



An  
Bord  
Pleanála

## Inspector's Report

**ABP-318353-23**

<b>Development</b>	Retention of works and new works to two-storey apartment scheme
<b>Location</b>	261 Harolds Cross Road, Dublin 6W
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	5123/22
<b>Applicant(s)</b>	Forthbridge Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	To grant permission and retention permission subject to conditions
<b>Type of Appeal</b>	Third Party v Grant
<b>Appellant(s)</b>	Michael McMahon
<b>Observer(s)</b>	Donal and Margaret Fitzpatrick
<b>Date of Site Inspection</b>	10 <sup>th</sup> . January 2024
<b>Inspector</b>	Brendan McGrath

## **1.0 Site Location and Description**

- 1.1. This is a suburban site fronting onto a busy radial road (R317) in South Dublin. It is one of a terrace of three. red brick, Edwardian villas. Attached to the rear of the villa there is a two-storey flat block accessed via the villa and by a brick archway to the side of the villa. There is a parking area at the front and paved area and lawn to the rear. The site backs onto low rise residential properties.

## **2.0 Proposed Development**

The nature and scope of the proposal is complex, only clarified by a further information request by the local authority. The application relates to a pre-1963 complex of eight flats, bought by the applicant in 2019. The proposal is for retention and completion of works to the complex, now comprising 6 residential units. The works for which planning permission is sought include 3 roof dormers at the front and a water tank enclosure on the rear flat roof. The retention works include a raised flat parapet roof and rear single storey extension.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission and retention permission subject to 9 conditions of a standard nature apart from condition 3, requiring changes to the submitted design.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning report is the basis of the decision. 14 points of further information were requested in 2022 to clarify the nature and scope of the proposed development.

- The planner had particular concerns about the residential amenity of the occupants, including the presence of rooms without windows,
- Overlooking of an adjacent dwelling
- Car parking provision

- Roof-top water storage
- Impact on adjacent properties to the rear because of the height of the proposal
- Window design

The report notes that a new city development plan has been adopted since the application was lodged and the new plan allows dormer windows to the side and front of dwellings, a change relevant to this application

3.2.2. The planner considered that some flexibility should be allowed in respect of compliance with accommodation standards because the application relates to a pre-63 development.

3.2.3. Other Technical Reports – Drainage Report

No objection but compliance with Regional Code of Practice for Drainage Works required.

### 3.3. **Prescribed Bodies**

No reports received

### 3.4. **Third Party Observations**

Three observations received which raise a range of issues:-

- Continuation of unauthorised development
- Overlooking
- Height of building
- Window design
- Uncertainty about car-parking provision
- Water tank on roof
- Concern about provision of balconies and resultant overlooking

## 4.0 Planning History

3574/20 Refusal of permission for range of development, on three grounds:-

1. Unauthorised development resulting in provision of sub-standard residential units,
2. Incongruous nature of front dormers proposed,
3. Side dormer and external stair would result in overlooking.

Unauthorised development works continued in 2021 and 2022 after the refusal of permission in 2020

## 5.0 Policy Context

### 5.1. Development Plan

Dublin City Development Plan 2022-2028

- Site zoned Z1 'to protect, provide an improve residential amenities'
- Appendix 18 sets out residential development standards, which include guidance allowing dormer windows to front, rear and side of residential buildings
- There are no Architectural Conservation Areas (ACAs) or protected structures in the immediate vicinity

### 5.2. National Policies/Guidelines

Sustainable Urban Housing Design Standards for New Apartments 2023.

The guidance sets out relevant accommodation standards for the proposal. The proposal comprises a 6-unit scheme as follows:-

- 4 2-bedroom units which meet the minimum floor space standard,
- 1 2-bedroom unit which is just below the minimum standard, and
- 1 1-bedroom unit which is just below the standard.
- There is no private open space provided but there is a rear communal open space area which does exceed the minimum space standard

### 5.3. Natural Heritage Designations

None relevant

#### **5.4. EIA Screening**

The proposal is not of a class for which EIA screening is required

### **6.0 The Appeal**

The appellant, Michael McMahon lives locally, to the north of the proposal site.

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

- Application for works that have already been refused permission,
- Pre 63 status of the flats not proven,
- Represents a continuation of unauthorised development
- Permission for window which was not part of application
- Excessive external lighting
- Overbearing and out-of-character development.

#### **6.2. Applicant Response**

None received

#### **6.3. Planning Authority Response**

None received

#### **6.4. Observations**

Donal and Margaret Fitzpatrick, who live beside the proposal site.

They agree with the appellant grounds. Specific points made:-

- Continuous record of unauthorised development
- Overlooking window in south elevation
- All-night external lighting (19 lights at the rear)
- Dormer windows in front elevation.

### **7.0 Assessment**

- 7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider the main issues in this appeal are those listed in the grounds of appeal and the standard of

accommodation being provided, which is a matter raised by the local planning authority during the assessment of the application. I am satisfied that no other substantive issues arise. Appropriate Assessment (AA) also needs to be considered. The main issues, therefore, are as follows:-

- Legal status of the proposal,
- Standard of accommodation proposed,
- Visual impact,
- Residential amenity in the vicinity, and
- Appropriate Assessment

- 7.2. Legal status of the proposal. It is not necessary for the purpose of determining this appeal, for the applicant provide legal proof of the pre-63 status of the development. A history of unauthorised development does not preclude an applicant from seeking retention permission or permission for new development.
- 7.3. Standard of accommodation proposed The proposed accommodation, subject to allowing proposed modifications, is substantially in accordance with the requisite standards. The rear private space is a recreation space and there will be no car-parking
- 7.4. Visual impact The proposal includes the addition of 3 small square dormer windows to the front elevation, aligning with existing fenestration. I consider that this would have negative visual impact but not to the extent that it should be ruled out for consideration, given the nondescript character of the streetscape. It is also the case that the development plan allows for such development and the windows are essential to render proposed flat units 5 and 6 reasonable living spaces. The height of the rear block has been increased by 540mm. I do not consider that this increase has had a serious adverse visual impact. I do not consider that the proposed water tank enclosure on the roof would have a significant adverse impact
- 7.5. Residential amenity in the vicinity A high level window to light the unit 6 living space is proposed and conditioned - no overlooking will result. The applicant has replaced 4 windows in the rear elevation with French windows. Balconies are not proposed. The flat roof is not proposed as living space. I therefore do not consider an adverse impact in this respect. The excessive external lighting is not addressed by the applicant and this matter should be addressed.

- 7.6. Appropriate Assessment (AA). Having regard to the nature of the development, i.e. changes to an existing small apartment scheme in a built-up urban area with no European sites in the immediate vicinity, 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

I recommend that planning permission be granted for the reasons and considerations set out below and subject to the conditions listed.

## 9.0 Reasons and Considerations

Having regard to the need to increase housing supply in Dublin, and to provide new accommodation that is in accordance with national and local design standards, it is considered that, subject to compliance with the conditions set out below, the proposed development would not injure established residential amenity and would 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 as amended by further information received on 14<sup>th</sup> September 2023, 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>
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2.	<p>The developer shall undertake the following amendments, the details of which are to be agreed with the local planning authority:-</p> <ul style="list-style-type: none"> <li>a) A covered lockable bike store shall be provided at the rear of the site for a minimum of 6 bikes.</li> <li>b) A covered bin store shall be provided at the rear of the site.</li> <li>c) The window at first floor level on south west gable (in unit 6) shall be a high level window, fitted with obscure glass.</li> <li>d) The flat roof to rear of unit 5 shall not be used for sitting out or as a terrace. A guard rail shall be provided to the French window in unit 5 to prevent it serving as an access to the roof.</li> <li>e) The three front dormer windows shall be set above the existing eaves level of the roof.</li> <li>f) External wall-mounted lighting to the rear and side of the building shall be replaced by low-level mounted lights (less than 50cm from ground level).</li> <li>g) Four small ornamental trees (<i>Malus</i>, <i>Prunus</i> or similar), staked and with tree guards, shall be planted in the green space to the rear.</li> </ul> <p>Reason: In the interest of residential amenity</p>
3.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0900 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</p>

	<p>planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
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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.

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Brendan McGrath  
Planning Inspector

5<sup>th</sup> February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	<b>ABP-318353-23</b>			
<b>Proposed Development Summary</b>	Retention of works and new works to two-storey apartment scheme			
<b>Development Address</b>	261 Harolds Cross Road, Dublin 6W			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>		
		<b>No</b>	No further action required	
<b>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?</b>				
Yes		Class.....	EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
<b>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]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
No	X	N/A		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	<b>X</b>	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_**Date:** \_\_\_\_\_