



An
Bord
Pleanála

Inspector's Report

ABP-313126-22

Development

Permission is sought for partial demolition and change of use from workshop to two two-bedroom semi-detached dwellings with raised roof and a first-floor extension on the south side with rooflights to front and rear.

Location

The Lane, Westminster Court,
Brighton Road, Dublin 18

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

D22A/0009

Applicant(s)

Mary Muldowney

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Mary Muldowney

Observer(s)

None

Date of Site Inspection

13/10/2022

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located on Westminster Court in the south Dublin village of Foxrock, Dublin 18. The site currently comprises a two-storey workshop with single storey shed to the rear (east) and informal parking to the front (west). It is accessed from Westminster Road via a laneway that serves the existing site, the rear entrance to an adjoining yard and to the rear of Brighton Cottages.
- 1.1.2. The site is bound to the north by the rear gardens of Westminster Court and a pedestrian laneway that serves those properties. To the immediate south of the site is an open yard attached to an industrial shed that wraps around the eastern boundary of the subject site. That yard and shed, which appear to be an auto-service business open out onto a fuel service station with convenience shop on Brighton Road.
- 1.1.3. The workshop on the subject site extends into the yard, with a door and window onto the yard (western elevation) and also into the shed (western elevation). The extent of the subject site is not clearly differentiated from the adjoining auto-service operation.

2.0 Proposed Development

- 2.1.1. On the 7th January 2022 planning permission was sought for a development that comprises the partial demolition of and change of use from workshop to two two-bedroom semi-detached dwellings, with a first floor extension to the side.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 3rd March 2022 the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:

- 1 Having regard to the Objective A zoning of the subject site, which seeks 'to protect and/or improve residential amenity' the subject proposal, which comprises the provision private open space that does not meet the minimum requirements of section 8.2.8.4(i) of the County Development Plan 2016-2022, is not deemed to be capable of delivering adequate levels of residential amenity. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

2. The proposed development intends to build over the wayleave for an existing public sewer. Such works, if permitted, would impede access to the wayleave for maintenance and repair purposes, which has the potential to be seriously detrimental for public health.

3.2. **Planning Authority Reports**

- 3.2.1. **Transportation Planning:** Proposed car parking and pedestrian access is less than desirable. Currently up to 3 no. cars are parked in front of the workshop. Applicant should be requested to address the deficiency in cycle parking.
- 3.2.2. **Drainage Planning:** Council records indicate a 675mm diameter surface water sewer traversing the northern boundary of the site. Council policy requires a 6m wayleave (3.0m either side). Proposed development would introduce new development within the required wayleave extent which would reduce and impede the future access and maintenance ability of the Council. Not reasonable or practical to divert the sewer. Permission should be refused.
- 3.2.3. **Planning Report:** Proposed dwellings fall below the gross floor area recommended by the 2007 Quality Housing Guidelines, but this is not deemed material. Proposed 37sq.m. of private open space is significantly below the required 48sq.m. resulting in over-development of the site. Proposed ground floor window on southern façade, looking into the yard of the adjoining business is not acceptable. Planning Authority has significant concerns in relation to the quality of internal spaces and the amount of sunlight and daylight they would receive. Laneway is 3.7m with pinch points. Proposed parking would encroach on the laneway, creating a conflict with other laneway users. Query over whether there is sufficient room to turn vehicles. Query over ownership of the laneway and whether the applicant has sufficient interest to provide access to the site. Proposed development over an existing 675mm sewer would deteriorate an already inadequate situation in terms of access to a public sewer. Recommendation to refuse permission.

3.3. **Prescribed Bodies**

- 3.3.1. None on file.

3.4. **Third Party Observations**

- 3.4.1. One observation on the application raises the issues of drainage, overlooking, and access.

4.0 **Planning History**

- 4.1.1. Planning Authority reg. ref. **D95A/0206**: Planning permission granted for the retention and completion of extensions to workshop at 1 Brighton Road (rear of Westminster Court). The floor area of development is stated to be 26sq.m. in a building of 245sq.m. on a site of 453sq.m. The use of the building was stated to be engineering workshop and stores. Permission was granted subject to 6 no. conditions.

5.0 **Policy Context**

5.1. **Dun Laoghaire Rathdown Development Plan 2022-2028**

- 5.1.1. The 2022 Dun Laoghaire Rathdown development plan came into effect on the 21st April 2022, after the assessment of the subject application by the Planning Authority.
- 5.1.2. The zoning of the subject site did not change in the 2022 plan and it retains its Objective A Residential zoning, which has the stated objective ‘to provide residential development and improve residential amenity while protecting the existing residential amenities’. Residential use is permitted in principle in such zones.
- 5.1.3. **Policy Objective PHP19: Existing Housing Stock – Adaptation:** It is a Policy Objective to: Conserve and improve existing housing stock through supporting improvements and adaption of homes consistent with NPO 34 of the NPF. Densify existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods.
- 5.1.4. **Section 12.3.7.7** of the development plan refers to Infill Development and states: In accordance with Policy Objective PHP19: Existing Housing Stock – Adaptation, infill development will be encouraged within the County. New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/ gateways, trees, landscaping, and fencing or railings. This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th

century suburban 'Garden City' planned settings and estates that do not otherwise benefit from ACA status or similar.

5.2. **Natural Heritage Designations**

- 5.2.1. The subject site is approx. 6.4km from the Rockabill to Dalkey Island SAC (003000), Dalkey Islands SPA (004172), 3.9km from the South Dublin Bay and River Tolka Estuary SPA (004024) & South Dublin Bay SAC (000210) and 6.9km from the Wicklow Mountains SAC (002122) and SPA (004040).

5.3. **EIA Screening**

- 5.3.1. Having regard to nature and scale of the proposed development and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. An agent for the applicant has submitted a first-party appeal against the decision of the Planning Authority to refuse permission. The grounds of the appeal can be summarised as follows:

- Planning permission was granted in 1995 (D95A/0206) for retention and completion of works to the workshop, within the wayleave of the 675mm sewer, abutting the pedestrian lane containing the sewer.
- The existing access to the site is private. Access to the site is established and in use for over twenty-seven years. There is a right-of-way over the lane from 1997. Map attached to appeal submission.
- The laneway is 3.7m wide, satisfying section 8.2.3.4(vi) of the development plan. It is a short cul-de-sac with low traffic volumes.
- Access to the adjoining garage is across a right-of-way. More generally access is via the front of the property on Brighton Road.

- Access to the rear of the Brighton Cottages is via a barrier at the end of the laneway.
- The only users of the lane are the applicant and no. 4 Brighton Cottages.
- There is sufficient space to execute a three-point turn and exit the lane in forward motion.
- The proposed development complies with the 2016 and 2022 development plan zoning objectives.
- All of the building within the sewer wayleave is existing. Only part of the single storey shed is to be demolished. The Planning Authority's error in describing the extent of demolition may have led to a belief that new buildings are proposed over the wayleave. The proposed development involves refurbishment of the existing building over the wayleave.
- The shed to be demolished is independent of the adjoining site and is outside the sewer wayleave.
- Two cars and bicycle parking fit on site without impacting the laneway. Sheffield stands as per section 4.1 of the Cycle Parking for Residential Development (Jan 2018).
- Existing foul drainage connection to the public sewer will be used. The proposed development involves an increase in permeable areas, reducing the existing extent of hard surfaces to 37% of original run-off. The drainage department of Dun Laoghaire Rathdown did not object. There is no flood risk.
- Eaves level will be raised to 5.1m, to allow for sufficient headroom at first floor level. This will not be a noticeable impact.
- The existing window at ground level can have a 2m x 2m portion of garden located outside as this part of the yard is not essential to the functioning of the business. All window sizes comply with Building Regulations.
- The proposed dwellings will not cause overlooking or overshadowing of adjoining properties.
- While overall floor areas are below the guidelines. The living and bedroom spaces comply and storage exceeds the minimum.

- The proposed additional accommodation is in a built-up urban area that is zoned for residential use, is close to services and transport, has car parking and integrates with the surrounding development, in compliance with section 8.2.3.4 of the development plan.
- Private open space is less than the development plan requirement but the subject site is in the centre of a village. The proposed gardens at 4m x 9.15m are larger than those in Brighton Lodge. If the Board requires greater private open space provision, this can be acquired from the adjoining site at cost to the applicant and causing hardship to the adjoining tenant.
- The location of the 675mm sewer is shown relative to the 1995 permitted extension, the existing open yard, the portion of shed to be demolished, the existing open parking area and the 6m wayleave. There is no necessity to divert the sewer.
- The Planning Authority granted permission for development within the wayleave in 1995. The proposed development is simply a change of use of that permitted development. No new building is proposed. The floor loading would reduce from 5kN/m² to a domestic load of 1.5kN/m², a reduction of over 33%.
- The Board is requested to grant permission.

6.2. Planning Authority Response

6.2.1. None on file.

6.3. Observations

6.3.1. None on file.

7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development

- Residential Amenity
- Wayleave

7.2. Principle of Development

- 7.2.1. The subject site is located in an area zoned to protect and / or improve residential amenity. The principle of the proposed development is acceptable, subject to other planning considerations.
- 7.2.2. The subject site parts part of a larger site indicated as being in the applicants ownership. The existing workshop building extends at ground floor level into the open yard of the adjoining auto-service operation, with a single storey structure that has a door and window facing into the open yard and a door facing into the shed of the auto-service building. I note that the applicants drawings show this single storey structure as being 1.206m wide (see drawing no. 6845-BP10 and 6845-01) with no openings. This is not correct as per my site visit of 13th October 2022, where a single storey structure of approx. 2.5 wide with a window and door that opens into the open yard was clearly seen. A further door on the opposite side of the structure (east) opens into the shed. It is possible that only the first 1.2m of this single storey structure are attached to the workshop and that the rest of the structure is connected to the adjoining auto-service business. This is suggested in the drawings for the proposed development which shows a 1.2m single storey part of the existing building being incorporated into the proposed dwellings. Should that be the case, the existing site plan should nonetheless accurately reflect the extent of existing development on site.
- 7.2.3. The Board may wish to seek clarification of this apparent discrepancy.

7.3. Residential Amenity

- 7.3.1. It is proposed to convert the existing two-storey workshop into two 2-storey semi-detached dwellings. The proposed development involves the demolition of an existing single storey shed that lies to the rear of the existing workshop and to the north of the shed housing the auto-service operation. This area of demolition will become the private open space of the proposed dwellings.
- 7.3.2. The configuration of the structures on site and division of the site into two will result in part of the second dwelling being bound to the south and east by the adjoining

service business. The side (south) elevation of the dwelling will have a ground floor window looking into the open yard of the adjoining business. The rear (east) elevation of this dwelling will also be bound by the auto business, with the result that the first floor bedroom and en-suite windows on the rear / eastern elevation will look onto to a pitched corrugated iron roof with an overall height of 5.7m. This is contrary to the 2007 Quality Housing for Sustainable Communities Guidelines which advise that care should be taken to minimise obstruction of daylighting to nearby windows by protruding extensions or outbuildings.

- 7.3.3. The northern gable wall (5.4m in height) of the auto-service business will form the boundary of the private open space of the second (southern most) dwelling. I raise a concern about the residential amenity offered to the residents of this dwelling – being surrounded on two sides by an active auto-service operation. The proposed ground floor window into the open yard would offer no privacy to future residents while the amenity and light of the first-floor bedroom would undoubtedly be compromised.
- 7.3.4. The private open space proposed for the two dwellings is 36.9sq.m. each, a rear garden of 10.22m long and approx. 4m wide. Section 12.3.7.6 of the 2022 County Development Plan requires a minimum of 48sq.m. of private open space, with a minimum length of 11m for new two-storey backland dwellings. A relaxation in rear garden length can be accepted, once sufficient private open space is provided. Neither of the requirements are fulfilled with the proposed development. Further, as noted above, the high gable wall to the shed to be retained would create an imposing feature that would result in a garden that would not provide much residential amenity.
- 7.3.5. I note that the appellant offers a 2x2m garden within the yard, however this solution is not possible within the existing red line boundary. Nor does it appear practical: the resulting small area of open space would not be accessible, would still be surrounded by an auto service business and would still be subject to a lack of privacy.
- 7.3.6. Section 12.3.4.2 of the 2022 development plan refers to the minimum sizes of habitable rooms, requiring compliance with the 2007 Quality Housing for Sustainable Communities Guidelines. For a two-bedroom four-person dwelling, two storey dwelling the recommended gross floor area is 80sq.m. The proposed dwellings are

78sq.m. and 77.3sq.m., marginally below the recommended standard. In isolation his shortfall is not considered significant, however in conjunction with the concerns raised above regarding the juxtaposition of the proposed dwellings with the wrap-around service yard, it is considered that the overall residential amenity of the proposed dwellings is compromised.

- 7.3.7. I concur with the assessment of the Planning Authority that the subject site may be suitable for a single dwelling. The location of the site within the village centre, on zoned and serviced land is such that it is currently under-utilised. A single residential use on the subject site would be appropriate.

7.4. Wayleave

- 7.4.1. The Planning Authority's second reason for refusal refers to the existence of a 675mm sewer running east-west along the northern boundary of the subject site. The Drainage Department of Dun Laoghaire Rathdown state that it is Council policy to require a minimum 6m wayleave -3m either side of the external face of a public sewer to any building or development structure.
- 7.4.2. The appellant has refuted this reason for refusal, stating that Dun Laoghaire Rathdown has previously granted permission for a building within the wayleave and that the proposed residential development would reduce the load on the floor to that of a domestic load.
- 7.4.3. That the subject building exists within the wayleave is acknowledged by the Planning Authority. The internal report from the Drainage Department to the Planning Authority states that the proposed development would introduce "new works", which would reduce and impede the future access and maintenance ability of the Council.
- 7.4.4. The location of the sewer or a requirement to have a wayleave either side of the sewer was not addressed in the 1995 planning application. The decision of the Planning Authority then cannot be held as a precedent for any future development within the wayleave. The proposed development represents a significant intensification of use. It is considered reasonable and appropriate for the Drainage Department to advise against further development within the wayleave. I concur with the assessment of the Planning Authority that permission should be refused on the grounds that further development (in this instance an intensification of use) within the

wayleave would reduce and impede the future access and maintenance ability of the Council.

7.5. **Appropriate Assessment**

7.6. Having regard to the nature and scale of the proposed development to be retained in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that 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**

8.1. I recommend permission be REFUSED for the following reasons:

- 1 The proposed development of two dwellings on a restricted site that forms part of a larger landholding in industrial use, would fail to meet the standards of the Dun Laoghaire Rathdown County Development Plan 2022-2028 required to provide for residential amenity of future residents. The proposed development does not accord with the zoning objective for the area, which seeks to provide residential development and improve residential amenity while protecting the existing residential amenities, and is therefore considered to be contrary to the proper planning and sustainable development of the area.
- 2 The proposed development comprises an intensification of use of a building constructed within a wayleave of an existing public surface water sewer. The proposed development, if permitted, would impede access to the wayleave for maintenance and repair purposes and therefore would be prejudicial to public health.

Gillian Kane

Senior Planning Inspector
25 October 2022