



An
Bord
Pleanála

Inspector's Report ABP314163-22

Development

Retention and full permission for (i) sub-division of ground floor retail unit to revert to two independent retail units, in addition, planning permission is also sought for (i) subdivision of retail unit 1 to convert existing ancillary office use at first floor level (through a change of use) to a self-contained office unit, to combine with the construction of a new two-storey residential building to rear courtyard to create 1 no. two storey 2-bed dwelling unit.

Location

61-63 Saint Assam's Park, Raheny,
Dublin 5 – D05W3C8.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

3870/22.

Applicant(s)

Hex3 Limited.

Type of Application

Retention & Full Permission.

Planning Authority Decision

Refuse Permission and Refuse
Retention permission.

Type of Appeal	First Party
Appellant(s)	Hex3 Limited.
Observer(s)	None.
Date of Site Inspection	22/06/23.
Inspector	Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site is located on the north side of Saint Assam's Park within a commercial cluster comprising a short parade of commercial premises (nos. 57-63) of which nos. 61 & 63 Saint Assam's Park form part (comprising 2 of the 4 original building plots within the commercial terrace); there is a public house (Cedar's Pub) to the east on the opposite side of the road set back from the carriageway. The set-back accommodates surface car parking. The site area is approximately 0.024 hectares, as stated on the submitted documentation. The surrounding area is characterised by suburban residential development predominantly semi-detached houses.
- 1.2. Nos. 61 & 63 Saint Assam's Park are commercial units in a small commercial terrace, characterised by shop frontages and ground floor level access to the upper floors at street level. The building line of the terrace is tight to the pavement with a hard surfaced car parking area located to the front of nos. 61 & 63 between the pavement and the main carriageway.
- 1.3. There is a service lane to the rear of the commercial terrace accessed from Saint Assam's Avenue between houses nos. 62 & 62A Saint Assam's Avenue. The service lane is unnamed.

2.0 Proposed Development

- 2.1. The proposed development at Nos. 61 & 63 Saint Assam's Park, Raheny, Dublin 5 comprises -

Retention and full permission for the following: (i) the retention of the sub-division of the authorised ground floor retail unit (spanning nos. 61-63) including elevational changes and reinstatement of customer entrance to no.61; (ii) permission for the subdivision of retail unit 1 (at no. 61) from use as ancillary office to a self-contained first floor office unit with access from street; (iii) the retention of the demolition of ancillary store to rear (9.9 sqm.) and permission for the construction of a two-storey residential unit to the rear of the site to combine with the change of use to residential (37.4 sqm.) at ground floor level to the rear of the retail unit to create a two storey 2-

bed dwelling unit linked by an open courtyard and, (iv) permission for associated works.

3.0 Planning Authority Decision

3.1. Decision

To refuse planning permission and to refuse retention permission for the following reason:

1. Having regard to the restricted nature of the site, the development to be retained and proposed development would result in a substandard dwelling with poor outlook, inadequate residential amenity and private amenity space of substandard quality in addition to an insufficient separation distance from the commercial unit at No. 61 St Assam's Road to the residential dwelling. The proposed bin store to serve the two retail units, the office unit and the residential dwelling would be problematic and is inappropriately sited within the gated driveway of the proposed two-storey dwelling. In addition, the proposed development will leave no external space available to the retail units and the office unit within the subject site. The proposed development would constitute overdevelopment of a restricted site and would therefore be contrary to the Z3 objective to improve neighbourhood facilities for the area, the residential standards and provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dublin City Council reflected the recommendation of the planning case officer.

3.2.2. Other Technical Reports

- The Transport Planning Division (TPD) of Dublin City Council have no objection in principle to the proposed provision of one number vehicular parking space (5.3 x 2.8 metres) within the curtilage of the site with access

from the service lane; the service lane is not in charge. The TPD notes that bicycle parking and refuse bin storage are adequately demonstrated and that the Division has no objection to the sub-division of the ground floor retail unit.

- The Drainage Division of Dublin City Council require the submission of additional information as inadequate detail has been submitted in the matter of the management of surface water.

4.0 Planning History

- The construction of a new two-storey commercial unit, comprising internally a deli preparation / staff area at ground floor level and office space at first floor level, with rear vehicular access / parking bay and bin store, to the rear courtyard of nos. 61-63 Saint Assam's Park was granted planning permission, as an ancillary use to the convenience store (McMahon's Food Store) that occupied the street frontage at the time of application, under Register Ref: 2896/20 (08 October, 2020). This permission has not been implemented.
- The demolition of a kitchen to the rear of no. 63 Saint Assam's Park and the construction of a semi-detached part two-storey / part single-storey family residence, and the change of use to retail of the remainder of the ground floor and the first floor to offices, was granted planning permission under Register Ref: 4062/07 (27 August, 2007). This permission relates to the house at no. 62A Saint Assam's Avenue.
- The demolition of 2 no. terraced houses at nos. 61 and 63 Saint Assam's Park, comprising retail units (Mace) at ground level and residential unit and office on first floor, and the construction of a three storey mixed-use development, consisting of 350 sqm. retail, bicycle and refuse storage at ground level and 6 no. two bedroom apartments on first and second floor levels was refused on appeal under (ABP: PL29N.220591) (Decision date 23 October 2006) (DCC Reg. Ref. 3031/06).

5.0 Policy and Context

5.1. Development Plan

The relevant land-use zoning objective is Z3 (Map C): *to provide for and improve neighbourhood facilities*. The proposed development is a permissible use.

Neighbourhood Centres provide local facilities such as convenience shops, hairdressers, post offices etc. within a residential neighbourhood and range from the traditional parade of shops to larger neighbourhood centres.....Neighbourhood centres provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened, where appropriate. Neighbourhood centres may include an element of housing, particularly at higher densities, and above ground floor level.

The Dublin Development Plan 2022-2028, Chapter 2 (Core Strategy) details the projected population targets for Dublin City aligned with national and regional population projections. Section 2.2.2 (Population and Housing Targets) states:

The NPF identifies a minimum target population of 1,408,000 (minimum target population) for Dublin City and Suburbs (including all four Dublin local authority areas) by 2040, representing a 20-25% population growth range from 2016.

Furthermore, Chapter 2, Section 2.7.4 (Development Management) states:

Development management will play a leading role in the implementation of the development plan on a site by site basis, ensuring that development applications (planning application, Part 8, Section 5 etc.) are in substantial compliance with policies, objectives, and standards as set out in this development plan.

The Dublin Development Plan 2022-2028, Chapter 5 (Quality Housing and Sustainable Neighbourhoods) policy objective QHSN6 (Urban Consolidation) states:

To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development,

backland development, mews development, re-use/adaption of exiting housing stock and use of upper floors, subject to the provision of good quality accommodation.

The Dublin Development Plan 2022-2028, Chapter 15 (Development Standards), Section 15.11 (House Developments) provides development criteria for houses including *inter alia* floor area, daylight, private open space and distance between dwelling standards. Section 15.11.3 (Private Open Space) is relevant:

Private open space for houses is usually provided by way of private gardens to the rear of a house. A minimum standard of 10 sq. m. of private open space per bedspace will normally be applied. A single bedroom represents one bedspace and a double bedroom represents two bedspaces. Generally, up to 60-70 sq. m. of rear garden area is considered sufficient for houses in the city. In relation to proposals for house(s) within the inner city, a standard of 5– 8 sq. m. of private open space per bedspace will normally be applied.

Section 15.13.4 (Backland Housing) of Chapter 15 is also relevant:

Backland development is generally defined as development of land that lies to the rear of an existing property or building line.

Backland housing can comprise of larger scale redevelopment with an overall site access; mews dwellings with access from a rear laneway or detached habitable dwellings to the rear of existing housing with and independent vehicular access.

Applications for backland housing should consider the following:

- *Compliance with relevant residential design standards in relation to unit size, room size, private open space etc.*
- *Provision of adequate separation distances to ensure privacy is maintained and overlooking is minimised.*
- *That safe and secure access for car parking and service and maintenance vehicles is provided.*

- *The scale, form and massing of the existing properties and interrelationship with the proposed backland development.*
- *The impacts on the either the amenity of the existing properties in terms of daylight, sunlight, visual impact etc. or on the amenity obtained with the unit itself.*
- *The materials and finishes proposed with regard to existing character of the area.*
- *A proposed backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.*
- *A relaxation in rear garden length, may be acceptable, once sufficient open space provided to serve the proposed dwelling and the applicant can demonstrate that the proposed backland dwelling will not impact negatively on adjoining residential amenity.*

All applications for infill developments will be assessed on a case by case basis. In certain instances, Dublin City Council may permit relaxation of some standards to promote densification and urban consolidation in specific areas. The applicant must demonstrate high quality urban design and a comprehensive understanding of the site and the specific constraints to justify the proposal.

The following national and regional planning policy documents are relevant in the context of sustainable residential land-use and the strategic policy objective to achieve compact growth:

- The National Planning Framework (NPF) (Project Ireland 2040) (Government of Ireland 2018);
- The Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regional Assembly (EMRA) (June 2019).
- The Department of Housing, Planning and Local Government 'Urban Development and Building Height Guidelines for Planning Authorities' (December 2018)

- The Department of Environment Heritage and Local Government 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (2009) and the accompanying Design Manual (2009).

5.2. EIA Screening

The development is not in a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The proposed development is in accordance with the strategic national and local densification policy objectives of the National Planning Framework (Project Ireland 2040) and the Dublin City Development Plan, including infill development;
- The ground floor of nos. 61 & 63 Saint Assam's Park were amalgamated without the benefit of planning permission; the provision of 2 independent retail units is a reversion to the historic configuration;
- The properties in the terrace, including no.61 Saint Assam's Park, traditionally had residential accommodation to the rear of the retail unit at ground floor level;
- The morphology of the proposed two-storey building to the rear of the site onto the service lane is demonstrated to be acceptable in principal in terms of scale, height and massing, as previously granted permission under Dublin City Council Register Ref: 2896/20;
- The proposed 2-bed dwelling should be assessed in terms of residential standards as an apartment unit;
- The proposed residential unit would have a high residential amenity in terms of internal room sizes, orientation and private open space. A housing quality assessment is provided as an appendix to the appeal (Appendix A);

- The assessment of the merits of the proposal should be on a case by case basis in specific in terms of private open space provision and separation distance between buildings. It is noted there is no minimum separation distance set out in the apartment guidelines and the Dublin City Development Plan.
- Clarification of the bin storage arrangements for the commercial and residential uses is provided in the appeal statement including the submission of a site layout plan(s) annotated with a waste management strategy for each of the units (Appendix B).

6.2. Planning Authority Response

- The Planning Authority request that the decision of Dublin City Council is upheld by An Bord Pleanála. In the event of a grant of planning permission it is requested that a section 48 development contribution is applied to the permission by way of condition.

6.3. Observations

N/A

7.0 Assessment

7.1. This first-party appeal is against the refusal of Dublin City Council to grant planning permission and retention permission for development at nos. 61 & 63 Saint Assam's Park, Raheny, Dublin 5. Nos. 61 and 63 are commercial units in a small terrace of units with active street frontage within a commercial cluster zoned neighbourhood centre. The neighbourhood centre is surrounded by suburban housing. The applicant site comprises 2 (nos.61 & 63) of the 4 original plots (nos. 57-63 Saint Assam's Park) in the run of commercial units; the applicant site includes the rear curtilage of no. 61 denoted on the drawings as "existing rear service yard".

The subject commercial units on street are occupied by "Brew Coffee" (Retail unit 2 – ground floor of no. 63) and "Pete's" wine shop (Retail unit 1 – ground floor of no. 61); access to "All Financial" (first floor of no. 63) is at the southern extremity of the

commercial terrace (and is not included within the red line site boundary). The access to the first floor of no. 61 Saint Assam's Park is at the northern extremity of the street frontage within the red-line site boundary.

The building line of the terrace is tight to the pavement with a hard surfaced car parking area located to the front of nos. 61 & 63 between the pavement and the main carriageway. There is a service lane to the rear of the commercial terrace with access from Saint Assam's Avenue facilitating the operation of the commercial units. The "existing rear service yard" to the rear of no. 61 has a vehicular access to the service lane opening through double gates.

7.2. The development comprises 3 principal elements for assessment purposes:

- the retention of the subdivision of a retail unit that previously spanned the floor area of nos. 61 & 63 (McMahons Food Store) and associated elevational changes (including reinstatement of customer entrance to no. 61) to form two independent retail units at no. 61 (Pete's) and no. 63 (Brew Coffee), respectively;
- the change of use of the upper floor of no.61 Saint Assam's Park from ancillary office use, linked to the ground floor retail use, to use as a self-contained office unit with street access via a shared entrance at street level and;
- the retention of the demolition of an ancillary store to the rear (9.9 sqm.) of no. 61 Saint Assam's Park and planning permission for the construction of a detached two-storey dwelling unit (approximately 81 sqm.) that would combine with the residual rear ground floor area of no.61 Saint Assam's Park (37.4 sqm.) to create a 2-bedroom dwelling linked by an open courtyard; the residual ground floor area of no. 61 Saint Assam's Park would require a retention permission for a change of use from commercial to residential use.

It is considered that the 3 principal development elements seeking retention and permission are inter-related and are not divisible. However, for clarity I will assess the substance of each element in succession below.

7.3. In the matter of the retention of the subdivision of the larger retail unit (McMahon Food Store) to form two independent retail units, it is observed on my site visit that

both independent units are existing and are operational. The retail unit at no. 61 Saint Assam's Park (Pete's) was in use as a wine shop on the day of my site visit. It has a modest floor area (28 sqm.) comprising retail floor space and a lavatory cubicle. The residual space (approximately 38 sqm.), located to the rear of the retail unit, presently comprises an unauthorised residential unit.

It is proposed that this residual area to the rear of the retail unit would form part of a proposed larger 2-bedroom dwelling unit, in part to be constructed as a two-storey detached building to the rear of the site and separated from no.61 by an open courtyard. The proposed internal courtyard would provide the dedicated open space (approximately 28 sqm.), for the combined residential floor plates at ground floor level within no. 61 Saint Assam's Park and at ground and first floor level within the new-build 2-storey building to the rear of the site; the subject residential floor plates located within the two buildings albethey defined as a 2-bedroom dwelling on the submitted drawings would be physically independent with no internal link.

It is noted that the Transport Planning Division of Dublin City Council (TPD) reports that bicycle parking and refuse bin storage are adequately demonstrated for the residential unit and that the Division has no objection to the sub-division of the ground floor retail unit. It is considered that the retail subdivision is acceptable in principle. However, the configuration of the unit(s) is problematic. It is considered that the interrelationship between residential and commercial floor areas, proposed shared services, including waste disposal, and access and egress to the 2-bedroom residential dwelling require a comprehensive and integrated assessment.

- 7.4. In the matter of the self-contained office unit, the proposed first floor office suite with street access would be acceptable in principle. The change of use would be consistent with the pattern of development within this commercial streetscape and with the neighbourhood zoning objective. However, the principal access to the proposed 2-bedroom dwelling unit, in part comprising the new-build 2-storey building to the rear of the site and the residual ground floor area of no. 61 Saint Assam's Park, located behind the retail frontage, would be via a shared access lobby that also provides access to the first floor office suite. The access lobby is located at the northern extremity of the applicant site completing the commercial street frontage to nos. 61 & 63.

The bin storage arrangement for the self-contained office unit, the retail units and the 2-bedroom residential dwelling have been clarified by the appellant as part of the appeal. A revised and clarified layout of the service lane has been submitted with the appeal statement (Drg. PA102 dated July 2022), which identifies the bin storage arrangements for the respective uses (Appendix B). The 2-bedroom residential dwelling would have a dedicated bin storage area within the rear curtilage of the unit located beside a dedicated parking space. The bin storage for the office unit, wine shop (Pete's) and coffee shop (Brew Coffee) would be located in the service laneway.

- 7.5. In the matter of the proposed 2-bedroom residential dwelling, the appellant has cited the national and local strategic policy context promoting compact growth in support of a grant of planning permission. It is considered that the National Planning Framework (NPF 2018) and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Region (EMRA) (2019) encourage and support the densification of existing urban areas and promote the use of performance based criteria in the assessment of developments to achieve well designed and high quality outcomes.

The Dublin City Development Plan 2022-2028 Chapter 1 (strategic context and vision) commits the City Council to promote compact growth and to ensure the continued consolidation of the city, with sustainable patterns of development and the creation of a dynamic and vibrant city core complemented by well-serviced and integrated neighbourhoods. Furthermore, Chapter 5 (Quality Housing and Sustainable Neighbourhoods) policy objective QHSN6 (Urban Consolidation) requires that residential consolidation and sustainable intensification through the consideration of planning applications for *inter alia* back-land type developments, such as the proposed 2-storey residential building to be constructed to the rear of no. 61 Saint Assam's Park, and the adaptation of existing buildings, is subject to the provision of good quality accommodation.

- 7.6. The proposed 2-bedroom dwelling would consist of two residential formats to be combined as one dwelling unit comprising: (1) floor area within no.61 Saint Assam's Park including a living room, utility, study and an ensuite off the study – a total floor area measuring approximately 38 sqm. and; (2) floor area external to no. 61, within a new-build 2-storey building to the rear of the site, including a kitchen / dining room

(downstairs), 2 bedrooms and bathroom (upstairs) - a total floor area measuring approximately 81 sqm. The existing vehicular access to the rear of the site opening onto the service lane would provide ingress / egress to a dedicated residential car parking space and yard with access to the kitchen / dining room of the proposed 2-bedroom dwelling unit; bicycle and bin storage are also configured in this location.

The two residential formats would for practical purposes be independent entities, notwithstanding their room designation on the submitted drawings, by reason of the external courtyard being the sole link between the formats: for example a resident would have to walk from the living room located in no. 61 through the open courtyard to gain access to the kitchen / dining room and bedrooms in the proposed 2-storey detached building to the rear of the site. Therefore, it is considered that the internal arrangement of the 2-bedroom dwelling, to be located in two physically separate buildings, would provide a poor level of residential amenity and would represent sub-standard residential development.

Furthermore, it is considered that the proposed 2-bedroom residential dwelling, would fail to satisfy minimum housing development standards, as provided for in Chapter 15 of the Dublin City Development Plan 2022-2028. In specific the provision of private open space would be deficient. Chapter 15, Section 15.11.3 (Private Open Space) requires a minimum standard of 10 sqm. of private open space per bedspace: a single bedroom represents one bedspace and a double bedroom represents two bedspaces. It is considered that the proposed 2-bedroom dwelling would have a total of two double bedrooms requiring a minimum open space requirement of 40 sqm. The proposed internal courtyard, measuring an approximate 28 sqm., would be deficient in area to satisfy the required private open space standard.

The appellant has stated in the appeal statement that the proposed 2-bed dwelling should be assessed as an apartment unit. It is considered that the configuration of the proposed 2-bedroom dwelling unit, where the residential accommodation would be arranged in two distinct and independent buildings, linked by an open courtyard, would not constitute apartment development rather it would represent substandard back-land house development.

It is considered that the location of the proposed 2-storey building to the rear of the site with its principal access from the shared entrance lobby (shared with the first-floor office suite) at No. 61 Assam's Park would constitute back land housing development. Chapter 15, Section 15.13.4 (Backland Housing), of the Dublin City Development Plan 2022-2028, provides minimum standards for back-land housing. The proposed back to back distance between the rear elevation of no. 61 Saint Assam's Park and the east elevation of the proposed 2-storey building is a deficient 5.343 metres, as measured from the main rear elevation of no. 61 Saint Assam's Park at first floor level.

Therefore, the proposed location of the new-build 2-storey building would not satisfy the minimum 15 metres back-to-back development standard required by the Dublin City Development plan for back-land housing development. It is considered that the proposed 2-bedroom dwelling unit, would be inconsistent with the provisions of Section 15.13.4 (Backland Housing) in terms of residential development standards *inter alia* with regard to the provision of private open space, minimum back to back distances and would as such represent substandard back land housing development.

7.7. Finally, the appellant observes that the office use and wine shop would generate minimal waste. However, in practical terms waste disposal would require the physical movement of waste from the commercial units to be brought out through the main customer entrances and disposed of via a circuitous route, in front of no. 62A Saint Assam's Avenue, to access the dedicated commercial storage located approximately mid-way along the service lane to the rear of the commercial terrace (Appendix B). It is considered that the waste management strategy as submitted as part of the appeal is sub-optimal, as there would be no external space for the operation of the commercial units.

7.8. In conclusion, there is a strategic requirement for additional housing units in Dublin City and suburbs and the densification of the existing built urban / suburban footprint through sustainable compact growth is a priority national, regional and local policy objective. However, there is a requirement to provide quality housing that achieves, at a minimum, appropriate development standards to provide an acceptable level of amenity for residents. It is considered that the proposed 2-bedroom residential dwelling would not satisfy private open space, internal configuration and separation

between building standards and as such would represent sub-standard residential development.

Furthermore, I conclude that the other elements of the development to be permitted and to be retained are not divisible from the substantive proposal for a 2-bedroom dwelling unit. I would also concur with the Planning Case Officer that the reconfiguration to provide two independent retail units without dedicated refuse storage is problematic. The appeal statement includes a clarified layout of the rear service lane to identify separate dedicated bin storage zones for the residential and commercial uses. However, it is considered this does not mitigate the requirement for on-site waste storage within the curtilage of the commercial units.

7.9. Appropriate Assessment Screening:

The proposed development comprises a change of use and a new build detached residential building in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

8.1. The refusal of permission and the refusal of retention permission for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the neighbourhood zoning objective, the pattern of development in the area, my site visit observations and the Dublin City Development Plan 2022-2028 policy framework, the proposed development and the development to be retained should be refused permission and refused retention permission for the following reason:

1.	Having regard to the restricted nature of the site, the development to be retained and proposed development would result in a substandard dwelling with poor internal configuration, having residential accommodation linked solely by an external courtyard, providing
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inadequate residential amenity and substandard private open space. In addition, there would be an insufficient separation distance from the rear elevation of no. 61 Saint Assam's Park to the proposed detached 2-storey backland residential building to the rear of the site. Furthermore, the commercial bin store to serve the two retail units and office unit located in the service lane would be problematic by reason of the distance and access from the commercial units taking a circuitous route, through the customer entrances on Saint Assam's Park via the frontage of no. 62A Saint Assam's Avenue, to access the laneway. Therefore, the proposed development would constitute overdevelopment of a restricted site contrary to the Z3 objective to improve neighbourhood facilities for the area, would be inconsistent with the residential housing standards and provisions of the Dublin City Development Plan 2022-2028 and the proper planning and sustainable development of the area.

"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".



Anthony Abbott King
Planning Inspector

07th July 2023