



An
Bord
Pleanála

Inspector's Report

ABP-310775-21

Development	Detached single storey studio space at the side of house.
Location	24A, Lea Road, Sandymount, Dublin 4
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	web1455/21
Applicant(s)	Kathy & Paddy Herbert
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Brian & Carol Gallagher
Date of Site Inspection	30 th August 2021
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.0235 is located a short distance to the west of Sandymount and on the western side of Lea Road. The appeal site is occupied by no. 24a, which is a two-storey end of terrace dwelling. To the north is no. 24, which is a two-storey dwelling attached to the dwelling on the appeal site and to the south is no. 25, which is a two-storey dwelling part of a separate terrace of dwellings to the south.

2.0 Proposed Development

- 2.1. Permission is sought for a detached studio space at the side of no. 24a Lea Road. The development will consist of an 11sqm artist's studio space with a side passage provided to access the rear garden. The 22sqm sedum flat roof will extend to form a porch roof at the entrance to 24a and a covered space to the rear of the studio.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 10 conditions. Of note is the following conditions...

3. The entire house top revert to use as a single dwelling and use of the artist studio to be confined solely to residents of the dwelling.
4. The artist studio to be used for the purposes described.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (09/06/21): The design and scale of the proposal was considered acceptable in the context of the visual amenities of the area and amenities of adjoining properties, and in accordance with the proper planning and sustainable development of the area. A grant of permission was recommended subject to the conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1 A submission was received from Brian & Carol Gallagher, 25 Lea Road, Sandymount, Dublin 4.

- The issues raised include breach of building line, loss of light, adverse impact on visual amenity and overdevelopment of the site with unauthorised subdivision of the existing dwelling on site.

4.0 Planning History

1181/13: Permission granted for two-storey attached dwelling with independent vehicular entrance to the side of no. 24 Lea Road and conversion of garage to bathroom and covered side passage.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Dublin City development Plan 2016-2022. The appeal site is zoned Z1 with a stated objective “to protect, provide and improve residential amenities”.

Section 16.10.12 Extensions and Alterations to Dwellings

(See also Appendix 17)

The design of residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy. In addition, the form of the existing building should be followed as closely as possible, and the development should integrate with the existing building through the use of similar finishes and windows. Extensions should be subordinate in terms of scale to the main unit.

Applications for planning permission to extend dwellings will only be granted where the planning authority is satisfied that the proposal will:

- Not have an adverse impact on the scale and character of the dwelling.
- Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.

Section 16.10.9 Corner/Side Garden Sites

The development of a dwelling or dwellings in the side garden of an existing house is a means of making the most efficient use of serviced residential lands. Such developments, when undertaken on suitable sites and to a high standard of design, can constitute valuable additions to the residential building stock of an area and will generally be allowed for by the planning authority on suitable large sites. However, some corner/side gardens are restricted to the extent that they would be more suitable for extending an existing home into a larger family home rather than to create a poor quality independent dwelling, which may also compromise the quality of the original house. The planning authority will have regard to the following criteria in assessing proposals for the development of corner/side garden sites:

- The character of the street.
- Compatibility of design and scale with adjoining dwellings, paying attention to the established building line, proportion, heights, parapet levels and materials of adjoining buildings Impact on the residential amenities of adjoining sites.
- Open space standards and refuse standards for both existing and proposed dwellings.
- The provision of appropriate car parking facilities, and a safe means of access to and egress from the site.
- The provision of landscaping and boundary treatments which are in keeping with other properties in the area.
- The maintenance of the front and side building lines, where appropriate.

5.2. Natural Heritage Designations

None in the vicinity.

5.3. EIA

The works in question are not of class as set out under Schedule 5 Part 1 and 2 of the Planning and Development Regulations, 2001 (as amended).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Brian & Carol Gallagher, 265 Lea Road, Sandymount, Dublin 4.

- The appellant outline current issues regarding unauthorised development at no. 24a Lea Road (sub-division into apartments) and note that enforcement action in relation to such is not statute barred. The appellants question the need for the structure noting that the unauthorised use has created the need for such and raise concerns regarding potential for specific conditions regarding use not to be complied with. The appellant considers that the proposal represents an over intense use and notes that the need for the development has been generated by unauthorised use mean a lack of justification for the level of development proposed.
- The appellant raises concerns regarding the level of projection forward of the building line and notes that there is no precedent for this level of deviation from established building line in the area. If the development is being considered for a grant the appellant suggest modifications.
- The proposed development due to location relative to the appellant property would result in loss of light to the front of eh adjoining property at no. 25.
- The proposal would create an undesirable precedent and such is proposed under circumstances in which there is unauthorised development and the applicant has sought to conceal such unauthorised development in the application and plans submitted.

- The appellant refers to two High Court cases in which there was emphasis on the need for accurate plans and particulars and the provision of such in the context of the Planning and Development Regulations.

6.2. Applicant Response

6.2.1 Response by the applicants. Kathy & Paddy Herbert.

- The response outlines the background to the proposal and the need for the development for use as an artist's studio for the applicant who is currently renting a studio space elsewhere. It is noted that the issue of leased out rooms is not relevant as the permission relates to construction of an artist's studio. The studio is modest in scale and does not take away from rear amenity space and has been designed to have respect to the character of the street and existing structures.
- The appellants claims regarding potential compliance with conditions is speculation.
- In relation to the building line it is noted the site is corner site where two different building lines meet and guidance for corner sites is provided under Section 16.10.9 of the Development plan. It is considered that the design would not adversely impact on the building line and is satisfactory in design and scale.
- In relation to loss of light it is noted that any loss of light to the appellants' property would be negligible and that the appellants' dwelling receives direct sunlight from around midday everyday throughout the year.
- It is noted that the grant of permission is subject to conditions regarding restriction of use and that such can be dealt with by the enforcement section in the event of non-compliance. It is noted that no enforcement action has been taken by the PA and that the PA can decide to refuse permission to applicant who have failed to comply with previous permissions or conditions on site. This does not apply in this case.
- The plans submitted by the applicant of the existing dwelling on site are accurate and reflect the existing layout.

6.3. Planning Authority Response

6.3.1 No response.

7.0 Assessment

7.1. Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Principle of the proposed development

Design, scale, visual and residential amenity

Unauthorised development/other issues

7.2. Principle of the proposed development:

7.2.1 Permission is sought an 11sqm artist's studio space with a side passage provided to access the rear garden. The 22sqm sedum flat roof will extend to form a porch roof at the entrance to 24a and a covered space to the rear of the studio. The proposal is for a structure within the curtilage of an existing dwelling for the purpose of use as an ancillary structure with the specific purpose indicated as being an artist's studio for the applicant. The appeal site is located within an established residential area, within the curtilage of an existing residential property and is in an area zoned Z1 with a stated objective "to protect, provide and improve residential amenities". I consider that the principle of the proposed development for a structure ancillary to existing residential use is acceptable in principle and that the main issue concerns the overall scale and physical impact of the development in the context of the visual amenities of the area and the residential amenities of adjoining properties.

7.3 Design, scale, visual and residential amenity:

7.3.1 The proposed structure is a single-storey structure with a flat roof, a ridge height of 3.711m and a floor area of 11sqm. In terms of overall scale relative to existing dwellings in the vicinity, the proposed structure is modest in scale and height. I would consider that the design of the structure, which has a curved front elevation to reflect the location of the site on the bend of the road and the change in angle of the front

elevation of the existing dwelling on site to the dwelling on adjoining site at no. 25. I would be of the view that the design of the proposal integrates well with the existing dwelling on site and would be acceptable in the context of the overall visual amenities of the area. In relation to building line it is notable that no. 24a, has a different building line to the dwellings to the north and is projected forward of such. In relation the building line of the dwellings to the south there is a change in direction and orientation between the dwelling and appeal site and no. 25 to the south. I am satisfied that the modest scale of the structure taken in conjunction with its overall design would mean it would not be detrimental to the visual amenities of the area. In this regard I do not consider a precedent is being set for undesirable development with the overall design proposed being satisfactory in terms of its aesthetic appearance and its integration with the existing dwelling on site.

7.3.2 The appellant raises concerns regarding the impact of the development on light levels due to its projection forward of the building line of no. 25 and its location relative to a window serving a room at the front of their house. I would consider that overall scale of the extension is modest and that such projects 3.2m forward of the building line of no. 25, is 3.5m in height relative to no. 25 and is also located north of the appellants' dwelling. I am satisfied that based on modest scale of the development and its orientation in relation to the appellants dwelling that there is unlikely to be any significant loss of amenity through overshadowing/loss of light.

7.3.3 The proposal does not impact on the level of private amenity space associated with existing dwelling due its location to the side and front the existing and dwelling and subsequently no reduced amenity level for the occupants of the existing dwelling.

7.4 Unauthorised development/other issues:

7.4.1 The appellant raises a number of issues relating to the fact the existing dwelling is subdivided into multiple residential units and that the proposal constitutes overdevelopment of the site. The appellant raises concerns about the potential compliance with conditions attached in the event of a grant of permission. The

appellant raises concerns regarding the accuracy of the plans submitted in relation to the existing dwelling in the context of the requirements of the Planning and development regulations. The appellants' also raise the implications of condition no. 3, which requires the entire property to revert to use as a single unit with case law cited by the appellants.

7.4.2 The proposal sought of the development as described in the public notices and this the development is being considered on its merits. In relation to issues of unauthorised development I would note that there does not appear to have been a permission granted to subdivide no. 24a and it is noted in the Planning report that such has been done and the report questions whether enforcement action can be taken. On this issue the Board is not the enforcement authority and has no power in regards to unauthorised development with this function falling solely on the Planning Authority. This assessment does not include an assessment of unauthorised development and is an assessment on development proposed on its merits and such is set out in the previous section of this report.

7.4.3 In relation the accuracy of plans I would note that the plans submitted provide a clear indicate of the development proposed and the development being assessed and the proposal does not entail any alteration to layout or function of the existing dwelling on site and such is not being considered under this assessment. In relation to the potential for compliance with conditions attached in event of a grant of permission, such is not a consideration on whether permission should be granted or not is a speculative consideration. The Planning Authority have a function and powers in relation to planning enforcement in the event that such is required. In relation conditions to be attached in the event of a grant of permission I would recommend condition specifying that the proposed development be used for a purpose ancillary to the use of the existing dwelling on site.

8.0 Appropriate Assessment

8.1 Having regard to the nature and scale of the proposed development and its proximity to 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 a grant of permission subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development which is ancillary to the use of the existing dwelling on site, the overall design and scale, which is subordinate in scale to the existing dwelling on site and structures in the vicinity, the proposed development would be satisfactory in the context of the visual amenities of the area and the amenities of adjoining property. 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, 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 detail of the external finishes on the walls shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The proposed artist studio/home office/store extension shall be used solely for that purpose/or a purpose ancillary to the use of the main dwelling.

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

4. Site development and building works shall be carried out only between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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 amenities of property in the vicinity.

Colin McBride
Planning Inspector

09th August 2020