



An
Bord
Pleanála

Inspector's Report ABP 308078-20.

Development	A three-storey residential building, containing twelve one-bedroom independent living units with balconies, and six on-site car parking spaces and associated site works.
Location	Lands at side of St Agnes Convent, Captains Armagh Road, Crumlin, Dublin 12.
Planning Authority	Dublin City Council.
P. A. Reg. Ref.	4456/19.
Applicant	St Agnes Medical Ltd.
Type of Application	Permission.
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Brian Kelly
Date of Inspection	10 th November, 2020.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site is to the east side of the former St Agnes Convent buildings within the integrated health care and residential care facility under construction. It is adjacent to the north-western boundary with the rear of two storey terraced houses with rear gardens on Cashel Road. At the time of inspection the site had been fenced off and clearance and some preparatory works had been carried out.
- 1.2. The convent and chapel buildings to the west side of the site and to its west side is a purpose-built primary care centre and both are occupied by the HSE. These buildings and the adjoining road and surface parking come within Phase One of a Two Phase overall development. There are six three and four storey blocks within the area to the north side of these buildings. There are 103 one bed independent living units within these blocks, and they come within Phase 2 of the overall development along with a, permitted but not constructed residential care facility.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority on 19th November, 2019 indicates proposals for construction of a three-storey, (10.6 metres high) block, containing twelve one-bedroom independent living units with balconies on the upper floors and landscaped communal garden space to the front and rear at ground floor level, along with six on-site car parking spaces and associated site works. The units are dual aspect although the side elevation kitchen windows on one side are small size and opaque glazed.
- 2.2. Vehicular access is from the internal access road along the north, rear side of the primary health care building and the former convent building on the other side of which are the permitted and constructed blocks of independent living units. Six parking spaces are proposed to serve the development.
- 2.3. A further information submission which includes minor modifications was lodged on 9th July, 2020, details of which are set out under para. 3.2.1 below.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 5th August, 2020 the planning authority decided to grant permission subject to ten conditions generally of a standard nature and, according to Condition No 3 subletting or short term letting of the twelve independent living units is not permitted.

3.2. Planning Authority Reports

- 3.2.1. The **planning officer** indicated a recommendation for a multiple item further information request in his original report. The planning officer issued a supplementary report on response submission lodged with the planning authority on 9th July, 2020. The lodged shadow study was considered acceptable that that it demonstrated minimal overshadowing impact on the rear gardens of the adjoining Cashel Road properties; an increase in window ope sizes for the side elevation kitchen windows, proposals for materials and finishes matching those within the overall scheme were also accepted as being satisfactory. Satisfaction was also indicated with the proposed open and communal space provision having regard to the lodged copy of the masterplan for the overall development showing circa 30 per cent of the site area (6,980 square metres) allocated to open space which exceeds the 25% of the site area's requirement for Z15 zoned lands; landscaping and amenity space, revisions to parking provision to include provision for one disability permit and five spaces and, access and parking management arrangements.
- 3.2.2. The report of the Transportation Planning Division dated, 8th January, 2020 indicated a recommendation for an additional information request regarding car and cycle parking and access arrangements. The supplementary report of the Transportation Planning Division dated 20th July, 2020 indicates no objection subject to conditions to include a requirement for a construction management plan to be submitted and agreed with the planning authority prior to the commencement of the development.
- 3.3. The report of the **Drainage Division** indicates no objection subject to conditions of a standard nature.

3.4. Third Party Observations

- 3.4.1. Submissions were lodged by the occupants of Nos 120, 122 and 124 Cashel Road in which issues of concern raised are similar to those in the appeal and relate to size and overbearing impact, overlooking and overshadowing and separation distances from the Cashel Road properties.

4.0 Planning History

- 4.1.1. There is a prior planning history for the primary care centre and renovation and change of use of the convent buildings to primary medical and health care facilities which are now operational and include a café and pharmacy. (P. A. Reg. Ref. 2881/12 (PL 241889) refers.)
- 4.1.2. Permission for the residential care facility, not yet constructed was granted under P. A. Reg. Ref. 2882/12 (PL 241890) Subsequent modifications were permitted under P. A. Reg. Refs. 3610/18 and 3611/18
- 4.1.3. P. A. Reg. Ref. 3544/19 / PL 205593-19: The planning authority decision to refuse Permission, for two infill blocks containing twenty two independent living units was upheld following appeal for reasons relating to overbearing impact close proximity to existing blocks, excessive height and scale and loss of communal open and circulation space.
- 4.1.4. Under P. A. Reg. Ref 2572/20 /PL 307770 there is concurrent application before the Board at present in which there is a first party appeal against the planning authority decision to refuse permission for two infill blocks containing twenty independent living units was upheld following appeal for reasons relating to overbearing impact close proximity to existing blocks, excessive height and scale and loss of communal open and circulation space.

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 'Z15': *to protect and provide for institutional and community uses*".
- 5.1.2. Policy QH14 provides for support for ILUs and supported living for older people and provision for purpose-built accommodation and section 5.5.4 provides for quality housing for all including the specific accommodation needs for older people. Policies QH03 and QH4 provide for the drawing up of design principles for good practice in providing for age friendly accommodation in connection with the appropriate housing bodies and agencies.
- 5.1.3. Indicative site coverage is 50% and plot ratio is 0.5-2.5.
- 5.1.4. Development Management standards are set out in Chapter 16.
- 5.1.5. The location is in Area 3 for Parking and according to Table 16.1 there is a requirement for one space per two dwellings and one space per two bed spaces for the residential care facility.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was received from AKM on behalf of Brian Kelly the appellant party on 1st September, 2020. Attached are signatures from occupants of some properties on Cashel Road who support the appeal. Mr Kelly resides at No 224 Cashel Road which is within a terrace of two storey houses with front and rear gardens to the east side of the application site. It is stated that the separation distances between the proposed block and No 220 Cashel Road is 16.266 metres, No. 222 Cashel Road is 21.442 metres and 224 Cashel Road is 15.409 metres.
- 6.1.2. According to the appeal:
- The balconies would directly overlook the gardens in the properties on Cashel Road and are less than twenty-two metres from these properties. A three

storey blocks a separation distance of thirty-five metres according to section 16.10.2 of the CDP. The main living rooms and balconies are just one metre from the boundary.

- Overshadowing effect has not been satisfactorily assessed in the submitted shadow study. The proposed ten-metre-high building would block the sun's path of the sun towards the rear garden of Nos 214-224 Cashel Road which includes the appellant's property.
- Drawing 1818-PA-301 is deficient in detail but the contiguous elevation shows the excessive height relative to the two storey houses.
- The amenities available for the future occupants of the one bed units is wedged between parking spaces and is unsatisfactory. The development is unbalanced comprising single aspect one bed units only which is contrary to SPPR 4 of the Design Guidelines for New Apartment Developments according to which fifty percent dual aspect dwellings is required for suburban locations. The dominance of one bed units is unsatisfactory and contrary to SPPR 1 according to which a maximum of fifty per cent of the development should be in one bed units. A mix of one, two and three bed units is required.
- The site location is transitional being adjacent to the area on Cashel Road zoned "Z1" (to protect provide for and improve residential amenities) and according to section 14.7 of the CDP, abrupt transitions in scape and use should be avoided. The proposed scale and design do not protect the residential amenities of the Cashel Road properties.
- The proposed development is overdevelopment for the site and poorly designed and the bulk and massing is excessive relative to the Cashel Road properties.
- There are concerns about access and capacity for turning for fire tenders. The lift overrun is not shown on the plans and could increase the building height by 1.5 metres. For former institutional lands zoned Z15 higher open space provision is required and, the site was intended to be a green buffer in the masterplan.

- There may be under provision of carparking as six spaces is deficient for twelve units and on street parking may be affected.
- The visual impact would be negative due to the size and overbearing impact on the adjoining properties.

6.2. Applicant Response

A submission was received from the applicant's agent on 30th September, 2020.

According to the submission:

- A distance of fifteen metres from the nearest corner of the proposed block and the nearest corner of the rear extension to the appellant property. The distance from the centre of the nearest first floor balcony to the first-floor rear elevation window for No 224 is circa 26 metres. This acceptable distance with regard to overlooking is mitigated further by the near impossible 18 degree viewing angle between the windows.
- It was determined that the shadowing effect is minimal in the shadow study, so it is not necessary for the upper floors to be reconfigured. However in addition to the submitted shadow diagrams two additional drawings, for 9.00 am and 3.00 pm are attached to the appeal with it being shown that boundary walls cast shadows at these times in the December analysis and that only the lower portion only of the garden is shadowed by the proposed development. The June analysis shows very little shadow impact at any time.
- All the dwellings are dual aspect and the soft landscaped space in communal gardens is 255 square metre in area which equates to 21 square metre per unit which also have individual winter gardens/balconies. In addition 30 per cent of the overall site is in open space and there are community facilities which include the pharmacy and cafe in the Primary Care facility building.
- There are available DACS and Fire Certs for the completed six blocks and a Fire Cert is anticipated further to a grant of permission, the application having been prepared in consultation with Fire Consultants. Fire Tender access is addressed in a Fire Safety Certificate application. The lift over run will be lower than the parapet heights and will not be visible from the ground levels.

- The internal layouts accord with the standards in the Apartment Design Guidelines. It was demonstrated initially in connection with the masterplan preparation that there was a lack of one bed units and an oversupply of three bed units. This was accepted by the planning authority and it assists in balancing the housing stock. According to Council records there is an immediate need for 450 one bed units in the Dublin 12 area.
- The building height is not excessive and current policy advises four storey development as the norm instead of three storeys.
- The carparking provision accords with the requirement of the CDP that is five spaces and one disability permit space.

6.3. **Planning Authority Response**

There is no submission from the planning authority on file.

7.0 **Assessment**

7.1. The issues central to the determination of the decision and considered under the subheadings below are:

Overlooking and Overshadowing of adjoining properties.

Design, height, scale and mass – visual impact.

Overshadowing,

Communal and private open space

Dwelling Mix

Parking

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. **Overlooking and Overshadowing of adjoining properties.**

7.2.1. Overlooking from the side elevation (kitchen windows) towards the properties on Cashel Road is not possible owing to the proposals for obscure glazing. Furthermore, it should be noted that the elevation is positioned at an angle so that

the windows are offset from the rear walls of the houses on Cashel Road. One house which has a substantial two storey extension is also unaffected.

- 7.2.2. The enlargement of the kitchen windows is a significant improvement for the attainable amenities and natural lighting to the interiors of the apartments even though it is necessary for opaque glazing to be used. It is recommended, if permission is granted, that the windows have top hung openings only so as to eliminate any concerns as to intrusiveness on the privacy of the adjoining properties.
- 7.2.3. Overlooking from the balconies towards the properties of the Appellant party on Cashel Road, the nearest property being No 224 where the separation distance is estimated to be circa twenty-six metres. With regard to the reference to the separation distances of of twenty two metres recommended in the Apartment Guidelines and CDP for windows directly opposite at first floor level it should be borne in mind that neither the main living room and bedroom windows and balconies are directly opposite rear elevation windows in the Cashel Road properties.
- 7.2.4. Therefore there is an acceptable separation distance with regard to potential for direct overlooking and furthermore, as fenestration is not directly opposite it is considered that application of the recommended thirty five metres separation distance for directly opposite windows at second floor level or above is unwarranted. Furthermore, the range of visibility from the balconies is obstructed owing to the setbacks. It is noted that according to the applicant's submission to there is a viewing angle of 18 degrees between the windows.
- 7.2.5. Owing to the depth of the rear gardens and configuration of adjoining properties on Cashel Road relative to the application site, overshadowing impact would be minimal and confined to the area immediately adjacent to the boundaries with the application site. The submitted shadow study is considered adequate.

7.3. **Design, height, scale and mass – visual impact.**

- 7.3.1. As previously stated that footprint of the block is at an angle from the properties on Cashel Road which have deep rear gardens and, given the 1.50 metres height, it is not accepted that the proposed development would have either an overbearing or adverse visually impact on the residential amenities of these properties as a result. To this end, it is considered that no issues arise as to unacceptable transition

between lands subject to the 'Z15' zoning objective and the 'Z1' zoning objective for the adjoining Cashel road properties.

- 7.3.2. The selection of finishes which match those of the overall scheme and complement the adjoining former convent buildings and comprise a combination of plaster and dark 'raven' red brick with an anthracite grey window frames are acceptable.
- 7.3.3. Although slightly forward of the front building lines of the former convent buildings the block would be acceptable and compatible owing to the corner location, modest block and site width and limited viewing vantage points from the north west within the public realm. The proposed block is considered acceptable in terms of visual impact for the south west, from the frontage of which it is setback being landscaped space and end on parking.

7.4. Communal and private open space provision.

- 7.4.1. In addition to the individual balconies for each of the units, the block would benefit directly from the open space provision directly to the south west side of the block overlooked by some of the units and accessible from the development around the site. The inclusion of the block does not undermine the quantum and distribution of communal amenity space within the scheme which as shown in the submitted masterplan, exceeds thirty percent of the site area, which is in excess of the minimum requirement for 15 % for Z15 zoned,(institutional) lands.

7.4.2. Dwelling mix.

- 7.4.3. As indicated in the documentation lodged in connection with the application the management and operation of the development is to be under the control of Fold Ltd on behalf of the City Council. By virtue of the nature of management and occupancy in meeting social housing needs, it is noted that there is no objection by the planning officer to the entirety of the units being one bed units. The higher density is partially accounted is not objected to outright by the planning officer and to this end, the proposed dwelling mix in principle is acceptable. As the proposed dwelling units are ILUs within the overall integrated health and residential care scheme, the lack of dwelling mix is not at issue with regard to SPPR 1 of the Apartment Guidelines", 2018, according to which a maximum of fifty per cent of the development should be in one bed units.

7.4.4. Generally, the sizes and quality of the internal layouts of the dwelling units as proposed appears satisfactory having regard to the minimum standards within the Apartment Guidelines 2018. Although there is heavy reliance either north west or south east elevations for aspects, the units would benefit also from natural light to the kitchen windows on the site elevations and as such they are not solely single aspect, as contended in the appeal. The internal layouts are satisfactory.

7.5. **Parking.**

7.5.1. The further information submission includes a parking layout drawing for the overall development. Instead of six space as originally proposed, there is provision for five spaces and one disability parking space within the overall development under the control of a management company and is acceptable to the Transportation planning Division.

7.5.2. The entirety of the carparking provision all of which is surface carparking is distributed around the overall development. Fifty-three spaces serve the primary care centre and former convent building and one hundred and two spaces serve the six blocks of independent living units which are constructed and the residential care facility which has not yet been constructed. A concurrent application for two infill blocks containing twenty-one bed independent living units in which no additional parking provision is included is before the Board at present on appeal and is undetermined at the time of writing. undetermined.

7.6. **Environmental Impact Assessment – Screening.**

7.6.1. Having regard to the minor nature of the proposed development and its location 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.

7.7. **Appropriate Assessment.**

7.7.1. Having regard to the scale and nature of the proposed development and to the location, 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 forgoing, it is recommended that the planning authority decision be upheld, and that permission be granted. 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 lands are subject to the 'Z15' zoning objective: "*to protect and provide for institutional and community uses*", to the existing designated integrated health care and residential care development and to the site configuration and scale, height and design of the proposed block relative to the adjoining properties on Cashel Road it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area, or the residential amenities of adjoining properties, would provide for a satisfactory standard of residential amenity for the future occupants, would be acceptable in terms of traffic safety and convenience, would be in accordance with the development objectives for the lands in which the site is located and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on 9th July, 2020 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 independent living units within the block shall not be sublet or used for short term letting or sold individually without a prior grant of planning permission.

Reason. In the interest of clarity, consistency the development objectives for the site location and the interests of the proper planning and sustainable development of the area.

3. Prior to the commencement of development, the applicant shall submit and agree in writing with the planning authority, a comprehensive construction management plan which shall include full details of the following requirements.

- (a) the location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and on-site car parking facilities for site workers during construction.
- (b) The timing and routing of construction traffic and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network.
- (c) Details mitigation measures for noise, dust, and vibration, and for monitoring, including noise monitoring locations for the purposes of the construction phase of the proposed development. Noise levels shall accord with the standards set out in BS 5228: *“Noise Control on Construction and Open Sites Part 1 Code of Practice for Basic Information and procedures for noise control”* and, shall not result in grounds for complaint as provided for in B.S. 4142. *“Method for rating industrial noise affecting mixed residential and industrial areas”*
- (d) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater.

(e) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

(f) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interests of clarity, residential and public amenities, health, safety, and sustainable development.

4. Site clearance and development works shall be carried only out during the construction phase between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, excluding bank holidays and, between 08.00 to 14.00 on Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, which shall incorporate SUDS drainage methods and shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. 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.

7. Proposals for a name and associated signage for the proposed block shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and orderly development.

8. No advertisement or advertisement structure (other than those shown on the drawings submitted with the planning application) shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of

planning permission.

Reason: In the interest of visual amenity.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

10. No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour, or nuisance at sensitive locations.

Reason: In the interests of visual amenity.

11. Details to include samples of the materials, colours and textures of all external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

12. A plan containing details for the management of waste, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste, especially recyclable materials, in the interest of protecting the environment.

13. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, communal spaces, landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, prior to occupation of the development.

Reason: In the interest of amenity and orderly development.

14. Prior to commencement of development, the developer shall lodge with the planning authority, a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

15. 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.

Jane Dennehy

Senior Planning Inspector
December, 2020.