



An
Bord
Pleanála

Inspector's Report ABP-310116-21.

Development	Demolition of existing garage and construction of 2-storey mews dwelling.
Location	Rear of 141 Tritonville Road (Herbert Mews), Sandymount, Dublin 4.
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3759/20
Applicant	Paul and Frances Meagher
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant	Philomena Fyfe
Observer	None
Date of Site Inspection	17 th July 2021
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by a neighbour into the decision by the planning authority to grant permission for a mews development to the rear of a period dwelling in Sandymount.

2.0 Site Location and Description

2.1. Tritonville Road (Herbert Mews), Dublin 4

Tritonville Road in Sandymount is an inner suburban link road developed in the mid-19th Century as part of the late Georgian and early Victorian expansion of Dublin towards the coast. It runs south from Ringsend to the east and more or less parallel to the Dodder River. It is characterised by an attractive mix of typical early to mid-19th Century 2 and 3-storey 2 bay terraced houses, usually with substantial front and rear gardens with some mews accesses to the rear. The appeal site, no. 141, is on the west side of the road south of the junction with Herbert Road. There is a private lane – a mews dating to the original development of the area, running from Herbert Road serving a terrace of 9 dwellings. This serves a small cluster of mews dwellings on the north side, in addition to the rears of a number of houses on Tritonville Road. It terminates at the entrance to a single storey dwelling, while also taking a right angle following the line of the rear of no.141, giving access to the rear of no.143.

2.2. Appeal site

The appeal site, the rear of no. 141 Tritonville Road, is the rear garden of a typical mid terrace 2 storey 2 bay dwelling from around the mid-19th Century (the latter house is part of the 'blue lined' area of the site). It has a substantial front and rear garden and access to Herbert Mews to the rear. Total site area (the red lined area) is given as just under 150m², approximately one third of the overall landholding. There is a garage of some 30 m² on the site. It abuts a similar rear gardens to the north and a shorter garden and lane to the south (including what appears to be a storage building or garage). A single storey dwelling is just across this section of lane to the south of the site.

3.0 Proposed Development

The proposed development consists of the demolition of the garage and the construction of a 2 storey mews dwelling with 2 bedrooms. Total floorspace of the proposed dwelling is given as 148.2 m².

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 12 generally standard conditions.

4.2. Planning Authority Reports

4.2.1. Planning Reports

Two planning reports are on file, the second subsequent to a request for further information.

- Notes permission (upheld on appeal) for mews for no.137, this is considered to be a precedent.
- Notes that existing garage is used for vehicular access.
- Flood risk elements noted.
- Concerns over mature sycamore tree on adjoining site outlined.
- Concerns over legal interest in the laneway are noted.
- Following the submission of clarification on legal interest to use the site and to protect the tree, the second planning report concluded that the proposed development was acceptable in principle and recommended a grant of permission.

4.2.2. Other Technical Reports

Drainage: No objection subject to conditions.

Transport: Notes existing use of the rear garage. No objections subject to conditions

4.3. Prescribed Bodies

No responses

4.4. Third Party Observations

Four separate observations were submitted outlining a number of legal and planning objections.

5.0 Planning History

A previous application for permission for a mews on the site in 2019 (**3759/19**) appears not to have been followed up following a request for further information.

In 1994 permission was refused for a single storey dwelling on the site in two separate applications – **2038/94** and **2046/94** – both by reason for its impact on residential amenities.

In 2018 the Board, on appeal, upheld the decision of the planning authority (**2440/17**) to grant permission for a one-bedroom mews dwelling to the rear of no.137 Tritonville Road (**PL29S.248932**) – this dwelling is two doors to the north of the appeal site.

6.0 Policy Context

6.1. Development Plan

The site is in an area zoned as Z2 Residential neighbourhoods (Conservation Areas), with the zoning objective ‘*to protect and/or improve the amenities of residential conservation areas*’.

. In such areas, it is the policy of the City Council (CHC4) to:

To protect the special interest and character of all Dublin’s Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities may include:

- 1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting*
- 2. Re-instatement of missing architectural detail or other important features*
- 3. Improvement of open spaces and the wider public realm, and re-instatement of historic routes and characteristic plot patterns*
- 4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area*
- 5. The repair and retention of shop- and pub-fronts of architectural interest.*

General standards for mews dwellings are set out in section 16.19.16 of the Dublin City development Plan.

6.2. **EIAR**

Having regard to the small scale and nature of the proposed development within a long developed urban area, and the absence of any sensitive receptors in the immediate vicinity, the development would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

6.3. **Natural Heritage Designations**

There are no EU designated habitats on or in the vicinity of the site. The closest such habitats are the various littoral and marine SAC's and SPA's of Dublin Bay to the east. The **South Dublin Bay** SAC, site code 000210 and the **South Dublin Bay and River Tolka Estuary SPA** site code 004024 are within 1 km to the east of the site.

7.0 The Appeal

7.1. Grounds of Appeal

The decision to grant permission has been appealed by a local resident, Philomena Fyfe of 23 Herbert Road (the house to the south of the site at the end of the mews lane). The following are the main points to her appeal:

- Noted that a previous application was deemed to have been withdrawn following a request for further information.
- Notes that the site is within Flood Zone A and the planning authority did not appear to be satisfied with the original response by the applicant.
- Notes the Z2 zoning designation and the objective ‘to protect and/or improve the amenities of residential conservation areas. It is argued that the proposed development is contrary to this zoning objective as it is of such close proximity to the appellants property that it will seriously impact her residential amenities – it is noted that this was a reason for refusal under previous applications on the site.
- It is argued that it will directly overlook the appellants property (photos and extracts from the plans are attached in support of this argument).
- It is argued that the proposed balcony could facilitate the construction of an additional balcony that could overlook the property.
- It is argued that the 5 no. opes on the southern elevation will overlook the appellant’s garden. It is noted that the separation distance is just 5.7 metres.
- It is argued that it is unclear that car access to the proposed mews can be achieved without disrupting existing residents.
- Concerns are expressed that the proposed development will conflict with the existing wayleave for access along the lane.
- It is argued that the submitted information does not take account of recent flood events in the area.

- It is argued that the construction will have unacceptable impacts on immediate neighbours.
- Concerns are expressed at the potential impact on the existing mature tree to the rear of no.139 Tritonville Road.
- A number of precedents are outlined for refusals of similar mews developments are outlined.
- It is argued that it would set an undesirable precedent for further such developments in the area.

7.2. Applicant's response

- A detailed number of photographs are set out indicating the context and the layout of the existing site.
- It is argued that the proposed development was designed in a manner fully cognisant of local amenities. It is stated that two of the five windows on the southern elevation are opaque, and the others are small in size – the largest window is next to an internal void.
- It is noted that the appellants dwelling is single storey so there will be no direct loss of privacy.
- With regard to traffic, it is noted that the site is currently accessed by a car for the garage and the planning authority accepted this as demonstrating that there would be no additional access issues.
- A Tree Survey Plan is noted (originally submitted with the further information request) indicating that the neighbouring tree would not be directly impacted upon and could be protected through standard measures.
- It is indicated that the owners of the site have long had access through the lane, and it is denied there is any impact on wayleaves.
- It is noted that all works will be in accordance with an approved Construction Management Plan.
- In other respects, it is argued that the proposed development is fully in line with national and local policies and objectives for sustainable housing.

7.3. **Planning Authority Response**

The planning authority has not responded to the grounds of appeal.

7.4. **Observations**

None.

8.0 **Assessment**

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following general headings:

- Preliminary issues
- Principle of development
- Amenities
- Tree protection
- Traffic and access
- Conservation issues
- Other planning issues
- Appropriate assessment

8.1. **Preliminary issues**

The appellant has raised concerns about whether the applicant has title to access the rear mews, which appears to be private. The rear access has clearly been used by vehicles accessing no. 141 for some years, as with many of the other houses on this section of Tritonville Road. The applicant submitted significant clarification to the planning authority on this point and the planning authority were satisfied that the applicant had sufficient title to make the application. On the basis of the information on file I would consider that there is at least sufficient evidence to confirm that the applicant has in the past used this lane. I consider this to be a civil matter between the parties and as such S.34(13) applies.

8.2. Principle of development

The appeal site is in a Z2 residential conservation area and is adjacent to the curtilage of a protected structure. In such areas, mews developments are generally considered acceptable subject to the criteria set out in the development plan and general planning considerations. The Z2 designation is appropriate for the area as while there are no particularly important buildings or protected structures in the vicinity, the overall urban quality of Tritonville Road and its surrounds is very high, with the mid-19th century terraces generally in very good repair with most original external fittings intact.

Within the context of an area designated for the protection of amenities, Sandyford is an inner urban area with very good connections to the city centre with local bus and Dart services within easy walk. As such, within the context of national and regional policy to encourage higher density residential development within such areas, there is a presumption in favour of new dwellings when it can be demonstrated that it will not impact on amenities or the conservation qualities of the area.

The planning history of the mews is mixed, with previous applications refused, although the most recent application for a mews, to the rear of no. 137 Tritonville Road, was granted permission in 2019 and this was confirmed by ABP on appeal. The planning authority stated that they consider this to have set a precedent for other such mews developments along this lane, and as a general principle I would concur with this.

I would conclude that the principle of a new mews dwelling on the site is in accordance with the zoning designation and the general planning history of the mews, and each application should be judged on its own merits with particular regard to the Z2 designation and the general guidelines and standards set out in the Dublin City Development Plan 2016-2022.

8.3. Amenities

The proposed dwelling is a modest scaled 2-storey unit over a parking area. The planning authority considered that the internal amenities were acceptable and in

accordance with all Development Plan guidance, as is the provision of private open space.

The southern elevation has a number of opes facing the single storey building owned by the appellant at the end of the mews. It is less than 6 metres from this dwelling with a narrow lane separating the two properties. There are a total of five opes, two of which are for the en-suite bathrooms and are proposed to be opaque. The larger one is over a void designed to allow light into the lower levels. I would accept the argument submitted by the applicant that the size and design and orientation of these would not significantly impact on the privacy of the appellant, having regard to the overall nature of the area. The planning authority added a condition for opaque windows and I would concur with this approach and would recommend that the Board repeat it.

In other respects, the proposed development faces towards the existing dwelling and has one balcony. The balcony and the remaining opes face either the main house or over the mews. The design and orientation of the dwelling is very similar to that permitted by ABP for no. 137 (**PL29S.248932**). Any shadow or loss of light would primarily fall on the rear garden of the adjoining dwelling to the north of the appeal site. The length of the garden is such that this would not impact on the rear of this property to any significant degree.

The demolition and construction works would be close to existing dwellings and so some disruption and noise is inevitable, but I would consider that this issue can be addressed by way of a standard construction management condition.

I do not consider that the impact on neighbouring amenities would be unacceptable having regard to the nature and layout of the mews laneway and all separation distances are in accordance with guidelines.

8.4. Tree Protection

There are a number of mature trees in the rear gardens, including one particularly good sycamore tree which contributes to the overall quality of the private mews. The applicant has submitted details of how roots will be protected as part of normal good practice for the works with an arboriculturist report.

I consider these details to be acceptable and I do not recommend that any additional conditions are required to confirm this apart from a normal construction management condition.

8.5. Parking and access

The site is used for a single car garage and the proposed development would have a curtilage parking space for one. Notwithstanding the concerns over the wayleave expressed by the appellant, it is clear that this garage is used regularly, and the proposed development would not therefore significantly change the overall situation. It would displace parking for the existing dwelling, which lacks curtilage parking. But having regard to the overall parking situation in the area I would consider this to be acceptable.

8.6. Conservation

There are no protected structures or recorded ancient monuments near the site. The main terrace on Tritonville Road is of a high quality and the main house is in very good original condition but is not listed on the NIAH and is not a protected structure. I do not consider that the proposed development would significantly detract from the conservation or visual qualities of the area. The site is not within an archaeologically sensitive area.

8.7. Other planning issues

The site is in a high risk 'Flood zone A' area but there are no records of flooding and no indications that the proposed development would increase run-off. The site is at the edge of the historic flood plain of the Dodder River. I note that in recent years there has been very significant public investment in improving the flood barriers along this river from its confluence with the Liffey up to Ballsbridge. I note that the planning authority are satisfied that the design is appropriate for a Flood Zone A designated area.

The site is fully serviced with water and sewerage and there are no indications that the proposed extension could not be serviced.

I do not consider that there are any other planning issues raised in this appeal.

8.8. **Appropriate Assessment**

There are no EU designated habitats in the immediate vicinity of the site. The site is about 0.5 km west of the closest Natura 2000 sites – those in Dublin Bay. It is likely that surface water drains to the bay, to the **South Dublin Bay SAC**, site code 000210 and the **River Tolka Estuary SPA** side code 004024 using the city drainage system. The site is fully served by the public sewer and water system, and the proposed change of use would not substantively increase drainage or run-off, so there are no pathways for pollution or any other possible direct or indirect impact on the conservation interests of those designated sites.

I therefore consider that 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 European Site No. 000210 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 **Recommendation**

I recommend that the Board uphold the decision of the planning authority to grant planning permission subject to the conditions set out in section 11 below, for the reasons and considerations set out below.

10.0 **Reasons and Considerations**

Having regard to the provisions of the Dublin City Development Plan 2016 to 2021, and to the nature, and scale of the proposed development, it is considered that, subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, or give rise to a traffic hazard. 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 10th day of March, 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 bedroom windows in the south elevation and the two bathroom windows shall all be obscure glazed.

Reason: In the interest of residential amenity.

3. The car parking space for the mews dwelling shall be kept free from obstruction at all times for the use by the occupier of the dwelling and shall not thereafter be used for any other purpose other than for the parking of vehicles.

Reason: To ensure the provision of adequate off-street parking and traffic safety.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: In the interest of public health.

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 hours of working, tree protection measures, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

6. Site development and building works shall be carried out only between the hours of 0700 to 1800 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.

7. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall be erected on the within the rear garden area, without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the dwelling.

8. 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.

Philip Davis
Planning Inspector

19th July 2021