



An  
Bord  
Pleanála

## Inspector's Report ABP308612-20

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<b>Development</b>	Construct 14 apartments.
<b>Location</b>	1 Northumberland Avenue, Dun Laoghaire, County Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D20A/0582
<b>Applicant(s)</b>	Cumberland Developments Limited.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	Cumberland Developments Ltd.
<b>Observer(s)</b>	<ol style="list-style-type: none"><li>1. Sinead Gorby</li><li>2. Eoghan Sharkey</li></ol>
<b>Date of Site Inspection</b>	10 <sup>th</sup> January 2021.
<b>Inspector</b>	Hugh Mannion.

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision – Refuse permission.....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	4
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.4. Natural Heritage Designations .....	5
5.6. EIA Screening .....	5
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Planning Authority Response .....	7
6.3. Observations .....	7
6.4. Further Responses.....	7
7.0 Assessment.....	7
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13
10.0 Conditions .....	14

## 1.0 Site Location and Description

1.1. The application site has a stated area of 0.048ha and comprises the footprint of a single storey commercial/retail building at 1 Northumberland Avenue and Lees Lane in Dun Laoghaire, County Dublin. Northumberland Avenue has a junction with Georges Street (the main commercial spine in Dun Laoghaire) to the northeast. Lees Lane runs along the north-eastern boundary of the site and provides a one-way vehicular access linking Northumberland Avenue with Mulgrave Street to the west. The buildings between the application site and Georges Street are in retail commercial use (Dunnes Stores, a florist, café and a jewellers) on both sides. The single storey building is currently unused but was formerly a supermarket food hall. Opposite the application site is residential development at Dungar Terrace. Number 2, 3 and 4 Northumberland Avenue are in residential use. Mulgrave Street to the west is predominantly in commercial use at its eastern end in the vicinity of the application site.

## 2.0 Proposed Development

2.1. The proposed development comprises the demolition of the existing single storey retail building on site and erection of a two to four storey residential building. The new building will have.

- 14 residential units (10 one bed units, 3 two bed units, and one 3 bed unit,
- All units have private open space as balconies
- 81m<sup>2</sup> of shared open space.
- Entrance from Lees Lane, bin storage and bike storage,
- A sedum roof and connections to piped services

At 1 Northumberland Avenue/Lees Lane, Dun Laoghaire, County Dublin.

The appeal was accompanied by two revisions for the Board's consideration.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision – Refuse permission.**

1. The proposed development has not had sufficient regard to the importance of its corner location on Northumberland Avenue and Lees Lane, does not provide a main entrance on Northumberland Avenue and provides ground floor private amenity space/terraces onto Northumberland Avenue which provide an unacceptably low level of residential amenity for future residents of these apartments.
2. The number of 2 bed three person units conflicts with section 3.7 of the Design Standards for New Apartment Guidelines.
3. The location of a third-floor bedroom window on the southern elevation and a proposed walkway would allow overlooking of adjoining residential properties which would seriously injure their amenity and devalue these properties.

#### 3.2. **Planning Authority Reports**

- 3.2.1. Planning Reports – planners report recommended refusal as set out in the manager’s order.
- 3.2.2. **Other Technical Reports**
- 3.2.3. **Transport Planning** recommended additional information in relation to the loading bay on Lees Lane, adequacy of bin storage to serve the units, dimensions of the footpaths on Northumberland Avenue and Lees Lane, details of cycle parking, provision of two short stay cycle spaces.
- 3.2.4. **Drainage Planning Section** reported no objection in principle but recommended conditions.

### 4.0 **Planning History**

- 4.1. ABP307297-20 (application ref D20A/0085) permission granted on this site on appeal for a 5-storey aparthotel with 45 suites, recreational spaces, cafe, refuse

management and service areas at 1 Northumberland Avenue, Dun Laoghaire, County Dublin.

## 5.0 Policy and Context

### 5.1. Development Plan

5.2. The site is zoned MTC major town centre “to protect, provide for and/or improve major town centre facilities” in the **Dun Laoghaire Rathdown County Development Plan 2016-2022**.

5.3. The Sustainable Urban Housing Design Standards **for New Apartments Guidelines for Planning Authorities December 2020** are the relevant apartment guidelines.

### 5.4. Natural Heritage Designations

5.5. The nearest Natura 2000 sites are;

- South Dublin Bay and River Tolka Estuary SPA is circa 982m to the north-west of the site.
- South Dublin Bay SAC is 1.3km to the north-west of the site.
- Dalkey Island SPA is 3km to the east of the site.
- Rockabill to Dalkey Island SAC is 3km to the east of the site.

5.6. Having regard to the relatively modest scale of the proposed development, its location within a build-up urban area, the foreseeable emissions therefrom and the availability of public piped services to serve the proposed development I conclude that there are no significant impacts arising for these sites from the proposed development.

### 5.7. EIA Screening

5.8. Having regard to the nature and scale of the proposed development and the nature of the receiving environment there is no likelihood of significant effects on the environment arising from the proposed development. The need for environmental

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

- The proposed development seeks to address the issues referenced in the planning authority refusal on D20A/0085.
- The planning authority is concerned about the connecting walkway overlooking residential uses to the south. This walkway is not designed for residents to stop on but the issue can be addressed by providing screening along the walkway.
- The planning authority is concerned that the Northumberland Avenue/Lees Lane treatment provides poor quality public streetscape. To address this concern the appeal proposes a revision whereby a retail unit is incorporated into the ground floor. This will result in a revised development of 12 residential uses and a retail unit of 85m<sup>2</sup>.
- In relation to refusal reason 1 referencing the undesirability of balconies opening onto the street it should be recognised that is a high-density urban area where there is often a close relationship between ground floor residential uses and the street. Furthermore, there are open spaces in the area which can be used by the residents of the apartments.
- The amended scheme is submitted at appeal for the Board's consideration. In principle it retains the residential use but replaces two proposed residential uses with a retail use at ground floor to meet the planning authority's concerns about the treatment of the street frontage at Northumberland Avenue/Lees Lane.
- A third option is also submitted which provides for the retail use at ground floor and an additional 5<sup>th</sup> floor which has the advantage of maintaining a higher residential density.

## 6.2. **Planning Authority Response**

- The planning report on files deals with the application on appeal.
- Transport Planning Department objects to the removal of the loading bay on Lees Lane.
- The proposal for an additional floor on the building is unacceptable in terms of scale, height and massing.

## 6.3. **Observations**

- A multi-storey development will block light to and overlook adjoining property to the east.
- The proposed works may impact on the stability of adjoining property and should be subject to agreement.
- The bulk, scale and design are out of character with adjoining buildings.
- The proposal would encourage similar unsuitable development in the area.
- There is a shortage of parking in the immediate area.
- The proposed density is excessive.

## 6.4. **Further Responses**

None.

## 7.0 **Assessment**

### 7.1. **Development Plan policy.**

- 7.2. The site is located in an area zoned for major town centre development where residential development and retail use are listed in the development plan as permitted in principle. I conclude that the original proposed development and the amended development are acceptable in the area.

**7.3. Mass Scale and Height.**

7.4. The Urban Development and Building Heights Guidelines for Planning Authorities (Dept Housing, Planning and Local Government 2019) make the point that a number of assessment criteria should be applied in considering applications for new buildings in urban areas. These criteria include achieving higher residential density in towns and cities, supporting more compact urban growth, supporting higher density in proximity to public transport links, integration of new buildings into the existing public realm, provision of a mix of uses and renewing the urban fabric.

7.5. The presence case provides an opportunity to revitalise an infill urban site which is underused for forms of development compatible with the zoning objective for the area and the pattern of development in the vicinity. The density is about 290 units/per ha which is a reasonable density for a town centre location close to transport links, community facilities and recreational and employment uses.

7.6. The existing building on site is a single storey structure previously in use as a supermarket/food hall and has no particular architectural significance. The adjoining buildings on Northumberland Avenue is a terrace of eight two storey over basement dwelling houses. On the opposite side are two storey commercial buildings and the corner of Northumberland Avenue/Georges Street turns at a larger scale 3 storey building. The buildings on Georges Street facing up Northumberland Avenue are four storeys. The proposed development is four storey which exceed the adjoining building at 2 Northumberland Avenue by 3.5m. I conclude on this basis that the proposed development is not out of scale with adjoining buildings or those in the immediate area, that it complies with the national and local policy framework in relation to redevelopment of infill sites and would not be visually intrusive or be unacceptable in terms of scale or mass in its urban/streetscape context.

**7.7. Residential amenity.**

7.8. The planning authority is concerned that the standards of amenity in the proposed units is unacceptably low. All the apartments in terms of floor area comply with specific policy requirement 3 in the Sustainable Urban Housing Design Standards for New Apartments 2018. The apartment sizes also comply with the size requirements in the current (December 2020) standards. The revised proposal submitted with the appeal (with the ground floor retail units) also complies with the December 2020



standards. Additionally, the original proposal and the amended one submitted at appeal provide private open space compliant with the standards.

- 7.9. The planning authority did not look favourably on the ground floor treatment along Northumberland Avenue and Lees Lane and considered that a main entrance should be provided on Northumberland Avenue and that residential balconies were an inappropriate street frontage. The applicant in the appeal makes the point that residential uses meeting the footpath is not unusual in the area.
- 7.10. I consider that two balconies opening onto the footpath are acceptable in terms of streetscape and visual amenity and are necessary to provide an amenity space for the apartments they serve and, given their orientation southeast, will get reasonable sunlight and daylight. However I consider the that amended proposal (the retail use with 12 apartments over 4 floors) submitted with the appeal is preferable in that it provides a more animated frontage on an important corner site and better reflects the advice set out in the Urban Design Manuals published in combination with the Retail Planning Guidelines and the Sustainable Housing Development in Urban Areas Guidelines.
- 7.11. A further concern addressed in the revisions submitted with the appeal is the lack of an entrance on Northumberland Avenue. This is addressed by providing an access to the bike parking and upper floors through a new 'front door' onto Northumberland Avenue. I consider this to be an improvement on the original design.
- 7.12. The planning authority is concerned that a single bedroom window at third floor in apartment 14 will seriously injure the amenity of property to the south by way of overlooking. Having regard to the set back from the boundary by about 4m, the use of the room as a bedroom and the urban context of the application site I consider that no unreasonable impact on the amenity of adjoining property will arise from this window.
- 7.13. A somewhat similar issue arising in relation to the second-floor link walkway giving access to the shared open space on the Mulgrave Street side of the development. I consider that an opaque screen 2m high along this walkway will adequately protect the amenity of the rear gardens of adjoining residential property.

**7.14. Parking.**

7.15. The application provides no off-street car parking. The planning authority's Transport Planning section raised no objection on this point. An observer makes the point that there is as shortage of parking in the area.

7.16. The New Apartment Guidelines 2018 under which the application was lodged and the current (December 2021) Apartment Guidelines make the point that, in certain locations, for example, city and town centres already well served by public transport, the default policy is to minimise car parking or omit it entirely. Having regard to the location of this proposed development in Dun Laoghaire town centre which is well served by public transport and a mix of community/retail/educational and employment uses I consider that the proposed development need not include carparking.

7.17. The original application proposed 20 bike parking spaces for 14 units and the revised proposal for 12 units provides for 15 bike parking spaces. I consider both provisions acceptable.

**7.18. Refuse Storage.**

7.19. In the original application bin storage is accessible from Lees Lane. In the amended plans this bin storage has been increased in floor area. I recommend that this be made accessible from within the building through in the entrance lobby.

7.20. The planning authority's transport planning section raised the issue of the elimination of a loading bay on Lees Lane. There would be a good case for the retention of a loading bay if a substantial commercial use was being proposed on the site. In the present case either a solely residential use (14 units) or a small retail (85m<sup>3</sup>) and residential use (12 units) would not generate a dedicated loading area and I conclude that the retention of a loading bay is not necessary in this instance.

**7.21. Part V**

7.22. The provisions of Part V do not apply in this case since the site is less than the 0.1ha threshold.

**7.23. Amendments Lodged with the Appeal.**

7.24. The original application was for a four storey solely residential building. The applicant with the appeal submitted amendment drawings providing for a four-storey building

with a retail use at ground floor addressing Northumberland Avenue. The initial issue, therefore, is if this an amendment which may be considered within the context of the application as advertised to the public and decided upon by the planning authority. This revised application provides for 12 apartments (they are incorrectly numbered in the submitted drawings) and 86m<sup>2</sup> of retail floor area with street frontage onto Northumberland Avenue and Lees Lane. Having regard to the relatively minor change in number of units proposed 14 originally as against 12 in the amended proposal, the relatively small area of floor space being given over to retail and the acceptability of both proposed use types within the zoning objective for the area set out in the development plan, the absence of amendment to the scale, height or footprint of the alternative submitted I recommend that the amended proposal can be considered by the Board as not being a material change to the application. A condition in the draft order below requires a separate planning application for the shop front element of the proposed development.

- 7.25. The Board may conclude that the amendments should be readvertised to allow for public comment.
- 7.26. In relation to the second option; that of a retail use at ground floor and an additional 5<sup>th</sup> storey on the building; having regard to the significant additional height being proposed I recommend that this proposal is a material change to the application as notified to the public and assessed by the planning authority and that it should not be considered further by the Board.
- 7.27. **Appropriate Assessment Screening.**
- 7.28. The appeal site is not in or immediately adjacent to any Natura 2000 site, so the proposed development would not have any direct effect on any Natura 2000 site. The nearest European site is the South Dublin Bay and River Tolka Estuary SPA (004024) 982m to the north-west of the application site. South Dublin Bay SAC (000210) is located 1.3km to the north-west of the application site. The Rockabill to Dalkey Island SAC (003000) is located 3km to the east of the application site and Dalkey Island SPA (004172) is located 3km to the east of the application site.
- 7.29. The conservation objectives for South Dublin Bay and River Tolka Estuary SPA (004024) are to maintain the favourable conservation condition of the qualifying bird species in the Natura 2000 site and these species are;

- Light-bellied Brent Goose [A046]
- Oystercatcher [A130]
- Ringed Plover [A137]
- Grey Plover [A141]
- Knot [A143]
- Sanderling [A144]
- Bar-tailed Godwit [A157]
- Redshank [A162]
- Dunlin [A149]
- Black-headed Gull [A179]
- Roseate Tern [A192]
- Common Tern [A193]
- Arctic Tern [A194]
- Wetlands & Waterbirds [A999]

7.30. The conservation objectives for the South Dublin Bay SAC (000210) are to maintain the favourable conservation condition of the habitats/qualifying interests for which the site has been designated and these habitats/qualifying interests are;

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Annual vegetation of drift lines [1210]
- Salicornia and other annuals colonising mud and sand [1310]
- Embryonic shifting dunes [2110]

7.31. The Conservation Objective for Rockabill to Dalkey Island SAC (003000) is to maintain the favourable conservation condition of reefs and the harbour porpoise which are the qualifying interests for which the SAC has been designated.

7.32. The Conservation Objective for Dalkey Island SPA (004172) is to maintain or restore the favourable conservation condition of the bird species listed as the qualifying interests for the SPA which are Roseate Tern (*Sterna dougallii*), Common Tern (*Sterna hirundo*) and the Arctic Tern (*Sterna paradisaea*).

7.33. Having regard to the nature of the proposed development including the removal of an existing building, the location of the application site in a built-up urban area which is zoned for development where public water supply and sewerage facilities are available, to the nature of the likely emissions from the proposed development, the separation distance of the European sites from the application site, the nature of the qualifying interests and conservation objectives for the European sites assessed it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the South Dublin Bay and River Tolka Estuary SPA (004024), the South Dublin Bay SAC (000210), the Rockabill to Dalkey Island SAC (003000), the Dalkey Island SPA (004172) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required

## **8.0 Recommendation**

8.1. I recommend a grant of planning permission referencing the Option 1 amendments submitted at appeal stage which provide for a 4 storey building with retail at ground floor.

## **9.0 Reasons and Considerations**

Having regard to the location of the application site in an area zoned for major town centre development in the Dun Laoghaire Rathdown County Development Plan 2016 – 2022 where residential and retail uses are permitted in principle, to the existing retail use on site and the mass, scale and height of the proposed development it is considered that the proposed development would not detract from the visual or residential amenity of the area, would not give rise to traffic hazard and would otherwise accord with the County Development Plan and the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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 received by An Bord Pleanála on the 19<sup>th</sup> day of November 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>This permission refers to Option 1 submitted to An Bord Pleanála on the 19<sup>th</sup> day of November 2020 and providing for a four storey building comprising 12 apartments with a retail use at ground floor illustrated, in particular, on drawings numbers 2020-24-ABP-101 and 2020-24-ABP-102.</p> <p><b>Reason:</b> In the interests of clarity.</p>
3.	<p>The bin storage area accessible externally from Lees Lane shall be also accessible internally from within the building. Prior to commencement of development the developer shall submit and agree plans and particulars providing for this arrangement with the planning authority.</p> <p><b>Reason:</b> To facilitate waste management in the interest of residential amenity.</p>
4.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials 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.</p>

	<p><b>Reason:</b> To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
5.	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>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.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
8.	<p>Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity.</p>
9.	<p>Proposals for a building name and apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of urban legibility.</p>
10.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p><b>Reason:</b> To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
11.	<p>No external security shutters shall be erected on the premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
12.	<p>Details of all external shopfronts and signage shall be the subject of a separate planning application.</p> <p><b>Reason:</b> In the interest of the amenities of the area/visual amenity.</p>
13.	<p>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 the “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. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p><b>Reason:</b> In the interests of sustainable waste management.</p>
14.	<p>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</p>



	<p>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.</p> <p><b>Reason:</b> 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.</p>
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Hugh Mannion  
Senior Planning Inspector

2<sup>nd</sup> February 2021