



An
Bord
Pleanála

Inspector's Report

ABP-313635-22

Development	Change of use for part of the building from commercial use to residential use, and all associated site works.
Location	2 Killiney View, Glenageary, Co. Dublin, A96 C2R9
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D22A/0175
Applicant(s)	Peter O'Callaghan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Peter O'Callaghan
Observer(s)	None
Date of Site Inspection	22 nd June 2023
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.0146 hectares, is located in Glenageary, in the administrative area of Dun Laoghaire Rathdown County Council. The site is located off the eastern side of Albert Road Lower, with The Metals pedestrian/cycleway to the immediate south/front of the site, running alongside the Dart line. This pedestrian/cycleway connects to the east to Killiney and to the northwest to Dun Laoghaire. Glenageary Dart station is c. 222m west of the site. Adjacent the site to the east is a hard standing area, east of which is a two-storey dwelling, no. 3 Killiney View, Glenageary.
- 1.2. The site is part of an L-shaped two-storey block consisting mainly of commercial development at ground level. The building at ground floor level appears to comprise an office unit. The neighbouring unit at ground level has a veterinary use at ground level, a boutique, and residential use at first floor level.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Change of use of upper floor of a commercial unit to 1 x two bed unit (76 sqm) with balcony to the rear and 1 x one bed unit (66sqm) with balcony to the front elevation and all associated changes including new entrances and new cladding to east facing side elevation to be in timber and plaster render finish.

3.0 Planning Authority Decision

3.1. Decision

Permission REFUSED on 29th April 2022 for the following reason:

R1: The rear balcony elements of the development, as proposed, by reason of their proximity to site boundaries and relationship of same to existing adjacent properties, fail to have due regard to the amenities of adjacent properties and would thus not accord with the provisions of Policy Objective PHP19: Existing Housing Stock – Adaptation, or the A land use zoning objective of the site and surrounding properties which seeks ‘to provide residential development and improve residential amenity

while protecting the existing residential amenities'. The proposed development would therefore be contrary to the provisions of the Dun Laoghaire-Rathdown County Development Plan 2022-2028. Furthermore, the proposed development would, if permitted, set an undesirable precedent for similar development in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is noted:

- Relaxation of communal open space requirement acceptable in accordance with section 12.8.3.2 of the development plan, where relaxation allowed for building refurbishment schemes on sites up to 0.25ha.
- Front balcony with 1.8m high glazed screen incorporating opaque glazing is acceptable.
- Balcony elements to the rear unacceptable given location over a ground floor element; given immediately abutting shared boundary with 1A/1B Killiney View and open space to the rear of same; and location a minimum of 2.5m from property boundary and rear garden of 41 Albert Road Lower to the north of the site.

3.2.2. Other Technical Reports

Drainage Report – no objection.

Transportation – no objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

ABP ref PL06D.242342 (D13A/0255) – Permission GRANTED by ABP at 2 Killiney View for change of use of part of building from commercial use to residential use of one two bedroom units and associated alterations, including two new entrances, commercial use to be retained in ground floor, with balcony at front to provide outdoor space.

D12/0238 – Permission REFUSED at 2 Killiney View for change of use of part of building from commercial use to residential use of one two bedroom units and associated alterations, including two new entrances, commercial use to be retained in ground floor, with balcony at front to provide outdoor space.

Two reasons for refusal, relating to location of car parking and inadequate width of parking bays; and substandard private open space and storage provision.

5.0 Policy Context

5.1. National Policy

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities (2020)

5.2. Dun Laoghaire Rathdown County Development Plan 2022-2028

- Zoning Objective A ‘To provide residential development and improve residential amenity while protecting the existing residential amenities’.
- cACA The Metals, a public right of way, runs adjacent to the railway to the immediate south of the site.

- Policy Objective HER28: The Metals It is a Policy Objective to manage and enhance The Metals from the People’s Park to Dalkey giving due regard to its historic importance while continuing to facilitate and encourage its use as a walking and cycling route between Dún Laoghaire and Dalkey.
- Policy Objective PHP19 Existing Housing Stock – Adaptation:...
 - It is a policy objective to...Densify existing built up areas in the County through small scale infill development having due regard to the amenities of the existing established residential neighbourhoods.
 - Implementation of this policy will necessitate the use of the Council’s powers under planning - and other associated legislation – to:
 -
 - Support ‘Living-Over-the-Shop’ schemes. Encourage residential use of the upper floors of existing commercial properties in retail / commercial areas including in the environs of Dún Laoghaire, Glathule, Dalkey, Sandycove, Blackrock, Monkstown and Dundrum (refer also to Section 12.3.7.8)....
 - Prevent any new development or change of use which would seriously reduce the amenity of nearby dwellings...
- Chapter 12 Development Management
 - Section 12.3.5 Apartment Development
 - All apartment developments shall accord with or exceed the minimum floor areas indicated in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’, (2020), as set out in the Table 12.4 below.
 - One Bedroom = 45 sqm
 - Two Bedroom (3 persons) = 63 sqm
 - Two Bedroom (4 persons) = 73sqm
 - Section 12.3.7.9 Living-Over-the-Shop

In encouraging the residential use of the upper floors of commercial properties in established retail/commercial areas the Council will consider possible dispensations from normal standards to facilitate 'Living-Over-The-Shop' developments, that will contribute positively to the renewal of areas provided any proposed modifications will not have a negative impact on visual amenities or the existing streetscape. The Planning Authority will encourage 'living over the shop', subject to suitability of location, standard of accommodation proposed, and the following should be noted in this regard:

- Derogations for older commercial buildings in appropriate cases may be given in respect of private open space, parking, and unit size standards.
- Derogations for car parking may be allowed having regard to parking policy.
- Section 12.8.3.3(ii) Private Open Space for Apartment Developments: One bed = 5sqm; Two bed (3 persons) = 6 sqm; Two bed (4 persons) = 7sqm.

5.3. **Natural Heritage Designations**

The following sites are located c.1.2-2km northeast of the appeal site:

- South Dublin Bay SAC (000210)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- Dalkey Island SPA (004172)
- Rockabill to Dalkey Island SAC (003000)
- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206)

5.4. **EIA Screening**

The proposed development is for a change of use where no major construction works or intervention in the natural surrounds are involved. The proposed development does not therefore constitute a development project for the purpose of

EIA. 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

The grounds of appeal is submitted by the first party and is accompanied by a letter of support from the neighbouring veterinary clinic. The grounds of appeal is summarised as follows:

- The rear balcony elements would have a 1.8m high obscured sand blasted glazed screen to front and side boundaries to protect the amenities of adjacent properties from overlooking.
- The existing rear window configuration has currently no protection form overlooking.
- There were no third party objections. The project was discussed with the neighbours and no concerns were raised.
- The previous permission had minimal open space and want to improve on that minimal provision.

6.2. Planning Authority Response

The planning authority refers the Board to the planners report and considers the grounds of appeal does not raised any new matter which would justify a change of attitude to the proposed development.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Residential Amenity of Neighbouring Properties

7.1. Residential Amenity

- 7.1.1. The provision of residential development is considered acceptable in principle within the zoning objective for the area and is in accordance with policies to support Living-Over-the-Shop schemes, subject to assessment against impact on existing residential amenity.
- 7.1.2. I note the operative development plan highlights that any additional residential units in an established area shall have regard to the character of the area and site context. In relation to living-over-the-shop developments, the operative development plan states the Council will consider possible dispensations from normal standards to facilitate 'Living-Over-The-Shop' developments, that will contribute positively to the renewal of areas provided any proposed modifications will not have a negative impact on visual amenities or the existing streetscape. Derogations will be considered for older commercial buildings in appropriate cases in respect of private open space, parking, and unit size standards, and also derogations for car parking may be allowed having regard to parking policy.
- 7.1.3. The PA is of the view that the proposal would unduly impact on the amenity of existing adjacent properties to the northeast and north of the site. The PA also highlight that to simply omit the balcony to the two-bed unit would be undesirable as a solution to the issues raised.
- 7.1.4. I note with regard to the first floor apartments of the adjoining unit that they do not appear to have access to any private amenity space, with no access to the rear yard area which is in use by the veterinary clinic. To repeat the scenario where a residential unit has no access to private open space is undesirable, notwithstanding the confined nature of the site. I consider further hereunder the design of the existing

balconies and their impacts, noting the Board previously permitted one apartment with balcony to the front at first floor level at this location.

- 7.1.5. In terms of the impact of the rear balcony to the two-bedroom unit on the outlook of the neighbouring apartment unit in the adjoining building, I do not consider the proposed balcony would have an overly obtrusive or negative impact given its intended use and design with opaque glazing. The balcony would in my opinion have a negligible visual impact over the existing outlook which is onto a flat roof and concrete yard area with sheds. Given the orientation of the windows relative to the path of the sun, I do not consider the balcony would have a significant impact on daylight on the neighbouring unit. I consider the use of opaque glazing does have a negative impact on the amenity of future occupants given the limited outlook, however, having regard to the limited scale of the site and the derogations applicable in the living-over-the-shop provisions within the development plan, I consider this, on balance, to be a reasonable approach to the design. In terms of potential impact in terms of noise from the balcony, which is proximate to what appears to be a kitchen window, the proposal will alter the level of noise that exists, but not to such an extent in my mind that would warrant a refusal. A degree of activity is to be expected from any amenity space in an urban area and such activity in a residential area is not out of context with the wider area.
- 7.1.6. In terms of the impact of the two rear balconies on the residential dwelling to the north, I note a portion of the balcony is toward the rear extension to that house with a distance of 3.5m to the boundary where it is open to that boundary. I note there is a degree of overlooking in existence from the existing windows on the existing elevation facing toward the northern boundary. The balcony of the one-bed unit will be facing toward an intervening shed. The north facing elevations of the balconies will be designed with 1.8m high opaque glazing to prevent overlooking, therefore through their design in addition to their angled position I do not consider the degree of overlooking will be so significant as to warrant a refusal. I do not consider the level of noise generated from the use of the balconies will have a significant negative impact on the amenity of the dwelling to the north, with the remainder of the street comprising dwellings with large gardens, therefore, as noted previously, I consider the potential noise associated with the enjoyment of an amenity space is not unusual in the context of the area.

- 7.1.7. I acknowledge there will be a degree of impact on neighbouring properties given the change of use is from a commercial to a residential use with first floor balconies and I acknowledge the site is limited in area. However, this impact has to be balanced against local policy to support living over the shop and densify existing built up areas, as well as government policy to deliver new residential units in existing urban areas with services and amenities. I note the extent of low density family dwellings in the immediate area and consider the provision of two apartments would be a welcome addition to the area and in particular will be of benefit in providing increased activity overlooking The Metals pedestrian/cycleway.
- 7.1.8. In terms of the issue raised of the balcony being over a flat roof extension, I do not consider this a significant issue given it is over a commercial unit and the development would be subject to building regulations in terms of construction standards.

7.2. Other Matters

- 7.2.1. I note the windows to the ground level apartment on the east elevation are high level and comprise obscure glazing. I see no requirement for obscure glazing given the high level nature of the windows and therefore to improve daylight and outlook, the obscure glazing should be omitted.
- 7.2.2. In relation to the finish to the side elevation, I note that a timber cladding is proposed. This is in contrast to the brick and render finish of the existing building. I consider a plastered and painted render finish would be more in keeping with the existing building. I note under the previous permission, details of finishes were to be agreed with the planning authority.

7.3. Appropriate Assessment Screening

- 7.3.1. Having regard to the nature and scale of the proposed development, which relates to the change of use of an upper floor of an existing building from a commercial to a residential use, in an established and serviced residential area, and having regard to the proximity to the nearest European site, I am satisfied that 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

I recommend that permission for the change of use development be granted for the following reasons and considerations, subject to conditions.

9.0 Reasons and Considerations

- 9.1. Having regard to the provision of the Dun Laoghaire Rathdown County Development Plan 2022-2028, in particular Policy Objective PHP19 and living-over-the-shop provisions and having regard to the zoning objective, the design, layout and small scale of the development, and to the pattern of development in the area, it is considered that subject to compliance with conditions below, the proposal would not seriously injure the amenities of the area or of property in the vicinity, and would not adversely or materially impact on the character of the building or streetscape. 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, 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 interests of clarity.
2.	This permission is for one one-bedroom apartment and one two-bedroom apartment only.

	Reasons: In the interests of clarity.
3.	<p>The proposed development shall be amended as follows:</p> <p>(a) The timber cladding on the eastern elevation shall be replaced with a rendered and painted finish in keeping with the existing building.</p> <p>(b) The high level windows at ground level on the eastern elevation shall comprise standard glazing in place of the proposed opaque glazing.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority/An Bord Pleanala prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
4.	<p>The rear balcony elements shall comprise a 1.8m high obscured sand blasted glazed screen to front and side boundaries and the front balcony shall comprise a 1.8m high obscured sand blasted glazed screen to the eastern side. These glazed elements shall be permanently maintained in place.</p> <p>Reason: In the interests of residential and visual amenities of the area.</p>
5.	<p>A plan containing details for the management of waste, including the provision of facilities for the storage and collection of waste shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: In the interest of residential amenity.</p>
6.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0700 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</p>

	<p>circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p> <p>Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.</p>
9.	<p>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.</p> <p>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.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Una O'Neill
Senior Planning Inspector

26th June 2023