



An
Bord
Pleanála

Inspector's Report ABP 306552-19.

Development	Change of use from institutional to residential use in ten apartments, reconfiguration, refurbishments, repairs and alterations to internal layout, demolition of caretaker bungalow, and construction of two storey extension, surface carparking, drainage and site development works
Location	Molyneux House, Leeson Park, Dublin 6. (Protected Structure.)
Planning Authority	Dublin City Council
P. A. Reg. Ref.	3349/19.
Applicant	Esprit Investments.
Type of Application	Permission
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Ed Madden
Date of Site Inspection	27th March, 2020
Inspector	Jane Dennehy.

1.0 Site Location and Description

1.1. Molyneux House is a three storey nineteenth century building with an annex which is vacant but formerly was in institutional use as a residence for the blind and subsequently as a nursing home which closed in 2012 and the site has a stated area of 2,700 square metres and is on the east side of Leeson Park. Molyneux House comes within a shared plot and is north of Litton Hall and Wesley Hall/Methodist Hall, south of Christ Church. These buildings on this larger plot from which the application site is subdivided, form an ensemble designed in the neo Gothic style and constructed circa 1860. A bungalow, a former caretaker dwelling is located at the southern end of the site. To the north of which is Dartmouth Road at the eastern end of which is Upper Leeson Street. There is access through the plot between the entrances off Leeson Park and Upper Leeson Street.

2.0 Proposed Development.

2.1. The application lodged with the planning authority on 26th June, 2019 indicates proposals for the following development.

- A change of use of the existing three storey building to residential use to provide for nine two bed apartments, incorporation of internal refurbishment and reconfiguration providing for change to the internal layout and a one bed unit in adjoining out building along with concierge facilities.
- Reconfiguration of adjoining caretaker building providing for a one bed apartment with concierge facilities.
- Demolition of substandard building fabric to be replaced with a two-storey extension to the south-east of the existing building.
- The removal of two late twentieth century fire escape structures on the north-eastern and south-western facades.
- The demolition of existing caretaker bungalow at the south-east of the site.
- The provision of a new accessible entrance at lower ground floor level to the northwest façade of the building in the existing courtyard with the replacement of an existing elevator within the foyer with a new glass elevator.

- The repointing and repair of the existing external stonework; repair and refurbishment works to the roof, chimneys, rainwater goods and windows. - The removal of guarding bars to windows at lower ground-floor level.
- The provision of eleven residents' and one mobility impaired spaces surface car parking spaces and two secure car parking barriers to the west side of the building.
- The provision of secure cycle parking facilities (ten spaces), garden and bin stores.
- The provision of ground floor communal open space, changes in level and landscaping and boundary treatments.
- Piped infrastructure (including a French drain), ducting, the addition of an attenuation tank and the removal of existing storage tanks to the south of the building.
- The removal of all existing surface car parking other than the proposed resident parking and,
- all associated site excavation and development works above and below ground.

(No changes are proposed to the existing access arrangements.)

Included with the application are a conservation report, design rationale, arborist report inclusive of tree survey.

- 2.2. Further information was received by the planning authority on 2nd December, 2019 in response to a request for additional information issued on 22nd August, 2019. It includes a written statement, revised drawings, specifications for a barrier at the entrance, a lighting fittings and fixtures inventory and assessment report in which it is concluded that some light fittings are of some interest but their removal is recommended with a recommendation that they be made available for salvage.

2.3. **Planning Authority Decision**

By order dated, 7th January, 2020, the planning authority decided to grant permission for the proposed development subject to conditions which mainly are of a standard planning, building conservation and technical nature.

2.4. **Planning Authority Reports**

- 2.4.1. The final report of the **planning officer** indicated satisfaction with the proposed development, particularly with regard to historic building conservation and with regard to consistency with the minimum standards set out in the 2018 Apartment Guidelines (see para 5.2) as supplemented in the information in the further information submission and a grant of permission was recommended.
- 2.4.2. The report of the **conservation officer** dated 15th August, 2019 which the proposed change of use is supported but this is subject to protection of the planform and architectural characteristics with planning gain through conservation works of high quality facilitating sustainable continued use. Concerns are indicated with regard to adequacy of detail on submitted drawings, some methodologies for repair works, the site layout, and setting, and options for subdivisions and services for the apartment units and the proposed extensions. A request for additional information based on the conservation officer's assessment was recommended to facilitate further consideration of the proposed development in respect concerns about legibility of planform, features to be retained and/or removed, existing joinery and partition, selection of service routes, fire upgrades, drainage and external works to the structure and grounds. (A supplementary report on the further information submission by the conservation officer is not available.)
- 2.4.3. The report of the **Transportation Planning Division** indicates acceptance of the proposed development subject to conditions to include preparation of a residential travel plan.
- 2.4.4. The report of the **Drainage Division** indicates acceptance of the proposed development subject to conditions.

2.5. **Third Party Observations**

An observation was received from Ed. Madden, the Appellant Party whose concerns relating to overlooking, construction stage disturbances and clarity of information in the application are also raised in his appeal. (See para 5)

3.0 **Planning History**

According to the planning officer report, permission was granted for an external lift platform for disability access to the front of the building on 8th March, 2012. P A. Reg. Ref. 2872/11 refers. A Section 57 Declaration was issued in 2001 but no details are available according to the submission of the applicant's agent. (D0278/01 refers.)

4.0 **Policy Context**

4.1. **Development Plan**

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site comes within an area subject to the zoning objective Z2: *to protect and/or improve the amenities of residential conservation areas.*

Molyneux House along with the adjoining structures, Litton Hall, and Wesley House to the south and Leeson Park Church to the north are included on the record of protected structures. Nineteenth century townhouses within the surrounding street network are also included on the record of protected structures.

Policy CHC2 provides for protection of the special character and integrity of protected structures. Guidance and standards on works and additions, internally and externally, to protected structures are set out in section 11.1.5.3 which provides for minimal intervention to and maximisation of retention historic fabric and original planform, protection of proportions within buildings and relative to adjoining buildings.

Policy CHC4 provides for protection of the special interest and character of Dublin's Conservation Areas. Guidance is set out in section 11.1.5.4 according to which there is a request that development contribute positively to the character and

distinctiveness of the conservation area and that development should take opportunities to protect and enhance the special appearance of the area and its setting in so far as is possible.

4.2. **Statutory Guidance.**

The relevant statutory guidance is:

'Sustainable Urban Housing: Design Standards for New Apartments' and accompanying design manual, *'Urban Design Manual: A Best Practice Guide'* (2009)

Sustainable Urban Housing: Design Standards for New Apartments, (March 2018) (The Apartment Guidelines, 2018) These guidelines supersede policies, objectives and standards within the CDP as provided for under Section 28(1C) of the Planning and Development Act, 2000, as amended. (the Act) *'Architectural Heritage Protection: Guidelines for Planning Authorities'*, DOEHLG. 2005.

5.0 **The Appeal**

5.1. **Grounds of Appeal**

5.1.1. An appeal was received from Mr. Ed. Madden, of No 18 Leeson Street Upper on 3rd February, 2020 on his own behalf and he states that he has resided at this property for over thirty years and, that he has not been consulted in connection with the application.

5.1.2. According to the appeal;

- The existing windows overlook his property. This issue should be addressed in the application. Insertion of opaque glass is suggested.
- Construction works ongoing for eleven hours a day, starting at 7.00 am for six days a week with potential for derogations without consultation with Mr Madden is unreasonable. It will affect the amenities and safety of his property and in addition, Mr Madden is concerned as to potential impacts on the structural stability of the wall adjoining his property.

- Mr Madden states that caretaker's bungalow has been occupied until 2019 and therefore it has not been vacant as indicated in the application. He also states that reference to use of Molyneux House for student accommodation in the application submissions is also inaccurate and that such use would have required a grant of planning permission for change of use from nursing home use. He contends that these matters should be clarified and that he should have been consulted by the local authority about the proposed development having regard to his constitutional rights in connection with property ownership.

5.2. Applicant Response

5.2.1. A submission was received on 24th February 2020 from the applicant's agent according to which the proposed development comprising of change of use to high quality apartments fully accords with the land use zoning objectives, as discussed in the planning officer report, with the relevant CDP policies and objectives for development involving designated protected structures and, minimum standards in the Apartment Guidelines, 2018. In response to the appeal it is submitted that:

- With regard to overlooking, the separation distances and the level of perceived overlooking from the existing building, which was constructed in the 1860s to the appellant property is long established. No extensions that would bring the building closer to the appellant property are proposed. Furthermore, the existing two metres high wall, which has been repaired in places provides privacy for the rear garden of the appellant property and there is a half level drop between the existing building and this wall which is shown in an extract from a topographical survey included in the application. It would be inappropriate;

from the perspective of amenity standards for obscure glass to be fitted for the living space in apartments and,

for the existing glass to be removed from the windows and replaced with obscure glass from the perspective of best conservation practice.

Extensive repair works to the windows, window linings and shutters are to be undertaken.

- With regard to construction stage impacts, the majority of the proposed works to the existing building are internal. The assumption as to adverse impact on the stability of the adjoining wall on the boundary with the appellant's property is unfounded. The stability of the building and this wall will be monitored throughout the demolition and construction period. The applicant undertakes to comply with the requirements of Condition No 5 relating to construction hours and No 6 relating to safety and protection of the conditions of the adjoining road work attached to the planning authority decision.
- It is stated that matters with regard to the contentions as to inaccurate details in the application submission were clarified and addressed in the further information submission. In this regard it is agreed that the caretaker bungalow is not unoccupied. It is confirmed that the statement as to use as student accommodation was incorrect, the existing building having been in use as a home for the blind, followed by use as a nursing home and that the building is now vacant.

5.3. **Planning Authority Response**

5.3.1. There is no submission from the planning authority on file.

6.0 **Assessment**

6.1. The appeal has been lodged by the occupant of No 18 Upper Leeson Street, a Victorian house in residential house with gardens which adjoin the eastern boundary of the site of the proposed development.

6.2. The appellant has raised issues relating to accuracy of details in connection with the nature of use of the existing bungalow on the site and in connection with the former uses of the main Molyneux House building. It is considered that the information supplied in the further information submission and in response to the appeal fully clarifies that Molyneux House was never in use a student accommodation and, that the caretaker bungalow has been occupied up until 2019. It is considered that the application and appeal process has not been materially affected and that third-party entitlements and involvement in participating in the planning review process has not

been compromised or diminished as a result of the erroneous detail in the original application submission referred to in the appeal.

6.3. The planning issues raised in the appeal and considered below are that of impact on residential amenities and privacy of the appellant's property due to:

- overlooking
- construction stage impacts.

In addition, some observations on historic building conservation issues are included under, 'Architectural Heritage Protection.'

6.4. **Overlooking:**

6.4.1. The rear garden boundary of the appellant's property where it adjoins the application site extends over a distance of circa twenty-six metres. However, the atypical configuration of the rear garden whereby the area directly at the rear of the house is limited and angled and extending southwards behind the rear of the return of the adjoining house is such that its amenity potential is compromised. Generally, private open space provision for nineteenth century townhouses is directly to the rear, across the entire width of the house, extending over the depth of the plot, or, as far as a coach house facing onto rear services lanes. The less advantageous amenity potential of the appellant's property in this regard is appreciated.

6.4.2. However, it is considered that the proposed change of use, and the proposed interventions to the building which do not entail any reconfigurations or additions to the fenestration in the east facing elevation will not result in significant material changes to the established relationship between Molyneux House and the applicant's property. There is no apparent argument whereby it could be established that apartment use instead of institutional use would give rise significantly increased potential for overlooking and invasiveness of privacy at either the internal accommodation or in the rear private open space. Installation of obscure glazing would be unwarranted, is undesirable with regard to the amenity potential of the proposed habitable interior space and, it would also be inappropriate, given the special interest of the historic fabric and features of the existing structure particularly with regard to fenestration detail. The case made in the response to the appeal is therefore supported.

6.5. Construction stage impacts

- 6.5.1. It is inevitable that demolition and construction are a potential source of adverse impact on residential amenities of adjoining properties. However, it should be borne in mind that modern methods for demolition and for construction management and practice have been increasingly effective in significantly reducing the intensity and extent of construction stage impacts on the surrounding environment.
- 6.5.2. For the current proposal, no extensive site clearance, excavation and piling work is involved and, as pointed out in the applicant's submissions, a considerable amount of the works are internal, external works apart from disassembly/demolition, comprising mainly of limited new construction refurbishment and repairs and, hard and soft landscaping. The conditioned restrictions on hours of construction works and with regard to management of potential for overspill onto the adjoining public road network are of a standard nature and reasonable. However, for the purposes of clarity and the protection of residential amenities of the properties on, Leeson Park Upper Leeson Street and the immediate surrounding area, it is desirable and reasonable for the purposes of clarity that a construction management plan, including traffic management plan be prepared prior to commencement of development for the written agreement of the planning authority. A condition for this requirement can be attached if permission is granted.

6.6. Architectural Heritage Protection.

- 6.6.1. On *de novo* consideration of the proposed development, some brief historic building conservation related observations follow, although such issues have not been raised in the appeal, A comprehensive building history architectural record including photographic survey which inform the architectural heritage impact assessment are included within the conservation report provided with the application.
- 6.6.2. It is considered that the proposed change of use provides for protection of the viability of the structure and for sustainable development interests by way of use of underutilised sites and buildings within the inner urban built up area of the city which is to be encouraged and facilitated having regard to statutory architectural conservation guidance and national policy. The works providing for the proposed change of use do result in intervention to planform legibility and interventions and

loss of historic fabric and features as has been pointed out in the conservation officer's report. Clarification as to details of historic and later fitouts are provided. It is noted that a supplementary report on the further information submission details are not available, but it is considered that the drawings and accompanying documentation do address the requirement for clarification of details sought in the initial report.

6.7. The submitted survey and inventory and assessment details are comprehensive but, to provide for an opportunity for the planning authority to satisfy itself as to the appropriateness of the methodology and materials to be applied and additional requirement (to those under Condition No 3) providing for a conservation method statement to be prepared for the planning authority's written agreement should be included, if Permission is granted. In addition, inclusion of a landscaping condition is recommended.

6.8. Environmental Impact Assessment Screening.

6.8.1. Having regard to the nature of the proposed development and its location comprising change of use of an existing building in a serviced inner suburban area in the city in conjunction with limited demolition, extensions and alterations, including conservation repair works, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.9. Appropriate Assessment Screening.

6.9.1. Having regard to the location and to the nature of the proposed development comprising change of use of an existing building in a serviced inner suburban area in the city in conjunction with limited demolition, extensions and alterations, including conservation repair works, no Appropriate Assessment issues arise and 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.

7.0 Recommendation

In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld, but with inclusion of additional requirements by condition to those attached to its decision. Draft Reasons and Considerations and Conditions follow.

8.0 Reasons and Considerations

- 8.1.1. Having regard to the layout of development in the area, to the plot configuration of the site and adjoining development, the arrangement of fenestration on the existing east facing façade of Molyneux House, the entire extent and distribution of which is to remain unaltered, the nature of the proposed change of use, (from residential institutional use to multiple apartments for residential occupation), and, to the extent and nature of demolition and construction works involved, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of adjoining properties, would not adversely affect the integrity and special architectural character of the existing building which is included on the record of protected structures or the amenities and architectural character of the surrounding area. The proposed development would therefore be in accordance with Policy CHC 2 which provides for ensuring the protection of the special character and integrity of protected structures and, the zoning objective “Z2” *To protect and/or improve the amenities of residential conservation areas*” of the Dublin City Development Plan, 2016-2022 and would therefore be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged with the planning authority on 2nd December,

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 demolition and construction works shall be carried out in accordance with a conservation method statement to be submitted and agreed with the planning authority prior to commencement of the development. The works shall be carried out under the direction of an architect with specialist expertise in historic building conservation and in accordance with the recommendations within: *Architectural Heritage Protection: Guidelines for Planning Authorities* issued by The Department of the Environment, Heritage and Local Government in 2005.

Prior to the commencement of the development, the applicant shall submit and agree in writing with the planning authority revised plans. The development shall not be made operational unless all works have been completed to the satisfaction of the planning authority.

Reason: In the interest of clarity, and to ensure the protection of the integrity and special interest of the Molyneux House and those of the protected structures within the ensemble in which it is located and, the visual amenities and established architectural character of the area.

3. Arrangements for demolition and clearance of the site and for construction of the development shall be managed in accordance with a Demolition, Waste and Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development:

Reason: In the interests of clarity and the residential amenities of the area.

4. Hours of construction work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

Reason: In the interest of residential amenities of surrounding properties and clarity.

5. Landscaping, planting and boundary treatment, and external communal amenity space provision shall be fully implemented within the first planting season following completion of construction.

Reason: In the interests of the visual amenities of the area and orderly and sustainable development.

3. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

Reason: In the interest of residential amenity.

4. Throughout construction and demolition stages, the development shall be carried out in accordance with the standards set out in BS 5228: *Noise Control on Construction and Open Sites Part 1: Code of Practice for basic information and procedure for noise control*. Throughout operational stages, the rated noise levels emanating from the development shall not constitute reasonable grounds for complaint as provided for in BS 4142, *Method for rating industrial noise affecting mixed residential and industrial areas*.

Reason: In the interest of clarity and residential amenities.

5. Water supply and drainage arrangements, including the attenuation and 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.

Jane Dennehy
Senior Planning Inspector
25th April, 2020.