



An  
Bord  
Pleanála

## Inspector's Report ABP 309538-21

---

<b>Development</b>	Modifications to existing 5 storey residential building on site. Provision of 1 no. additional floor to provide 3 no. apartments and associated works.
<b>Location</b>	Grove House, 36 Grove Road, Rathmines, Dublin 6.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2756/20
<b>Applicant</b>	Halact Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	1. Karen Sheehy & Jack Keegan 2. Tim McParland
<b>Observer</b>	1. Phillip O'Reilly
<b>Date of Site Inspection</b>	18/01/22
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

Grove House is a 5 storey (5<sup>th</sup> floor recessed) apartment block accessed from Grove Road on the south side of the Grand Canal in Dublin 6. It has a relatively narrow frontage onto the road and extends back (southwards) into the site. As it extends back it incorporates two wider blocks separated by a courtyard. At roof level there are two existing lift/stair overrun enclosures which extend above the parapet level. The block is stated to provide for 18 apartments (2no. 3 bed, 8 no. 2 bed and 8 no 1 bed). It is served by gated underground car parking.

The site is bounded by a car park and Cathal Brugha Barracks to the east and south and by a four storey block of flats (Grove Road Flats) served by surface car parking to the west.

## 2.0 Proposed Development

The application was lodged with the planning authority on the 22/05/20 with further plans and details submitted 23/12/20 following a request for further information dated 14/07/20.

The proposal entails the addition of a further floor to the apartment block to provide for 3 no. apartments comprising:

- 1 no. one bed unit (48.7 sq.m.)
- 1 no. two bed unit (73 sq.m.)
- 1 no. three bed unit (98.9 sq.m.)

The application is accompanied by a Planning Application Report.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant permission for the above described development subject to 13 conditions including:

Conditions 3 – 5: Construction hours and works

Condition 6: No additional plant/air handling units etc. to take place above roof level without prior grant of permission.

Condition 7: Obscure glazing to be used in stairwell windows.

Condition 8 (i) construction management plan to be submitted.

(ii) operational waste management plan to be submitted.

(iii) cycle parking to be provided to development plan standards.

Condition 10: Part V provisions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The 1<sup>st</sup> Planner's report dated 09/07/20 notes:

- The submitted plans largely match the plans approved under 1083/06 in terms of the number of car and cycle parking spaces shown.
- The plot ratio would increase from 3:1 to 3.8:1 and materially exceeds the development plan limit for the area of 2.0 indicating a very high density of development.
- Having regard to the Building Height Guidelines it is noted that the site is in a sustainable location adjoined by a building of a similar height and in an area of varied character, which includes the large format buildings of Cathal Brugha barracks and the openness of the canal. It is considered that an additional floor can be accommodated without a negative impact on the visual amenity of the area.
- The presence of St. Patrick's church in the barracks which is a protected structure is noted but given the separation distance, it is not considered that the proposal would impact materially on its setting.
- Care is required in the external finishes.
- Given the enclosed nature of the communal space it is likely to receive restricted levels of sunlight. Further information required on the quality of the space.

- A sunlight/daylight study is required with regard to impact on Grove Road flats adjoining.
- There will be no windows facing the barracks. Windows to stairwells to be fitted with obscure glazing. One balcony to the rear would allow views to the east and south. This would mirror existing balconies and the additional impact would be limited. A screen could be added to the eastern side.
- Given the site location the parking provision is considered adequate.
- Clarification required on site ownership.

A request for further information recommended.

The 2<sup>nd</sup> Planner's report dated 28/01/21 notes:

- The applicant accepts that the building as constructed differs from the approved plans. The differences are minor. With regard to the lift overruns they would be replaced by the proposal if granted.
- Based on the shadow analysis the height of the existing building and position, scale and massing of the extension it is unlikely to have a material impact on neighbouring properties.
- Given the setback of the extension from the front elevation of the building and subject to the amendments to the cladding the proposed design including fenestration, is acceptable.
- The submission of an operational waste management plan is considered appropriate.

A grant of permission subject to conditions recommended.

### 3.2.2. Other Technical Reports

3.2.3. Transportation Planning Division in a report dated 07/07/20 recommends further information on the number of existing apartment units and carparking within the building, number of additional parking spaces, if any, to be provided and cycle parking. In view of the location of the site no additional car parking would be acceptable. The 2<sup>nd</sup> report dated 25/01/21 following further information has no objection subject to conditions.

Drainage Division has no objection.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to building height and visual impact, precedent set, impact on amenities of adjoining property and units within the block, ownership of the block, car parking, traffic, construction impacts and the operational security and culturally sensitive setting of Cathal Brugha barracks.

## **4.0 Planning History**

1083/06 – permission granted for demolition of public house and construction of apartment block providing for 18 apartments served by basement car parking.

PL29S.243915 – permission refused on appeal in February 2015 for an additional floor to the apartment block providing for 3 no. apartments.

## **5.0 Policy Context**

### **5.1. Policy Guidelines**

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2018.

Urban Development and Building Heights - Guidelines for Planning Authorities, 2018.

### **5.2. Development Plan**

Dublin City Development Plan 2016-2022

The site is within an area zoned Z1, the objective for which is to protect, provide for and improve residential amenities.

Chapter 5 addresses Housing and Apartments.

Policies QH18 -QH20 promote the provision of high quality apartments for a range of needs.

Chapter 16 sets out the development management standards and requirements.

Section 16.7 Building Heights

The site, outside the Canal, is classified as outer city wherein heights up to 16 metres are open for consideration with the criteria against which a proposal for a high building is to be assessed detailed.

Section 16.10.1 sets out the standards for Apartments

Section 16.38 sets out Car Parking Standards.

The site is within zone 3 wherein 1.5 spaces per residential unit is required.

### **5.3. Natural Heritage Designations**

None in the vicinity.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

3<sup>rd</sup> Party appeals have been received from:

**1. Tim McParland**

**2. Karen Sheehy & Jack Keegan**

The submissions can be summarised as follows:

- The applicant does not have sufficient legal interest to lodge the application or carry out the development. The appellants own their apartments and are members of the Grove House Owners Management Company Ltd. who own the development. They have not provided consent for the property to be developed. The property has no legal affiliation with the applicant.

- The completed building is a significant departure from its originally approved plans and drawings. The basement and 1<sup>st</sup> to 3<sup>rd</sup> floors in no way reflect the configuration and layout of what is shown.
- The building contains 16 apartment units and not 18 units. To achieve 18 units would require substantial internal structural works and is a matter that can only be agreed and dealt with through the Management Company and its members.
- There are 15 basement parking spaces serving 16 apartments and not 18 as stated. The car park is tight and cramped. The parking layout impacts on the safety of vehicular manoeuvres. It will not accommodate 18 spaces.
- The car park will not accommodate a site toilet during the construction phase. Consent for same has not been secured.
- Waste storage space in the basement is insufficient.
- Construction noise, disturbance, dust and placement of equipment will impact on the amenities of units within the development. The construction plan does not outline where materials will be unloaded or stored on site. The measures detailed in the plan appear to be token gestures.
- No account has been taken of impact of construction activities on traffic flow.
- There will be a tangible difference in the sunlight to apartment 1 at ground floor level.
- The daylight/sunlight report outlined that the sunlight to the communal courtyard will be impacted during summer months.
- Low rise outer city developments traditionally had a height limit of 16 metres. The additional floor will bring the building height to 17.9 metres. It is outside the canal ring. It would dominate the skyline from canal bridge to bridge, in an area of mostly single, two and three storey buildings save for the flats beside the development which extend to four storeys.
- The plans do not accurately reflect the impact of the proposal. The neighbouring flats are recessed back from the street relative to Grove house which changes how the building is perceived from street level at either side of

the canal. The plans make Grove House appear lower in height next to adjacent buildings.

- The existing overruns are very prominent in views. An additional two metres in height will accentuate them.

## **6.2. Applicant Response**

The response by Brock McClure Planning and Development Consultants on behalf of the applicant, which is accompanied by supporting documentation, can be summarised as follows:

### **6.2.1. Ownership**

- The applicant has sufficient legal interest to lodge the application. The matter was assessed by the planning authority. Solicitor's letter submitted by way of further information referenced.
- Section 34 (13) of the Planning and Development Act, 2000, relevant.
- Matters of legal interest are not specifically a planning consideration and should not be used as a reason for refusing permission for development.

### **6.2.2. Car Parking and Apartment Layouts**

- No alterations to the existing car park is proposed.
- The ground floor plan as constructed shows a permitted light well space covered over to provide bicycle parking. This is considered exempted development.
- A comparison of the permitted elevations and that constructed indicates that a larger lift overrun has been constructed. This will be resolved by the construction of the new floor.
- The differences do not have a tangible impact on the principle of additional height and 3 no. additional residential units.

### **6.2.3. Construction Impacts**

- The key principles of the Outline Construction Management Plan will be unchanged in the final plan.



- The duration of the construction is estimated at 8 months.
- Construction impacts cannot be eliminated entirely.

#### 6.2.4. **Daylight and Sunlight Report**

- The impact the proposal will have on sunlight availability is not significant as there is not a large difference between the shadow cast by the existing building when compared with the proposed development.
- The predicted impacts on the communal courtyard are negligible and it will continue to receive acceptable levels of sunlight.

#### 6.2.5. **Servicing – Waste Management**

- Existing waste storage arrangements has capacity to accommodate the waste arising from the additional units.
- There is capacity for additional waste storage facilities.

#### 6.2.6. **Building Height**

- Appropriate justification of the building height and the additional 3 no. units was provided.
- The suitability of the site for the building height has been accepted by the planning authority.
- Matters relating to the existing building issues, number of units and car parking spaces are not relevant planning arguments in the context of the application.

### 6.3. **Planning Authority Response**

None

### 6.4. **Observations**

Philip O'Reilly

- The height of the existing building is unacceptable and the additional floor will exacerbate the visual intrusion and overwhelm nearby properties.

- Impact on amenities of adjoining property.
- Negative impact on water pressure in the area

## 7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Procedural and Legal Issues
- Increase in Building Height
- Amenities of Existing Property
- Basement Carparking
- Construction
- Other Issues

### 7.1. **Procedural and Legal Issues**

The two appellants contest that the applicant does not have sufficient interest to make the application and carry out the development. They state that the legal ownership sits with the Management Company of which they are members. Its consent was not sought. Legal opinion that the applicant has sufficient interest was furnished with the further information submission, a copy of which accompanies the appeal response. In same it is stated that in transferring the legal of the ownership to the Owner Management Company Ltd. the beneficial interest in the common areas was expressly retained by the developers who also reserved the right to apply for permissions for additional development.

As noted in section 5.13 of the Development Management Guidelines the planning system is not designed as a mechanism for resolving dispute over land and that these are ultimately matters for resolution in the Courts. I consider that for the purposes of making the application the applicant has demonstrated sufficient legal interest. I submit that any further issue between the parties would constitute a civil matter best resolved through the appropriate channels. I recommend that the applicant be informed of the provisions of Section 34(13) of the Planning and

Development, Act, 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development.

The parent permission for the apartment building on the site was granted in 2006 under ref. 1083/06 providing for 16 units (reduced from 18 no. way of further information). As per the plans of the development as existing which accompany the application, 18 no. apartments are delineated. Mr. McParland contests this stating that the drawings in no way reflect the configuration and layout of some of the apartments. I note that the letter from the Property Management Company on file relating to adequacy of the bin store facility makes reference to the provision *being sufficient for the existing 16 units*. This discrepancy has not been clarified save for the agent for the applicant in the appeal response stating that matters arising in terms of number of units and car parking spaces etc. are not relevant planning arguments in the context of the application. I would not necessarily concur with this view as the number of units may have a knock on impact on matters pertaining to open space, car parking etc. Notwithstanding, issues in terms of compliance with the existing permission is a matter for the planning authority and is not for adjudication at this appeal stage. I submit that to present for a robust assessment 18 no. existing apartments units will be considered.

I note that the discrepancies in terms of the existing lift overruns relative to those permitted would be addressed should permission be granted in this instance.

## **7.2. Increase in Building Height**

The existing building has 5 storeys of which the 5<sup>th</sup> is recessed. The additional floor will increase the flat roof of the building from 15.6 to 18.4 metres with the lift/staircores extending to 21.2 metres. This exceeds the 16 metre limit set out for outer city locations as set out in the current City Development Plan. Consequent to the adoption of the said plan the Guidelines on Urban Development and Building Heights was issued in 2018 which advocates for increased building height in suitable locations including town and city cores and areas that have good public transport connectivity.

Having regard to the site location, which is just outside the canal ring in close proximity to the city centre, less than 1km from the Charlemont LUAS stop with public bus routes in close proximity, in addition to the varied character of the area

including the large format buildings and open yards associated with Cathal Brugha Barracks to the east and the openness of the canal to the north, I consider that it is an appropriate location for increased building height subject to the amenities of adjoining property being protected.

In my opinion the images accompanying the application demonstrate that the visual impact of the additional floor is minimal relative to that existing. It is to be recessed from the northern elevation in line with the 5<sup>th</sup> floor, which assists in reducing its visual impact when viewed from the north and when travelling in both directions along the canal on Grove Road. The fact that the building line is forward of the four storey Grove Road flats immediately adjoining does not, in my opinion, accentuate the impact.

As noted by the planning authority the external finishes will be important in limiting the visual impact. The amendments made by way of further information allowing for the proposed cladding to the front elevation to match that of the lower level is considered appropriate. A condition requiring the finishes to be agreed with the planning authority prior to commencement of development is recommended.

### **7.3. Amenities of Existing Property**

As noted above the site is immediately to the east of the 4 storey Grove Road flats. By way of further information a Sunlight Report was submitted which focusses on measuring the impact on sunlight to same and to the building itself.

Section 3.3.17 of BRE guidelines 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' states that any loss of sunlight as a result of a new development should not be greater than a ratio of 0.8 times its previous value and that at least 50% of an amenity area should receive a minimum of two hours sunlight on the 21<sup>st</sup> day of March.

As evidenced from the shadow analysis both the private amenity spaces in the Grove Road flats immediately adjoining delineate very marginal shadow increases for the morning of 21<sup>st</sup> June, only. The communal internal courtyard serving the apartment block, itself, will experience a marginal increase in overshadowing for midday on 21<sup>st</sup> June.

I therefore accept the conclusion that the impact from the additional floor would not have a material impact on the amenities of existing residents both within the complex and on the properties adjoining than heretofore exists.

The issues of adequacy of waste management facilities at basement level is queried by the appellants. The applicant in response states that the existing facilities are adequate to meet the needs of the 3 no. additional apartments. A copy of the letter from the relevant Property Management Company which confirms same accompanies the appeal response.

#### **7.4. Basement Car Parking**

As per the plans accompanying the application 18 no. parking spaces are provided at basement level. The appellants contest this stating that 15 no. spaces only are provided, that their layout and arrangement presents difficulties in terms of vehicular manoeuvres and that additional spaces would aggravate an already substandard situation.

No additional parking spaces are proposed as part of the development. I consider that the site, by reason of its proximity to the city centre and public transport options, is suitable for a reduction in car parking requirements. Thus there will be no change in the prevailing situation at basement level nor in the vehicular movements using the existing entrance onto Grove Road.

#### **7.5. Construction**

While disturbance is an inevitable and typical consequence of any development and there would be likely to be some disruption for local residents and occupants during the construction period, this would only be for a temporary period and would be mitigated through measures in the construction management plan. In this regard I note that the Outline Construction Management Plan identifies measures to avoid nuisance impacts arising to residents including construction hours. The final details of this plan will be subject to agreement with the planning authority prior to commencement of development and, as such, I am satisfied that these matters can be satisfactorily addressed by way of planning condition.

## 7.6. Other Issues

The proposed apartment units accord with the minimum size and space requirements of the Design Standards for New Apartments - Guidelines for Planning Authorities. I note that the two bed unit has an area of 63 sq.m. to accommodate 3 persons.

The plot ratio of the existing building on the site which I calculate to be at 2.36 already exceeds the development plan upper limit for a Z1 zone of 2. The additional floor will increase the plot ratio by approx. 14% to 2.78. Having regard to the above assessment in terms of amenities of adjoining residents and visual impact the increase is considered acceptable.

I would also accept that given the site area of less than 0.25 hectares, the existing built form and close proximity to the canal, the relaxation in the requirements for the communal open space area is appropriate.

As per the drawings of the existing ground floor 21 no. bicycle parking spaces are provided for which accords with the current City Development Plan requirements as set out in Table 16.2.

The windows serving the stairwells are required to be of obscure glazing to preclude overlooking of the secure area associated with Cathal Brugha Barracks.

### *Appropriate Assessment – Screening*

Having regard to the nature and scale of the proposed development and distance from the nearest European Site it is concluded no appropriate assessment issues arise as 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

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

## 9.0 Reasons and Considerations

Having regard to the residential zoning provisions for the site in the current Dublin City Development Plan and the nature and scale of the proposed development, it is considered that the proposed development, subject to compliance with conditions set out below, would be acceptable in terms of visual impact, would not seriously injure the residential amenities of the area or of property in the vicinity, would provide a suitable level of amenity for future occupants in accordance with the provisions of the Dublin City Development Plan 2016-2022 and the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020) prepared by the Department of Housing, Local Government and Heritage, and would be acceptable in terms of traffic safety and convenience. The proposed development 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 submitted on the 18<sup>th</sup> day of October 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 stairwell windows in the east elevation of the extension shall be permanently glazed with obscure glass.

**Reason:** To protect the amenities of adjoining property.

3. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

**Reason:** In the interest of public health.

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

**Reason:** In the interest of visual amenity.

5. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** To protect the residential amenity of property in the vicinity and the visual amenity of the area.

6. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 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 the interests of public safety and residential amenity.

7. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:



- (a) location of the site and material compound(s) including area(s) identified for the storage of construction refuse,
- (b) Details of timing and routing of construction traffic to and from the site,
- (c) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (d) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (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.

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 interest of amenities, public health and safety.

8. 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.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

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 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 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.

---

**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**January, 2022**