



An
Bord
Pleanála

Inspector's Report

ABP-315982-23

Development	Protected Structure: Demolition of store, construction of dwelling with all associated site works
Location	11, Louis Lane/Rear 10 Leinster Road, Dublin 6, D06 R594
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	5376/22
Applicant(s)	Airside Estates Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Airside Estates Limited.
Observer(s)	None
Date of Site Inspection	23/06/2023
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located to the rear (north) of no. 10 Leinster Road, fronting on to Louis Lane, in the south Dublin suburb of Rathmines. Louis Lane is a T-shaped cul-de-sac running to the rear of Leinster Road, with access through an arch at no. 13 Leinster Road. The lane provides access to the rear of the properties and also pedestrian access to the adjoining St Louis Senior primary school. The eastern end of the lane running to the rear of no.s 12-6 Leinster Road is uneven, unsurfaced and approx. 2.6-2.8m in width at the subject site. The first mews site on the eastern end of the lane, no. 9 Louis Lane (to the rear of no. 12 Leinster Road) has been developed. The western end of Louis Lane, serving no.s 8-19 Leinster Road has approx. 6 no. mews developments, is surfaced and wider, ending in a turning area.
- 1.1.2. The site, which once formed the rear garden of the main dwelling – a three-storey Protected Structure, comprises a single storey shed with mono-pitched roof and pedestrian access on to the lane.

2.0 Proposed Development

- 2.1. On the 5th December 2022 planning permission was sought for the demolition of a single storey shed and the construction of a part-two, part-single storey mews dwelling of 60.2sq.m. on a site of 90sq.m. at 11 Louis Lane. The application was accompanied by a cover letter, an Architectural Heritage Appraisal Report and a Drainage Report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 7th February 2023, the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:
 - 1 The proposed development for a mews dwelling, located on a plot which was formally the curtilage and garden of number 10 Leinster Road, (a Protected Structure) would not comply with the standards for mews dwelling as set out in Section 15.13.5 of the Dublin City Development Plan 2022-2028. The proposed development would constitute over development of this restricted plot, and result in a substandard amount of private open space being retained to cater for the main dwelling at number

10 Leinster Road, which is in multiple occupancy. In this regard, the proposed development would seriously injure the residential amenities of the existing residents in number 10 Leinster Road, and would be contrary to the proper planning and sustainable development of the area.

- 2 The proposed development would contravene Policy BHA2 of Section 11.5.1, Policy BHA9 of Section 11.5.3, and Section 15.13.5 of the Dublin City Development Plan 2022-2028, would adversely impact the amenity, special architectural character and setting of the Protected Structure and that of the Residential Conservation Area, and would set an undesirable precedent for development within and adjacent to protected structures in the area.
- 3 Adequate vehicular access proposals have not been demonstrated and the proposed development is considered contrary to Dublin City Development Plan 2022-2028, Section 15.3.5.4 Mews Access and Appendix 5, Section 4.3.8 Mews Parking. The proposed development would result in increased vehicular and pedestrian conflict resulting in traffic safety hazard, set an undesirable precedent and, would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. **Drainage:** No objection subject to condition.
- 3.2.2. **Transportation Planning:** Refusal recommended on the grounds of lack of adequate vehicular access, traffic safety hazard and undesirable precedent.
- 3.2.3. **Planning Report:** Notes planning history of site, notes that site has been sold since previous refusal, notes that laneway does not meet standards for mews development in terms of width. No car parking proposed, proposed mews is smaller than previously sought. Planning Authority states that they have concerns regarding the suitability of the site for a mews. Other mews on the lane were granted under previous development plans and generally at the other end of the laneway which is wider. Notes that notwithstanding that the subject site is now legally separated from the main dwelling at 10 Leinster Road (which is in multiple occupancy use), the site is still within the curtilage. Not clear how private open space for the main dwelling is provided given the existence of a large shed on site, not shown on the drawings.

Estimated 30sq.m. private open space for the main dwelling is substandard. Proposed development contravenes section 15.13.5.1, policy BHA2, policy BHA9, section 11.5.3 of the development plan. Concerns about ability of lane way to serve the dwelling, in terms of surface, width, high pedestrian footfall. Recommendation to refuse.

3.3. Prescribed Bodies

3.3.1. None on file.

3.4. Third Party Observations

3.4.1. One objection to the proposed development raised issues of overshadowing, loss of sunlight, deficiency in the laneway and impact on public safety.

4.0 Planning History

4.1.1. Planning Authority reg. ref. **4194/22**: Planning permission refused for the demolition of the single storey store at the end of the rear garden onto Louis Lane and the construction of a part single and part two storey mid-terrace house to the rear of the site opening onto Louis Lane including a rear terrace at first floor level and all ancillary works at rear, for the following reasons:

- 1 The proposed development is located in an area which is zoned Residential Neighbourhood Z2 with a land-use zoning objective "to protect and/or improve the amenities of residential conservation areas". The proposal for a two-storey mews dwelling 5 metres from the rear to the Protected Structure at 10 Leinster Road, would result in encroachment on the residential amenity of existing residents of this property. In addition, the proposal would have an overbearing impact on the private amenity space of 11 Leinster Road located directly adjacent to the site. The proposed development would therefore be contrary to the policies and objectives of the Dublin City Development Plan 216-2022 and to the proper planning and sustainable development of the area.
- 2 Having regard to the scale and layout of the proposed development, the proposed development fails to meet the required 7.5 metre garden depth as set out with 16.10.16 (j) of the City Development Plan. The proposed

development fails to provide an adequate level of private amenity for future occupiers, and represent an overdevelopment of the site. This is contrary to the Dublin City Development Plan 2016-2022 and accordingly would, therefore, not be compatible with the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Architectural Heritage Protection – Guidelines for Planning Authorities

5.1.1. This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principle of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).

5.1.2. With regard to **curtilage**, section 13.3.1 of the guidelines state that features within the curtilage and attendant grounds of a protected structure can make a significant contribution to the character of that structure. The designed landscape associated with a protected structure was often an intrinsic part of the original design concept and, as such, inseparable from the building. Where proposals are made for alterations to a designed landscape, ancillary buildings, structures or features within the curtilage or attendant grounds of a protected structure, a site inspection should be carried out by the planning authority in order properly to understand the potential effects of the proposed development. **Section 13.3.2** states that when assessing the contribution of structures or features within the curtilage or attendant grounds to the character of a protected structure, and when considering any proposals to alter such features, certain criteria must be considered.

5.2. Dublin City Development Plan 2022-2028

5.2.1. In the 2022-2028 plan the subject site is zoned **Z2 Residential Conservation** area zoning, which has the stated objective 'To protect and/or improve the amenities of residential conservation areas'. Section **14.7.2** of the development plan states that

“Residential conservation areas have extensive groupings of buildings and associated open spaces with an attractive quality of architectural design and scale”

- 5.2.2. Chapter 11 of the development plan refers to Built Heritage and Archaeology. Of relevance to the proposed development is Policy BHA2 which states:

It is the Policy of Dublin City Council: **BHA2** Development of Protected Structures
That development will conserve and enhance protected structures and their curtilage and will:

- (a) Ensure that any development proposals to protected structures, their curtilage and setting shall have regard to the Architectural Heritage Protection Guidelines for Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht.
- (b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.
- (c) Ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.
- (d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.
- (c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.
- (d) Respect the historic fabric and the special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.
- (e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.
- (f) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.
- (g) Ensure historic landscapes, gardens and trees (in good condition) associated with protected structures are protected from inappropriate development.

(h) Have regard to ecological considerations for example, protection of species such as bats.

5.2.3. **Section 15.3.5** of the 2022 plan refers to mews dwellings. **Policy BHA 14** states that it is the Policy of Dublin City Council To promote the redevelopment and regeneration of mews lanes, including those in the north and south Georgian core, for sensitively designed, appropriately scaled, infill residential development, that restores historic fabric where possible, and that removes inappropriate backland car parking areas.

5.2.4. No. 10 Leinster Road is included in the Record of Protected Structures, Volume 4 Part 2, ref no. 4609.

5.2.5. Mews parking is addressed in Volume 3 Appendices. Of relevance to the proposed development is **section 4.3.8** which states that “Car free mews developments may be permitted in certain circumstances where there are specific site constraints and where alternative modes of transport are available. Each development will be assessed on a case-by-case basis. However, if the introduction of car parking spaces within the mews development would have an impact on the volume of the proposal and would render it inconsistent with the historic terrace, then in order to protect the legibility of the historic coach house terrace, car parking will be discouraged”. “Potential mews laneways must provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles. A minimum carriageway of 4.8m in width (5.5m where no verges or footpaths are provided) is required. In circumstances where Transport and Mobility: Technical Requirements | Appendix 5 267 these widths cannot be provided, safe access and egress for all vehicles and pedestrians must be demonstrated”.

5.3. **EIA Screening**

5.3.1. Having regard to nature of the development comprising development of a brownfield site and the urban location 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An agent for the first party has submitted an appeal against the decision of the Planning Authority to refuse permission. The appeal provides detail on the reasons for refusal, the site location and description, the proposed development, the planning history of the site and comparable development, planning context nationally regionally and locally.

6.1.2. The grounds of the appeal can be summarised as follows:

- The proposed development is representative of a high-quality and appropriately scaled residential development with a high standard of accommodation that does not cause a loss of residential amenity.

Reason no. 1

- The proposed development is not over-development of the site. The wider area with its array of facilities is capable of absorbing the proposed development.
- The proposed development will have limited visibility.
- Plot ratio (0.67) and site coverage (51%) are within the standards in appendix 3 Table 2. Therefore, the proposed development is not over-development.
- The Board is requested to find that the proposed 36sq.m. private open space to be acceptable in the context the wider Rathmines area.
- The proposed development will not reduce the existing 30sq.m. private open space available to the main dwelling at no. 10 Leinster Road.
- Photo / images demonstrate the length of time of the separation of the two sites.
- The subject site is within 1km of numerous sports and recreation facilities and green spaces. Given this and that the proposed development exceeds the required 20sq.m. private open space , the relaxed standard for open space is justified.

Reason no. 2

- The proposed development has been sensitively designed with due regard to the adjoining Protected Structures.
- The proposed mews is compliant with Policy BHA2 – it does not alter the dwelling at no. 10 Leinster Road, it will be carried out in line with best conservation practice, is sensitive to existing Protected Structures and will have high quality finishes.
- The site is not located within a red-hatched conservation area. Policy BHA9 refers to conservation zones Z2 and Z8 denoted by red-line conservation hatching on the zoning maps. The proposed development enhances the Z2 zone by revitalising an under-utilised overgrown site.
- The proposed development is respectful and appropriate to the receiving context, in compliance with section 15.13.5 of the development plan.
- The proposed removal of the existing stone wall on to Louis Lane, will be rebuilt as a recessed panel within the façade for the front entrance of the mews.
- The proposed development provides exceptional private open space, in accordance with section 15.13.5.1.
- The proposed building is in line with surrounding mews and rear garden sheds. It has a smaller footprint than the mews at no. 12 and no. 9.
- The proposed mews complies with section 15.12.3 relating to mews roofs, is in keeping with the surrounding pattern of building scale, height and footprint and matches the adjacent rear façades.

Reason no. 3

- No car parking is proposed, so no increased vehicular or pedestrian conflict will arise.
- A car-free development is appropriate given the location of the subject site, close to bus routes, the Luas and the city centre.
- There will be no impact on the laneway in terms of traffic volume.

Precedents

- 23 Leinster Road – development did not meet development plan standards for open space, but was granted. The Board is asked to take a similar approach.
- 13 Emorville Avenue – development granted notwithstanding the Inspector noting the restricted and confined site. The proposed mews will similarly fit in with its surroundings without being overbearing.
- Units 1-3 Aideen House – development granted despite a restricted site with limited access.
- 1 Palmerstown Road – car free mews granted.
- 141 Tritonville Road car free mews granted.
- In conclusion, the Board is requested to grant permission.

6.2. Planning Authority Response

6.2.1. None on file.

7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Impact on Residential Amenity
- Traffic / Car Parking
- Precedents

7.2. Principle of the Proposed Development

7.2.1. The subject site is zoned Z2, Residential Conservation Area. Residential development is permitted in principle in such areas.

7.3. Impact on Residential Amenity

- 7.3.1. The appellant states that the proposed development cannot be considered to be over-development (reason. No.1 of the Planning Authority's decision to refuse) as the proposed development complies with the development management standards for plot ratio and site coverage.
- 7.3.2. That is correct. The proposed development does comply with the required standards and is not over development of the subject site. This ignores, however, the claim of the Planning Authority that the subject site cannot be assessed in isolation, that the legal separation of the site from the Protected Structure at no. 10 Leinster Road does not preclude it from assessment. The Planning Authority state, and I concur, that the subject site is still within the curtilage of the main dwelling. So, the proposed development must, in my opinion, be assessed in the context of the entire site. On this matter, I note that the applicants submitted an Architectural Heritage Appraisal Report with the planning application, stating that while the mews site had been sold, they submitted the planning application as a Protected Structure "to offer continuity with the comments and concerns expressed by Dublin City Council in response to the earlier application". Further, the site location in the public notices refers to both Louis Lane and 10 Leinster Road.
- 7.3.3. The appellants state that the subject site has been separated from the main dwelling by means of a timber fence for a period in excess of 16 no. years. The Planning Authority in their assessment state that the main dwelling appears in to be in multiple occupancy use and that the private open space available to the residents is inadequate. The appellant, in response, stated that as the proposed development would not impact the 30sq.m. private open space available to no. 10 Leinster Road, that it would be unreasonable to tie the subject site to its former historical use. While that may currently be true and while the subject application cannot be used as a mechanism to force the developer of no. 10 to provide adequate residential amenity for the residents of this dwelling, the granting of permission for the subject site would remove the possibility of ever providing adequate residential amenity to the main dwelling. I note section 15.13.5.1 of the city development plan which states that where a main house is in multiple occupancy, the amount of private open space remaining after the subdivision of the garden shall meet both the private open space requirements for the main house divided into multiple dwellings and for the mews

development. This section requires that the boundary line between the two properties shall be located at an appropriate distance from the building line of the Protected Structure so as to provide an appropriate amenity space for the Protected Structure. I acknowledge that the appellant states that the site has been divided legally and that inadequate private open space is currently provided for the main dwelling, however, it is considered that the granting of permission for the proposed development would provide an unacceptable precedent for the division of such Protected Structure sites/ curtilages.

- 7.3.4. The laneway the eastern section of Louis Lane is narrow – at points less than 2.5m wide, unsurfaced and on the date of my site visit appeared unused, being blocked off by traffic cones. Whilst the proposed development does not seek to provide a car parking space (discussed in greater detail in section 7.5 below), the creation of a residential property on the lane would create some traffic, if only at construction stage and / or for emergency vehicles. In its current state and width, the lane is incapable of providing vehicular access. It is not clear how construction traffic, for example, could be accommodated during the construction phase.

7.4. Conservation and Impact on Built Heritage

- 7.4.1. The appellant submits that Policy BHA9 does not apply to the subject site as the site “is not located within a red-hatch conservation area”. I draw the Boards attention to section 11.5.3 of the 2022 development plan which refers to Z2 and Z8 zonings and Red-Hatched Conservation areas, ie. three separate entities. It is clear from the section that each one of these ‘Conservation Areas’ are separate areas, ones that according to the development plan are recognised as having conservation merit and importance and warrant protection through zoning and policy application. The wording of Policy BHA9 is slightly less clear, stating that it is the policy of Dublin City Council “*To protect the special interest and character of all Dublin’s Conservation Areas – identified under Z8 and Z2 zoning objectives and denoted by red line conservation hatching on the zoning maps*”. One can see where a misunderstanding might arise – for policy BHA9 to apply a site must have either a Z2 or a Z8 zoning **and** be within a red-hatched area. However, I am satisfied that the matter is clarified in section 11.5.3 of the plan where each of the three areas are distinctly addressed.

Therefore, I am satisfied Policy BHA 9 does apply to any development on the subject site, it being in a Z2 zone.

- 7.4.2. Notwithstanding that, the subject site is largely hidden from public view. Limited traffic passes the site, only pedestrians accessing the rear entrance to the adjoining primary school. The proposed development were it to be developed, would not be visible from the street and with only a limited view from the rear of the adjoining dwellings on Leinster Road. I am satisfied therefore that the proposed development would not injure the minor rear elevation of the main dwelling or its adjoining neighbours. While the proposed development being of relatively small scale would not enhance the character of the Z2 Conservation Area, nor would it detract from any special feature or architectural interest of the area.

7.5. Traffic

- 7.5.1. The subject site is an appropriate location for a car-free development. The site is within walking distance of numerous bus routes, a Luas stop, the village centre with its full range of retail and commercial services.

7.6. Precedents

- 7.6.1. The appellant provides a number of examples of mews development which they state provide a precedent for the granting of permission for either a restricted site and / or a car free site. As stated above, I concur that the subject site is an appropriate location for a car-free development.
- 7.6.2. In terms of confined sites, none of the comparables submitted involved the provision of inadequate open space for the main dwelling which was in multiple occupancy use. Nor do they involve access lanes of less than 2.5m wide. Nor, were they assessed under the 2022-2028 Dublin City Council development plan.
- 7.6.3. Further, the Board is required to assess each development on its own merits.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that 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.

8.0 Recommendation

8.1. I recommend permission be REFUSED for the following reasons:

- 1 The proposed mews dwelling on a restricted and confined site, with limited access on a narrow, uneven, unsurfaced laneway, would not comply with the standards for mews dwelling as set out in Section 15.13.5 of the Dublin City Development Plan 2022-2028. The proposed development would constitute over development of this restricted plot, and result in a substandard amount of private open space being retained with the main dwelling, a Protected Structure at number 10 Leinster Road, which is in multiple occupancy. It is considered that the proposed development and the precedent that it would set for the subdivision of curtilages of Protected Structures would be contrary to 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.

Gillian Kane
Senior Planning Inspector

26 June 2023