



An
Bord
Pleanála

Inspector's Report

ABP-314135-22

Development

Planning retention is being sought for
1) the conversion/change of use of the ground floor area of the vacant retail unit to residential 2) construction of 1.83m high wall on north-east boundary to support electrical supply cabinet 3) construction of timber clad bin store with roof over on the north-east boundary 4) retention of double car parking bay and associated site works.

Location

7 Bray Road, Loughlinstown, Dublin 18, D18 HW25

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D22A/0312

Applicant(s)

Michelle and Alan Colgan.

Type of Application

Retention

Planning Authority Decision

Refuse Retention

Type of Appeal	First Party
Appellant(s)	Michelle and Alan Colgan
Observer(s)	None.
Date of Site Inspection	10 th September 2023
Inspector	Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The subject site is located on the south-west side of 7 Bray Road in a small cul-de-sac off the N11 and comprises of a two-storey property in a small Neighbourhood Centre. The existing property is set back from the public roadway and is served by off street parking. St. Bride's Stream (also referred to as Loughlinstown River North/Carrickmines Stream with reference to EPA mapping) runs to the rear of the building.

2.0 Proposed Development

- 2.1. Planning retention is being sought for 1) the conversion/change of use of the ground floor area of the vacant retail unit to residential 2) construction of 1.83m high wall on north-east boundary to support electrical supply cabinet 3) construction of timber clad bin store with roof over on the north-east boundary 4) retention of double car parking bay and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Refuse retention permission for 3 no. reasons as follows:

1. Having regard to the location of the proposed development for retention on lands zoned NC which seeks to 'To protect, provide for and-or improve mixed-use neighbourhood centre facilities', the central location of this building within the principle parade of this Neighbourhood Centre, the design of its frontage which resembles a detached dwelling and the permission for retention of the conversion / change of use of the ground floor area of the vacant retail unit to residential, it is considered that the development for retention does not provide for an active street frontage or an appropriate mix, range or type of use at this Neighbourhood Centre location. The proposed development for retention would be contrary to Policy Objective RET7: Neighbourhood Centres and Policy Objective RET11 Active Street Frontages Non-Retail Uses, of the Dun Laoghaire-Rathdown County Development Plan 2022-2028,

Furthermore, the development to be retained would, if permitted, set an undesirable precedent for similar development in the area. The proposed development for retention would therefore be contrary to the NC zoning, the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 and the proper planning and sustainable development of the area.

2. The subject site is located within the catchment of the Shanganagh River and is located in Flood Zone A and B, as identified on the Flood Zone Maps of the County Development Plan -2022-2028. The applicant has proposed retention permission for a change of use from less vulnerable (retail) to highly vulnerable (residential) use located in Flood Zone and as such is not in accordance with the requirements of Appendix 15, in particular Sections 5.2 and Section 6.2.510 which sets out the specific policy for the Shanganagh River, of the 2022-2028 County Development Plan. The proposed development is located in an area which is at risk of flooding and as such, would be contrary to the proper planning and sustainable development of the area.
3. The bin store and the timber fence on the east boundary of the property to be retained, by reason of its location and rudimentary appearance is out of character with the area, would injure the visual amenities of the area, and would set an undesirable precedent for similar type of development in the area. The development to be retained would detract from the character of the area visually and would therefore, be contrary to the proper planning and sustainable development of the area.

Decision Date: 29/06/22

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 29/06/2022)

Principle

- Notes the site is zoned 'NC', and that residential is permitted in principle on such site/is permitted where the PA is satisfied that the proposal would be compatible with the overall policies and objectives for the zone

- Conversion/change of use of the ground floor area to residential may be considered acceptable in principle subject to compliance with the relevant provisions of the Dun Laoghaire-Rathdown County Development Plan 2022-2028
- Having regard to the central location of the premises within the principle parade of the Neighbourhood centre, the design of the frontage which resembles a detached dwelling, and the use for retention, it was considered that the proposed development does not provide for an active street, or an appropriate mix
- Would be contrary to Policy Objective RET7 and RET11 of the Development Plan
- Would set an undesirable precedent

Residential Standards/Amenity/Design

- Note the ground floor apartment (Apartment 1 -2 bed) and the first floor apartment (Apartment 2 bed - 3 bed) – states that Apartment 2 should also form part of this application as it is accessed from the shared hallway and is also shown on the plans.
- Both Apartments meet floor area standards/floor to ceiling height of apartment 2 does not meet standard but discretion can be applied in this instance.
- No storage indicated on plans
- Relaxation of the communal open space requirements may be considered acceptable in this instance.
- Details of amenity space provision would be required.
- No impact on adjoining amenity
- Bin store and timber fence on the east boundary of the property would injure the visual amenities of the area/would set an undesirable precedent

Flood Risk

- Notes site lies within Flood Zone A and B, as identified on the Dun Laoghaire-Rathdown Flood Zone Maps
- Refers to the Drainage Report (as summarised below) – change of use from a less vulnerable (retail) to a highly vulnerable (residential) use in Flood Zone A is

not in accordance with the requirements of Appendix 15 of the Development Plan/Flood Risk Management Guidelines

3.2.2. Recommendation was to **Refuse** permission for 3 no. reasons.

3.2.3. Other Technical Reports

Drainage Planning – Recommend refusal – Change of use from a less vulnerable (retail) to a highly vulnerable (residential) use in Flood Zone A is not in accordance with the requirements of Appendix 15 of the Development Plan/Flood Risk Management Guidelines

Transportation Planning – No Objection subject to conditions

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. One third party submission was received during the application stage. This is summarised as follows:

- Notes Enforcement Notice
- Change of use is in conflict with the retail character at ground floor level
- Wall is damaging/prevents use of the open area in front of the terrace/restricts access to and blocks view of potential customers to the retail unit immediately adjoining the development
- Not appropriate to install electrical connections without planning permission
- Bin store has injurious effects

4.0 **Planning History**

D09/0782 - Planning permission **REFUSED** for the demolition of the 3 No. single storey cottages at Nos. 4,5 and 6 Main Street (also known as Bray Road), Loughlinstown, Dublin 18 and demolition of two storey house at No. 7 main street (also known as Bray Road), Loughlinstown, Dublin 18. The proposed development is

a four storey building to comprise 4 No. ground floor units (295.9sq.m) comprising 1 No. medical practice, 1 No. unit for sale of hot food off the premises, 1 No. veterinary practice and 1 No. retail unit (the latter 2 No. units to accommodate existing uses), 4 No. first floor commercial/office units (334.4sq.m), and 4 No. 2 bedroom duplex apartments with associated balconies/terraces at second and third floor level, 8 No. bicycle parking and 8 No. car parking spaces to front of the site at existing parking area, refuse and recycling areas to the rear, and all associated site development works.

Refuse for one reason:

Having regard to the scale and plot ratio of the development as proposed, serious concerns exist that the development by itself or by the precedent which the grant of permission for it would set for other relevant development, would adversely impact on the established character of this neighbourhood centre area, would not afford an acceptable public realm and would encourage development of a scale which would potentially blur the distinction between this neighbourhood centre area and the proposed new urban area at Cherrywood to the west of the site. This would be contrary to the neighbourhood centre zoning objective for this location of providing facilities and services to meet local needs, would be injurious to its established character and would be contrary to the proper planning and sustainable development of the area. 2. The site is located in a confined cul-de-sac fronting onto the N11.

Having regard to the scale of development proposed, the inadequate parking provision, the traffic which would be generated by the proposed development, and the road network in the vicinity of the site, it is considered that the proposed development by itself or by the precedent which the grant of permission for it would set for other relevant development, would endanger public safety by reason of traffic hazard, due to the traffic turning movements it would generate and the resultant traffic congestion. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Appeal Ref PL06D.227549 (PA Ref D07A/1492) **REFUSE PERMISSION** to Demolish 4 no. dwellings (4-7 Main Street, also known as 4-7 Bray Road, Loughlinstown) and construct mixed use development comprising 4 no. retail/commercial units and 13 no. residential

Refuse permission for 2 no. reasons:

1. Having regard to the restricted size of the site and the quantum and density of development proposed, it is considered that the proposed development constitutes overdevelopment of the site, with inadequate car parking, which would seriously injure the amenities of property in the vicinity. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.
2. The site is located in a confined cul-de-sac fronting onto the N11. Having regard to the scale of development proposed, the traffic which would be generated by the proposed development, and the road network in the vicinity of the site, it is considered that the proposed development and the precedent it would set, would endanger public safety by reason of traffic hazard, due to the traffic turning movements it would generate and resultant traffic congestion. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Enforcement History

ENF 25021 – Alleged unauthorised development at 7 Bray Road, Loughlinstown

5.0 **Policy Context**

5.1. **Section 28 Guidelines**

- Flood Risk Management Guidelines for Planning Authorities (November 2009)

5.2. **Development Plan**

Dun Laoghaire-Rathdown County Development Plan 2022-2028

The site is zoned NC 'To protect, provide for and/or improve mixed-use neighbourhood centre facilities'

Chapter 4 – Section 4.3 Homes

PHP42 Building Design and Height

Policy Objective RET7: Neighbourhood Centres seeks to support the development of such centres as the focal point of the communities they serve, by way of the provision of an appropriate mix, range and type of uses – including retail and retail service, subject to protection of residential amenities. Table 7.2 of the Development Plan seeks to promote the mixed-use potential of Neighbourhood Centres as appropriate, subject to the protection of local amenities.

Policy Objective RET11: Active Street Frontages Non-Retail Uses - seeks to control the provision of non-retail uses at ground floor level within specific locations including within the shopping parades of mixed-use Neighbourhood Centres.

Policy Objective EI22: Flood Risk Management

Appendix 15 Strategic Flood Risk Assessment

5.3. **Natural Heritage Designations**

- 5.3.1. c. 3km to the west of Rockabill to Dalkey Island SAC (site code 003000).

5.4. **EIA Screening**

- 5.4.1. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity 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.

5.5. **AA Screening**

- 5.5.1. Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of the First Party Appeal (received 20th July 2022) are summarised as follows:

- Applicants were aware of the provisions of S.I. No 30/2018 Planning and Residential (Amendment)(N. 2) Regulations 2018, permitting the conversion to residential use
- Believe the property meets the criteria set out in the SI therefore did not need Planning Permission

Reason for Refusal No. 1

- Neighbourhood Centre is not of any architectural or urban design note/no significant urban or village character
- No sense of being a vibrant or active street front
- Previous vacant shop did not add to the Neighbourhood Centre
- Row of buildings falls well short of what a Neighbourhood Centre is or should be
- Original ground floor unit was vacant and had been for a long time/no interest from any party in renting the unit
- If it had not been converted to residential it is likely it would have remained vacant
- SI 30 of 2018 was introduced to permit this type of development

Reason for Refusal No. 2

- No history of the site ever flooding.
- Flood mitigation works have been implemented in the Cherrywood SDZ scheme
- Applicants have raised the floor level of the pre-existing premises by 300mm giving further protection against flooding
- Balance needs to be sought when assessing aspects of the Development Plan
- Proposal does not add to flood risk

- Very unlikely risk of flooding is outweighed by the benefits of having a place to live

Reason for Refusal No. 3

- A number of units along the road have side walls projecting to the front/there is a substantial set back from the road edge to the building line/these areas are used for parking/bin storages/signage etc
- The original building had a low wall on one side
- Bin enclosure is intended to manage the bins in a tidy manner and should be welcomed by the PA
- Hard to see how a bin store could represent an unwanted precedent
- ESB required a wall to be erected to house the metres/wall could be reduced in size if the Board directed it.

6.2. Planning Authority Response

6.2.1. A response from the Planning Authority was received on 18/08/2022. This is summarised as follows:

- Note the site is located in Flood Zone A on Map 10, Flood Zone Maps, 2022-2028 Development Plan
- Appendix 15 (Strategic Flood Risk Assessment) sets out Council Policy on Flood Risk Assessment.
- Section 5.2.1 refers to Minor Development
- Section 6.2.10 refers to the Shanganagh River – CFRAM Study indicate possible flood depths up to 2m/Until a Flood Relief Scheme to the 1.0% AEP event standard is complete, and development in Flood Zone A is not permitted.
- Applicant has stated that there is no history of flooding at the site/however a report for the specific site location is available on Floodinfo.ie/report states that 4 retail/shop units were affected by the event/one of which is the property in question

- Raising the finished floor level of the property by 300mm is not sufficient/flood depths at the site are predicted to be potentially in excess of 2m
- There are no formal fluvial mitigation works within the Cherrywood SDZ Scheme

6.3. **Observations**

6.3.1. None.

6.4. **Further Responses**

6.4.1. None.

7.0 **Assessment**

7.1. The planning issues raised in this appeal are as follows:

- Principle of Development
- Neighbourhood Centre Designation
- Flood Risk
- Design and Visual Amenity
- Other issues

7.2. **Principle of Development**

7.2.1. The site lies within an area zoned 'NC' - To protect, provide for and/or improve mixed-use neighbourhood centre facilities' as per the Dun Laoghaire Rathdown Development Plan 2022-2028. Residential is a permitted in principle use within this Zoning Objective, and as such the development proposed for retention is acceptable in principle.

7.3. **Neighbourhood Centre**

7.3.1. The first reason for refusal relates to non-compliance with policies and objectives relating to Neighbourhood Centres, as set out in the Development Plan, namely:

- Policy Objective RET7: Neighbourhood Centres seeks to support the development of such centres as the focal point of the communities they serve, by

way of the provision of an appropriate mix, range and type of uses – including retail and retail service, subject to protection of residential amenities. Table 7.2 of the Development Plan seeks to promote the mixed-use potential of Neighbourhood Centres as appropriate, subject to the protection of local amenities.

- Policy Objective RET11: Active Street Frontages Non-Retail Uses -seeks to control the provision of non-retail uses at ground floor level within specific locations including within the shopping parades of mixed-use Neighbourhood Centres.

7.3.2. This particular Neighbourhood Centre consists of a small strip of land off the N11 Road, and currently comprises of a tyre repair centre, the subject property, a takeaway, a veterinary clinic, a furniture showroom and a larger vacant plot/building at its northern end. One could argue the Whelan's wine store/Eleven Restaurant, with the large expanse of car parking to the rear, located on the southern side of the junction of Bray Road and Cherrywood Road, is also included with the Neighbourhood Centre, but they form two distinct parcels of neighbourhood centre zoned land, separated by an area of land zoned residential (as per Map 10 of the Dun Laoghaire Rathdown County Development Plan 2022-2028). In relation to the merits of the existing Neighbourhood Centre, I am not of the view that the strip of land within which the subject site lies, could be regarded as a focal point of the surrounding community, and to my mind, has been overtaken and overwhelmed somewhat by the development that has taken place around it, notably the development of the Cherrywood scheme, with the shops and services located therein. In relation to the specificities of the subject site, it would appear the ground floor unit was occupied for a length of time by a vacant unit, and the first party appellant states that this was for a considerable period. This point is not contended by the Planning Authority. While not definitive, Google Street view appears to show it in a vacant condition since at least August 2009 (no earlier dates are available). As such it is likely that this unit has, indeed, been vacant for a considerable period of time, and has not been contributing to the appearance, or vitality of this small Neighbourhood Centre. There are provisions within the Development Plan that support the change of use of vacant commercial space into residential use in appropriate locations, and having regard to the zoning objective of the area (p85 of

the Development Plan refers). In addition, and of particular relevance to this appeal the supporting text for Policy RET 11, as referred to above, also allows for some discretion within Neighbourhood Centres, where the premises has been vacant for a considerable period. I am of this view that this discretion should be applied here, given the likelihood that the unit that was previously at ground floor level has been vacant for at least 14 years.

7.3.3. Furthermore, if the Board were of the mind to approve this retention permission, there still remains commercial uses with the strip of units, and therefore a mix of uses would still exist within the Neighbourhood Centre.

7.3.4. In relation to setting a precedent for similar type of development, I note every application is considered on its merits, and I am of the mind that it is the particular set of circumstances in this instance that allow for the change of use here (i.e. the nature of the Neighbourhood Centre itself and the considerable length of time the previous commercial unit remained vacant).

7.4. **Flood Risk**

7.4.1. The second reason for refusal refers to Flood Risk. I note the site is located within Flood Zone A and B (as Per Map 10 of the Development Plan SFRA). The site has also been impacted by a previous flood event, with reference to information accessed on Floodinfo.ie, with the commercial units here, and other properties, impacted by flood waters overtopping from the Carrickmines River, a tributary of the Shanganagh River, on the 25th October 2011. According to this report, typical flood depth was 0.5m with a max value of 0.8m, as evidenced from water marks on buildings. I have placed a copy of this report on file for the Board's perusal.

7.4.2. Of particular relevance to this appeal, is the Strategic Flood Risk Assessment as contained in Appendix 15 of the Development Plan. Section 5.2 of same refers to development within Flood Zones A and B, and states that

7.4.3. *'Applications for minor development, such as small extensions to houses or the rebuilding of houses, and most changes of use [with the proviso that the change of use does not increase the vulnerability of the development] of existing buildings and or extensions and additions to existing commercial and industrial enterprises, are unlikely to raise significant flooding issues..... since such applications concern existing buildings, the sequential approach cannot be used to locate them in lower-*

risk areas and the Justification Test will not apply. However, a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. These proposals should follow best practice in the management of health and safety for users and residents of the proposal'

- 7.4.4. Section 5.3.3 of the SFRA makes reference to the Shanganagh River and within this document it is stated that, with reference to the relevant map in Figure 5.3 of same, that;

'There are some areas of existing residential development including parts of , Beech Park, Sunnyhill Park and Cherrywood Park and an area zoned neighbourhood centre at the junction of Cherrywood Road and the N11¹ that are located in Flood Zone A and B. In areas of existing development, flood risks are generally moderate and risks to minor development, such as extensions and changes of use, can be managed through site specific risk assessments in accordance with the specification guidance in this SFRA'.

- 7.4.5. I would note that the Flood Risk Management Guidelines for Planning Authorities (November 2009), in relation to minor changes of use within areas of Flood Risk, also state that such development is unlikely to raise significant flooding issues, but do not have the same proviso in relation to the vulnerability of the use proposed (or proposed for retention) [Section 5.28 of same refers].

- 7.4.6. Section 6.2 of the SFRA refers *inter alia* the Loughlinstown River and the Shanganagh River. In relation to this particular area, it is noted

'Near the confluence with the Shanganagh and upstream of the N11 (16), the CFRAM Study indicates possible flood depths of over 2m. Risks to Minor Development, as defined in Section 5.2.1, should be assessed through site specific risk assessments in accordance with the specification guidance in this SFRA. New development within Flood Zone A and B cannot be justified'

- 7.4.7. As such, it would appear that a change of use such as that proposed for retention here would not be unacceptable in principle, but would be managed though the

¹ The subject site lies within this Neighbourhood Centre.

submission of site specific flood assessment, although I acknowledge that there is some conflict between Sections 5.2, Section 5.3.3 and Section 6.2 of the SFRA, in relation to changes of use to a more vulnerable development, such as this proposal for retention of a residential use (a highly vulnerable use, with reference to the definitions within Table 3.2 of the Flood Risk Management Guidelines).

- 7.4.8. I note that no Site Specific Flood Risk Assessment has been submitted with the application, or submitted at appeal stage, although the applicant has stated that the finished floor level of the dwelling has been raised by 300mm. The Planning Authority has stated that this is insufficient as flood depth at this point can reach up to 2m.
- 7.4.9. Notwithstanding that the development proposed for retention is introducing a more vulnerable use at ground floor level within Flood Zone A, I am of the view a degree of pragmatism is required in this instance. There is existing development on the site, and the development proposed for retention is not introducing new built form within the flood zone, and as such would not impact on flow paths, or increase flood risk off site. The proposal is for a relatively minor development of 1 no. residential unit and I am of the view that the flood risk to the property can be mitigated to an acceptable degree by way of a detailed site specific flood risk assessment, which can be required by way of condition. Such a document should detail the specific level of flood risk pertaining to the property, contain specific measures that reduce or mitigate flood risk to the property, such as appropriate floor levels or other measures, well as measures to ensure the safety of occupiers in the event of flooding occurring. This is in line with Section 5.22 of the Flood Risk Management Guidelines which state that conditions may be required in dealing with potential flood issues in minor residential development.

Design Issues

- 7.4.10. The third reason for refusal relate to the appearance of the bin store and the timber fence, and the PA were of the view that these features were injurious to the visual amenity of the area. In relation to same, I would note that the bin storage is rather innocuous in appearance, and furthermore provides for an appropriate location in which to store the refuse bins, rather than on the street or in a prominent position in front of the residential unit. The other reasons as set out by the applicant as to why

the bin store in necessary (i.e. to prevent customers of the takeaway disposing of rubbish in the bins) are also logical. I do not have an objection to the visual appearance of same. In relation to the fence, this again is somewhat understated in appearance, and I do not have an objection to same, noting it provides a clear definition to the boundary of the property, and from the slightly unmaintained strip of land to the south.

7.4.11. In relation to the visual impact of the wall, upon which the ESB meters are located, and in response to the comments of the third party observer made at application stage, I am not of the view that the wall would prevent views towards the takeaway units, with much of the front elevation and signage related to same still visible from the footpath, and from the surrounding roads.

8.0 Recommendation

8.1. I recommend that permission be **Granted**, subject to the conditions below.

9.0 Reasons and Considerations

9.1. Having regard to the scale, form and design of the development proposed for retention it is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely impact the residential amenity of neighbouring property or the character and visual amenity of the existing building and surrounding streetscape. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained 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.
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	Reason: In the interest of clarity.
2.	<p>Within 3 months of this date of this decision, the applicant shall submit a Site Specific Flood Risk Assessment (SSFRA), for agreement in writing with the Planning Authority, detailing <i>inter alia</i> the specific level of flood risk pertaining to this property, specific mitigation measures to minimise flood risk as well as details of evacuation or emergency measures in the event of flood event.</p> <p>Reason: To minimise flood risk and in the interest of proper planning and sustainable development of the area.</p>
3.	<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</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.

Ronan O'Connor
Senior Planning Inspector

12th September 2023