



An
Bord
Pleanála

Inspector's Report ABP-313829-22

Development

1) Construction of a 2 storey, 2-bedroom flat-roof mews dwelling with ground level garden and courtyard; 2) landscaping, boundary, treatments and associated site works and services. No. 38 Mountpleasant Avenue Lower is a Protected Structure.

Location

Rear of 38, Mountpleasant Avenue Lower (fronting Fortescue Lane), Dublin 6

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3653/22

Applicant(s)

Dearcrest Limited

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Dearcrest Limited

Observer(s)

Aoife O'Riordain & Edward Guiney

Maura King
Conor Chakravarty
Kieron J. Walsh & Alicia O'Keeffe
Emmet Butler
Mo Flynn & Stephen Wescott
Pat Barry

Date of Site Inspection

23rd June 2023

Inspector

Lorraine Dockery

1.0 Site Location and Description

- 1.1 The subject site is located to the rear of 38 Mountpleasant Avenue Lower, Rathmines, Dublin 6, a Protected Structure. The site has a stated area of 125m² and is currently overgrown. The subject site is accessed and fronts onto Fortescue Lane. There are a number of mews type developments and commercial properties along the lane.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a two-storey, two-bedroom mews dwelling with ground level garden and courtyard, landscaping, boundary treatments and associated site works and services.
- 2.2. The stated floor area of the proposed dwelling is 102m².

3.0 Planning Authority Decision

3.1. Decision

The planning authority REFUSED permission, as follows:

1. Having regard to the existing pattern of development on Fortescue Lane, to the existing level of parking demand, to the limited capacity of the lane to accommodate vehicular traffic including emergency and service access and in the absence of a plan for the coordinated development of the mews lane it is considered that further mews dwellings would add to the traffic congestion on the lane and would result in increased pedestrian, cyclist and vehicle use conflict. The mews development does not comply with aims and objectives of the Dublin City Development Plan 2016 – 2022, Section 16.10.16 'Mews Dwellings', in terms of width of the existing laneway. The proposed mews development would set an undesirable precedent and is therefore considered to be contrary to the proper planning and sustainable development of the area

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planner's report include:

- Reflects decision of planning authority; recommends refusal of permission

3.2.2. Other Technical Reports

Road Planning Division- Refusal recommended due to increased pedestrian, cyclist and vehicle use conflict and inadequate width of existing laneway; setting of undesirable precedent

Conservation Division- Recommends grant of permission, subject to conditions

Drainage Division- No objections, subject to conditions

4.0 Planning History

There is quite a protracted planning history along this laneway for mews dwellings and I refer the Board to the Planner's Report of the planning authority in this regard. The most recent, relevant history for this site is as follows:

PL29S.247009 (Reg. Ref. 2938/16)

Decision of planning authority UPHELD and permission REFUSED on appeal at 37 and 38 Mountpleasant Avenue Lower, Dublin 6 for demolition of structures on site, construction of 2 no. mews dwellings and associated site works. The reason for refusal related to the siting and layout of the proposed dwellings, failure to reflect mews location and proximity to Protected Structures and the detrimental impact on the character and setting of the Protected Structures, which would seriously injure the visual amenities of the lane and would be contrary to provision of operative City Development Plan.

5.0 Policy and Context

5.1. National Policy

Architectural Heritage Guidelines for Planning Authorities, 2004. Development guidelines for Protected Structures and Areas of Architectural Conservation. Section 3.10.1: Criteria for assessing proposal with demolition.

5.2. Development Plan

The Dublin City Development Plan 2022-2028 is the operative City Development Plan.

Zoning- ‘Objective Z2’ which seeks ‘to protect and/or improve the amenities of residential conservation areas’.

Section 15.13.4 Backland Housing

Section 15.13.5 Mews

Appendix 5, Section 4.3.8 Mews Parking

Policy BHA 2 That development will conserve and enhance protected structures and their curtilage...

Policy BHA 9- To protect the special interest and character of all Dublin’s Conservation Areas

Policy BHA 14- To promote the redevelopment and regeneration of mews lanes, including those in the north and south Georgian core, for sensitively designed, appropriately scaled, infill residential development, that restores historic fabric where possible, and that removes inappropriate backland car parking areas

Objective BHAO5- To prepare a best practice design guide regarding appropriate mews development in the city, including for the north and south Georgian cores.

5.3. Natural Heritage Designations

The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

5.4. EIA Screening

Having regard to the nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest sensitive location, 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

The first party appeal received, may be summarised as follows:

- No parking restrictions along laneway; most parking is related to commercial car mechanics operation; most mews along lane don't have off-street parking and buildings meet edge of carriageway
- Lane has capacity for further mews dwellings close to city centre, within walking distance of all amenities, close to LUAS stop-a rea should be exploited for its residential potential; central accessible area
- Lands zoned primarily to accommodate residential development; non-conforming uses are being replaced by more conforming residential development
- No plan for co-ordinated development of this lane; lack of proactive work from planning authority
- No jut out wall, which was cut back many years ago- all that remains is a remnant. Proposed setback will add to the adjacent set-back of the sheds to provide a significant improvement to the lane's capacity. Walls of proposed structure will inside line of wall remnant, site has modern boundaries
- Traffic- further commercial developments not supported by zoning, so if residential not permitted stagnation and dereliction will prevail

- Laneway is a public roadway, DCC is in charge of regulating parking and ensuring car parking is not uncontrolled. Commuters seek out unregulated locations to park during daytime, leading to unsustainable patterns of commuting and parking; proximity of site to public transport; high number of households in such areas do not possess a car (CSO data submitted)
- Reason for refusal cannot be sustained; Board did not sustain contention that lane was at capacity on previous appeal
- Seeks to address previous reason for refusal; current proposal occupies a smaller curtilage; depth is less than commercial buildings on either side; pattern of permissions granted for varying types and styles along lane

6.2. **Planning Authority Response**

None

6.3. **Observations**

A total of seven observations were received, which may be broadly summarised as follows:

- Traffic concerns- existing congestion, lack of residents parking/uncontrolled parking, access for emergency vehicles and other vehicles due to on-street parking; safety concerns; width of laneway
- Level of development- laneway already overdeveloped with residential development
- Residential Amenity- existing anti-social behaviour, noise, disruption to residents; impacts on sunlight; privacy concerns and enjoyment of dwellings; overlooking; proximity to neighbouring dwellings
- Visual Amenity- impact on the nature and character of Bessborough Parade and on Protected Structures in vicinity; proposed design and materials out of keeping;
- Other Matters- occupancy of No. 38; setting of precedent

6.4. **Further Responses**

None

7.0 **Assessment**

- 7.1. I have read all the documentation attached to this file including inter alia, the appeal submission, the report of the Planning Authority and the observations received, in addition to having visited the site. The primary issues, as I consider them, are the issues raised in the reason for refusal relating to (i) traffic and transport and (ii) other matters.
- 7.2. I highlight to the Board that a new City Development Plan was adopted, since the issuing of the planning authority decision.
- 7.3. I also highlight that there was a previous appeal on this site (No. 37 and 38) for two dwellings (PI29S.247009). The reason for refusal related to design and layout issues and impact on Protected Structures due to setback from laneway. I note that the Inspector in that case also recommended refusal on grounds relating to traffic congestion and creation of a traffic hazard, however the Board omitted these as reasons for refusal.
- 7.4. The first reason for refusal which issued from the planning authority stated that 'Having regard to the existing pattern of development on Fortescue Lane, to the existing level of parking demand, to the limited capacity of the lane to accommodate vehicular traffic including emergency and service access and in the absence of a plan for the coordinated development of the mews lane it is considered that further mews dwellings would add to the traffic congestion on the lane and would result in increased pedestrian, cyclist and vehicle use conflict. The mews development does not comply with aims and objectives of the Dublin City Development Plan 2016 – 2022, Section 16.10.16 'Mews Dwellings', in terms of width of the existing laneway. The proposed mews development would set an undesirable precedent, and is therefore considered to be contrary to the proper planning and sustainable development of the area'.
- 7.5. Section 15.13.5 of the operative City Development Plan sets a generally favourable policy towards mews development, subject to compliance with normal planning

criteria. I consider the proposal to be substantially in compliance with this section of the operative City Development Plan. The reason for refusal which issued from the planning authority noted that the proposed development was not in compliance with Development Plan policy for mews dwellings due to the width of the laneway. I note section 4.3.8 of Appendix 5 of the operative City Development Plan which states that 'A minimum carriageway of 4.8m in width (5.5m where no verges or footpaths are provided) is required. In circumstances where these widths cannot be provided, safe access and egress for all vehicles and pedestrians must be demonstrated'. In this instance, the existing laneway width is stated as being 3.755m. However, the applicants are proposing to setback the proposed mew dwellings insofar as a laneway width of 5.545m is being achieved at their site frontage. I note the concern raised by the Transportation Division in relation to an existing boundary wall jutting out with No. 37. At the time of my site visit, this wall was removed and judging from the growth on the remaining element, it would appear that this removal had taken place some time ago.

- 7.6. In addition, I note section 15.13.5 of the recently adopted Plan which states that 'car free mews developments may be permitted in certain circumstances where there are specific site constraints and where alternative modes of transport are available. Each development will be assessed on a case by case basis'. In this instance a car free development is proposed. The specific site constraint in this instance is the overall width of the laneway. However, I note the locational context of the site, within a central accessible area, close to alternative modes of public transport (both bus and LUAS). The site is within walking distance of the city centre and other established inner suburbs of the city. There is excellent pedestrian and cycle connectivity in the wider area. The proposed setback/courtyard area could be conveniently used for the parking of bicycles. I am satisfied that in this instance a car free development can be justified and I consider the proposal to be in compliance with the operative City Development Plan in this regard. Given that this is a car-free development, it cannot be reasonably considered to add to traffic congestion in the area, once construction works are complete. Given the limited scale of the proposed development (one additional dwelling), I would not anticipate it to lead to the generation of significant volumes of traffic. While I accept the point made in the observations received that at future date, an occupant of the property may have a car, I would consider that the

parking situation is such that it may be a deterrent to those requiring a parking space. Any future occupant would rent/purchase the property in the knowledge that there is no parking space. Again, given the locational context of the site I am satisfied in this regard.

- 7.7. I acknowledge that Fortescue Lane is a narrow lane with no footpaths. However, given its narrowness, speeds are low and as per other such laneways where mews dwellings have been permitted, there is a shared surface nature to the lane. I noted informal parking along the lane at the time of my site visit, and judging by the array of 'No Parking' signage, consider that this appears to be a sensitive issue on the lane. Concerns raised by the planning authority and observers in relation to the extent of parking and associated issues are noted. However I note that there appears to be no formal parking arrangement in place, nor any restrictions in terms of double yellow lines. This is obviously a matter for the local authority, however it may be the case that matters of illegal parking (as raised by the observers) will continue until such time as enforcement measures are introduced. I am of the opinion that many of the concerns raised may be adequately addressed if a formal parking arrangement was put in place along the length of the laneway.
- 7.8. I note the concerns of the planning authority in relation to the setting of an undesirable precedent for other such developments. Given that planning permission has previously been granted for mews dwellings along this laneway, it could therefore be argued that a precedent has already been established for such along Fortescue Lane. During my site visit, I noted that there are many properties that have rear access onto the laneway that would evidently not be suitable for such a form of development. Therefore, I note that not every property with access onto the lane has the potential for such mews development.
- 7.9. Having regard to all of the above, including that the Board did not raise this matter as a concerns/reason for refusal in the previous appeal on the site, I am generally satisfied in this regard and have no information before me to believe the proposal would lead to the creation of a traffic hazard or obstruction of road users.

Other Matters

- 7.10. I have examined the previous refusal reason of this site, which related to proposed setback and subsequent impacts on the character of the existing Protected

Structures. I am of the opinion that this reason for refusal has been adequately addressed in this current appeal. I note that other mews dwellings permitted along the lane were constructed right up against the lane edge, while a setback is proposed in this current proposal. I am satisfied in this instance and consider that the setback allows for the provision of space for bicycle parking, if required.

- 7.11. In terms of visual amenity, I am generally satisfied with the design approach put forward in this instance. I do not consider the proposal to be excessively dominant, overbearing or obtrusive in its context and I consider that the subject site has capacity to accommodate a development of the nature and scale proposed, without detriment to the amenities of the area. The utilisation and re-use of such brownfield sites for residential development, within serviced urban areas close to established facilities and services is welcomed in national policy.
- 7.12. In terms of impacts on built heritage, I note the number of Protected Structures within the vicinity of the site, including the subject site No. 38 Mountpleasant Avenue and the fact that the proposal is located within a Residential Conservation Area. I do not consider the proposal to be out of character with existing development in the vicinity nor does it detract from the character or setting of any Protected Structures in the vicinity or from the Residential Conservation Area. I note that the Conservation Officer of the planning authority did not express concern in this regard, subject to recommended conditions. I am satisfied that the proposed development is in accordance with the operative City Development Plan in this regard.
- 7.13. In terms of impacts on residential amenity, I am cognisant of the relationship of the proposed development to neighbouring properties. In my opinion, separation distances typical of what would normally be anticipated within such an established, urban area are proposed with existing properties. This will ensure that any impacts are in line with what might be expected in an area such as this. The operative City Development Plan allows for such flexibility. I am satisfied that impacts on privacy would not be so great as to warrant a refusal of permission. There is an acknowledged housing crisis and this is a serviceable site, in an established city area, where there are adequate public transport links, services, facilities and employment in close proximity.

- 7.14. The proposed house would not unduly overbear or overlook adjoining properties, and would not seriously injure the amenities of property in the vicinity of the site. I have had regard to the guidance documents referred to in the Ministerial Guidelines and the Dublin City Development Plan to assist in identifying where potential issues/impacts may arise. I consider any potential impacts to be reasonable, having regard to the need to provide new homes within an area identified for residential development/compact growth, and increase densities within zoned, serviced and accessible sites, as well as ensuring that the potential impact on existing residents is not significantly adverse and is mitigated in so far as is reasonable and practical.
- 7.15. Adequate private open space is proposed to comply with Development Plan standards. I note that the proposed dwelling complies with the operative Development Plan in terms in internal standards.
- 7.16. Matters raised in relation to anti-social behaviour, noise and disruption to residents are outside the remit of this planning appeal. They are a matter for An Garda Siochana.

Conclusion

- 7.17. Having regard to the limited extent, height and design solution put forward, I am satisfied that the proposed development is in accordance with the zoning objective of the City Development Plan, which seeks 'to protect and/or improve the amenities of residential conservation areas', is in keeping with the pattern of development in the area and is in accordance with the proper planning and sustainable development of the area.

8.0 Appropriate Assessment Screening

- 8.1 Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites

arising from the proposed development, alone or in combination effects, can be reasonably excluded.

9.0 Recommendation

9.1. I recommend permission be GRANTED subject to conditions.

10.0 Reasons and Considerations

Having regard to the pattern of development in the area and its residential zoning under the Dublin City Development Plan 2022-2028, and to the standards for mews development, as set out in section 15.13.5 of that Plan, it is considered that, subject to compliance with conditions below, the proposed house would not seriously injure the character of the area or the amenities of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

11.0 Conditions

1.	<p>The development shall be carried out 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.</p> <p>Reason: In the interest of clarity</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The laneway elevation shall be finished in white brick with white pointing.</p> <p>Reason: In the interest of visual amenity.</p>

3.	<p>Prior to the commencement of development, the developer shall ascertain and comply with all requirements of the planning authority in relation to conservation matters including the protection of any historic fabric, during the course of the works.</p> <p>Reason: To protect the character and integrity of the existing built fabric</p>
4.	<p>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.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
5.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.</p> <p>Reason: In the interests of visual and residential amenity.</p>
6.	<p>Water supply and drainage arrangements including the attenuation and 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 and surface water management.</p>
7.	<p>Prior to the commencement of development, the developer shall enter into a water and wastewater connection agreement with Irish Water.</p> <p>Reason: In the interests of public health</p>
8.	<p>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, noise</p>

	<p>management measures, machinery storage and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
9.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area</p>
10.	<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.

Lorraine Dockery
Senior Planning Inspector

29th June 2023