



An
Bord
Pleanála

Inspector's Report

ABP-307852-20

Development	Demolition of storage buildings and construction of amews building.
Location	Rear of 32-33, Rathgar Road, Spireview Lane, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2631/20
Applicant(s)	Latinus Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Latinus Limited
Observer(s)	1) Marco Sabatini 2) Mari O'Leary 3) Saoirse Strange & Jane Farren
Date of Site Inspection	6 th December 2020
Inspector	Mary Crowley

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports.....	5
3.3. Prescribed Bodies	5
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	8
5.3. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response	10
6.3. Observations	10
6.4. Further Responses.....	11
7.0 Assessment	11
7.3. Principle	11
7.4. Residential Amenity	12
7.5. Visual Amenity	12
7.6. Appropriate Assessment	13
7.7. Other Issues.....	14

8.0 Recommendation..... 14

9.0 Reasons and Considerations..... 14

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.01 ha is located to the rear of No 34 Rathgar Road with access through a private car park off Spire View Lane that is situated to the rear of No 32-33 Rathgar Road. Currently on the site is a single storey storage building with both pitched roof and flat roof. To the south is the rear of No 35 Rathgar Road, to the west is No 6 & 5 Spireview Lane. To the east lies the rear of No 34 Rathgar Road and to the north lies the existing on-site car parking area.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. The development will consist of the demolition of existing storage buildings and construction of a two-storey, two-bedroom mews building. All with associated bin storage, car parking and site works.
- 2.2. The application was accompanied by the following:
 - DCC Section 96 Application with Statutory Declaration
 - Design Statement
 - Engineering Report
 - Architectural Heritage Impact Assessment
- 2.3. Modified car parking / amenity space plans were submitted with the appeal. These are described in the appeal below.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council issued a notification of decision to refuse permission for the following two reasons relating to residential amenity and visual amenity.
 1. *The proposed new dwelling, which would be accessed through a private carpark and which would not be provided with an appropriate level of private amenity*

space, would be contrary to the policies and objectives of the Dublin City Development Plan. The proposed development would therefore fail to provide an adequate standard of residential amenity for future residents and would be contrary to the proper planning and sustainable development of the area.

2. *The proposed development is located in an area zoned Z2 with a stated zoning objective “to protect and/or improve the amenities of residential conservation areas”. Having regard to the established pattern of development in the area, it is considered that the proposed development, by reason of its bulk, scale, massing and proximity to the rear gardens of existing dwellings, would result in excessive overbearing and contrary to the visual amenities of the area. The proposed development would therefore, seriously injure the residential and visual amenities of this residential conservation area and be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Officer** recommended that permission be refused for 2 no reasons relating to residential and visual amenity. The notification of decision to refuse permission issued by DCC reflects this recommendation.

3.2.2. Other Technical Reports

- **Transportation Planning** – No objection subject to conditions relating to the allocation of one car parking space to the unit, provision of secure cycle parking, all costs incurred by DCC shall be at the expense of the developer and compliance with the requirements set out in the Code of Practise.
- **Drainage Division** – No objection subject to conditions relating to compliance with the Greater Dublin Regional Code of Practise for Drainage Works, separate foul and surface water system, SUDs, Flood Risk Assessment and all private drainage to be located within the final site boundary.

3.3. Prescribed Bodies

- 3.3.1. There are no reports recorded on the appeal file.

3.4. Third Party Observations

- 3.4.1. There are 7 no observations recorded on the planning file from (1) Gerry Costello, (2) Marston Planning Consultancy on behalf of Marco Sabatini, (3) Tom Garvey, (4) Rathgar Residents Associates, (5) Saoirse Strange & Others (Residents & Owners of Spire View Lane), (6) Aoidin & Dermot Crowley and (7) Mari O’Leary.
- 3.4.2. The issues raised relate to insufficient open space, backland piecemeal development, position of the proposal on the boundary line with 4, 5 & 6 Spireview Lane would have a significant negative impact on these rear gardens by way of loss of light, overshadowing and overlooking, traffic hazard, proposal represents overdevelopment and an inappropriate design response.

4.0 Planning History

- 4.1. There is no evidence of any previous planning application or appeal at this location.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Dublin City Development Plan 2016-2022**. The site is within an area zoned **Z2 Residential Neighbourhoods (Conservation Areas)** where the land use zoning objective is “*to protect and/or improve the amenities of residential conservation areas*”. The subject site is to the rear of a protected structure at No 34 Rathgar Road. It is noted that all buildings to the east of the appeal site and fronting onto this section of Rathgar Road are protected structures save for No 32 and 33 which appear to be a more recent intervention in the streetscape.
- 5.1.2. Relevant Sections and Policy from Development Plan 2016-2022 are as follows:
Section 14.8.2 Residential Neighbourhoods (Conservation Areas) – Zone Z2. The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such area, both protected and nonprotected.
- 5.1.3. **Chapter 5 Quality Housing**

- **Policy QH8** - *To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area*
- **Policy QH22** - *To ensure that new housing development close to existing houses has regard to the character and scale of the existing houses unless there are strong design reasons for doing otherwise*

5.1.4. **Chapter 11 Built Heritage and Culture**

- **Policy CHC2** - *To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will (a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest*
- **Policy CHC4** - *To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting all conservation areas will contribute positively to the character and distinctiveness; and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.*

5.1.5. **Chapter 16, Development Standards**

- **Section 16.2.1 Design Principles** - All development will be expected to incorporate exemplary standards of high-quality sustainable and inclusive urban design and architecture befitting the city's environment and heritage and its diverse range of locally distinctive neighbourhoods. In the appropriate context, imaginative contemporary architecture is encouraged, provided that it respects Dublin's heritage and local distinctiveness and enriches its city environment. Through its design, use of materials and finishes, development will make a positive contribution to the townscape and urban realm, and to its environmental performance.

5.1.6. **Section 16.10.16 Mews Dwelling** - This section sets out criteria for assessment of proposed mews dwellings.

5.1.7. **Section 16.10.8 Backland Development** - It states: 'The development of individual backland sites can conflict with the established pattern and character of development in an area. Backland development can cause a significant loss of amenity to existing

properties including loss of privacy, overlooking, noise disturbance. Applications for backland development will be considered on their own merits.'

- 5.1.8. **Appendix 5** - Road and Footpath Standards for Residential Development. The guidance states that where driveways are provided, they shall be at least 2.5m or, at most, 3.6m in width, and shall not have outward opening gates.

5.2. **Natural Heritage Designations**

- 5.2.1. The site is not located within a designated Natura 2000 site.

5.3. **EIA Screening**

- 5.3.1. Having regard to the nature and scale of the proposed development comprising a residential development in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The first party appeal has been prepared and submitted by Simon Clear & Associates on behalf of the applicant, Latinus Ltd against the decision to refuse permission and may be summarised under the following general heading:

- **Context** - The applicant's own No 32 & 33 Rathgar Road which are non-original 20th Century infill apartments in a modern building with a large return inserted within a Victorian terrace between protected structures. Access to the proposed site is via the rear car park which runs behind No 31-33 Rathgar Road and which is accessed by a wide gateway from Spire View Lane.
- **Conservation** - The Conservation Architect, John Greene stated the following:
 - 1) The removal of the sheds and the proposed development will have a direct positive impact on the site

- 2) The development is considered minor as it is only two storey and is to the rear of the buildings that have been reworked
 - 3) The proposed development will have a neutral impact on the protected structures in the vicinity of the site, which are on Rathgar Road and the proposed development is to the rear of the buildings on the road
 - 4) The proposed development will result in no loss of authentic fabric.
- **Access** - The access arrangements along Spire View Lane which is a public road with footpath on both side and double yellow lines is more than adequate to access the proposed development. This is not a mews lane.
 - **Policy** - The Planning Officer assessed the scheme with reference to the standards for mews dwellings and backland development. The proposed development is more correctly described as Infill Development and should be assessed under Section 16.10.10 of the Development Plan. The proposed development seeks to replace an under-utilised shed with a properly designed small dwelling, which can be accommodated on site without overlooking, overshadowing, or scale that would represent an overbearing impact. The proposal meets all the relevant policy parameter as follows:
 - 1) The proposal fits the characteristics of the receiving environment
 - 2) There is access to frequent public transport
 - 3) There is adequate private amenity space and there is no impact from 1 unit on communal open space
 - 4) There are no difficulties with access or availability of water services
 - 5) The design is appropriate for the setting and context
 - 6) The internal spaces are adequate in accordance with guidelines
 - **Residential Impact** - In terms of impact upon neighbouring properties, over and above their existing baseline amenities, there is no additional overlooking, loss of outlook or overbearing. There is no loss to amenity daylight / sunlight or undue overshadowing of private rear gardens areas, due to the aspect relationship with the neighbouring properties on Spire View Lane being west of the development and receiving amenity sunlight from the south and west. The orientation of rear gardens in Spireview Lane behind the site is southwest, which is the optimum

orientation for amenity light. It is not unusual in a suburban setting to have an unwindowed gable perpendicular to the rear of a house garden. The absence of windows prevents overlooking issues from occurring.

- **Modified Proposal** – The car parking spaces shown allocated to the proposed development occupy space unused at present. Taking into account the Planning Officers comment that 1 no car parking space would be sufficient revised drawings submitted indicating 1 no car space and an added amenity space allocated to the front of the proposed dwelling. The revision also included a boundary arrangement incorporating a covered bicycle rack to serve the general development.
- **Conclusion** - It is submitted that the proposed development is an infill that makes use of an underutilised site in an area otherwise well developed with access and parking infrastructure, public transport, access to urban services and facilities and proximity to the city centre. Requested that planning permission be granted.

6.2. Planning Authority Response

6.2.1. None

6.3. Observations

- 6.3.1. There are 3 no observations recorded on the appeal file from (1) Marston Planning Consultancy on behalf of Marco Sabatini, (2) Mari O’Leary and (3) Saoirse Strange & Jane Farren.
- 6.3.2. The issues raised relate to the following as summarised; support the reasons for refusal; piecemeal development; not infill development; inadequate provision of private amenity space; loss of amenity to existing properties; overlooking No 35; overshadowing No 5 & 6 Spireview Lane; overdevelopment; overbearing structure; visual impact; the site is well utilised as a private car park, bin and bicycle storage, by maintenance teams and as an amenity space for the residents; access arrangements through a private car park; traffic and safety hazard; relaxation of the Development Plan standards does not apply in this instance; the assessment of the scheme as a “mews development” and “backland development” is appropriate.

6.4. Further Responses

6.4.1. DCC submitted a copy of the Section 97 Certificate of Exemption.

7.0 Assessment

7.1. This assessment is based on the plans and particulars submitted to Dublin City Council on the 14th April 2020 as amended by plans and particulars submitted to An Bord Pleanála on 7th August 2020.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Residential Amenity
- Visual Amenity
- Appropriate Assessment
- Other Issues

7.3. Principle

7.3.1. Under the provisions of the Dublin City Development Plan 2016 – 2022 the site is wholly contained within an area zoned Sustainable Residential Conservation Area – Zone Z2 where the land use zoning objective is “*to protect and / or improve the amenities of residential conservation areas*” and where residential development is a permissible use. Accordingly, the principle of the development of a mews house at this location is acceptable in principle.

7.3.2. It is also intended to demolish the existing single storey storage buildings on site. I do not consider that this building has any significant architectural merit or associated features that contribute to such an extent that its retention would be warranted. Therefore the demolition of same is acceptable.

7.4. Residential Amenity

- 7.4.1. DCC in their first reason for refusal state that the new dwelling would not be provided with an appropriate level of private amenity space, for future residents and would be contrary to the proper planning and sustainable development of the area.
- 7.4.2. As documented above there is a single storey shed with a pitched roof that extends to the sites boundaries and that is accessed through a private car park on the site. The proposal is to demolish this shed and to replace it with a dwelling two stories in height with a flat roof. The existing structure has a height of between c3.3m and 3.5m. The proposed dwelling will have a maximum height of 6.45m. The proposed dwelling will occupy the footprint of the existing structure hard to the sites boundary save for a small, enclosed courtyard (3.9m x 2.5m) to the rear of the house in the south east corner of the site adjoining No 34 and 35 Rathgar Road.
- 7.4.3. In the original plan submitted to DCC open space is provided for in the form of an enclosed rear courtyard measuring less than 10m². This is an unacceptable, substandard level of open space provision if the Development Plan rate of 10sqm per bedspace is applied. In the modified plans submitted with the appeal 1 no car space is provided with an added amenity space allocated to the front of the proposed dwelling and within the private car park. However, this additional amenity space is outwith the red line boundary of the site. No details have been provided with regard to the size of the additional space or the boundary treatment. While this additional space may offer an improvement in quantitative terms I am still concerned, in the absence of appropriate details, that the qualitative nature of the private open space proposed is substandard. Therefore, it remains that the proposed development has failed to provide an adequate standard of residential amenity for future residents. Refusal is recommended.

7.5. Visual Amenity

- 7.5.1. DCC in their second reason for refusal state that the proposed development, by reason of its bulk, scale, massing and proximity to the rear gardens of existing dwellings, would result in excessive overbearing and would seriously injure the residential and visual amenities of this residential conservation area.

- 7.5.2. With regard to the general design of the scheme I would make the comment that notwithstanding the overall scale of the proposal I am not critical of the architectural style applied in this instance. Within established conservation areas such as this there is always opportunity to encourage high quality, innovative, modern design that contrasts with the existing building form. I consider this contemporary design to be architecturally compatible with its surroundings and that to permit same would not detract from the integrity of the adjoining protected structures or character of the area.
- 7.5.3. This is a compact backland site proximate to dwellings to the west on Spireview Lane. The proposed dwelling would be constructed hard on the rear boundaries of No 5 & 6 Spireview Lane which would equate to a separation distance of just 7.5m. In addition, the proposed 6.5m high dwelling would exceed the 4.5m parapet height of these adjoining dwellings and would result in the introduction of a 6.5m high, blank wall running along the common rear boundary.
- 7.5.4. No information on overshadowing has been submitted with the application. I agree with the Case Planner that given the location of the site and its proximity to the rear gardens of adjoining dwellings and given the height, scale and massing of the proposal, there are concerns that the development may have an overbearing impact on the rear amenity space of the properties along Spire View lane.
- 7.5.5. Having regard to the established pattern of development in the area, the compact, backland nature of the site and proximity to adjoining properties, I consider that the height of the flanking wall facing the properties on Spireview Lane would if permitted, form an unduly overbearing and dominant element when viewed from these adjoining properties and that I could also diminish existing daylighting standards and therefore injure both visual and residential amenities. Refusal is recommended.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development and its distance 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

7.7. Other Issues

- 7.7.1. **Development Contributions** – I refer to the Dublin City Council Development Contribution Scheme 2020-2023. Section 12 outlines development that will be liable for a reduced rate of development contributions under the Scheme. Under this section it is stated that *where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created.* The area to be demolished is 85m². The floor area of the proposed scheme is 111.3 m². Having regard to the net additional floor area it is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.0 Recommendation

- 8.1. It is recommended that permission be **REFUSED** subject to the reasons and considerations set out below

9.0 Reasons and Considerations

- 1) The proposed new dwelling, which would be accessed through a private carpark and which would not be provided with an appropriate level of private amenity space, would be contrary to the policies and objectives of the Dublin City Development Plan. The proposed development would therefore fail to provide an adequate standard of residential amenity for future residents and would be contrary to the proper planning and sustainable development of the area.
- 2) The proposed development is located in an area zoned Z2 with a stated zoning objective “to protect and/or improve the amenities of residential conservation areas”. Having regard to the established pattern of development in the area, the backland nature of the site and proximity to adjoining properties, the Board considered that the proposed development would be unduly prominent and overbearing to the neighbouring properties at Spireview Lane by reason of its bulk, scale, massing and visual dominance of the proposed flank wall. The proposed development would therefore, seriously injure the residential and visual amenities of this residential

conservation area and be contrary to the proper planning and sustainable development of the area.

Mary Crowley

Senior Planning Inspector

16th December 2020