



An
Bord
Pleanála

Inspector's Report ABP-317465-23

Development

Demolition of no. 11 and part of no. 13C. Refurbishment of nos. 13A, 13B and 13C including construction of a 2-storey rear extension to no. 13C. Change of use of nos. 13A, 13B & 13C from 3 shop units with living accommodation over to 1 no. one bedroom apartment and 1 no. two bedroom apartment. Construction of 1 no. part two storey/ part single storey three-bedroom mews house to the rear of the site.

Location

11, 13A, 13B and 13C Booterstown Avenue, Booterstown, Co. Dublin.

Planning Authority

Dun Laoghaire-Rathdown County Council

Planning Authority Reg. Ref.

D23A/0064

Applicant(s)

Alan Kirwan & Sharon Daly

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Cian O'Colmain

Dr. Michelle Keating O'Donnell

Eoin and Elizabeth O'Colmain

Observer(s)

None

Date of Site Inspection

24th November 2023

Inspector

Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject appeal site is located on the western side of Booterstown Avenue, approximately 89 metres to the south of its intersection with the Rock Road. The site has a stated area of 0.0555 hectares.
- 1.2. The site includes the two storey properties of no's. 11, 13a, 13b & 13c Booterstown Avenue. The ground floor comprises of 3 no. former shop units with associated storage floorspace to the rear. The first floor comprises former retail space associated with unit no. 11 and separate former residential floorspace, no. 13b.
- 1.3. The site is located within the Booterstown Avenue candidate Architectural Conservation Area (c. ACA). There are a number of Protected Structures immediately adjacent to the north of the subject site, namely no's 3, 5, 7 & 9 Booterstown Avenue (RPS No's 12, 13, 14 & 15).
- 1.4. The buildings on the subject site are located forward of the building line of existing buildings to the north and south. There is a pedestrian safety railing adjacent to the footpath in front of these buildings. The subject buildings are currently in a poor state of repair.

2.0 Proposed Development

- 2.1. The proposed development comprises of Demolition, Refurbishment, a Change of Use and Construction. The proposed development will provide a total of 3 no. residential units in the form of 1 no. one bedroom apartment (69.3 sqm), 1 no. two bedroom apartment (84.1 sqm) and 1 no. stand-alone part single storey/ part two storey Mews dwelling to the rear of the site (129.3 sqm) (overall height of Mews dwelling is 6.55 metres). The construction works include the provision of a new 2 storey rear return extension to no. 13c.
- 2.2. The proposed Demolition includes the following:
 - Demolition of No. 11, its associated 2-storey rear return and associated walls;
 - Demolition of the 2-storey rear return and outbuildings of no. 13c.
- 2.3. The proposed Refurbishment works relate to:

- Refurbishment of the existing buildings at nos. 13a,13b and 13c including removal of shop fronts and installation of new windows.

2.4. The proposed Change of Use relates to the following:

- Change of use of nos. 13a,13b & 13c Booterstown Avenue from 3 shop units with living accommodation over to residential use (1 no. one bedroom apartment and 1 no. two bedroom apartment) accessed from Booterstown Avenue and from Grotto Avenue.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 6th June 2023, the Planning Authority issued a Notification of Decision to GRANT planning permission subject to 17 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Planning Officer's Report** dated 6th March 2023 states that the Planning Authority welcomes the proposal which seeks to safeguard the future use of these important buildings and accords with best conservation practice and policy objectives of the current Development Plan.
- The Planning Officer is satisfied that the issues raised by way of the Request for Further Information have been suitably addressed and therefore recommends that the subject planning permission be granted, and that the conditions, as recommended by the internal Departments be included into the recommended conditions.
- In respect of the issue of legal entitlement to carry out development works, reference is made to the provisions of Section 34 (13) of the Planning & Development Act, 2000 (as amended) upon which, it is stated, the Planning Authority rely. The Planner further states that inclusion of lands in this application does not bestow any legal rights on the applicant as the matter of the ownership is a civil matter, and not a matter for the Planning Authority to

adjudicate on. It is further stated that a general advice note will be attached regarding Section 34 (13) of the Act.

- The Planner concludes that having regard to the Objective A zoning and the nature, scale and location, the proposed development would not adversely impact on the residential amenity of the adjacent properties by reason of overshadowing, overlooking or overbearing appearance. It is further concluded that the proposed development would not significantly detract from the character of the surrounding area and would be in accordance with relevant policy and the provisions of the Development Plan. The Planner concludes that the proposed development is therefore in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

- **Environment Section:** No objection subject to 4 no. conditions.
- **Drainage Planning:** No objection subject to 3 no. conditions.
- **Conservation Officer:** No objection subject to 1 no. condition.
- **Transportation Department:** No objection subject to 3 no. conditions.
- **Parks Department:** No objection subject to 1 no. condition relating to the implementation of a Landscaping Plan.

3.3. Prescribed Bodies

- **Uisce Eireann:** No objection subject to 4 no. observations.

3.4. Third Party Observations

3.4.1. A total of 1 no. Observation was received from the following:

- Eoin & Elizabeth O'Colmain
- Cian O'Colmain
- Adam Keating & Michelle O'Donnell Keating

- 3.4.2. The following areas of concern were raised: impact on Candidate Architectural Conservation Area, Architectural Heritage and adjacent Protected Structures, Visual Impact, Loss of Commercial Business, Right of Way, Suitability of Laneway Access and future implications as to the management and operation of same, Car Parking implications at Grotto Avenue, Potential Drainage and Sewerage Implications on Laneway, Loss of Privacy and Amenity, Proximity to Dwelling, Overlooking, Full extent of Planning History is not detailed, Health & Safety Implications, Construction Impacts causing Nuisance, Access during Construction, Pedestrian Safety, Security Concerns, Lighting, Intensity of the Development, Lack of sufficient detail in the application, Devaluation of Property, Excessive Density.

3.5. Request for Further Information

- 3.5.1. On 24th March 2024 the Applicant was requested to address the following 5 no. items of Further Information:

1. Overlooking and clarification of floor areas.
2. Justification for the lack of car parking.
3. Revised proposed for cycle parking.
4. Drawings and details in relation to:
 - The Applicant's Right of Way over the laneway.
 - The Applicant's right to carry out works to the access lane.
 - Details and proposals for the treatment of the access lane.
5. Submission of a Construction Traffic Management Plan.

4.0 Planning History

- 4.1. Planning History on the Subject Site and the Adjacent site to the immediate North (no. 9 Booterstown Avenue).
- 4.1.1. **ABP-305342-19 (Local Authority Planning Reg. Ref. No. D19A/0409):** Permission for Demolition of no's 11, 13a, 13b & 13c Booterstown Avenue and construction of new two storey detached dwelling house. Permission was **REFUSED** on 24/02/2020 for the following reason:

1. *Having regard to the planning history of the site, the character of the area and streetscape, including the contribution of the existing buildings on site to this character and streetscape, to the design of the proposed replacement dwelling, and to the relevant provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, it is considered that the proposed development would seriously injure the amenities of the area and would detract from the character of the existing streetscape. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

- 4.1.2. **D17A/1102:** Permission for amendments to previously approved planning application reg. ref. D17A/0490, consisting of: 1. Modified proposed vehicular entrance and front railings, parking area with turning platform. 2. New side boundary railing position between no. 11 and no. 9 Booterstown Avenue (a Protected Structure) enabling the altered vehicular entrance. Permission was **REFUSED** on 12/02/2018 for 2 no. reasons relating to i) Pedestrian Safety, Traffic Hazard/ Undesirable Precedent, and ii) Endangerment of Public Safety by reason of the proposed off-street car parking arrangement, Traffic Hazard or obstruction to other road uses or otherwise and resultant undesirable precedent.
- 4.1.3. **D17A/0490:** Permission for Demolition of no. 11 Booterstown Avenue and creation of New vehicular entrance. Demolition of two storey rear extension to no. 13A Booterstown Avenue, demolish single storey structure to rear of 13B Booterstown Avenue and single storey storage areas. 3. Conversion of the remaining building at 13A,B,C Booterstown Avenue to a single dwelling (with 4 bed and living areas) to include the construction of 1 and 2 storey extension to the rear. Permission was **GRANTED** on 30/08/2017 (11 no. conditions).
- 4.1.4. **D14A/0165:** Permission for development consisting of the demolition of the existing buildings, comprising of 3 no. retail units and 1 no. first floor apartment and the construction of 1 no. two storey detached 5 bed house, complete with new site entrance, on-site parking and all associated site works. Permission was **REFUSED** on 26/05/2014 for 1 no. reason relating to demolition of the existing structure, the resultant impacts on established architectural character of the area and associated injury to the amenities of the area.

- 4.1.5. **D09A/0747:** Permission for the demolition of existing buildings and the construction of three new 3 bed terraced dwellings, three storeys in height with balconies to front at first floor level. Permission was **REFUSED** on 08/12/2009 for 2 no. reasons relating to i) Design and injury to the amenities of the area and ii) Endangerment of Public Safety/Traffic Hazard.
- 4.1.6. **D04A/0306 (Appeal Ref. no. 06D.208548):** Permission for Two shopfronts, 3 apartments at first floor, vehicular entrance, roof extension to rear, 5 car parking spaces and all associated site works. Permission was GRANTED on 04/01/2005 (5 no. conditions).
- 4.1.7. **D03A/0600 (Appeal Ref. No. PL06D205644):** Permission for demolition of existing buildings, construction of 3 storey building with setback curved roof at second floor level, accommodating 4 No. 2 bedroom apartments over ground floor, commercial and/or retail use, 4 No. car spaces. Permission was REFUSED on 03/012/2003 for 1 no. reason relating to the size, scale, height and design, serious injury to the amenities of property in the vicinity by reason of overlooking and overshadowing. An Appeal was withdrawn on 09/02/2004.
- 4.2. Planning History on the adjacent site to the immediate north-west (rear) (no. 4 Grotto Avenue)
- 4.2.1. **D22B/0209:** Permission for contemporary metal clad dormer to side of existing roof to create a habitable bedroom within the existing converted attic, Removal of existing roof window to front with ancillary works. Permission was GRANTED on 21/07/2022 subject to 2 no. conditions.
- 4.3. Planning History on a site located c. 20 metres to the north-west (No. 7 Booterstown Avenue)
- 4.3.1. **D19A/0576 (Appeal Ref. No. ABP-305772-19):** Permission for the construction of a house. Permission was **GRANTED** on 11/03/2020 subject to 9 no. conditions.

5.0 Policy and Context

5.1. Local Planning Policy

Dun Laoghaire County Development Plan, 2022 to 2028

- 5.1.1. The subject appeal site is zoned 'Objective A' in the Dun Laoghaire County Development Plan 2022-2028. The relevant zoning objective for Objective A zoned lands is: *'to provide residential development and improve residential amenity while protecting the existing residential amenities.'* Residential development is 'Permitted in Principle' under this zoning objective.
- 5.1.2. The appeal site is located within the Booterstown Avenue Candidate Architectural Conservation Area (cACA).
- 5.1.3. Chapter 4: Neighbourhood – People, Homes and Place
- 5.1.4. Chapter 5: Transport and Mobility
- 5.1.5. Chapter 11: Heritage and Conservation
 - Section 11.4 Architectural Heritage
 - 11.4.2 Architectural Conservation Areas
 - Policy Objective HER13: Architectural Conservation Areas, Policy Objective HER14: Demolition within an ACA, Policy Objective HER15: Shopfronts within an ACA, Policy Objective HER17: Candidate Architectural Conservation Areas, Policy Objective HER18: Development within a Candidate Architectural Conservation Area, Policy Objective HER20: Buildings of Vernacular and Heritage Interest
- 5.1.6. Chapter 12: Development Management
 - Section 12.3: Neighbourhood – People, Homes and Place
 - 12.3.3: Qualitative Standards for All Residential Development, 12.3.4: Residential Development – General Requirements, 12.3.5: Apartment Development, 12.3.7: Additional Accommodation in Existing Built-Up Areas, (12.3.7.1: Extensions to Dwellings, 12.3.7.6: Backland

Development, 12.3.7.7: Infill Development), 12.3.9: Demolition and Replacement Dwellings,

- Section 12.4: Transport
 - 12.4.5: Car Parking Standards, 12.4.6: Cycle Parking, 12.4.8: Vehicle Entrance and Hardstanding Areas (12.4.8.4: ACAs/ Protected Structures)
- Section 12.8: Open Space and Recreation
 - 12.8.3: Open Space Quantity for Residential Development (12.8.3.3 Private Open Space)
 - 12.8.7: Private Amenity Space – Quality Standards (12.8.7.1 Separation Distances)
- Section 12.11: Heritage
 - 12.11.2: Architectural Heritage – Protected Structures, 12.11.3: Architectural Conservation Areas (ACA), 12.11.3: New Development within an ACA

5.2. Guidelines

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2023
- Design Manual for Urban Streets and Roads, 2019
- Urban Development and Building Heights – Guidelines for Planning Authorities, 2018
- Urban Design Manual - A Best Practice Guide, 2009
- Flood Risk Management Guidelines, 2009

5.3. Natural Heritage Designations

- 5.3.1. The appeal site does not form part of, it does not adjoin, nor is it located within close proximity to any designated Natura 2000 site.

- 5.3.2. The South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) is located to the north, at a distance of circa 121 metres at its closest point. The South Dublin Bay SAC (Site Code: 000210) is located to the north, at a distance of 239 metres at its closest point.

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. A total of 3 no. Third Party Appeals were received in respect of the decision of Dun Laoghaire Rathdown County Council to Grant permission for the proposed development, from the following:

- Cian O'Colmain
- Dr. Michelle Keating O'Donnell
- Eoin and Elizabeth O'Colmain

- 6.1.2. The following is a summary of the main grounds of appeal:

- Change of Use from Commercial/ Retail to Residential
 - There is no reason why the buildings could not be refurbished and repurposed for continued commercial use.
 - There is a demand for commercial/ retail space in the area as evidenced by recent local development in the area.

- The buildings at 13, Booterstown Avenue are among the oldest on this road.
- A previous 2004 permission was not mentioned in the most recent planning application.
- Protected Structures adjacent to the proposed development
 - The proposed development will have a detrimental visual effect on the streetscape and the adjacent buildings historic relevance to the area.
 - The modern architectural design on an historic busy public road adjacent to period and protected structures should be considered.
- Loss of Privacy
 - There will be a loss of privacy and amenity for the residents of no. 6 Grotto Avenue due to the proposed nature of the development. The proposal overlooks the bungalow. The passageway looks directly into their kitchen and bathroom windows. These issues do not appear to have been given adequate consideration by DLRCC.
 - The bathroom and en-suite windows of no. 4 Grotto Avenue open onto the laneway. The privacy of the property owners will be greatly diminished.
 - There will be a loss of privacy due to the proposed nature of the development.
- Health & Safety
 - Concerns are raised as to the scale of demolition and construction works in such a small area and its potential impact on the safety, level of nuisance and possible encroachment issues that will accompany this project.
- Pedestrian Laneway/ Security
 - Potential Security concerns are raised due to the potential uncontrolled opening of a pedestrian access to Grotto Avenue from Booterstown Avenue.

- Other concerns in relation to this said access also include future control of this entrance in terms of access and lighting proposals.
- Potential for anti-social behaviour.
- No previous pedestrian passageway in place over the past 60 years.
- A previous Right of Way at this location has not been used since 2006.
- There should be no passageway and a more straightforward restoration plan should be considered.
- The laneway is narrow and not suitable to cyclists, wheelchair users or children's strollers/ prams and is not wide enough for a single person.
- Title to the laneway is in question.
- There is no indication of the applicants' intention to purchase this strip of land.
- Title to the section of ground from the gate of the laneway. Potential pedestrians would be trespassing across private property.
- The owner of No. 4 Grotto Avenue is not objecting to the residential development of the site but submit that the granting of planning permission for the laneway be removed.
- Traffic Safety
 - An increase in the volume of traffic to Grotto Avenue would pose a danger to pupils of the nearby National School at Grotto Place.
 - There is potential that the proposed development will be used as a short cut to the school.
- Pedestrian Safety
 - Future Pedestrian Safety to the front of the site.
- Insufficient Detail
 - The development is too intensive and lacks sufficient detail to alleviate the general concerns raised.

- The First Registration Map is of poor quality and is largely illegible. The map has no stamp to indicate that it is an official document and a version of it cannot be located online.
- Construction Impacts
 - Construction workers will use Grotto Avenue for Car Parking. This will lead to continuous impacts on surrounding properties in terms of noise, dirt, dust and pollution on the laneway and will exacerbate the traffic hazard.
- Other Matters
 - Failure of DLRDCC to allow the owner of the property to the rear at no. 4 Grotto Avenue to submit observations to the Response to Further Information. The property rights of the owner of no. 4 Grotto Avenue have therefore been infringed by virtue of the granting of planning permission without an opportunity for observations to be considered.

6.2. Applicant Response

6.2.1. A First Party Response to the Third-Party Appeals was received on behalf of the Applicant. The main issues raised in the Response include the following:

- Planning Authority Decision:
 - The Applicant provides an overview of the application, the Decision of the Local Authority to Grant permission, the initial Assessment of the Local Authority Planner, the Request for Further Information, the associated issues raised and the Responses to same including supporting documentation such as an Outline Construction and Environmental Management Plan, the subsequent Assessment of the Local Authority Planner and the Conclusion of the Local Authority.
- Change of Use from Commercial/ Retail to Residential:
 - The Applicant acknowledges the previous Commercial use of the site but highlights the current Objective A Zoning to protect and/ or improve residential amenity.

- The poor state of the buildings is referenced, and the lack of available car parking are highlighted. The conversion of the existing buildings to residential use is considered to be more sustainable than the provision of commercial units.
- Protected Structures adjacent to site on Booterstown Avenue:
 - The Applicant notes the nearby Protected Structures and is of the opinion that the proposed development has fully considered the historic context and that this is endorsed by the Reports of the Planning Authority, including that of the Conservation Officer.
 - The proposed development is considered by the Applicant to be an appropriate response to its location and would not be considered to represent an over intensive use of the site within a candidate Architectural Conservation Area.
- Residential Amenity and Pedestrian Route:
 - With regards to overlooking, the Applicant highlights the design alterations presented in Response to the Request for Further Information and considers that these measures will reduce direct overlooking between opposing windows and also the perceived overlooking to the private amenity space on Grotto Avenue.
 - The Applicant states that the passageway is in their ownership and was in the ownership of the previous owners of the site. The Applicant notes that this was acknowledged by the owners/ applicant for permission at No. 4 Grotto Avenue in a recent application for permission to extend at first floor level. The Applicant requests that the Board examine planning reg. ref. no. D22B/0209 which is stated to show windows to the existing bathroom and WC facing the pedestrian path (acknowledged in the drawings with a yellow colour and stating 'Yellow Highlighted Area shows right of way'. The subject windows at 4 Grotto Avenue bound the pedestrian path and this has been acknowledged in the planning history at No. 4 Grotto Avenue.
 - The existence of the pedestrian route is acknowledged by the appellants at No. 6 Grotto Avenue. The said appellants acknowledge there was a

right of way in place which was used occasionally by the shop at 13, Booterstown Avenue, which they acknowledge has not been in use since the shop ceased trading in 2006.

- The pedestrian route has always been part of the site and was previously registered in the title deeds by previous owners. The Applicants provide supporting documentation from the previous owners in this regard. The Applicant claims full legal title over the laneway.
- The Applicant acknowledges that the lane has not been in use recently but that it is intended to use it as a means of pedestrian access to the 3 no. new residential units. Access will be for residents only who will each have a key to the access gate.
- The Applicant includes a copy of the First Registration Conveyancing Map which it is stated demonstrates the applicants legal title in relation to the pedestrian access lane to Grotto Avenue. The said map was submitted as part of the Response to Further Information. The Applicants are the owners of the pedestrian access and the overall site is registered to a Company owned by the Applicants and their children.
- The Applicant notes that while the original title deeds to the property are pending registration with Land Registry, they attach two further deeds relating to the property from prior title. The Applicant states that these show that the pedestrian path to the rear has been part of the title to the property well before the Applicant acquired it.
- A declaration from an Architect from 2008 which specifically references the laneway accessing Grotto Avenue is referenced (albeit erroneously referred to as Grotto Lane).
- Construction Impacts:
 - The Applicant references the Preliminary Construction and Environmental Management Plan (CEMP) which includes a Traffic Management Plan for the Construction stage.
 - There is no access from Grotto Avenue during the construction stage.

- There is sufficient detail in the CEMP with regard to the proposed site clearance and demolition activities to address the concerns raised by the Third Parties.

6.3. **Planning Authority Response**

- The Board is referred to the previous Planner's Report.
- It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.4. **Observations**

- None.

6.5. **Further Responses**

- None.

7.0 **Assessment**

7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeals, and having inspected the site, and having regard to relevant local/ regional/ national policies and guidance, in my opinion, the substantive issues in this appeal are as follows:

- Zoning
- Loss of Commercial Use
- Built Heritage
- Residential Amenity
- Traffic Safety/ Pedestrian Safety
- Other issues
 - Appropriate Assessment

- Construction Phase
- Sufficient Legal Interest/ Consent

7.2. Zoning

- 7.2.1. The Appeal site is entirely zoned Objective A *‘to provide residential development and improve residential amenity while protecting the existing residential amenities’* in the Dún Laoghaire-Rathdown County Development Plan 2022-2028. Residential use is permitted in principle on lands zoned Objective A, subject to assessment against normal planning considerations. These matters are discussed in turn below.

7.3. Loss of Commercial Use

- 7.3.1. The loss of former commercial uses is raised as an issue in the Appeal submissions. As per the submitted floor plans, 3 no. former commercial/ retail units occupy no. 11, no. 13A and 13C with no. 13B at first floor level comprising of a former residential use. The buildings have not been in use for said purposes for a considerable length of time.
- 7.3.2. The proposed development seeks to redevelop the site for residential purposes. The primary purpose, as per the above quoted zoning objective, is in my view, to provide residential development. Established surrounding uses are overwhelmingly residential. Therefore, the proposed development, in my view, accords with the stated zoning objective.
- 7.3.3. Residential use is identified as a use which is Permitted in Principle on lands zoned Objective A. It is noted that no commercial/ retail uses are identified as being Permitted in Principle on lands zoned Objective A. Although certain commercial/ retail uses are identified as being Open for Consideration on the lands, this would be subject to normal planning considerations such as the availability of car parking. I am satisfied that the most appropriate use of the subject Appeal site is for residential purposes.

7.4. Built Heritage

- 7.4.1. Concerns are raised in the Appeal/s that the proposals will have a detrimental visual effect on the streetscape and the adjacent buildings historic relevance to the area. In addition, the Appellants consider that the modern architectural design on an historic busy public road adjacent to period and protected structures should be considered.

7.4.2. I note the existing Protected Structures to the north of the subject site, the architectural character of the existing building/s and the location of the subject site within the Booterstown Avenue candidate Architectural Conservation Area (c. ACA). I further note the design and layout of the proposed refurbishment and extension works, together with the proposed stand-alone Mews dwelling to the rear. The majority of the proposed works are to the rear of the existing structure and for the most part will not be readily visible from the public road. I agree with the Conservation Officer that the design of the new elements are acceptable and that they will be clearly legible as new additions within the historic context of the site. I further agree with the Conservation Officer that the proposals do not visually detract or over-power the existing buildings and the neighbouring Protected Structures.

7.5. Residential Amenity

- *Loss of Privacy/ Overlooking/ Access Lane*

7.5.1. The revised design proposals submitted in response to the Request for Further Information are noted. In my opinion, the revised proposals ensure no direct undue overlooking will arise to surrounding properties as a result of the construction of the Mews dwelling and the extension of the main structures.

7.5.2. The concerns of the Third Parties in relation to the existing access lane and the Responses of the Applicant are noted. The issues of Sufficient Legal Interest/ Consent are addressed further below.

7.5.3. I am satisfied that any future access to the laneway from the proposed development can be suitably restricted and would not result in general access to the public. I therefore do not share the opinion of the Appellant's that the provision of the laneway will result in potential for anti-social behaviour.

7.5.4. As noted in the appeal submissions there are existing windows which face directly onto the laneway. I am not satisfied that the Applicants proposals for the treatment of the laneway adequately address the privacy concerns of the Appellants. In particular, it is my opinion that the use of the proposed laneway by future residents within the scheme, will serve to impact negatively upon the established residential amenities of the properties on either side of the said lane owing to the presence of said existing windows.

7.5.5. The subject laneway is not, in my opinion, a fundamental element to the overall scheme, as an independent means of pedestrian access via Booterstown Avenue is proposed. Having regard to the privacy issues raised and in the absence of any definitive design solutions from the Applicant to address such issues, it is my opinion that the laneway should be omitted from the scheme. A condition to this effect should be attached in the event of a Grant of permission being issued.

7.6. Traffic/ Pedestrian Safety

7.6.1. There is no car parking proposed. The Applicants justification for this arrangement is presented under item 2 of the Response to Further Information. It is noted that the principle of a car free development is established under a previous permission pertaining to the site, see condition no. 2 of planning reg. ref. no. D17A/0490. Having regard to the location of the subject site, the availability of alternative modes of transport and to recommendations contained in Section 5.3.4 of the Sustainable Residential Development and Compact Settlements Guidelines, 2024, including SPPR 3, I am satisfied that the omission of any car parking provision is appropriate in this instance.

7.6.2. A separate concern is raised in relation to future pedestrian safety at the front of the site. It is noted that the issue of a Construction Management Plan arose as part of the assessment of the application and that Condition no. 8 of the notification of decision to Grant permission issued by the Local Authority relates to the implementation of the general measures and actions indicated in the submitted Preliminary Construction Management Plan. I am satisfied that adequate pedestrian safety measures can be introduced during the construction phase. A specific condition in relation to a Construction Management Plan should be applied.

7.7. Other issues

- *Appropriate Assessment*

7.7.1. Having regard to the nature and scale of the proposed development 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.

- *Construction Phase*

7.7.2. The application is accompanied by a preliminary Demolition, Construction & Waste Management Plan. As is standard practice for development proposals of this kind and in the event of a Grant of permission being issued, a condition relating to the lodgement of a Construction and Environmental Management Plan (CEMP) would typically be applied. I am satisfied that the construction impacts raised can be suitably addressed by way of condition. It is noted there is no access proposed from Grotto Avenue during the construction phase.

- *Sufficient Legal Interest/ Consent*

7.7.3. In terms of legal interest, I am satisfied that the applicant has provided sufficient evidence of their legal interest for the purposes of the planning application and decision. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the Planning and Development Act, 2000 to 2023.

8.0 Recommendation

8.1. I recommend that permission be GRANTED for the following reasons and considerations and subject to the following conditions.

9.0 Reasons and Considerations

9.1.1. Having regard to the objective A zoning of the lands, provisions of the Dun Laoghaire County Development Plan 2022 - 2028 and the design and layout 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 the area or of property in the vicinity, would not significantly detract from the character of the surrounding areas and would comply with the provisions of the Development Plan. The proposed development would, therefore, 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, as amended by the further plans and particulars submitted to the Planning Authority on the 11th May 2023, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interests of clarity.

2. The proposed laneway from the site to Grotto Avenue to the west shall be omitted in its entirety. Prior to the commencement of any work on site, the Applicant shall submit a revised site layout plan to the Planning Authority for written agreement, which clearly shows the omission of the laneway.

Reason: In the interests of residential amenity.

3. 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.

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

4. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.

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

5. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

6. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Classes 1, 3 and 5 of Schedule 2, Part 1 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: In the interest of orderly development, and to allow the planning authority to assess the impact of any such development on the amenities of the area through the statutory planning process.

7. All works to the existing premises on site shall be carried out under the professional supervision of an accredited conservation architect who shall certify upon completion that the specified works have been carried out in accordance with good conservation practice.

Reason: In the interest of orderly development.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which 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 hours of working, noise management measures, pedestrian safety measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

9. 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.

Frank O'Donnell
Planning Inspector
25th March 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

| | | | |
|---|---|--------------------------------|--------------------------------|
| An Bord Pleanála Case Reference | ABP-317465-23 | | |
| Proposed Development Summary | Demolition of no. 11 and part of no. 13C. Refurbishment of nos. 13A, 13B and 13C including construction of a 2-storey rear extension to no. 13C. Change of use of nos. 13A, 13B & 13C from 3 shop units with living accommodation over to 1 no. one bedroom apartment and 1 no. two bedroom apartment. Construction of 1 no. part two storey/ part single storey three-bedroom mews house to the rear of the site. | | |
| Development Address | 11, 13A, 13B and 13C Booterstown Avenue, Booterstown, Co. Dublin. | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | √ |
| | | No | No further action required |
| 2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class? | | | |
| Yes | | Class 10(b), Schedule 5 Part 2 | EIA Mandatory EIAR required |
| No | √ | N/A – Below threshold | Proceed to Q.3 |

3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?

| | | Threshold | Comment (if relevant) | Conclusion |
|-----|--|----------------------|--------------------------|---|
| No | | N/A | | No EIAR or Preliminary Examination required |
| Yes | | Class/Threshold..... | | Proceed to Q.4 |

4. Has Schedule 7A information been submitted?

| | | |
|-----|---|----------------------------------|
| No | √ | Preliminary Examination required |
| Yes | | Screening Determination required |

Inspector: _____ Date: _____

Appendix 2 - Form 2

EIA Preliminary Examination

| | | |
|--|--|----------------------|
| An Bord Pleanála Case Reference | ABP-317465-23 | |
| Proposed Development Summary | Demolition of no. 11 and part of no. 13C. Refurbishment of nos. 13A, 13B and 13C including construction of a 2-storey rear extension to no. 13C. Change of use of nos. 13A, 13B & 13C from 3 shop units with living accommodation over to 1 no. one bedroom apartment and 1 no. two bedroom apartment. Construction of 1 no. part two storey/ part single storey three-bedroom mews house to the rear of the site. | |
| Development Address | 11, 13A, 13B and 13C Booterstown Avenue, Booterstown, Co. Dublin. | |
| The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations. | | |
| | Examination | Yes/No/ Uncertain |
| Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? | The proposed development to 3 no. residential units (stated area 0.0555 ha) is within an area zoned residential in the Dun Laoghaire County Development Plan, 2022 to 2028. | No |
| Will the development result in the production of any significant waste, emissions or pollutants? | The proposed development is to connect to public services. As per the documentation submitted, the proposed development will not result in significant emissions or pollutants. | No |

| | | |
|--|--|-----------|
| <p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> | <p>This proposal is for the construction of 3 no. residential units and is far below the threshold of 500 units and below 10ha as per Class 10(b) of Schedule 5 of Part 2 of the Planning and Development Regulations 2001 (as amended).</p> | <p>No</p> |
| <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p> | <p>There are no significant cumulative considerations having regard to other existing and/ or planned projects.</p> | <p>No</p> |
| <p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> | <p>Residential Development on serviced site on zoned lands and the proposal includes regard to surface water drainage and the incorporation of SuDS. The proposal does not have the potential to significantly impact on an ecologically sensitive site or location.</p> | <p>No</p> |
| <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p> | <p>The proposal does not have the potential to significantly affect other significant environmental sensitivities in the area.</p> | <p>No</p> |

| Conclusion | | |
|--|--|---|
| There is no real likelihood of significant effects on the environment. | There is significant and realistic doubt regarding the likelihood of significant effects on the environment. | There is a real likelihood of significant effects on the environment. |
| EIA not required | Schedule 7A information required to enable a Screening Determination to be carried out. | EIAR required. |

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)