



An
Bord
Pleanála

Inspector's Report

ABP-316077-23

Development	Retention of a fire escape and stairs
Location	21 Patrick Street, Dun Laoghaire, Co. Dublin
Planning Authority	Dun Laoghaire Rathdown Co. Co.
Planning Authority Reg. Ref.	D22A/1000
Applicant(s)	Conall Doorley, Alexandra Walsh and Ronan Crinion
Type of Application	Retention permission
Planning Authority Decision	Refusal of retention permission for 2 no. reasons
Type of Appeal	First Party
Appellant(s)	Conall Doorley, Alexandra Walsh and Ronan Crinion
Observer(s)	Ann Lynch
Date of Site Inspection	10 th October 2023
Inspector	Bernard Dee

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1.0 Site Location and Description

- 1.1. The appeal site is located along the western side of Patrick Street within Dún Laoghaire Town Centre. The street is characterised in the main by 2 storey terraced units and a mix of uses including retail, office and residential.
- 1.2. The appeal site, No. 21 Patrick Street, was originally a mid-terraced 2 storey residential unit which has been converted to Zero Zero pizza restaurant measuring 100m² in GFS on two levels. To the north of the appeal site, No. 19/20, a three storey contemporary style semi-detached residential unit that was built in 2016 to replace the original No. 19 /20 mixed use units which formed part of the terrace. To the south, the Observer's property No. 22, is a rental residential property. There is a pedestrian lane running along the NW boundary (rear) of the site which is shared with Nos. 20, 22, 23 & 24 and which accesses onto West Lane and then onto Cross Avenue.
- 1.3. During the site visit on 10th October it was noted that there was a lot of storage and rubbish in the shared lane some of which can be associated with the activities of the restaurant.

2.0 Proposed Development

- 2.1. The development for which retention permission is sought relates to a fire escape hand rail that runs over the rear extension of No. 21 and projects in the form of a landing over the shared access lane leading to West Lane and includes a flight of stairs which descends into the common area.
- 2.2. From the drawings submitted to the Planning Authority the stairway is enclosed within the red line boundary but also the right of way for Nos. 20, 22, 23 & 24 is shown on the application drawings.

3.0 Planning Authority Decision

- 3.1. Decision

Retention permission for the fire escape infrastructure was refused on 16th February 2023 for 2 no. reasons.

1. Having regard to the restricted nature of the subject site and surroundings, and the close proximity of the subject site to the adjoining property no.22 Patrick Street, the design, height and layout/ position of the fire escape stair proposed to be retained, and associated roof walkway access, would result in undue overlooking of the adjoining residential dwelling to the southwest side, no.22, Patrick Street and would seriously injure the residential amenity of that property. The development proposed to be retained would, therefore, seriously injure the amenities and depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The development proposed to be retained, and associated rooftop walkway and roof access use, would, if permitted, contravene materially conditions attached to an existing permission for development, namely condition no.2, and condition no.9, of An Bord Pleanála decision PL06D.247791 (Planning Authority Reg. Ref. Ref. D16A/0733). The development proposed to be retained 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 Planner's Report on file, in summary, had regard to the following planning issues:

- The restaurant use is permitted in principle within the MTC zoning objective.
- Conditions 2 and 9 of ABP Ref. PL06D.247791 expressly forbade the use of the flat roof extension for use as a terrace or for placing any additional apparatus or equipment on top of this roof.
- The fire escape railings are in breach of Condition 9 of ABP Ref. PL06D.247791 – material contravention.
- The applicant has not demonstrated sufficient legal interest for the retention of the fire stairs located in the shared area to the rear access lane.
- The use of the flat roofed extension as a fire escape would lead to loss of privacy by virtue of the overlooking of the rear amenity space of No. 22 the Observer party in this case.

3.2.2. Other Technical Reports

- The Drainage Department had no objections to the proposed development.

3.2.3. Observations

- A submission was received within the five week period from Ms. Anne Lynch who is the Observer in this case. The submission rests on similar

ground as the current Observation which is summarised in Section 6.4 of this Inspector's Report below.

4.0 Planning History

4.1. On the Appeal Site

- An Bord Pleanála Reference PL.06D.247791 (Planning Authority Ref. No. D16A/0733). Change of use from retail to restaurant use granted on appeal subject to 10 no. conditions. Conditions 2 and 9 are referenced in the Planner's Report and the Observer submission and are reproduced verbatim below.
- 2. The first floor flat roof to the rear of the property shall not be used as a terrace, smoking area or for any ancillary purpose associated with the restaurant. Reason: In the interest of residential amenity
- 9. No additional development shall take place on the flat roof area, including air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission. Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

4.2. In the Vicinity of the Site

- Adjoining property (No. 19 & 20) - An Bord Pleanála Reference PL.06D.244418 (Planning Authority Ref. No. D14A/0705). Permission refused in 2015 for the change of use of 2 no. retail/residential buildings to 2 no. residential units with an additional 3rd floor. The Boards reason for refusal referred to the overall design, scale and roof profile of the proposal which was considered would injure the visual amenities of the area. The Inspector had also included a reason for refusal relating to non-compliance with adopted policy and that the proposal would undermine the retail core which was not included in the Board's Direction. (file attached).

4.3. Policy and Context

4.3.1. Development Plan

Dun Laoghaire Rathdown County Development Plan 2022-2028 is the relevant statutory plan for the area.

The appeal site is located within zoning objective MTC – *‘To protect, provide for and/or improve major town centre facilities’*. Restaurant use is ‘Permitted in Principle’ within the MTC zoning objective.

4.4. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- South Dublin Bay SAC (000210)
- South Dublin Bay and River Tolka Estuary SPA (004024)

4.5. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any 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.

5.0 The Appeal

5.1. Grounds of Appeal

The relevant planning issues raised by the First Party are, in summary, as follows:

- The non-use of the roof as required by the conditions attached to permission Ref. PL06D.247791 have been complied with.
- Dublin Fire Brigade determined that a second fire escape was required via the existing door onto the flat roofed single storey rear extension and a certificate of compliance was sought and agreed between Dublin Fire Brigade and Dun Laoghaire Rathdown County Council on 23rd July 2023 – Ref. 19/8162/REG.
- The fire escape was built in accordance with the requirements of this certificate.

- The fire escape stairs while located in a shared access lane does not block or impede the lane as there is ample space remaining to get past the stairs and to utilise the lane.
- Ms. Lynch (owner of No. 22 Patrick Street to the south of the appeal site) states that the privacy enjoyed by the occupants in the rear yard has been compromised by the fire escape route across the flat roof extension by overlooking. The fire escape is used only in case of emergency so no overlooking occurs on a regular or casual basis.
- The fire escape is not a viewing platform, terrace or balcony so no loss of privacy is associated with this fire escape route.
- The shared access lane is not used as a dump and was overgrown before being brought into use as a fire escape. The gate to West Lane is unlocked.

5.2. Planning Authority Response

- The Planning Authority response indicates that nothing contained in the First Party appeal would change the Planning Authority decision in this case.

5.3. Applicant Response

- Not applicable.

5.4. Observations

The Board should note that the Observer submission contains a significant amount of background detail relating to the planning history, enforcement history, land title issues, interpretation of compliance with conditions, the validity of the planning application and neighbour disputes between the First and Observer Parties regarding access to the shared lane area. This extensive submission with respect to these issues however is not directly relevant to the appeal in hand which relates solely to the retention of the fire escape route and stairs sought by the First Party and as refused by the Planning Authority under Ref. D22A/1000. Having regard to this point, the planning issues relevant to this appeal raised by the Observer Party are, in summary, as follows:

- The presence of the fire escape on the flat roof extension of No. 21 is in contravention of Condition Nos. 2 and 9 of An Bord Pleanála Reference PL.06D.247791.
- It is not a defence for the unauthorised works for the First Party to state that a second fire escape was required by Dublin Fire Brigade and Dun Laoghaire Rathdown County Council.
- The presence of the fire escape represents an invasion of privacy of the occupants of No. 22 by means of overlooking the rear outdoor amenity area associated with No. 22.
- The presence of a 2.2m wide stairway in the common access lane impedes other users in the enjoyment and utilisation of the lane.
- The shared lane is outside the ownership of the First Party and the application for the retention of the fire escape stairs should have been invalidated in the absence of a letter of consent from the other co-owners of the lane.
- The unauthorised fire escape is contrary to the MTC zoning objective of the site, Specific Local Objectives 10 and 135, Chapter 4, Chapter 7 and Chapter 12 as it fails to improve town centre facilities, does not enhance the historic character of the area, has a negative impact on visual and residential amenity, removes sense of place from the shared access and fails in design terms in an historic urban area.

5.5. Further Responses

- Not applicable.

6.0 Assessment

- 6.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.
- 6.1.1. I would comment that both the Planning Authority in its initial assessment and the Observer Party in its submission to the Board address a multitude of issues which I have evaluated and found to be without substance and not relevant to the case in hand.
- 6.1.2. The question before the Board is whether or not the retention of the fire escape and stairs is in accordance with the proper planning and sustainable development of the area and nothing more.
- 6.1.3. The issue of AA Screening is also addressed in this assessment.
- 6.2. Fire Escape/Stairs
- 6.2.1. Firstly, there is no doubt but that the works associated with the fire escape are unauthorised and that the retention application was intended to regularise the planning status of 21 Patrick Street.
- 6.2.2. Condition 9 of An Bord Pleanála Reference PL.06D.247791 specifically allows for an application to be made for additional development on the flat roof area, *“including air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment”*. I would feel that fire escape apparatus would fall within the meaning of *“equipment”* and that there is no bar to the receipt of an application for this fire escape nor to a granting of permission for same.
- 6.2.3. The Planning Authority and the Observer Party appear to believe that a grant of permission is not possible as it would be in contravention of Conditions 2 and 9 of An Bord Pleanála Reference PL.06D.247791. However, Condition 9 specifically permits additional application to be made for equipment on the flat roof and Condition 2 merely prohibits the use of the flat roof area for ancillary uses such as smoking and is therefore unaffected by the subject of the retention application.

- 6.2.4. The suggestion that the privacy of the occupiers of No. 22 would be compromised by overlooking from the fire escape is not convincing as the fire escape is just that, a fire escape, and it is not a viewing platform, terrace, balcony or other type of viewpoint. The loss of privacy argument has, in my opinion, been over exaggerated beyond a credible level.
- 6.2.5. The red line boundary on the planning drawings encompasses that part of the lane to the rear of No. 21 and also indicates the right of way. As the fire escape is located within the red line boundary no letter of consent for other users of the lane would have been required to make a valid application. The issue of title deeds need not concern the Board in this instance as it is a matter for the owners of the shared lane to dispute.
- 6.2.6. Having visited the site I can confirm to the Board that while the stairs does indeed cause a pinch point in the shared access, the lane however is still perfectly passable and therefore usable by other users of the lane.
- 6.2.7. The argument in the Observer submission that the fire escape is contrary to the zoning objective and several objectives and development standards contained in the Development Plan simply does not stand up to even a superficial level of scrutiny and such arguments should be dismissed as not being relevant to the case in hand.
- 6.2.8. In summary, the fire escape and stairs were put in place without the benefit of planning permission and are therefore unauthorised development. Condition 9 of An Bord Pleanála Reference PL.06D.247791 does not preclude the making of a planning application to permit additional equipment on the roof of No. 21 Patrick Street. Indeed the wording of the condition requires that any additional equipment on this roof will require the benefit of planning permission which is what the First Party has sought to do in this instance to regularise the planning status of the unauthorised fire escape. It is illogical for the Planning Authority to refuse permission on the basis that the application materially contravenes conditions attached to An Bord Pleanála Reference PL.06D.247791. I recommend that the Board grant retention permission in this instance.

6.3. AA Screening

- 6.3.1. Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site, 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.

7.0 Recommendation

I recommend that planning retention be granted for fire escape route and stairs for the reasons and considerations set out below and subject to the following condition.

8.0 Reasons and Considerations

Having regard to the provisions of the Dun Láoghaire Rathdown Development Plan 2022-2028, including the zoning objective for the site Objective MTC – ‘*To protect, provide for and/or improve major town centre facilities*’. it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the visual or residential amenities of the area, or of property in the vicinity and not, by virtue of overlooking lead to loss of privacy or amenity in neighbouring properties. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 16 th December 2022 and, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
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	Reason: In the interest of clarity.
2.	The first floor flat roof to the rear of the property shall not be used as a terrace, smoking area or for any ancillary purpose associated with the restaurant. Reason: In the interest of residential amenity
3.	No additional development shall take place on the flat roof area, including air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission. Reason: To protect the residential amenities of property in the vicinity and the visual amenities 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.

Bernard Dee
Planning Inspector

11th October 2023