that the development will not be out of character with the existing residential development in the area.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To protect the residential amenities of property in the vicinity of the site.

5. The naming and numbering of the proposed dwelling unit shall be in accordance with the requirements of the planning authority prior to the occupation of the dwelling.

Reason: In the interest of orderly street numbering

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity

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.

Irené McCormack
Planning Inspector

22nd July 2019