



An
Bord
Pleanála

Inspector's Report ABP305590-19

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| Development | Change of use of lower ground floor storage area to 1-bed apartment. |
| Location | 48 Rathmines Road Lower, Dublin 6. |
| Planning Authority | Dublin City Council. |
| Planning Authority Reg. Ref. | 3519/19. |
| Applicant | Carnivan Bay Property Limited. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party -v- Refusal. |
| Appellant | Carnivan Bay Property Limited. |
| Observers | None. |
| Date of Site Inspection | 18 th December, 2019. |
| Inspector | Paul Caprani. |

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1.0 Introduction

ABP305590-19 relates to a first party appeal against the decision of Dublin City Council to issue notification to refuse planning permission for a change of use of a lower ground floor unit to a one-bedroomed residential apartment in a building at No. 48 Rathmines Road Lower, Dublin 6. Dublin City Council refused planning permission on the basis that the proposed lower ground floor apartment would provide a substandard level of amenity for future occupiers and would therefore set an undesirable precedent.

2.0 Site Location and Description

- 2.1. No. 48 Rathmines Road Lower comprises of a three-storey over basement building located adjacent Church of Mary Immaculate (Rathmines Church) on the eastern side of the Rathmines Road approximately 200 metres south of the Grand Canal. A row of Georgian three-storey overbasement buildings run along the eastern side of the Rathmines Road between the subject site and the canal. The buildings to the immediate north of the site together with St. Mary's Church to the south are all listed in the Record of Protected Structures in the Development Plan. The building which is the subject of the appeal however is not a protected structure. It comprises of a 40-50 year old infill building of little architectural merit. It was formally used for institutional accommodation associated with the adjacent church. The forecourt area of the building accommodates a downward slope from the footpath to the ground floor. Refurbishment works are currently being undertaken, on foot of a recent grant of planning for residential accommodation on the upper floors of the building (see section below). The lower ground floor was retained as a storage area under the recent grant of permission. The building backs onto the sacristy office associated with the adjoining Rathmines Church (Church of St. Mary Immaculate).

3.0 Proposed Development

- 3.1. Under Reg. Ref. 2325/18 planning permission was granted for internal and external alterations to the existing building in order to accommodate six one-bedroomed

residential apartments. Planning permission was granted on the 2nd October, 2018. The current application relates to the lower ground floor level of the existing building where permission is sought for a change of use from lower ground floor storage to the provision of a one-bedroomed apartment, 62 square metres in size. The proposed apartment is located to the rear of the building. It is also proposed to modify the openings of two windows on the southern elevation and the lower ground level. It is also proposed to install two new window openings to serve a kitchen.

4.0 Planning Authority's Decision

Dublin City Council issued notification to refuse planning permission for single reason which is set out below.

Having regard to the requirements of Section 16.10.1 and the Z2 zoning objective of Dublin City Development Plan 2016-2022 and Section 6.5 of the Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities 2018, it is considered that the proposed lower ground floor apartment would provide a substandard level of amenity for future occupiers in terms of daylight/sunlight from its limited window openings. It is therefore considered that this proposal if permitted would set an undesirable precedent for similar substandard development and would be contrary to the proper planning and sustainable development of the area.

4.1. Documentation Submitted with the Planning Application

4.1.1. The application was accompanied by the following documents.

A Planning Report which sets out details of the current proposal together with a site description and details of the planning history pertaining to the site and lands surrounding the site. Section 4 of the Planning Report goes on to outline in detail the proposed development. Section 5 of the Report sets out details of the planning policy context and reference is made to the National Planning Framework, the Action Plan for Housing and Homelessness, the Regional Planning Guidelines, the Sustainable Urban Housing Design Standards for New Apartments and the relevant policies and provisions contained in the Dublin City Development Plan. It is also noted that the site falls within the area of the Lower Rathmines Road – Conservation and Urban Regeneration Study. The Report also notes that the subject site is located in close

proximity to good public transport infrastructure. Section 6 of the Report assesses the proposed development in terms of development plan standards and considers the proposal to be in full compliance with requisite standards. An appropriate assessment screening exercise concludes that a Stage 2 Appropriate Assessment is not required in this instance. In conclusion, it is considered that the proposal fully complies with planning policy and residential standards and as such planning permission should be granted for the proposed development.

A separate Internal Daylight Assessment was undertaken and submitted as part of the application. All habitable spaces in the proposed new unit were analysed for “average daylight factor” and the results of the assessment have indicated that all spaces on the lower ground floor meet or exceed the BRE recommended standards of 1% and 1.5%. In this regard it is concluded that the proposed development performs to acceptable levels of daylight penetration.

4.2. Planning Authority Assessment

- 4.2.1. A report from the Engineering Department Drainage Division stated that there was no objection to this development subject to the developer complying with the Greater Dublin Regional Code of Practice.
- 4.2.2. A report from the Waste Regulation Section sets out a series of waste protocols which will be required to be complied with where planning permission is granted.
- 4.2.3. The planning report notes that under Planning Ref. 2325/18 which related to the conversion of the upper floors into one-bedroomed apartments which was granted by Dublin City Council it was proposed to accommodate a two-bedroom apartment at lower ground floor level. The Planning Authority however had concerns with regard to the lack of daylight this apartment would receive. And on foot of an additional information request, and a further request for clarification of additional information, the applicants omitted the accommodation at the lower floor in response to this concern. The planning report concludes that an apartment on the lower floor is unacceptable due to the very limited size and number of window openings proposed which would give rise to a poor level of amenity and daylight for future occupiers of this apartment. It was on this basis that Dublin City Council issued notification to refuse planning permission for the sole reason set out above.

5.0 Planning History

- 5.1. Under 4123/17 planning permission was refused from a change of use from presbytery accommodation to short stay tourist accommodation comprising of 8 bedroom suites. Planning permission was refused on the basis that the use proposed was not permissible under the Z2 zoning objective in the development plan and that the proposed additional floor on the building above the parapet height of the adjacent Georgian terrace would adversely impact on the visual amenity and character of the area.
- 5.2. Under Reg. Ref. 2325/18 Dublin City Council granted planning permission consisting of internal and external alterations to facilitate the change of use from institutional accommodation to seven one-bedroomed residential apartments raising in size from 45 square metres to 62 square metres.

6.0 Grounds of Appeal

- 6.1. The decision was appealed on behalf of the applicant by Hughes Planning and Development Consultants. The grounds of appeal can be summarised as follows:
- Dublin City Council have not provided any rationale or comprehensive justification in the decision to refuse planning permission with regard to access to light.
 - The subject site is zoned Z2 – Residential Conservation Area where residential development is permitted in principle under this zoning.
 - Reference is made to the planning history associated with the subject site and it is noted that in the case of Reg. Ref. 4123/17, where planning permission was refused for short-term tourist accommodation, the planner's report specifically recommended that the applicant consider investigating residential use on the subject site.
 - Reference is made to the planning history of surrounding sites. Specific reference is made to Dublin City Council's decision to grant planning permission for a residential development at 40 to 46 Rathmines Lower comprising of 74 student residential units and this decision was upheld by An Bord Pleanála under Reg. Ref. 29S.246625.

- It is argued that the proposed development fully accords with planning policy to provide and promote the sustainable development of vacant and/or underutilised infill sites at higher densities throughout the city. Reference is also made to various planning policy statements contained in the National Planning Framework, the Action Plan for Housing and Homelessness, the Regional Spatial and Economic Strategy for the Eastern and Midlands Region and the Design Standards for New Apartments. All of these documents it is argued, would support the use of the ground floor level for an additional residential unit.
- Reference is made to the internal daylight assessment prepared and submitted by Heffernan 3D which was submitted with the original application. It is argued that this report which makes reference to and relies upon the standards set out in the BRE Guide. The assessment carried out in accordance with the BRE Guidelines clearly demonstrates that the proposed residential unit at lower ground floor level would receive adequate levels of daylight with the daylight levels of the bedroom/kitchen/living area meeting or exceeding the recommended minimum standards.
- Finally, reference is made to precedent decision at No. 31 Merrion Square North (Reg. Ref. 2859/18) where concerns were raised by the Planning Authority in relation to daylight penetration on the lower ground floor unit. To address these concerns the applicant engaged the services of Heffernan 3D to conduct a daylight study. Following the receipt of further information planning permission was granted by Dublin City Council.

7.0 Appeal Responses

- 7.1. It appears that Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Development Plan Provision

- 8.1. The subject site is governed by the zoning objective “Z2” – in the Dublin City Development Plan with the vision to “protect and/or improve the amenities of

residential conservation areas”. Residential use is a permissible use under this zoning objective.

- 8.2. Policy QH7 seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for higher standards of urban design.
- 8.3. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.
- 8.4. Policy QH19 seeks to promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children in attractive sustainable mixed income / mixed use neighbourhoods supported by appropriate social and other infrastructure.
- 8.5. Chapter 16 of the development plan sets out details in relation to development standards including design, layout, mix of uses and sustainable design. Section 16.10.1 sets out details of residential quality standards. In relation to aspect natural lighting, ventilation and sunlight penetration the development plan notes that daylight animates an interior and makes it attractive and interesting as well as providing light to work or read by. Good daylight and sunlight contribute to making a building energy efficient. It reduces the need for electric lighting, while winter solar gain can reduce heating requirements. Livingroom and bedroom shall not be lit solely by rooflights and all habitable rooms must be naturally ventilated. Glazing to all habitable rooms should not be less than 20% of the floor area of the room. Development shall be guided by the principles of site layout planning for daylight and sunlight, a guide to good practice.
- 8.6. Dual aspect apartments maximising the availability of sunlight should be provided where possible. It is a specific planning policy requirement in the 2015 Department Guidelines that the minimum number of dual aspect apartments that may be provided in any single apartment scheme shall be 50%. In certain circumstances usually on inner city sites this may be reduced to an absolute minimum of 33% where it is necessary to ensure street frontage and subject to high quality design.
- 8.7. Where single aspect apartments are provided, the provision of south facing units should be maximised with west or east facing single aspect units also being

acceptable. Living spaces in apartments should provide for direct sunlight for some period of the day.

8.8. Sustainable Urban Housing Design Standards for New Apartments – Guidelines for Planning Authorities

Paragraph 6.5 of these Guidelines highlight the need for the provision of reasonable levels of natural light in new apartment developments and note that it is an important planning consideration as it contributes to the liveability and amenity enjoyed by residents. In assessing development proposals Planning Authorities must however weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision with the location of the site and the need to ensure appropriate scale of urban residential development. The Planning Authority should have regard to the quantitative performance approaches to daylight provision in guides like the BRE Guide and Lighting for Buildings (Part 2) Code of Practice for Daylighting in order to satisfy minimum standards of daylight provision. Where an applicant cannot fully meet all the requirements of daylight provisions above, this must be clearly identified and rationale for any alternative, compensatory design solutions must be set out which Planning Authorities should apply at their discretion.

9.0 EIA Screening Assessment

Having regard to the nature of the development comprising of a single apartment unit at ground floor level in an urban area it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

10.0 Planning Assessment

10.1. I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the Planning Authority's reason for refusal and the arguments set out in the grounds of appeal challenging the reason for refusal. I consider that the Board in this instance can restrict its deliberations to the issue raised in the grounds of appeal; namely whether or not the proposed lower ground

floor unit affords future occupant's adequate levels of daylight and sunlight for the purposes of amenity.

10.2. I invite the Board to agree that the principle of development on the subject site is appropriate in that:

- The subject site is zoned for residential use and residential development is a permissible development under this land use zoning objective.
- There are numerous policy statements contained in the development plan which seek to promote residential development and sustainable urban densities throughout the city and promote the sustainable development of vacant or underutilised infill sites within the city centre.
- There are numerous policies statements contained in the recently adopted National Planning Framework which seeks to direct a substantial portion of new residential development to within the existing urban footprint of already built-up areas by utilising infill and brownfield sites.

10.3. It is my opinion that the provision of an additional unit within the footprint of the existing building would be acceptable and fully in accordance with the overall policy statements and objectives set out in national and local planning policy to develop sites at sustainable densities throughout the city centre which were supported by good social infrastructure including public transport. The principle of residential development is therefore acceptable in my view.

10.4. With regard to the primary issue raised in the Planning Authority's reason for refusal it is appropriate that any residential development affords appropriate levels of daylight in all internal habitable rooms in order to make the building energy efficient and reducing the need for electric lighting.

10.5. It is not proposed in this instance to naturally illuminate any of the habitable rooms by rooflights. It is proposed to incorporate high level linear windows along the southern elevation. The main windows proposed to serve the kitchen/living area and the bedroom are between 2.055 metres and 2.049 metres in width and approximately 0.3 metres in height. The overall surface area of the window would range between 0.61 and 0.47 square metres on the south facing elevation. Smaller windows are provided in the bay area of the kitchen on the projecting east and west

elevations on the southern side of the building. These windows are considerably smaller amounting to a surface area of c.0.15 square metres. The total area of glazing to be provided amounts to less than 1.66 square metres all of which would be on the southern elevation and therefore single aspect. While I do acknowledge that the windows would be south facing (with the exception of the two smaller windows referred to) the total glazed area would represent approximately 2.7% of the floor area of the proposed apartment and approximately 3.5% of the habitable living area associated with the apartment. This falls considerably below the Dublin City Council's standard which requires glazing to all habitable rooms should not be less than 20% of the floor area of the room.

- 10.6. While I am fully in concurrence with the need to provide additional residential accommodation in accordance with the objectives and policies referred to above and also the need to apply flexible standards with regard to apartment living as permitted under the National Planning Framework and the most recently adopted Guidelines for Apartments, the proportion of glazing to habitable room area in the case of the current application falls considerably below and represents less than one-fifth of the minimum 20% standard set out in the development plan.
- 10.7. The applicant in the grounds of appeal places considerable emphasis on the conclusions of the internal daylight assessment submitted by Heffernan 3D as part of the application.
- 10.8. This report concludes that the BRE recommended minimum for a bedroom is 1% and in the case of the current application the average calculated daylight factor exceeds this minimum requirement at 1.7%. The living/kitchen area has a BRE recommended minimum of 1.5% and this minimum requirement is equal, according to the modelling undertaken, to 1.5%. It should be noted however that the BRE Guidelines state that "if a predominantly daylight appearance is required then a daylight factor should be 5% or more if there is no supplementary electric lighting or 2% or more if supplementary electric lighting is provided". It notes that there are additional recommendations for dwellings of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. These are, according to the standards, the minimum values of average daylight factor to be attained. It therefore appears that an average daylight factor of 2% is required for kitchens and in this instance the standard calculated is only 1.5%. It is also clear based on the above, that supplementary electric lighting

would be required in the case of the unit overall and in the case of the hallway and bathroom artificial lighting would be required at all times.

- 10.9. I would also have some concerns with regard to the internal distribution of daylight due to the single aspect nature of the lighting. The internal space of the main kitchen/living area is relatively elongated being over 8 metres in length. The area to the rear of the kitchen (i.e. the north-western portion of the living room) will have no south facing window to serve it being located adjacent to the kitchen. Therefore, on the one hand while it could be argued that the proposed glazing arrangements meet the minimum requirements set out in the BRE Guidelines, I consider that there would be considerable variation in terms of daylight distribution within the internal layout and this would exacerbate the need for artificial lighting throughout daylight hours. The incorporation of internal partitions within the living/kitchen area would also in my view reduce the amount of daylight available particularly in the northern portion of the kitchen/living area.
- 10.10. While there is a need to provide additional residential accommodation, this should to be at the expense of providing appropriate accommodation in terms of quality and the various documents referred to above highlight this point. The need for natural daylight and by consequence sunlight penetration is also particularly important in ensuring that the building attains some level of energy efficiency while reducing the need for energy consumption and ensuring that some solar gain can be attained in order to reduce heating requirements. Sustainable energy efficiency is an important requirement in any building design and the absence of adequate glazing will reduce the potential for energy efficiency.
- 10.11. Arising from my assessment above therefore I consider that the glazing requirements for habitable rooms is below that required in the development plan (20% of the floor area of the habitable room) and I further consider that the internal layout and configuration of the ground floor unit would not lend itself to an appropriate distribution of the minimum amounts of daylight which would be attained from the proposed fenestration arrangements. I therefore recommend that the decision of the Planning Authority be upheld in this instance and that planning permission be refused for the proposed development.

11.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment, together with the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

12.0 **Decision**

Refuse planning permission for the proposed development based on the reasons and considerations set out below.

13.0 **Reasons and Considerations**

Having regard to the requirements of Section 6.10.1 of the Dublin City Council Development Plan 2016-2022 and in particular the requirement for glazing to all habitable rooms should not be less than 20% of the floor area of the room together with Section 6.5 of the Sustainable Urban Housing Design Guidelines for New Apartment Guidelines for Planning Authorities (2018) which requires the provision of reasonable levels of natural light in new apartment developments, it is considered that the proposed lower ground apartment would provide a substandard level of amenity for future occupiers in terms of sunlight and daylight penetration due to the inadequate glazing arrangements. It is therefore considered that this development if permitted would set an undesirable precedent for similar substandard development and would be contrary to the proper planning and sustainable development of the area.

Paul Caprani,
Senior Planning Inspector.

January 6th 2020.