



An
Bord
Pleanála

Inspector's Report

ABP-309725-21

Development	Change of use to an apartment.
Location	4, Kilmore Road, Dublin 5
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3569/20
Applicant(s)	Ralzoon Ltd
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Ralzoon Ltd
Observer(s)	None
Date of Site Inspection	08 th May 2021
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located at 4, Kilmore Road, Artane, Dublin 5, approximately 5 km to the north east of Dublin City centre and c. 40m north of a junction with the Malahide Road. The site has a stated area of 189 sq.m.
- 1.2. The site consists of the curtilage of a two storey semi-detached building with hipped roof. The ground floor of the existing building on site appears to be vacant for some time and its last use appears to have been a commercial retail unit or shop. The first floor appears to be in residential use. This building adjoins and pairs with a similar style building with a ground floor takeaway pizza use. This property is No. 2 Kilmore Road. There is a railed ramp in front of the pizza unit that appears to be accessed from the front of the subject site.
- 1.3. The site forms one part of a small neighbourhood centre that fronts this section of Kilmore Road and wraps around the junction with the Malahide Road to provide other uses including, banking, retail and a public house.
- 1.4. The site does not benefit from front boundary treatment with the front area of the site and adjoining site open to the public path. There is an existing gated laneway to the side of the site along its northern boundary. Public parking and a loading bay are located to the front of the site.
- 1.5. To the north of the site there are six semi-detached houses No's 6, 8, 10,12,14 and 16 with a building line that staggers back from the subject site. These houses all have front gardens with boundary walls to the public path and Kilmore Road.

2.0 Proposed Development

- 2.1. The development comprises-
 - Change of use of ground floor retail unit to residential
 - A 23 sq.m extension to rear to provide a two bedroom apartment
- 2.2. The Planning Authority sought further information on the 14/12/20 in relation to the following-

- Provision of a privacy strip or defensible space to the front of the property and other measures to protect residential amenity considering the proximity of the takeaway use to address residential amenity concerns.
- A landscaping plan for the private open space to serve the proposed and existing apartment.

2.3. The applicant submitted further information on the 22/01/21 including the following-

- A new vertical timber screen to bound a paved area to the front of the unit.
- Double glazing with acoustic properties to reduce noise levels. Vertical blinds to provide privacy and daylight.
- Landscape and upgrade proposals for the rear garden area which will require minimal maintenance.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission on the 18/02/21 for the following reason-

1. Due to the positioning of the proposed apartment unit at ground floor level to the front of the subject property which adjoins a take-away unit which operates into the early hours of the morning, the proposed apartment unit would provide an unacceptable level of residential amenity for future occupiers by way of adverse impacts to privacy, security and noise levels. The proposed development would therefore, by itself and by the precedent it would set for other development in the surrounding area, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and contrary to the proper planning and sustainable development of the area.

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (18/02/21) reflects the decision of the Planning Authority. The following is noted from the report-

- The subject site was the subject of an application for an additional ground floor apartment unit to the rear and a change of use from retail to café use under Reg. Ref. 2715/19.
- A Split Decision issued, granting permission for the change of use to a café and refusing permission for the ground floor level apartment to the rear.
- The proposed development has reduced the scale of development whereby the retail use will be replaced by an apartment unit resulting in the overall property containing 2 apartments.
- It is not considered the rear extension will result in overdevelopment, over intensification of use or have undue impacts on the residential amenity of neighbouring properties to the north-west.
- Section 14.8.3 of the Development Plan notes that 'neighbourhood centres may include an element of housing, particularly at higher densities, and above ground floor level' and as such there is no objection in principle to an application to optimise urban infill sites to provide additional housing.
- Cognisance may be had to the long term vacancy of the retail unit and subject to a quality residential scheme being provided, in this instance the change of use is acceptable in principle.
- The proposed layout would appear to be marginally below Apartment Guideline standards.
- There is serious concerns that the provision of a residential unit at ground floor level located in such close proximity to a take-away which operates into the early hours of the morning will result in future occupants having a very low level of residential amenity.

- It is considered that the measures proposed with the further information response do not adequately address the concerns highlighted by the planning authority.
- 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.

4.2. Other Technical Reports

- Drainage Division- No objections subject to conditions.
- Transportation Planning Division- No objections subject to conditions.

4.3. Prescribed Bodies

- None

4.4. Third Party Observations

- None

5.0 Planning History

5.1. Relevant history of this site-

- 2715/19- ground floor 1 bed apartment to rear, change of use of shop on ground floor to cafe with takeaway facility, 27/09/19 Split Decision-
 - Grant change of use of shop to café with ancillary takeaway facility
 - Refuse one bed apartment to rear for following reason-

Having regard to siting, design and layout, it is considered that the proposed ground floor apartment to the rear of the property represents significant over-development and intensification of use of the site and would result in an unacceptably low level of residential amenity for future residents with regard to aspect, outlook and sunlight/daylight levels. As a consequence the proposal would therefore be

unacceptable and would set a precedent for other such substandard developments in the area. The proposed development would therefore, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the City Development Plan 2016-2022, and to the proper planning and sustainable development of the area.

6.0 Policy Context

6.1. Legislation-

The Planning and Development (Amendment) (No. 2) Regulations 2018 amended Article 10 of the Planning and Development Regulations. Article 10 (6) now provides for the change of use of certain premises as exempted development based on a number of criteria. The relevant details are summarised as follows-

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1 (shop), 2 (services etc), 3 (office) or 6 (residential club, a guest house or a hostel) of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d).....

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

6.2. Ministerial Guidelines-

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020. The following Specific Planning Policy Requirements are relevant-

Specific Planning Policy Requirement 2 states-

‘For all building refurbishment schemes on sites of any size.....:

Where up to 9 residential units are proposed, notwithstanding SPPR 1, there shall be no restriction on dwelling mix, provided no more than 50% of the development (i.e. up to 4 units) comprises studio-type units;.....

.....All standards set out in this guidance shall generally apply to building refurbishment schemes on sites of any size, or urban infill schemes, but there shall also be scope for planning authorities to exercise discretion on a case-by case basis, having regard to the overall quality of a proposed development.

Specific Planning Policy Requirement 3 states-

Minimum Apartment Floor Areas:

- 2-bedroom apartment (4 persons) 73 sq.m*

Specific Planning Policy Requirement 4- Dual Aspect

- 33% required in central and accessible locations, may be reduced for refurbishment schemes on a case by case basis subject to quality.

Specific Planning Policy Requirement 5- Ground Floor Ceiling Height

- Ground floor apartments a minimum 2.7m

Specific Planning Policy Requirement 6- Apartments per core

- Proposal is for ground floor only

Appendix 1- Required Minimum Floor Areas and Standards

6.3. Dublin City Development Plan 2016–2022

Zoning

Section 14.8.3 - *Land-Use Zoning Objective Z3 Neighbourhood Centres:*

To provide for and improve neighbourhood facilities.

Residential is a Permissible Use in Zoning Objective Z3

Development Standards- Chapter 16

- Section 16.10.1 Residential Quality Standards – Apartments

6.4. Natural Heritage Designations

- None Relevant

7.0 The Appeal

7.1. Grounds of Appeal

The grounds of this first party appeal can be summarised as follows:

- The Planning Authority have expressed concerns about a proposed residential unit located next door to a takeaway
- A timber screen was proposed at further information stage to adequately screen the residential use from the takeaway.

- The shop has been vacant for many years with little or no hope for it being let as a shop in the near future.
- There is a housing shortage (emergency) and every effort should be made to provide such accommodation.
- It will be extremely difficult for a small commercial operation to survive.
- The 2018 regulation SI 30 of 2018 has helped convert vacant property to residential use. It is suggested this instrument should have applied to this application as it has all of the criteria covered and permission should therefore be granted.

7.2. Planning Authority Response

- None received

7.3. Observations

- None

8.0 Assessment

8.1. I have examined the application details and all other documentation on file, including the appeal submission. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the relevant issues for consideration in this appeal are as follows-

- Zoning
- Residential Amenity and Apartment Standards
- Appropriate Assessment

8.2. Zoning

8.2.1. The site is zoned in the Development Plan as Z3 Neighbourhood Centres with a zoning objective '*To provide for and improve neighbourhood facilities*'. In this regards it is noted that Residential uses are Permissible Uses for this Zoning Objective. The proposal is therefore acceptable in principle.

8.3. Residential Amenity and Apartment Standards

- 8.3.1. The Planning Authority's refusal generally relates to the proximity of the site directly adjoining an existing takeaway unit with late night operations and subsequent impacts on residential amenity for the intended occupants of the apartment. The Planning Authority otherwise consider the proposed use as generally acceptable within the zoning objective of the site and that the proposed apartment generally complies with the 2020 apartment guidelines.
- 8.3.2. The 2020 guidelines introduced a number of Specific Planning Policy Requirements (SPPR) that apartment developments must be assessed against. Having reviewed the drawings and details submitted with this application it is noted the application appears to comply with all of the relevant SPPR's save for the proposed rear extension area which proposes a floor to ceiling height of 2.4m instead of 2.7m. The floor to ceiling height of the existing building is however indicated as 2.95m.
- 8.3.3. Appendix 1 of the Guidelines sets out other requirements including Minimum Floor Areas and Standards. In this regard the proposal generally meets the requirements but I also note the following-
- Aggregate floor area living/dining/kitchen- required 30 sq.m proposed 25 sq.m
 - Double bedroom- required 11.4 sq.m, proposed 17.1 sq.m and 10.92 sq.m
 - Aggregate bedroom floor areas- required 24.4 sq. m, proposed 28.02 sq.m
 - Minimum storage space requirements required 6 sq.m, proposed 4.5 sq.m inside and 2.25 sq.m outside
 - Minimum floor areas for private amenity space and communal amenity space both 7 sq.m. The application proposes 32.2 sq.m of private open space as a landscaped rear garden, that appears to be shared with the existing first floor apartment.
- 8.3.4. For building refurbishment schemes on sites of any size the Guidelines provides scope for planning authorities to exercise discretion on a case-by case basis, having regard to the overall quality of a proposed development. In this regard I consider the shortfall in meeting some requirements of the Guidelines to be insignificant in this context and the provision of a large landscaped area of shared private amenity

space to be acceptable. I also note the site appears to adequately provide for bin storage and cycle parking.

- 8.3.5. In order to address the Planning Authority's residential amenity concerns as the site adjoins an existing takeaway, the applicants submitted (at further information stage) proposals for a 1.1m high vertical treated timbers along the front (west) and side (southern) boundary of the site. This will enclose most of the area to the front of the site essentially providing a small front garden area finished with paving and planter boxes to the boundary with the takeaway. The applicants also propose double glazing with acoustic properties to reduce noise levels and vertical blinds to provide privacy while providing for daylight.
- 8.3.6. Having regard to the sites context and the proposed use, I consider it appropriate to enclose the space to the front of the property as a front garden area. However I consider a low level boundary wall to be a more appropriate boundary treatment given the existence of low boundary walls to a number of residential properties adjoining and to the north of the site as well as the southern side boundary of the takeaway. A boundary wall should also enclose the entire front boundary of the site to the boundary of the property to the north, save for the provision of a pedestrian entrance. Should permission be granted I recommend this be addressed by condition.
- 8.3.7. I note the provision of a boundary of any type between the site and the adjoining takeaway site may have implications for access to the ramp entering the takeaway premises. The access to the ramp appears to be from within the application site and in this regard I would consider this to be a civil matter between the owners of both properties.
- 8.3.8. I appreciate the concerns raised by the Planning Authority in relation to noise, security and privacy in particular late night use of the adjoining takeaway. I also note the applicants proposals submitted at further information stage to address these concerns. The application provides for bedrooms to the rear of the properties and to a certain extent will be set back away from potential noise pollution at night. The provision of a boundary to the front of the site should provide for enhanced security and significantly reduce intrusion in front of the subject property thereby reducing existing levels of noise. The site is within an existing urban area with a number of

other commercial uses and it is not uncommon for living areas of residential properties to adjoin or front the public realm in an urban environment. In this context I also do not consider it unusual or unacceptable for a residential use to adjoin an existing takeaway use and note the grant of permission for a first floor residential use to this property under 2715/19 and the proximity of other residential properties to the takeaway. However, I would have concerns in relation to a takeaway with late night uses seeking planning permission where it would adjoin existing residential properties.

- 8.3.9. In their appeal, the applicants have referred to SI 30 of 2018 i.e. the Planning and Development (Amendment) (No. 2) Regulations 2018 which amended Article 10 of the Planning and Development Regulations 2001. Article 10 (6) now provides for the change of use of certain premises as exempted development based on a number of criteria including a relevant period to avail of the exemption which is identified to 31st of December 2021.
- 8.3.10. These regulations provide a planning exemption for change of use from 'shop' units to residential in certain circumstances. However in this instance the applicants have not chosen to consider the exemption route under section 5 of the Planning and Development Acts and instead have made a planning application under section 34 of the same Acts.
- 8.3.11. While I do not consider the development as proposed to be exempted development under the provisions of the 2018 Regulations, I do consider it reasonable to note in a scenario where a change of use of a similar property to a residential use could be facilitated by these regulations, there does not appear to be any restriction to such a change of use where a site directly adjoins an existing takeaway facility with late night uses having regard to the Z3 zoning objective as set out in the Development Plan.
- 8.3.12. In this context of the subject application and having regard to all of the above, I consider it reasonable to permit the development as proposed.

8.4. **Appropriate Assessment**

- 8.4.1. Having regard to the nature of the proposed development and the distance from 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.

9.0 Recommendation

9.1. I recommend that permission is granted subject to the following conditions.

10.0 Reasons and Considerations

10.1. Having regard to the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020, the Dublin City Development Plan 2016-2022, the existing pattern of development in the area, and the nature of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would provide an acceptable level of residential accommodation and would contribute to the overall zoning objective of the site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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 22nd day of January 2021, 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 proposed development shall be amended as follows:

(a) The proposed timber screen enclosure to the front of the site shall be replaced with a low level capped and plastered boundary wall, no higher than 1.2m, or as otherwise agreed with the Planning Authority. Save for a pedestrian gate, the wall shall enclose all of the site's boundary to the public path to No. 6 Kilmore Road.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

Reason: In the interest of public health.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. 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 noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity

6. 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 within three months of the date of this order 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.

Adrian Ormsby
Planning Inspector
08th May 2021