



An  
Bord  
Pleanála

## Inspector's Report ABP 315251-22

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<b>Development</b>	Permission for change of use from commercial to residential use, Demolition of office Building Construction of two houses and associated works.
<b>Location</b>	No 229A Rathmines Road Upper, Rathmines, Dublin 6.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	WEB 1861/22.
<b>Applicant</b>	Martin O'Brien
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Martin O'Brien
<b>Date of Site Inspection</b>	10 <sup>th</sup> August, 2023
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The application site which is that of No 229A Upper Rathmines Road is that of a vacant corner site building and a derelict shed at the lower, western end of the original plot of No 229 Upper Rathmines Road, an end of terrace late nineteenth century townhouse. Access off from Upper Rathmines Road via Highfield Mews, a privately owned lane extending along the entire length of the plot of No 229 and around to the rear, northwards terminating at the rear of No 221 Upper Rathmines Road. There is a rubblestone boundary along the west side boundary and an original cobble stone surface is exposed along this north south section of the lane.
- 1.2. A row of nineteenth century coach house/workshop buildings are on the east side of the north south section of the lane on the application site at the rear of adjoining properties as far as No 221 Upper Rathmines Road. No 227A Upper Rathmines Road adjoining the application site is in use as a dwelling formed from the original building facing onto the lane at the rear of No 227. A 'For Sale' sign was displayed in the front garden at the time of inspection. formed from an original building facing onto the lane at the rear of No 227a. To the west side are properties on Villiers Road and to the south side are apartment blocks (Woodleigh) .
- 1.3. The rear gardens of Nos 227 – 229. Upper Rathmines Road are enclosed by a boundary wall circa two metres in height. There is access from the Highfield Mews Lane to the application site and to No 227A the adjoining dwelling over an accessible area off Highfield Mews which is used for parking.by occupants of No 229 and others. The structures within the application site comprise a building at the southwestern corner of the lane which has been in office use and a workshop to its east side.

## 2.0 Proposed Development

The application lodged with the planning authority on 14<sup>th</sup> September, 2022 indicates proposals for permission for:

- change of use at the site from commercial to residential use.

- demolition of the two existing buildings; the office building with a stated floor area of 90 square metres and workshop with a stated floor area of 49 square metres.
- construction of two, two storey flat roof houses with stated floor areas for Unit 1 of 101.9 square metres and a front garden of 26.7 square metres and, for Unit 2 of 109.7 square metres and front garden at 21 square metres. The dwellings are to be finished with stone cladding at ground level and painted render at upper floor level. Timber louvring and expansive glazing are also included along first floor west facing balconies with stated floor areas of 12.7 and 12.8 square metres are included at first floor level.
- a communal pathway and associated services and site works.

The application includes a planning report, prepared by the applicant's agent,

### 3.0 Planning Authority Decision

#### 3.1. Decision

By order dated, 4<sup>th</sup> November, 2022, the planning authority decided to refuse permission based on the following two reasons:-

Reason 1.

*“Having regard to Section 16.10.16 Mews Dwellings of the Dublin City Development Plan 2016- 2022 and to the siting, access, form, scale and design of the proposed development it is considered that the proposal constitutes piecemeal development, would result in an unacceptably low level of residential amenity for future occupants, would have an excessively overbearing effect on adjoining dwellings and does not complement the character of the conservation area. The proposed development would therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.”*

Reason 2:

*“The existing laneway of Highfield Mews from which the proposed mews development would gain access is currently substandard and contrary to the Dublin City Development Plan 2016 – 2022, Section 16.10.16. It is considered that the development, pending improvement in access, would therefore, endanger public safety by reason of traffic hazard. The development would set an undesirable precedent of other sites along the laneway. The 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 recommended refusal of permission based on the two reasons. (See 3.1 above) He compares the current and the prior unsuccessful application but indicates concerns about the current proposal's bulk and form. He considers these to be greater in adverse impact than the prior proposal and notes the depth of floor plan and the first-floor overhang in the current proposal. He states that there are shortfalls in internal layout notably with regard to width of the main living room, lack of sunlight and daylight analysis in the application, that there is an insufficient quantum and quality of private open space and refers to the deficiencies of the laneway having regard to the transportation planning division's report.

#### **3.2.2. Other Technical Reports**

The report of the Roads and Traffic Planning Division indicate a recommendation for refusal of permission. (Reason 2 attached to the decision the manager's order refers. See para 3.1 above.) It is stated that access along the laneway is seriously substandard for all vehicle types and that in spite of the omission of proposals for on-site parking, mews lane development which requires services and emergency accessibility is not acceptable and would set undesirable precedent for acceptance of such development along the lane and at other similar locations in the city.

#### **3.2.3. The report of the Drainage Division indicates no objection to the proposed development subject to standard conditions.**

## 4.0 Planning History

P. A. Reg. Ref. WEB1223/22:- Permission was refused for change of use from commercial to residential use at the site, demolition of the existing buildings and construction of two, two storey three bed flat roof dwellings. This application included provision is also made in this application for one car space per dwelling based on three reasons.

Reason One is on grounds of endangerment of public safety by reason of traffic hazard and undesirable precedent having regard to the substandard width of the laneway which is contrary to the mews lane provisions in section 16.10.12 the CDP

Reason Two is on grounds of failure to provide for adequate residential accommodation due to insufficient private open spec provision at the rear having regard to the CDP

Reason Three is on grounds of excessive site coverage, depth and massing at first floor level, inappropriate use of render for upper floor elevations, incompatibility with the character of the lane and wider conservation area and, undesirable harmful precedent having regard to the CDP

## 5.0 Policy and Context

### 5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2022-2028 according to which the site is within an area subject to the zoning Objective Z2 'Residential Neighbourhoods (Conservation Areas) *"To protect and improve the residential amenities of conservation areas"* Guidance on policy and objectives for Z2 zoned lands is in section 14.7.2.' The principal land use which is encouraged is housing. Residential use is permissible within the land use zoning objective for the site. The change of use from commercial to residential use is therefore acceptable in principle. The general objective is to discourage unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

Built Heritage and Archaeology are in Chapter 11 and Development Management Standards are in Chapter 15:

Mews Lane Development is covered in section 15.13. 5. (15.13.5. 1 -15.13. 5.4)

Architectural Design Quality is in section 15.4.3, Brownfield Regeneration site in section 15.5.1 and infill in 15.5.2 15.11.3 for private open space (10 square metres per bedspace.)

## 5.2. **EIA Screening**

5.3. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

An appeal was lodged on behalf of the applicant on 1<sup>st</sup> December, 2022. The submission includes a detailed appeal statement, a transportation statement an outline construction management plan, drawings and a daylight and overshadowing report. In brief, the appeal grounds having regard to the reasons for refusal attached to the planning authority decision can be outlined as follows.

With regard to reason 1:-

- The development is not piecemeal in that it is to be accessed in the same manner as No 227A via a shared path via the open area between the rear of the original dwellings and development potential of other properties on the lane are unaffected by the proposal
- There are no specific objectives in the CDP for the development of Highfield Mews Lane, but the proposal is an improvement for the site, provides appropriate precedent and has no impact on the conservation area having regard to the Z2 zoning objective. The lane is lacking in significant

architectural merit and views into the site are limited. It is dominated by the apartment development at which the carpark could be developed at a future date.

- The depth of the floorplan, as remarked on by the planning officer, marginally exceeds that of No 227A, by 0.44 metres. The first-floor overhang marginally over sails the ground floor by 1.2 metres. The roof and elevations are good quality, the scale is appropriate for the location, the plot ratio is below the maximum for Z2 lands, and the site coverage is appropriate. Targets for floor area, widths and room sizes are exceeded. The shortfall in living room width is negligible and is due to the setback to the south to facilitate improvements to the lane. The width could be addressed by condition by reducing the utility room width by 0.02 metres.
- A daylight and sunlight and overshadowing study is included with the appeal, in response to the observations of the planning officer as to the lack of a study within the application submission. It is demonstrated in the study that the proposed development is in compliance with BRE 209, 2022 and, with regard to light in buildings, compliance with BS EN17037
- Private open space is in the form of relatively large gardens and terraces at first floor level is useable and accessible and appropriate in quantum. Furthermore, the location is circa two minutes' walking distance from Palmerston Park. With regard to the observations of the planning officer report on private open space and the CDP standards, there are several precedents for private amenity space which is split over two levels, accessed from a bedroom, located at the side and not the rear and, limited depth. The first-floor balconies have sufficient separation distance from the west boundary so as not to compromise possible future development potential on the lands to the west side of the lane.

With regard to Reason Two:-

- There is a clear rationale to support the development within the transport statement included in the appeal submission. ( It is accompanied by an outline construction management plan.)



- The omission of parking in the current proposal is an acknowledgement that dedicated improvement works for the lane have not been carried or proposed. The applicant is facilitating the widening of the laneway in the development, but it is queried as to why it is necessary to widen the section from north to south to CDP standards. There are limited additional mews lane dwellings or need for on-site parking in view of the location close to the city.
- Service vehicles could access and egress the site from the laneway without undue impact on residential amenities of the occupants or of adjoining properties as submitted in the auto-track drawings and the Transport Statement. The nature of access on the laneway for the proposed development is preferable for public safety to the commercial traffic associated with the current office use. The proposal provides for improvements in width for pedestrian safety and vehicular access.

It is also submitted that:

- The proposal accords with the NPF which seeks balanced and concentrated growth in a sustainable manner in established and major urban areas . Reference is made to Objectives NPO 3a, 3b, OP 4, NPO33 and NPO35. The proposal is a good quality option as regards density and increased vibrancy and vitality where services and transport exist, appropriate height It is consistent with development management criteria as an appropriate infill for the district and neighbourhood in the form and design and it also protects residential amenities.
- The daylight and sunlight and overshadowing study accompanying the appeal indicates use of the methodology in BRE 209 *Site Layout Planning for Daylight and Sunlight A Guide to Good Practice* (2011) (BRE 209) It is concluded that development generates minimal overshadowing having regard to standards within, *BRE 209* At the centre of the window so adequate sunlight is achieved. The VSC value for the entire of windows exceeds 27%, and the fifty percent rule for two hours sunlight over half of an amenity space for two hours on 21<sup>st</sup> March.

## 6.2. **Planning Authority Response**

There is no submission from the planning authority on file

## 6.3. **Observations**

There are no observer submissions from third parties on file.

## 7.0 **Assessment**

7.1. The issues central to the determination of the decision can be considered below under the following subheadings:-

Strategic Policy

Piecemeal development

Residential Qualitative Standards

Adequacy of Highfield Mews Lane and public safety.

Refuse Storage and Collection

Cycle Parking

Emergency and Vehicular Access (Services and deliveries)

Construction Stage Management

Appropriate assessment

### **Strategic Policy**

7.2. In principle, the proposed development, subject to achievement of satisfactory planning, environmental and qualitative standards .would contributes to delivering the national and local strategic policy objectives for of consolidation of urban areas with development on underutilised serviced urban sites and delivery additional residential development.

### **Piecemeal development**

7.3. There are no specific objectives to facilitate and provide for mews development of Highfield Mews in either now current or prior, CDP which was operative at the time of the determination of the decision by the planning authority. The generic policies and

objectives encouraging and providing for a unified approach for mews lane developments as opposed individual proposals for each development (to be considered on their own merits), in section 15.3.5 - 15.3.5 1- 4), superseding similar provisions section 16.10.16 in the prior CDP) are applicable.

- 7.4. There is an apparent acceptance that vehicular access along the north south section of the lane which is cobble surfaced and is a contributory feature in the character of the area, is not feasible for vehicular access as has been established by the entrance and small garden at the north side of the adjoining mews dwelling at No 227A As such this section of the lane, which is cobble surfaced and enclosed by original buildings on the east side and the boundary adjoining property on Villiers Road to the north side.
- 7.5. In the case of the subject proposal, it is reasonable for an individual proposal to be made and considered and an expectation as to a unified approach is considered to be unrealistic and unreasonable for the subject location. There is exceedance of standards for plot ratio and no objection to the contemporary design and selection of materials, or to the height or scale, including a box form effect, beneath the flat roofs for the pair of dwellings notwithstanding the contrasting proportions in scale, form, height and in the finishes and materials in the existing structures on north south section of the lane. It is therefore agreed that the proposed development would not unduly affect the amenities and characteristics of the area having regard to the zoning objective; Z2- Residential Neighbourhoods (Conservation Areas)

#### **Residential Qualitative Standards**

- 7.6. The shortfalls having regard to the standards in Table 1 of *“Quality Housing for Sustainable Communities Best Practice Guidelines for Homes Sustaining Communities”* – DOEHLG 2007, to which the planning officer refers have been reviewed. The shortfall in width for the internal accommodation measurements for the living rooms are marginal with no implications as regards attainable residential amenities for future occupants. There is no objection to the overhang on the east elevation above the bedroom windows and entrance at ground floor level which allows for main living accommodation is on the first floor to benefit from sunlight and daylight.

- 7.7. It is considered that the quantum and quality of private open space provision, (in the form of west facing first floor balconies) and individual ground level gardens to the north side in front of the entrances and adjacent to the garden are for No 227A is satisfactory and compatible notwithstanding a shortfall of the CDP standards for size and depth of the latter having regard to the inner suburban location. The case made in the appeal as to the proximity of Palmerstown Park to the site is accepted in this regard.
- 7.8. There are no concerns with regard to achievement of the minimum standards for VSC and private open space daylight and sunlight and overshadowing study submitted with the appeal BRE 209, 2022 and, with regard to light in buildings, compliance with BS EN17037 Separation distances from rear elevation windows at the main buildings are sufficient

**Adequacy of Highfield Mews Lane and public safety.**

- 7.9. The submitted transport statement is somewhat generic and focussed on mobility management and alternative transport (to the private car) and the submitted statement also relates to a development on the north circular road having regard to for the proposed development (page 24) A number of scenarios for works to Highfield Mews and possible facilitation of two way traffic and segregated cycle paths are discussed but it is considered that they area outside of the scope of the proposed development in that it appears that the applicant would not be in a position to implement these works other than the provision for the setback along the frontage of the site.

**Refuse Storage and Collection**

- 7.10. It is reasonable for bins to be stored in the front gardens subject to enclosures being provided, which can be addressed by condition. There is no objection to bins being presented for collection at Rathmines Road Upper instead of the lane.

**Cycle Parking.**

- 7.11. The application does not include proposals for the proposed dwellings. However, provision for cycle parking appears feasible and should permission be granted, the applicant could be required by condition to submit and agree full details of arrangements with the planning authority.

### **Emergency and Vehicular Access (Services and deliveries)**

The proposed tracking arrangement for the emergency services vehicles is dependent on the proposed turning area being free from obstruction. Given the forty-four metres' distance from the public road it is essential for fire tenders enter onto the lane from Upper Rathmines Road to be within sufficient distance to attend emergencies.

- 7.12. It would appear that reversal, onto or off Upper Rathmines Road along the lane may be unavoidable for such vehicles and larger commercial vehicles servicing the dwelling with deliveries etc. and could lead to stopping for pick up and drop off on the lane. However, the frequency of such trips would be negligible. It is noted that there are public parking spaces for road users on Upper Rathmines Road in the vicinity of the entrance to Highfield Mews.

### **Construction Management**

- 7.13. In the case of the subject proposal, given the constraints and limitations having regard to the site and location, notwithstanding the small scale of the proposed development, it is considered that preparation of and compliance with an agreed construction management plan is warranted both in the interests of the established residential area, residential amenity, the conservation area, public safety and health and, clarity as to orderly development. The outline CMP is considered acceptable subject to a comprehensive plan being prepared and made available following appt of a contractor and prior to commencement of works on site. If permission is granted a condition to incorporate specific requirements would be warranted.

### **Appropriate Assessment Screening**

- 7.14. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built up urban area and, the distance from and absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

## 8.0 Recommendation

In view of the foregoing, it is considered that Reason No 1 and Reason No 2 attached to the planning authority decision is unwarranted and could be set aside and that the planning authority decision can be overturned, and permission granted based on the reasons and considerations and subject to the conditions which follow:-

## 9.0 Reasons and Considerations

Having regard to the location of the infill site on a lane within an established inner-suburban area, close to services and facilities, to the nature of proposed use the proposed development it is considered that subject to the conditions set out below, the proposed development would provide for a satisfactory standard of residential amenity for the future occupants, would not seriously injure the residential amenities of properties in the vicinity, would not adversely affect the integrity and established character and amenities of the residential conservation area, would be acceptable in terms of public health and safety and traffic convenience and, would 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 interest of clarity.

2. The construction of the development shall be managed in accordance with a Construction Management Plan, which, following appointment of a contractor

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:

The location of the site and materials compound including the area storage of construction refuse.

Details of site security fencing and hoardings; arrangements for pedestrians and vehicles

Details of the timing and routing of construction traffic.

Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network.

Appropriate measures for the protection of the fabric of the existing laneway. including the cobble stone surface along the north south section boundary walls and adjoining buildings.

Appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels.

Reason: In the interest residential amenity, public health and safety and orderly development.

3. Hours of construction works shall be confined to 0700 hrs – 1800 hrs Monday to Friday excluding bank holidays and 0800 hrs – 1400 hrs Saturdays only. Deviation from these hours shall be subject to the prior written agreement of the planning authority.

Reason: In the interest of residential amenity and the amenities of the area.

4. Management of noise during the construction stage shall be in accordance with the standards in, BS 5228: Noise Control on Construction and Open Sites – Part 1 'Code of Practice or basic information and procedures for noise control'.

Reason: In the interest of residential amenity and the amenities of the area.

5. The following requirements shall be provided for and adhered to in the development;-

Details of the proposed enclosures for bins and for covered cycle parking within the curtilage of each dwelling shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.

Refuse storage for each dwelling shall be provided for within the curtilage of each dwelling in an enclosure and not on the lane. Bins shall be presented for collection on Upper Rathmines Road on day of waste collection by service provider

Reason: In the interest of amenity, clarity orderly development.

6. Prior to the commencement of the development the applicant shall submit and agree in writing with the planning authority, a comprehensive engineering services report for the proposed management of foul and surface water to include provision for management of the surface water in accordance with Sustainable Urban Drainage Systems (SuDS)

Reason: In the interest of public health and to ensure a satisfactory standard of development.

7. The developer shall enter into water and wastewater connection agreements with Irish Water.

Reason: In the interest of public health.

8. Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.

Reason: In the interest of public health.



- 9 Details of all external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. Proposals for a name and house numbering scheme be submitted and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interests of urban legibility.

11. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

*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.*

**Jane Dennehy**  
Inspector  
10th August, 2023.