



An
Bord
Pleanála

Inspector's Report ABP306881-20.

Development	Demolition of workshop and construction of a three storey, two-bedroom mews dwelling including off-street parking. .
Location	34 Avenue Road, SCR., Dublin 8.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	4738/19
Applicant	Jill Twomey,
Decision	Grant Permission.
Type of Appeal	First / Third Party
Appellants	1. Paul Gillespie and Dierdre McQuillan. 2. Billy McGrath and Maire Kearney.
Observer.	Councillor Mannix Flynn
Date of Site Inspection	2 nd July, 2020
Inspector	Jane Dennehy.

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1.0 Site Location and Description

1.1. Avenue Road is a former service lane located between Victoria Street and Bloomfield Avenue comprising Victorian terraced houses off which it intersects, to the south of Lennox Street at its southern end and to the north of St Kevin's Road in Portobello. There is a single storey warehouse structure on the application site which has a stated area of 150 square metres and which is subdivided from the plot of No 34 Bloomfield Avenue. The adjoining building at No 34 Avenue Road is two storey and appears to be in residential use. The adjoining building to the north side is in use as a workshop uses. Along Avenue Road most of the properties are in light industry or commercial use with a few properties in residential use. The carriageway is circa 5.5 metres wide with a narrow footpath and parallel parking on the west side only with double yellow line markings on the east side.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for removal of the existing workshop structure on the site and for construction of a three storey, two bedroom dwelling with a garage at ground floor level, with a stated floor area of 170 square metres. The second-floor level which is to be clad in metal sheeting is setback at the rear.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 17th February, 2020 the planning authority decided to grant permission for the proposed development subject to conditions of a standard nature which include a requirement for preparation of a construction management plan and submission to a compliance agreement.

3.2. Planning Authority Reports

3.2.1. The **planning officer** indicated acceptance of the proposed development having concluded that it would not have adverse impact on residential amenities of adjoining

properties by reason of overlooking, overshadowing or overbearing impact and would be acceptable in design quality and with regard to future attainable residential amenity for the occupants.

- 3.2.2. The report of the **Transportation Planning Division** notes an approximate carriageway width of six metres along Avenue Road, inclusive of the public footpath on the western side, existing accesses to commercial and residential properties and uncontrolled on street parking. It is indicated that the proposed car space within the carport would be acceptable and in accordance with CDP standards for parking within parking Area 2 it being noted that manoeuvres for access and egress would be similar to the arrangements for other entrances off Avenue Road. Standard conditions are recommended.

3.3. **Third Party Observations**

- 3.3.1. Submissions were lodged by the two appellant parties who reside at properties on Bloomfield Avenue. Details of their objections regarding concerns as to impact on and protection of residential amenities at their properties are set out in section 6 below. Concern is also raised about the need for multipoint turning and a need for a vehicle to mount the footpath in order to access the carport.

4.0 **Planning History**

- 4.1.1. According to the planning officer report, permission was granted in 2008 for demolition of the existing workshop and construction of a two-storey mews dwelling with off street parking whereas permission was refused for two prior applications. Under P.A. Reg. Ref. 4008/08 permission was refused for demolition of the workshop and construction of a part two storey and part three storey three bedroom mews dwelling with terraces and incorporating alterations to the ground levels to provide for partial below level off street parking, and, under P. A. Re. Ref. 2428/08 for a first floor office extension over the workshop.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site location is within an area subject to the zoning objective, 'Z2': to protect and /or improve the amenities of residential conservation areas. Policy CHC4 provides for protection the special interest and character of Conservation areas. Polices objectives and standards for Mews Lane Development are set out in section 16.10.16.
- 5.1.2. The location is within Parking Area 2 according to Map J and according to table 16.1 there is a maximum requirement for one space per dwelling to be located off street.
- 5.1.3. Section 16.10.2 provides for adequate separation distance between first floor windows of opposite properties with there being provision for the traditional distance of twenty-two metres to be relaxed if the design preserves the amenities and privacy of adjoining properties.

6.0 The Appeals

6.1. Appeal by Paul Gillespie and Deirdre McQuillan,

- 6.1.1. An appeal was received from the appellants who reside at No 33 Bloomfield Avenue on 12th March, 2020 attached to which are photographs and 3D imagery.

According to the appeal:

- The proposed development constitutes overdevelopment having regard to the provisions of the CDP in respect of preservation of residential amenities CDP. The indicative plot ratio is 45% for the 'Z2' zoned lands whereas a site coverage of 62 per cent, which is 38% in excess of this limit is proposed and is not justified and undermines the CDP provisions. Modification to the design by condition is not possible so an outright refusal is requested so that the application can reconsider the design approach.
- The proposed development would result in overlooking in conflict with the provisions of para 16.10.16 of the CDP. Whereas the site presents no

development constraints there is within nineteen metres of the opposite window of the dwelling on Bloomfield Avenue reducing its residential amenity.

- In addition, it is stated that No 33 Avenue Road s incorrectly described as being in commercial use in the planning officer's report because it was converted to a residential use under P.A. Reg. Refs. 4375/16 and 3030/19.

6.2. Appeal by Billy McGrath and Maire Kearney.

6.2.1. An appeal was received from Laurie O'Connor on behalf of the appellants who reside at No 34 Bloomfield Avenue on 13th March, 2020 attached to which are drawings. It is indicated that there is no objection in principle to the proposed development. According to the appeal:

- The application submission lacks section drawings to demonstrate impact on the amenities of No 34 Bloomfield Avenue and therefore section drawings have provided with the appeal demonstrating that the proposed development results in an overt overlooking. The scale of the two living room windows at first floor level is cause for concern with regard to overlooking. Assurances as to provision of adequate and visually acceptable screening are necessary.
- There is insufficient detail on the proposed two metres high screen wall or screening relative to the 1.8 metres high wall in the appellant party's property. Detail of the existing coniferous hedge within the application site, which the appellant party considers insufficient for screening purposes are not included on application drawings.
- Overlooking is negated in a permitted development at the rear of Nos 38 39 and 40 Bloomfield Avenue on Avenue Road in that a split-level plan with a partially sunken ground floor is provided. This is possible suitable precedent. The first-floor space is 1.2 metres above the rear garden levels of Nos 38, 30 and 3 Bloomfield Avenue which together with soft landscaping negating overlooking and visual subordination to the Bloomfield Avenue properties.
- The current proposal for a three storey, thirteen metres deep dwelling will also impact on morning light from the east at No 34 Bloomfield Avenue and the materials are overtly complex o the surrounding context.

- The submission includes observations on the application drawings on the basis of which it is argued that there are insufficiencies in detail, inconsistencies and inaccuracies, concerns as to Part L requirements, the garage design and scale and missing information and which could be supplied in a new application of a further information submission.

6.3. Applicant Response

6.3.1. A submission was received from the applicant, Jill Twomey on her own behalf on 14th April, 2020.

6.3.2. With regard to the Appeal by Billy McGrath and Maire Kearney, Ms Twomey's observations are outlined in brief below.

- Overlooking of private open space from a first-floor level in an urban area is not prohibited outright in section 16.10 2 of the CDP. The privacy of the rear garden of No 34 is protected in so far as is practicable in the design.
- The proposed development accords with the provisions in Section 16 10 of the CDP with regard to mews lane development. The distance to the return at No 34 Avenue Road is 23.5 metres and there is compliance with private open space requirements.
- The planning officer refers to a separation distance of nineteen metres, as far as the ground floor extension at No 34 Bloomfield Avenue which he considered acceptable for the context in terms of overlooking and overshadowing. This extension is substantial, and the appellant party was aware of the proposed development at the time of their purchase of their property as there was an extant permission for development, now expired. Presumably, the appellant party had then been satisfied with the nineteen metres separation distance. The 1.8 meters high boundary wall protects the amenities of the ground floor extension.
- The development potential on the application site should not be constrained by the benefits, to the appellant party of their substantial extension. The coniferous hedge inside the boundary of the application site exceeds four metres in height and fully screens the first-floor windows as shown in the attached photograph.

- It is unclear as to why the mews development is referred to in the appeal as 'precedent' as such developments are diverse and devising a standard is unworkable. The mews at No 33 Avenue Road is a converted commercial building and the development at Nos 38-40 Avenue Road is a three-storey development of modern design. There is no standard mews type for particular areas provided for in the CDP. The proposed development accords with the CDP requirements under section 16.10 including that mews development complement the character of the lane and building in scale, mass, height, depth roofing, materials and an innovative response informed by established building lines and plot width.
- There is no objection to submission to the planning authority for agreement (by condition) of samples of materials and finishes.

6.3.3. With regard to the Appeal by Paul Gillespie and Deirdre McQuillan, Ms Twomey's observations are outlined in brief below:

- As stated by the planning officer the 62% site coverage is suitable for a small infill and is similar to the other mews lane developments with site coverage at No 33 Avenue Road being 75% and at Nos 38-40 Avenue Road being 68%. The indicative site coverage according to section 16.6 of the CDP also provides for higher site coverage in certain circumstances. And the existing coverage is 92%.
- The appellant party agrees that there is precedent that the development in principle is established and, that there is a shortage in housing supply.
- The development is in a good design in keeping with the CDP and adjoining developments, enhances the streetscape and, is a dwelling with high amenity potential.

6.4. **Planning Authority Response**

There is no submission from the planning authority on file.

7.0 Assessment

7.1. The issues raised in the appeals central to the determination of the decision are that of impact on the residential amenities of their properties by reason of overdevelopment, overlooking and overshadowing. In addition, vehicular and pedestrian safety and convenience on Avenue Road are also considered below.

7.2. Impact on Residential Amenities.

Overdevelopment.

7.2.1. The application involves replacement of a single storey light industrial building with a three-storey building with a smaller footprint resulting in sixty two percent site coverage whereas the indicative plot ratio is 45% for, 'Z2' zoned lands according to the CDP. It provides for internal habitable accommodation of a suitable standard having regard to the recommendations in the CDP and statutory guidance:

“Guidelines for Planning Authorities: Sustainable Residential Development in Urban Areas” and the accompanying *“Urban Design Manual”*, DOEHLG, 2009 and off street cycle and vehicular parking. It is also considered that the quantum, at fifty-one square metres in area and 7.5 metres in depth which is directly to the rear of the structure, and quality of private open space, which includes rainwater harvesting at the rear is satisfactory.

7.2.2. It can be concluded that the site has the capacity to accept the development as proposed, that it is consistent with the standards provided for in section 16.10 of the CDP and a satisfactory standard of attainable residential for the future occupants would be achieved. However, in the event that permission is granted it is recommended that exempt development entitlements be removed so as to allow for further planning review in the event of possible additional development on the site.

Overlooking.

7.2.3. The second floor element of the dwelling is setback from the first and second floor building lines both at the front and the rear three storey dwelling and it has a blank west facing elevation, towards the rear gardens and rear elevation fenestration of the properties on Bloomfield Avenue.

7.2.4. It is considered that the glazing for the two first floor rear elevation living windows at 1600 mm x 1100 mm approx. is not unreasonable or excessive for internal space

6500 mm in width and it is noted that the height above ground level is 3300 mm approx.

7.2.5. Although the levels for the site and contiguous developments and finished floor levels are unavailable it is considered that undue overlooking of the rear garden, ground floor and first floor windows of the property at No 34 Bloomfield Avenue which have a separation distance in excess of twenty two metres directly to the rear would not occur having regard to the rear garden depth, at 7.5 metres. The existing boundary wall at circa 1.8 metres in height provided by the appellant at the end of the rear garden at No 34 Bloomfield Avenue and planting within the site eliminate reciprocal overlooking at ground floor level between the properties restrict the scope of reciprocal views from first floor level windows.

7.2.6. The property at No 33 Bloomfield Avenue is to the south west as opposed to being directly at the rear of the application site and it is considered that undue overlooking would not occur. From a planning perspective, satisfactory standards are achieved. In this regard, it should be borne in mind that an expectation as to outright elimination of reciprocal overlooking in an established inner urban area would be unreasonable. In the case of the subject proposal it is considered that undue intrusiveness on privacy and residential amenity at adjoining properties would only be brought about by intentional observation from the first-floor rear elevation windows of the proposed dwelling.

Overshadowing.

7.2.7. The application site is to the east of the properties at Nos 33 and 34 Bloomfield Avenue and, having regard to the orientation, separation distances from the rear gardens and buildings at these properties and to the, height and form of the second floor element in particular of the proposed dwelling, it is considered that any potential for diminutions of access to morning sunlight from the east, if any would be negligible. At present the existing coniferous planting at the boundary may cause some shadow effect at the end of the rear garden of the property at No 34 Bloomfield Avenue.

7.3. Visual Amenities.

7.3.1. Other than the recommendations and standard provided in section 16.10 of the CDP for mews lane development there are no specific policy objectives or design

guidance for Avenue Road thus necessitating consideration of each proposal on its own merits in its locational context. Owing to the setback at the second floor level and its box form and flat roof profile, there is horizontal emphasis to the seven metres' wide plot and building which has a height to the first floor parapet of 5485 mm increasing to 7850 mm for the second floor element and this is not dissimilar to roof ridge heights for two storey suburban houses. The design and form are modest in profile and in conjunction with the selection of material and finishes results in an infill compatible to the location within the street and with surrounding established development. It is of note that the development at Nos 38-40 The Avenue is a more prominent contemporary and conspicuous development than the proposed dwelling.

7.4. Vehicular and Pedestrian Safety on Avenue Road.

- 7.4.1. The Transportation Planning Division in its report draws attention to existing conditions with regard to vehicular access and egress on Avenue Road and notes that the existing structure has vehicular access. Significant manoeuvres are unavoidable in the case of existing off-street parking and would be unavoidable in the case of the proposed development and this is not uncommon in mews lane development. There is a reasonable case for the proposed arrangements for the development in that they are not dissimilar to the existing arrangement, irrespective of whether the structure is in use at present.
- 7.4.2. The narrow carriageway width inclusive of the public footpath along the west side does not exceed six metres, on street parking with vehicles mounting the footpath takes place whereas on the east side of the lane there are double yellow line markings. It has been observed in the course of the inspection that owing to the obstruction of the footpath by parked vehicles pedestrians share the road surface with vehicular traffic. It is likely that vision on exiting the on-site parking is obstructed by vehicles, resulting in hazard for all road users.
- 7.4.3. There is an argument therefore for omission of the off-street parking in the carport incorporated in the development even though the existing development benefits from vehicular access off Avenue Road. Furthermore, the proposed arrangements have been accepted by the Transportation Planning Division, although some concerns were raised in the objections lodged by third parties at application stage. Should the issues raised above be taken into consideration it would be advisable to issue a

section 132 notification to the applicant in this regard prior to determination of a decision.

7.5. Environmental Impact Assessment Screening.

- 7.5.1. Having regard to the minor nature and scale of the development proposed for retention and its location in an area 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.

7.6. Appropriate Assessment.

Having regard to the, the location of the site which is a brownfield site on serviced land and, to the nature and scale of the proposed development, no appropriate assessment issues arise, the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. In view of the foregoing, having regard to the issues raised in the appeals, it is recommended that the planning authority decision be upheld, and that permission be granted with an additional requirement, by condition of removal of exempt development entitlements. However, issue of a section 132 notification would be advisable if further consideration is to be given to the issues raised with regard to access to the office street parking and potential obstruction and risk to safety of road users on Avenue Road. Draft Reasons and Considerations and Conditions follow.

9.0 Reasons and Considerations

Having regard to the Dublin City Development Plan, 2016-2022 according to which the site is located within an area subject to the zoning objective, *Z1: to protect and or improve the residential amenities of residential conservation areas*, to the site configuration and dwelling design and, the established pattern and character of development in the area 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 by reason of overdevelopment, overlooking and overshadowing or the visual amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours 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: In order to safeguard the residential amenities of property in the vicinity.

- 3 Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with, *“Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”*, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interests of sustainable waste management.

- 4 Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, shall not be carried out within the curtilage of the dwellings without a prior grant of planning permission.

Reason: In the interest of residential amenities.

- 5 Details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Sample panels shall be erected on site for inspection by the planning authority in this regard.

Reason: In the interest of visual amenity.

- 6 Details of the proposed arrangements for hard and soft landscaping and boundary treatment, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the substantial completion of external construction works. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenities.

- 7 Water supply and drainage arrangements, including the attenuation and disposal of surface water and mitigation measures against flood risk including in the basement area, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

- 8 The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

- 9 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.

- 10 The developer shall pay to the planning authority a financial contribution in respect of the LUAS Cross City Scheme, in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act is applied to the permission.

Jane Dennehy,
Senior Planning Inspector
3rd July, 2020.