



An
Bord
Pleanála

Inspector's Report ABP 320516-24

Development	New study/gym and associated site works
Location	To rear of 45 North Strand Road, North Strand, Dublin 3
Planning Authority	Dublin City Council (North)
Planning Authority Reg. Ref.	WEB1280/24
Applicant	Stephen Connolly
Type of Application	Permission
Planning Authority Decision	To grant permission with conditions
Type of Appeal	Third Party
Appellant	Conor Purcell
Observers	None
Date of Site Inspection	23 rd October 2024
Inspector	Trevor Rue

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1.0 Site Location and Description

- 1.1. The application site, with a stated area of 189 square metres, is located about 1.5 kilometres to the north east of Dublin City Centre, about 800 metres to the north east of Connolly Station and about 110 metres to the north east of the Royal Canal. It is on the north-western side of the R105 North Strand Road, a busy radial route.
- 1.2. The site comprises a 19th Century style terraced house with two storeys, a basement area and a two-storey rear return. It has a small front garden, which is separated from the footway by a hedge and overhung by a large tree. A raised area of overgrown vegetation extends 14.5 to 17.8 metres from the back of the building. This area is closed off from the back of the house by block walls.
- 1.3. Three other two-storey houses in the terrace, Nos. 46, 47 and 48, are located to the north east of the application site, between it and the junction of North Strand Road with Charleville Avenue. There are sizeable structures in the rear curtilage of No.46.
- 1.4. No. 44, which adjoins the site on its south-western side, is a two-storey building of more modern appearance and accommodates a retail outlet with a residential unit above. There is a café in No. 43, another two-storey building further to the south west. Newcomen Court, a narrow arched laneway, adjoins North Strand Road immediately to the south of the café.
- 1.5. The rear boundary of the application site is defined by a metal gate flanked by piers. The gate is about 2 metres in height. A mural has been painted on its outer side. Beyond the wall lies the continuously enclosed Mud Island Community Garden. There is a small two-storey residential block to the rear of Nos. 43 and 44. Pedestrian access to this block and to the community garden is via lockable gates on Newcomen Court.

2.0 Proposed Development

- 2.1. It is proposed to erect a free-standing single-storey building to be used as a study and gym for occupants of No. 45. It would abut the rear boundary of the site and the property boundaries with Nos. 44 and 46. It would be sited 10.37 metres from the back wall of the dwelling and 7.1 metres from the return. It would be L-shaped with a floor area of 30.8 square metres, 24 square metres of which would be occupied by the gym. The submitted ground floor plan shows a desk and seat within the study.

- 2.2. The proposed building, with a 7.41-metre depth, would have a double-pitch gable to the south-western boundary and a return pitch to the north east. Following the submission of further information requested by the planning authority, the proposed ridge height of the building was reduced to 3.72 metres above the level of the raised garden. Walls would be constructed in brick to match adjacent buildings. Slate would be used on the roof and timber on the windows and doors.
- 2.3. The building would enclose a 4.5 square metre courtyard situated at the north-western extremity of the site. The remaining rear area of the property, 55 square metres in area, would be upgraded to provide amenity space and access from the existing house by way of stairs. The garden and courtyard would have permeable paving.
- 2.4. The proposed building would be accessed from the proposed amenity space via a framed hardwood door and from the rear of the site via a metal door into the courtyard, which would be adjoined by a brick wall with metal railings above. Rainwater would be drained into water butts with overflows piped via a new connection to the existing combined foul and surface water sewer running to the rear of the existing house.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 11th July 2024, Dublin City Council issued a notification of decision to grant permission, subject to nine conditions, including the following:

3. The garden room hereby permitted shall not be used for human habitation or for the keeping of dogs, poultry, pigeons, ponies or horses or for any use other than as a use incidental to the enjoyment of the dwelling house as such, unless authorised by a prior grant of Planning Permission.

4. The garden room hereby permitted shall be used solely in conjunction with the main dwelling house and shall not be occupied other than as part of the overall site that includes this dwelling and its garden. The garden room shall not be let, sold or otherwise transferred or conveyed except as part of the overall site that includes the dwelling house and its garden.

- 3.1.2. Conditions relating to external finishes, working hours, noise control and protection of adjoining streets from building materials were also attached.

3.2. Planning Authority Reports

Planning Reports

3.2.1. A planning officer's report was produced on 14th June 2024 and, following the submission of further information by the applicant, it was updated on 15th July 2024. These reports provided the reasoning for the authority's decision.

3.2.2. The planning officer's assessment may be summarised as follows:

- The provision of a garden room (for use as a gym/study), which is ancillary to the enjoyment of the house, is acceptable in principle, subject to Development Plan criteria and protection of neighbouring amenity. Ample amenity space would remain for the occupants of the existing house. The applicant has stated that the property is used as a single family dwelling but has provided no substantiating evidence such as photos of the interior.
- A Council official has confirmed the existence of a 1-metre wide right of way from the rear of the application site to Newcomen Court and has made a key to the garden gate available to the applicant. The applicant has clarified that the garden room would be accessed predominantly from within the property, in addition to a rear access which would also serve the dwelling.
- Given its size, siting and proposed independent means of access from the rear of the property, a condition could be attached to ensure that the garden room remains in domestic use ancillary to the main property and is not commercially rented out. Such a condition would allow the planning authority to take enforcement action in the event of the structure being converted to an unauthorised use such as a residential dwelling.
- The structure would not be visible from North Strand Road. The level of detail submitted in respect of finishes and materials is acceptable, having regard to the backland nature of the proposal.
- In the context of adjoining buildings at the end of the neighbouring gardens to the south west and north east, the proposed structure would not be over-scaled. It would not cause undue overshadowing or impacts on daylight. As it would have no windows above ground level or directly facing other properties, no undue impacts on neighbouring privacy would arise. The revision to the ridge

height has sufficiently addressed the authority's concerns about undue overbearance and impact on the visual amenity of No. 46.

Other Technical Reports

- 3.2.3. The Drainage Division of the Council's Engineering Department had no objection subject to standard conditions.

3.3. Prescribed Bodies

- 3.3.1. The planning authority consulted Uisce Éireann and Irish Rail but received no response from either body.

3.4. Third Party Submissions

- 3.4.1. The present appellant made a submission to the planning authority, the substance of which was repeated in his appeal to the Board.

4.0 Planning History

- 4.1. **2426/21:** On 18th May 2021, the Council decided to refuse planning permission for Beau Homes Limited to alter and reconfigure the current application property to provide two self-contained apartments and to construct a three-storey extension to the rear of the building to accommodate three one-bedroom apartments. Following an appeal, the Board refused permission on 29th November 2021 (**310457-21**).
- 4.2. **WEB1964/22:** On 12th December 2022, the Council decided to refuse to grant planning permission to the present applicant for a new two-storey, two-bedroom mews dwelling to the rear of the current application site. There was no appeal.
- 4.3. **2760/15:** On 20th August 2015, the Council granted permission for the demolition of commercial buildings and the construction of three three-storey terraced houses to the side and rear of 1 Charleville Avenue, behind 47 and 48 North Strand Road. The Council later granted an extension of the duration of the permission until 12th November 2025.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Map E of the Dublin City Development Plan 2022-2028 shows the application site in Primary Land Use Zoning Category Z1, Sustainable Residential Neighbourhoods. Section 14.7.1 of the Plan states that the land-use objective for Zone Z1 is to protect, provide and improve residential amenities. Permissible uses include residential and home-based economic activity. Land immediately to the rear of the site is in Primary Land Use Zoning Category Z9, Amenity / Open Space Land / Green Network.
- 5.1.2. Appendix 18 to the Plan deals with ancillary residential accommodation. Section 1.1 acknowledges that residential extensions play an important role in promoting a compact city. It says that extensions to existing residential units should not have an adverse impact on the scale and character of the existing dwelling; not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, outlook and access to daylight and sunlight; and should achieve a high quality of design.
- 5.1.3. Section 2.0 of Appendix 18 to the Plan considers detached habitable rooms, which it defines as backland development within the curtilage of an existing dwelling that does not contain a separate vehicular access point. It states that the purpose of these rooms is to provide for additional space within the rear garden of an existing dwelling for study / home office use or additional living / children's play room. It goes on to say that all planning applications for detached habitable rooms will be subject to a condition to restrict the use of the room as ancillary living space to the main dwelling; the room may not be sold or rented separately from the main dwelling unit.

5.2. Natural Heritage Designations

- 5.2.1. The application site is not within any Natura 2000 European site of nature conservation importance. The Natura 2000 sites within the Dublin City Council boundary are:
- North Dublin Bay Special Area of Conservation (SAC)
 - South Dublin Bay SAC
 - North Bull Island Special Protection Area (SPA)
 - South Dublin Bay and River Tolka Estuary SPA

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appellant is the owner and resident of No.46, which he moved into in 2014. He works permanently from the back office / dining room on the ground floor of the house. His grounds of appeal may be summarised as follows:

- The further information response on behalf of the developer falsely claims that the property is a single-family home. It is in fact sub-divided into multiple flats. A screen grab from a video the applicant posted on Instagram states that *“The main property consists of a 5-Bed co-living and a separate 2-bed apartment, which has had a back-to-back refurb”*. The “co-living space” consists of separate studios with kitchens and bathrooms. The Residential Tenancies Board website shows that the house is divided into two flats. The fact that this is not a family home would be immediately apparent on visiting the site.
- Most of the tenants would be unable to access the garden from the rear of the existing dwelling due to its internal design. That puts the application in contravention of Section 2.0 of Appendix 18 to the City Development Plan. It is 72 metres from the front door of No. 45, down a lane and through a locked community garden to the rear of No. 45. It is unlikely the developer would spend upwards of €100,000 on a gym/study. His investment could only be recouped by renting out a studio apartment. Such an apartment could not be accessed through the main house, hence the necessity of rear access.
- Given the glut of houses turned into studio apartments in this area, adding another tiny room would only reduce the quality of the housing stock still further. The property developer, who does not live in the area, has stated on Instagram that the application site *“hasn’t stopped giving just yet”*. It would be very surprising if the garden room is not eventually used as a standalone apartment in order to increase the 12% return from the site.
- The Council planner who dealt with the previous application WEB1964/22 noted that the dwelling then proposed would be the only property to front on to the undeveloped area of open space, referred to the failure to provide adequately defensible boundary treatments and the lack of sufficient public lighting, and

said that the safety and security of future occupants had not been properly considered. Nothing has changed since this was written. The “gym/study” would still be the only property to front the open space. It would set an undesirable precedent and raise questions about security and insurance.

- No wayleave through the community garden is marked on the Land Registry map and there has been no access to the rear of the house in the past 12 years at least. The applicant’s proposed site plan shows a supposed wayleave but tenants would need to access the gate (on Newcomen Court).
- The maximum height of a garden room with a mono-pitched roof is 3 metres but the applicant wants permission for a garden room height of 3.7 metres. The application indicates that the existing rear return is used for toilets but both storeys are in fact used as studio apartments. The “gym/study” would overlook both tenants as it would be 6.64 metres higher than the basement unit (due to steps in the back garden) and only 7.1 metres away from both units.
- There is very little information on the internal and external materials and design of the proposed structure. It is almost impossible to know what the development would look like. Given the poor quality of the external finishes of No.45, it is hard to have faith that the proposed structure would have high quality finishes.
- The planning system in Ireland is heavily based on trust. Rewarding a developer who repeatedly lies in his application would set a terrible precedent and encourage others to do the same.

6.2. Applicant Response

- 6.2.1. A copy of the appeal was forwarded to the applicant’s architects on 12th August 2014 but they did not make submissions or observations in writing to the Board within the four-week statutory period.

6.3. Planning Authority Response

- 6.3.1. A copy of the appeal was forwarded to the planning authority on 12th August 2014 but it did not make submissions or observations within the four-week statutory period.

7.0 Environmental Screening

7.1. Environmental Impact Assessment

7.1.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations 2001, as amended, applies and therefore, the requirement for submission of an EIA assessment report and carrying out of an EIA assessment may be set aside at a pre-screening stage.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, the absence of foul effluent arising therefrom, the nature of the receiving environment as a built-up urban area and the absence of a pathway between the application site and any European site, it is possible to screen out the requirement for the submission of a Natura impact statement and the carrying out of an AA at an initial stage.

8.0 Planning Assessment

8.1. Issues

8.1.1. Having inspected the site and considered in detail the documentation on file for this Third Party appeal, it seems to me that the main planning issues are:

- the acceptability in principle of the proposed use;
- layout and access;
- design and effects on residential amenity; and
- precedent.

8.2. Acceptability in Principle

8.2.1. I am satisfied that the proposed study/gym to the rear of the property and the much needed upgrade of the intervening space to provide an amenity area would be compatible with the land-use objective for Zone Z1 to protect, provide and improve residential amenities. The development, as presented, would provide enhanced facilities for residents and enable home-based economic activity.

8.2.2. The proposal is not strictly speaking for a residential extension as the proposed new building would be not be attached to the existing house. The constraints listed in

Section 1.1 in Appendix 18 to the Dublin City Development Plan, relating to scale and character, effects on residential amenity, and design, are nonetheless relevant factors in their own right and are considered below.

- 8.2.3. It seems to me that the proposal is consistent with Section 2.0 in Appendix 18 to the Development Plan in that, as presented, it is for ancillary habitable living space and does not involve a separate vehicular access point. I conclude that the provision of a study/gym within the appeal property is acceptable in principle.

8.3. **Layout and Access**

- 8.3.1 The floor plans submitted with the 2021 application showed the property as it then existed divided into two apartments – a one-bedroom unit in the basement and a two-bedroom unit on the ground and first floors. The rear return, as depicted, contained one toilet at basement level and two toilets at ground-floor level. It was apparent when I inspected the property that it has since undergone significant change.
- 8.3.2. The ground and first floors of the property are occupied by five residential units, each with a numbered internal door. There is no access to the rear of the property from these floors. The basement, which has a separate entrance from the street, has bedroom accommodation in the return. There is access from the basement to a small yard but the raised overgrown area at the rear of the site is inaccessible from the yard.
- 8.3.3. The applicant's architect was incorrect when he told the planning authority that the property is used as a single family dwelling. It is understandable that the appellant is suspicious that the proposed building may be intended for use as a studio apartment, even though it would be far too small to serve that purpose adequately. However, in my opinion the Board is obliged to consider the proposal before it at face value.
- 8.3.4. A condition could be attached to any permission requiring the building to be used only in the manner described in the application and prohibiting its use as bedroom accommodation or its functional severance from residential use in the existing house. Should it subsequently be brought to the attention of the planning authority that the conditions had been breached, the authority would be able to take enforcement action.
- 8.3.5. There is an existing pedestrian access from Newcomen Court through Mud Island Community Garden to the application site. It is not unreasonable in my opinion that there should continue to be such access. Concerns about personal security are mitigated by the presence of street lights, lockable gates and fencing in Newcomen

Court and by the fact that the route is overlooked by the residential block to the rear of 43 and 44 North Strand Road.

- 8.3.6. To ensure that the proposed building is used solely for purposes incidental to residential use in the existing house, it is essential that its principal pedestrian access is from within the property. That would require the removal of obstructions, the provision of concrete steps, and the laying out of amenity spaces in accordance with the submitted plans. I consider it prudent to require that these works are satisfactorily completed before any works for the construction of the proposed building commence. A condition to that effect could be attached to any permission. Subject to the conditions I have outlined, I find the proposed layout and access to be acceptable.

8.4. Design and Residential Amenity

- 8.4.1. The proposed garden room ridge height does not contravene any statutory or policy requirement. I accept the planning authority's analysis that in the context of adjoining buildings the proposed structure would not be over-scaled; that it would not cause undue overshadowing or impacts on daylight; that no undue impacts on neighbouring privacy would arise; and that it would not have an unduly overbearing effect on the appellant's property at No. 46.
- 8.4.2. The proposed elevations submitted at further information stage indicate that the proposed building would have a slate roof and new brickwork walls to match "existing". I take that to mean to match the walls of the existing house. I agree with the planning authority that the level of detail submitted in respect of finishes and materials is acceptable, having regard to the backland nature of the proposal. A condition could be attached to any permission to require the external finishes of the new building to harmonise with those of the existing house in respect of materials and colour.
- 8.4.3. The Council's conditions relating to noise control and protection of adjoining streets from building materials are loosely worded and would not be easy to enforce. The potential impact of construction works on the community garden is not addressed. It seems to me that the developer should be required to agree precise measures with the planning authority prior to the commencement of development, to enable it to intervene if the agreed measures are not being properly implemented.

8.5 Precedent

- 8.5.1. The appellant has explained why he does not trust the applicant's stated intentions. I nevertheless consider that the concerns raised can be overcome by the imposition of enforceable conditions. It seems to me that a grant of permission for the specific development proposed in the application would be in accordance with the relevant policies of the City Development Plan and would not set an undesirable precedent.

9.0 Recommendation

- 9.1. I recommend the Board to grant permission subject to the conditions set out below.

10.0 Reasons and Considerations

- 10.1 Having regard to the Z1 zoning objective for the site, the pattern of development in the area and the nature, layout and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development would be consistent with the relevant provisions of the Dublin City Development Plan 2022-2028 and would not injure the amenities of the area. The development would therefore be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning application, as amended by the further plans and particulars submitted on 14 th June 2024, except as may be otherwise required by the following conditions. Reason: To clarify the plans and particulars for which permission is granted.
2.	The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority. Reason: To prevent flooding and in the interest of sustainable drainage.

3.	<p>Prior to the commencement of any works associated with the development, the developer shall submit a detailed Construction Environmental Management Plan (CEMP) for the written agreement of the planning authority. The CEMP shall incorporate proposals for noise control, having regard to the requirements of British Standard 5228-1:2009; and for the handling of debris, soil and other material; and if the need arises for cleaning works on neighbouring roads and other lands, which shall be carried out at the developer's expense. The agreed CEMP shall be implemented in full.</p> <p>Reason: In the interests of residential amenity, public health and safety.</p>
4.	<p>Site development and building works shall be carried out only between 7.00am and 6.00pm on Mondays to Fridays inclusive, between 8.00am and 2.00pm on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in compelling circumstances where prior written agreement (which may be subject to conditions) has been received from the planning authority.</p> <p>Reason: To safeguard the residential amenity of property in the vicinity.</p>
5.	<p>Construction of the gym/studio building shall not commence until the planning authority has certified in writing that new concrete steps have been provided, amenity spaces have been laid out and an unobstructed pedestrian access route from the back of the existing house to the new building has been created to its satisfaction, all in accordance with the proposed plans submitted on 14th June 2024. That pedestrian route shall thereafter be kept open in perpetuity.</p> <p>Reason: To ensure that the principal pedestrian access to the gym/studio is from within the existing property, in the interest of residential amenity.</p>
6.	<p>The external finishes of the gym/studio building shall harmonise with those of the existing house in respect of materials and colour.</p> <p>Reason: In the interest of visual amenity.</p>

7.	<p>The building hereby permitted shall be used only as a gym and studio in conjunction with and incidental to residential use in the existing house, 45 North Strand Road. In particular, it shall not be used as bedroom accommodation. It shall not be sold, let or otherwise conveyed as an independent living unit. The curtilage of the existing house, shown outlined in red on the site location map submitted with the planning application, shall not be subdivided.</p> <p>Reason: To ensure an adequate standard of residential amenity.</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.

TREVOR A RUE

Planning Inspector

5th November 2024