



An
Bord
Pleanála

Inspector's Report ABP 315912-23

Development	Demolition of garage and construction of new two storey mews house, 1. no off street car parking space and associated works
Location	Rear of No. 39 Tritonville Road, Sandymount, Dublin 4
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	5314/22
Applicant(s)	Robert Fagan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Village Management (No. 1) Company (Landsdown Village Management Company)
Observer(s)	None.
Date of Site Inspection	27 th April 2023
Inspector	R McLaughlin

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1.0 Site Location and Description

- 1.1. Tritonville Road in Sandymount, Dublin 4 is an inner suburban link road characterised mostly by a mix of early to mid-19th terraced houses with substantial front and rear gardens with some mews development to the rear. The subject site is located to the rear of a two storey, terraced house, No. 39 Tritonville Road and contains a single story garage to the rear served by an unnamed lane accessed from Newbridge Avenue. The laneway to the rear of this section of Tritonville Road extends northwest from Newbridge Avenue. The laneway has a good surface and yellow lines on the section from Newbridge Avenue to the T junction with Petty Lane and a poorer surface standard in the section from Petty Lane to where the Lane terminates to the north.
- 1.2. The subject site is c 14 m northeast of the junction of the of the two lanes. This section of the lane is not as well surfaced compared to the south of the junction with Petty Lane and has no footpath or road markings at the subject site.
- 1.3. Petty Lane runs in a southwest direction off the unnamed lane towards the River Dodder and is located to the rear of Newbridge Avenue and Lansdowne village, a small enclave of houses, located south of Lansdowne lawn tennis club.
- 1.4. The subject site is broadly rectangular in shape with a stated area of 247 sqm. A garage is located both north and south of the subject site. A tree located on the boundary with the adjoining garage to the south on the lane has cable infrastructure extending from a stand attached to the tree.
- 1.5. A number of mews properties have been developed along the lanes in the vicinity. The northern section of the laneway, north of the junction with Petty Lane has not been developed for residential development fronting the lane on the eastern side. On the western side, the rear gardens of houses in Lansdown Village bound the lane. A studio exists where the lane terminates to the north.

2.0 Proposed Development

- 2.1. The proposed development consists of the demolition of an existing single story garage on the back lane to the rear of No. 39 Tritonville road and the construction of a new two storey, 3 bedroom flat roofed mews house with roof lights, 1 no. off street

car parking space, bin and bicycle storage, private courtyard garden to front, rear garden and new 2.1 m tall boundary wall with retained garden to rear.

- 2.2. The proposed modern flat roofed house is proposed at 7.3 m high on the northern side, 6.1 m on the southern side, 9 m wide onto the laneway and up to 16.8 m in depth. A distance of 33.2 m is proposed between the rear of the existing and proposed dwelling. A rear garden (east) of c 76 sqm is proposed and a courtyard on the west adjacent to the parking area. The proposed floor area of the dwelling is 169.3 sqm and the garage proposed to be demolished is 52 sqm.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. A notification grant permission dated the 1st of February 2023 was subject to 11 conditions, the following of note.

Condition 2 required a development contribution.

Condition 4 required the glazing of the first floor west facing bathroom to be opaque.

Condition 5 required compliance with the requirements of the Transport Planning Division, which in summary related to the following:

- The applicant shall submit a revised drawing for written agreement showing the dwelling set back to provide a minimum 5.5 metre wide laneway.
- The section of substandard laneway which provides access to the development shall be upgraded to match the surface of the upgraded sections of the laneway to the south and a plan shall be submitted for written agreement.
- The entrance shall be at most 2.8 metres in width and entrance gate shall not be outward opening.
- All costs including repairs to the public road and services shall be at the expense of the developer.

-Condition 11 required the naming and numbering of the dwelling to be agreed with the planning authority prior to the occupation of the dwelling.

3.2. Planning Authority Reports

3.2.1. Planning Report

3.2.2. An extract from the transport planning division is inserted into the planning report. This is detailed below.

3.2.3. The application is for a mews dwelling is similar to a permitted development on the site which expired. The development context has not changed significantly in the interim. The development plan promotes and supports residential consolidation. The concern of the observer in relation to the width of the walls can be accommodated without seriously injuring the standard of accommodation internally. A separation distance more than 33 metres is achieved to the rear of the main house. The proposed mews would maintain the established building line on the lane and would be of height and scale similar to the existing Mews to the rear of no. 43. The requirements of the traffic planning division can be dealt with by way of condition. A condition can be attached in relation to an opaque window. It is recommended that permission be granted

3.2.4. Other Technical Reports

3.2.5. Drainage Division - no objection

3.2.6. Transport Planning Division. This report refers to the relevant development plan standards for mews laneways. The majority of the lane is in reasonable condition with double yellow lines. The subject site is located on a section of lane that is substandard. This portion of the lane provides vehicle or access to the rear of a number of houses fronting Tritonville Road as well as a number of yards and a studio. There is no objection in principle to the provision of a dwelling, but the laneway shall be upgraded to match the surface of the upgraded sections of the lane. Parking shall be provided within the curtilage and not on the laneway. The development shall be set back to provide a minimum 5.5 metre lane. There is no objection subject to five conditions relating to a minimum 5.5 metre wide laneway, upgrading the substandard laneway, a vehicle entrance at 2.8 metres in width, costs to be at the expense of the developer and the developer to comply with the requirements set out in the code of practice. The walls of the dwelling were considered to be non-compliant with building regulations.

3.2.7. **Observations**

- 3.2.8. One observation was submitted (by the appellant) to the planning authority during the planning application on substantially the same grounds as the appeal. In summary, the observation considered provision of individual homes and associated vehicle access could be considered an inappropriate intensification of the laneway, and no further development should take place unless the laneway is upgraded. Repeated requests have been made that the lane be taken in charge with no success. The observation also considered an increase densification of the lane has significant impacts on the Lansdowne Village estate and that construction works have historically trespassed on the lane. Specifically on the development, the observation requested the proposed opaque window should be formally conditioned. The development does not provide for a 5.5 metre wide laneway as required by condition number 8 in the 2016 permission and the access does not comply with the minimum 2.5 metre requirement.

4.0 **Planning History**

- 4.1. Subject site - relevant history
- 4.1.1. PA ref. 3374/16- permission granted for demolition of garage and construction of house.
- PA ref. 6024/06-permission granted for demolition of garage and construction of house on the subject site on appeal PL296S. 221833. Extension of duration refused.
- 4.2. Sites in vicinity- relevant history
- 4.2.1. PA ref. 2277/21-Permission granted for mews house to the rear of 47 Tritonville Road upheld on appeal ABP 311697-21.
- 4.2.2. PA ref. 3759/20-Permission granted for mews house to the rear of 141 Tritonville Road upheld on appeal ABP 310116-21.
- 4.2.3. PA ref. 2440/17-Permission granted for mews house to the rear of 137 Tritonville Road upheld on appeal ABP 29S.248932.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan 2022-2028 (CDP) applies. The site is zoned Residential Neighbourhoods (Conservation Areas) Land-Use Zoning Objective Z2: 'To protect, and/or improve the amenities of residential conservation areas' on map F. The principal land-use encouraged in Z2 areas is housing but can include a limited range of other uses. Permissible uses include housing.
- 5.1.2. The general objective for such Z2 areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.
- 5.1.3. Settlement Strategy – section 2.2. Compact growth will be promoted throughout the city through appropriate infill development and consolidation of brownfield sites.
- 5.1.4. Chapters 11: Built Heritage and Archaeology, and Chapter 15: Development Standards, detail the policies and objectives for residential conservation areas and standards, respectively.
- 5.1.5. Policy BHA9 provides development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities are listed including replacement or improvement of any building, feature or element which detracts from the character of the area or its setting and contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.
- 5.1.6. Section 15.13.5 sets out the standards for Mews development, including:
- Design and Layout Height
 - Scale and Massing
 - Roofs
 - Access
- 5.1.7. In relation to access, all mews lanes will be considered to be shared surfaces, and footpaths need not necessarily be provided. 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

5.1.8. Appendix 5 - 4.3.7 Parking in Conservation Areas and 4.3.8 Mews Parking.

5.2. **Guidelines**

5.2.1. Having reviewed the file, the following Guidelines are also relevant.

5.2.2. Development Management Guidelines for Planning Authorities (2007)

5.2.3. Section 7.3.2 provides "*Section 34(4)(a) of the Planning Act gives power to impose a condition regulating the development or use of adjoining etc. land, but such land must be under the control of the applicant and the condition must be "expedient for the purposes of or in connection with the development authorised by the permission". Moreover, where a condition requires the carrying out of works, or regulates the use of land, its requirements must be connected with the development permitted on the land to which the planning application relates.*"

5.3. **Natural Heritage Designations**

5.3.1. None relevant.

5.4. **EIA Screening**

5.4.1. 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

6.1.1. The grounds of appeal may be summarised as follows:

- The applicant has not sought permission from the owners to facilitate intensification of development onto this laneway
- While there is a right to pass and repass over the laneway due to the established right of way, the owners of the laneway object to the ongoing intensification of the laneway through iterative developments. The intensification has caused the owners considerable expense in maintenance, repair and renewal of the laneway.
- The local authority have not taken the laneway in charge removing the burden from the owners. Until the laneway is taken in charge on the appropriate infrastructure to support development is in place there should be a moratorium on any future development.
- Condition No.5 requires the section of substandard laneway to be upgraded. This condition places a burden on the developer of lands over which he has no authority or legal rights other than pass and repass and it would be considered trespass. Previous upgrades to the mew lane to the rear of Newbridge Avenue has not seen any contribution or support from those enjoying the access.
- A letter dated 2007 between the road maintenance, roads and traffic department and the management agents is appended to the appeal where there is no commitment to taking in charge by the Council of the laneway.

6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

- The proposed development represents the appropriate use for the suitably zone site. The applicant has sufficient legal interest to have made the

application, the redline boundary is within the applicant's ownership and therefore no landowner consent is required.

- The site is an amenity rich central location close to public services and public transport.
- The proposed development is in accordance provisions of the Dublin city development plan.
- The planning history is detailed and the refusal of the extension of duration preceded significant improvements to the lower Dodder flood defences. The planning history of eight sites in the vicinity is provided, ranging from 2002 to 2022. Two similar appeals in relation to the laneway were not upheld. It is submitted that the laneway is generally in reasonable condition where the proposed dwelling is situated. As the lane is undeveloped at this section, it is not to the same high standard. The applicant is willing to work with the owner of the laneway be that the appellant or Dublin City Council in case the lane is taken in charge prior to works taking place.
- Development at this site would in principle improve the laneway providing road upgrades to the northern section of the laneway. Condition five attached to the permission requires the upgrade to be made at the expense of the developer. The appellant is actively seeking to have the land taken in charge by Dublin City Council and this should not prevent planning permission being granted.

6.3. Planning Authority Response

The planning authority response requests the decision to grant permission be upheld. The following conditions are requested to be imposed.

- Payment of a section 48 development contribution
- Naming and numbering of the subject property.

6.4. Observations

None

6.5. Further Responses

None sought.

7.0 Assessment

7.1. The issues arising relate to the following:

- Principle of development
- Access, parking, consent and condition on upgrading the lane at expense of applicant.
- Appropriate Assessment

7.1.1. Principle of development

7.1.2. The applicable development plan is the Dublin City Development Plan 2022-2028. The site is zoned 'Z2 – Residential Neighbourhoods (Conservation Areas)' with the objective 'To protect and/ or improve the amenities of residential conservation areas'.

7.1.3. The CDP strategy places an emphasis on compact growth and supports the sustainable development of infill lands.

7.1.4. It is considered that the design, height, scale of the proposed dwelling is consistent with the character of both the mews lane and main building and has an acceptable level of open space and parking in accordance with the relevant Development Plan provisions. There is no objection to the design of the dwelling by the appellant or Planning Authority and minor points are made in relation to windows, access width and width of lane, all of which were dealt with by way of condition.

7.1.5. I consider the proposal, comprising a new mews dwelling (residential use) is acceptable in principle, subject to compliance with other planning considerations.

7.1.6. Access, parking, consent, and condition on upgrading the lane at expense of applicant.

7.1.7. The issues of access, parking, consent and upgrading the lane at the subject site are interrelated. An appeal has been made objecting to the proposed dwelling as part of the ongoing intensification of the laneway, which is privately owned and maintained by Village Management (No.1) Company and requesting a moratorium on additional

development onto the laneway until it is taken in charge by Dublin City Council. The appeal points to the fact that the applicant does not own the lane, that only a right of way exists and no consent to works to upgrade the lane have been given to achieve the condition imposed. The applicant has responded that he has a legal right to pass and repass along the laneway to his property and is entitled to carry out the development within the red line. The applicant considers that lane is in an acceptable condition and if the Board deems it necessary, he will work with the appellant.

- 7.1.8. There are no details from planning authority in the response to the appeal on the issue of taking the laneway in charge and while raised in the observation, the ongoing refusal to take the lane in charge was not specifically addressed in the planning report. The planning authority imposed a condition relating to the upgrading of the laneway outside the red line and outside the ownership of the applicant and the Transport Planning Division report focused on this issue. Dublin City Council have not taken in charge the lane and there is nothing in the Planning or Transport Division reports to suggest that this is under consideration currently.
- 7.1.9. The Development Management Guidelines for Planning Authorities acknowledges the planning legislation gives power to impose a condition regulating the development or use of adjoining land but reiterates that such land must be under the control of the applicant, which is not the case in this application. Accordingly, while the upgrading of the lane is a reasonable planning consideration, in this case, without consent of the owner, I consider that the condition was incorrectly imposed. The Planning Authority response to the appeal requested the decision be upheld and specifically two conditions be imposed, neither relating to upgrading the lane outside the ownership of the applicant. The Planning Authority have not reiterated their position about the upgrading the laneway outside the control of the applicant in the appeal response.
- 7.1.10. The assessment therefore leads to the suitability of the proposed development on a section of an unnamed laneway which is substandard in comparison to the southern section and Petty Lane to the southwest in a situation where there is no mechanism to require the lane to be upgraded by condition. The section of the lane where the subject site fronts is lightly trafficked as it undeveloped for residential use. The proposed development includes one off street parking space and would increase vehicular movements on this small section of laneway (c 14 metres) that is of lesser

quality than the lane to the south. The CDP strategy and the national and regional policy places an emphasis on compact growth and supports the sustainable development of infill lands, through consolidation to support the optimal use of the finite resource of land and accordingly I consider the provision of dwelling house in this location is acceptable while noting the condition of the laneway is not optimal.

7.1.11. I note the CDP considers that car free mews development may be appropriate in certain circumstances and that a mews laneway is considered a shared surface. In this regard, as only one parking space is proposed, I consider that this short section of the surface of the laneway close to the junction can facilitate the single dwelling.

7.1.12. I am satisfied the applicant has sufficient legal interests to have made the application within the red line, that a mews dwelling accessed from the laneway is an appropriate form of development at this location and that any issue relating to land ownership/ consent is a civil matter subject to Section 34(13) of the Planning and Development Act 2000 as amended. I do not consider that a condition requiring the upgrading the laneway outside the control of the applicant should be imposed.

The width of the vehicular access and the setback of the dwelling from the laneway can be conditioned in accordance with the requirements of the Planning Authority, to confirm the development accords with the standards in the CDP. The issue of construction works can also be conditioned. Issues around construction and impact on the laneway are civil matters.

7.1.13. **Appropriate Assessment**

7.1.14. Having regard to the modest scale of the proposed development, its location within an appropriately zoned and serviced area and the foreseeable emissions therefrom, I am satisfied that no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. Permission is recommended subject to conditions.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Dublin City Development Plan 2022-2028, to the 'Z2 – Residential Neighbourhoods (Conservation Areas)' zoning objective of the site, to the existing pattern of development, and to the nature, design, and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of property in the area and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays.</p>

	<p>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 residential amenities of property in the vicinity</p>
4.	<p>Details of the materials, colours and textures of all the external finishes to the proposed extension shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>Details of building layout, showing a minimum 5.5 m laneway shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of road safety and orderly development.</p>
6.	<p>1 no. car parking spaces shall be provided within the site. The location, access width and layout of this space shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To ensure adequate off-street parking provision is available to serve the proposed development.</p>
7.	<p>The glazing of the first floor west facing bathroom window shall be manufactured as opaque and permanently maintained as opaque.</p> <p>Reason: to protect the residential amenity of adjoining properties.</p>
8.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
9.	<p>Proposals for a name and numbering scheme of the dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	Reason: In the interest of urban legibility.
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>

Rosemarie McLaughlin
 Planning Inspector

15th May 2023