



An
Bord
Pleanála

Inspector's Report

ABP-321472-24

Development	Amendment to permitted development (Reg. No. D20A/0670 / ABP Ref. 309931-21). Replacement of 3 no. apartments at third-floor level of Block C to 2 no. apartments and all associated site works.
Location	24-28, Fosters Avenue, Mount Merrion, Blackrock, County Dublin
Planning Authority	Dún Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D24A/0783/WEB
Applicant	Naas Road Property Development Company Limited
Type of Application	Planning Permission
Planning Authority Decision	Notification of Grant
Type of Appeal	Third Party
Appellant	Ms. Elizabeth Connolly
Observer(s)	None
Date of Site Inspection	25 th February 2025
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.65 hectares and is located in Mount Merrion, County Dublin, off Fosters Avenue. The site is located approximately 210 metres southwest of the Stillorgan Road junction and is located directly opposite the Nova access to the University College Dublin Belfield campus. The site is located within an established residential area, and it was noted on the date of the site inspection that it comprises of an active construction site.
- 1.2. The site is bounded to the north by the Regional Road R-112, residential properties to the east and west and residential properties to the south which front St. Thomas Road. The topography of the site is below the level of the adjoining St. Thomas Road residential properties.

2.0 Proposed Development

- 2.1. Permission is sought to amend the 68-apartment development approved by An Bord Pleanála (ABP) under ref. 309931-21 (Local Authority ref. D20A/0670). This permission included for the construction of 3 no. blocks of apartments; Block A and Block B which are located within the northern section of the site fronting Fosters Avenue, and Block C which is located within the southern section of the site, closest to the rear boundaries of the St. Thomas Road residential properties.
- 2.2. The proposed amendment relates to the third floor of Block C. It is proposed to replace 3 no. 2-bed apartments on the third floor with 2 no. 3-bed apartments, which will result in a reduction in the number of apartments within the overall scheme to 67 no. The proposed development will amend the third floor balcony arrangements by replacing 3 no. 7.2sqm balconies on the southeast, southwest and northwest elevations with a single 24sqm balcony on the southeast elevation.

3.0 Planning Authority Decision

3.1. Decision

The planning authority (PA) issued a notification to **Grant** planning permission, by Order dated 20th November 2024, subject to 2 no. conditions.

3.2. Planning Authority Reports

Planning Report

The area planner (AP) report on file assessed the proposed development in relation to, inter alia, the principle of the development, relevant planning history, the proposed amendments and the issues raised by third parties. The AP undertook an appropriate assessment (AA) screening and determined that the development would not significantly impact upon a Natura 2000 site. In terms of Environmental Impact Assessment (EIA), the AP considered that there was no real likelihood of significant effects on the environment and the need for EIA was excluded at preliminary examination.

Other Technical Reports

- Drainage (*report dated 31/10/24*) – This section outlined no objection to the development subject to compliance with drainage conditions under the parent permission.
- Housing (*report dated 4/10/24*) – This section recommended that a Part V agreement condition is attached.
- Transportation Planning (*report dated 4/11/24*) – This section outlined no objection to the development subject to compliance with transportation conditions under the parent permission.
- Environmental Enforcement (*report dated 30/01/24*) – This section was satisfied with the recommendations set out under the parent permission subject to an operational waste management plan due to the change in the number of apartments.
- Parks and Landscape Services (*report dated 17/10/24*) – This section outlined no objection to the development.
- Infrastructure and Climate Change Department (*report dated 24/10/24*) – This section requested that a lighting design be provided by the developer.

Conditions

- Condition Number 2 required the developer to comply with the conditions of the parent grant of permission (D20A/0670 / ABP-309931-21).

3.3. Prescribed Bodies

None on file.

3.4. Third Party Observations

There was 1 no. third party observation submitted which raised concerns with the proposed amendment, in terms of overlooking, noise and privacy on existing residential amenity.

4.0 Relevant Planning History

PA ref. D25A/0010/WEB (*subject site*)

Permission is being sought for amendments to ABP-309931-21 for a change of use of permitted communal amenity space to 1 no. 3-bed apartment which would result in an overall increase to 69 no. apartments. On 24th February 2025 the PA requested additional information from the applicant.¹

ABP Ref. 309931-21 (PA ref. D20A/0670) (*subject site*)

Permission was sought for the construction of 72 no. apartments. The Board granted permission for the construction of 68 no. apartments (*Order dated 28th August 2023*).

ABP Ref. 308770-20 (PA ref. D20A/0406) (*subject site*)

Permission was granted by the Board for the demolition of a vacant industrial building and 2 no. dwellings (*Order dated 27th September 2022*).

ABP Ref. 304063-19 (Strategic Housing Development application) (*subject site*)

Permission was refused by the Board for the construction of 123 no. build-to-rent apartments and childcare facility due to the scale, bulk and height of the development resulting in overbearing, overlooking, overshadowing and noise issues on existing residential amenity and concerns in relation to the impact on bats.

¹ <https://planning.agileapplications.ie/dunlaoghaire/application-details/101184>

5.0 Policy Context

5.1. Dún Laoghaire-Rathdown County Development Plan 2022-2028

The subject site is located within the 'A' zoning objective for the site. This zoning objective seeks to provide residential development and improve residential amenity while protecting the existing residential amenities.

Policy Objective PHP20: Protection of Existing Residential Amenity

It is a Policy Objective to ensure the residential amenity of existing homes in the Built-Up Area is protected where they are adjacent to proposed higher density and greater height infill developments.

Chapter 12 Development Management Standards

- Section 12.3.5 Apartment Development
- Section 12.8.3.3 Private Open Space
- Section 12.8.7 Private Amenity Space – Quality Standards

5.2. Regional Policy

- Regional Spatial and Economic Strategy for the Eastern and Midlands Region 2019

5.3. National 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)

5.4. Natural Heritage Designations

The subject site is not located within any designated site. The nearest designated site is South Dublin Bay and River Tolka Special Protection Area (SPA) (Site Code 004024) which is located approximately 1.2km northeast of the subject site. This area

is also designated as the Booterstown Marsh proposed Natural Heritage Area (pNHA). Furthermore, South Dublin Bay Special Area of Conservation (SAC) (Site Code 000210) is located approximately 1.3km northeast of the site.

5.5. Environmental Impact Assessment (EIA) Screening

Having regard to the nature and scale of the proposed development which is for modifications to a permitted development and having regard to the brownfield nature of the site and to the nature, extent, characteristics and likely duration of potential impacts, it is considered that the proposed development is not likely to have significant effects on the environment. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required. I refer the Board to Appendix 1 regarding this preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal from Ms. Elizabeth Connolly was received by the Board on 17th December 2024. The grounds of appeal are summarised as follows:

- The change in scale of the balcony on the third floor on the southern elevation of Block C has not been addressed by the PA.
 - The width of the proposed balcony has been extended to three times the 3.7 metre permitted width which is substantial. This will create much more extensive overlooking into the adjoining properties on St. Thomas Road.
 - There are no trees along the southern boundary of the site as the hardstanding for the warehouses adjoined this boundary. The proposed planting plan is not substantial enough to prevent overlooking into neighbouring gardens and the existing trees along the boundary of the garden will not prevent overlooking.
 - The large balcony will have a material impact on the design character of the permitted development and is inconsistent with the permitted elevation.

- The area of the private amenity space vastly exceeds the minimum requirements of the CDP.
- The private space should be reorientated to the western elevation which could minimise the material impact of overlooking, noise and privacy on existing residents.
- Permission was previously refused by the Board for a similar development on the site by reason of impact on adjoining residential amenity in terms of overlooking and noise impacts.
- The development is located less than 11 metres from the appellant's property and existing residential amenities are not being protected.
- Photographs are provided showing a recently completed development in Mount Merrion. The development has resulted in clear views into adjoining gardens.
- The functionality and amenity of the appellant's house and garden space will be seriously compromised by this balcony, and it is requested that permission for the amendment be refused.

6.2. Applicant Response

The applicant issued a response to the grounds of appeal on 23rd January 2025 which is summarised as follows:

- It is respectfully requested that the Board upholds the PA's decision to grant permission.
- It is considered that there will be no material impact on residential amenity in terms of overlooking or privacy of any significance from the proposed amendments when compared to the permitted development onsite. The principal of a balcony at this location has been established.
- Additional permitted and proposed area plans, and contiguous sectional elevation drawings are included which demonstrate that the design approach and proposed amendments to Block C are appropriate for the site.
- The permitted third floor apartment in Block C is set back c. 12.9 metres from the southern boundary of the site and a total of c. 53 metres from the rear

elevation of the appellant's property. The permitted apartment is flush with the third-floor building line and included a recessed balcony of c. 7.2sqm.

- There is a change in levels along the southern site boundary with the subject site over 2 metres below the adjoining residential properties on St. Thomas Road. There is also a 2.5-metre-high blockwork boundary wall to the rear of the appellant's property which sits on top of an existing bank.
- The separation distances were considered acceptable by the Board under application ref. 309931-21.
- It is acknowledged that the floor area of the balcony will increase, however, it does not exceed beyond the permitted footprint of the third-floor level. It provides an additional setback from the apartment to the southern boundary of c. 15.7 metres, however, the distance of the balcony at c. 12.9 metre remains as permitted.
- The amendments exceed the separation distances set out in Section 12.3.5.2 of the CDP and also accords with SPPR1 of the Sustainable and Residential Development Compact Settlements Guidelines for Planning Authorities 2024.
- The scheme referenced by the appellant is not a direct comparison due to difference in levels and existing screening.
- The increase in size of the balcony will not result in a material change in terms of noise and it will continue to be comparable to a typical residential setting.

6.3. Planning Authority Response

The PA issued a response on 23rd January 2025. It considered that the grounds of appeal did not raise any new matter which would justify a change in attitude to the proposed development. The Board was referred to the previous Planner's report.

6.4. Further Response from Third-Party Appellant

Due to the particular circumstances of the appeal, the appellant was invited to make a further submission under Section 131 of the Planning and Development Act 2000, as amended. In response, the appellant issued a further submission on 19th February 2025, which is summarised as follows:

- The principal of a balcony at the location is for a more modest balcony of 7.2sqm and the proposed balcony cannot be considered in the same light.
- The balcony extends to the corner of the building and is open to the south and west neighbourhoods.
- Management companies are ineffective in situations of noise and if any such nuisance arises residents would be forced to put up with the loss of existing amenity.
- The building of the four-storey block 2 metres lower than the neighbours is irrelevant as the degree of overlooking and loss of privacy will be much the same for residents.
- There is insufficient and no screening in places between neighbouring properties and these will be overlooked. Branches and scrubby saplings that overhang the developer's property will probably be removed.

6.5. Further Response from Planning Authority

The PA also issued a further response on 26th February 2025. This response reiterated the same issues raised in its response of 23rd January 2025.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local, regional and national policies and guidance, I consider that the substantive issue in this appeal to be considered is in relation to the impact of the modification to the permitted development on adjoining residential amenity.
- 7.2. Having regard to the 'A' zoning objective of the site under the Dún Laoghaire-Rathdown County Development Plan 2022-2028 (CDP) and to the planning history of the site, I consider that the principle of residential development on the subject site has already been established and is acceptable.
- 7.3. The Board should also note that whilst not raised as an issue within the grounds of appeal I have reviewed the revised layouts for the 2 no. 3-bed apartments and am satisfied that they both comply with the standards set out under the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2023) and Section 12.3.5 of the CDP. It should be noted that the minimum floor areas substantially exceed the 90sqm minimum requirement. I also consider that the proposed amendment will not have a material impact on the approved density of the scheme.

Residential Amenity

- 7.4. The appellant's main issue with the amendment proposal is in relation to the design modification of the balcony on the southeast elevation of the third floor of Block C and its increase in size from 7.2sqm to 24sqm.

Private Open Space Quantitative Standard

- 7.5. Firstly, with regards to the appellant's concerns with the size of the balcony space exceeding the standards set out in the CDP, whilst Table 12.11 of said CDP and Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments (2023) outline a 9sqm space for a 3-bed unit, it should be noted that this is a minimum requirement. The Board should note that I have no concerns, in quantitative terms, with the size of the balcony exceeding such minimum standards and I consider that a

size greater than the minimum standard would result in a higher amenity standard for any future occupant.

Overlooking / Loss of Privacy

- 7.6. I note that the principal of a balcony on the southeast elevation of the third floor of Block C has already been established under ref. ABP-309931-21. Having reviewed the submitted drawings, the Board should note that the proposed amendments to the third floor do not propose to locate said balcony any closer to the southern boundary. The separation distance of c.12.9 metres to the southern boundary and c. 50 metres to the appellant's property remain unchanged as a result of the proposed amendment. I note that the design has simply set back the external walls of the original permitted apartment unit to accommodate a wider balcony footprint of 24sqm.
- 7.7. Specific Planning Policy Requirement (SPPR) 1 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024) states that a separation distance of at least 16 metres between opposing windows serving habitable rooms shall be maintained and Section 12.8.7.1 of the CDP states that a minimum standard of 22 metres separation between rear first floor windows should be observed. I note that the design significantly exceeds these standards and having regard to the substantial separation distance I have no significant concerns with overlooking of the appellant's property or any other property as a result of the proposed modifications.
- 7.8. With regards to the appellant's concerns of overlooking of the existing garden space and absence of sufficient screening, having regard to the 12.9 separation distance to the party boundary, which the Board should note has not been altered from what is already permitted, to the change in topographic levels between the applicant's garden and the subject site, to the existing and proposed screening along the southeast boundary, I am satisfied that the proposed modification would not significantly impact the usability and functionality of any adjoining garden.

Noise

With regards to the appellant's concerns that the increase in size of said balcony will result in increased noise, and notwithstanding the comments regarding the management company, having regard to the nature of the development being residential, to the separation distances to adjoining properties and to the Inspector's

conclusions under application ref. 309931-21 with regards to same, I am satisfied that the proposed modification would not result in an unacceptable impact on adjoining residential amenity in terms of noise.

Overall Conclusion

- 7.9. To conclude, having regard to the minor nature and scale of the proposed modifications, to the separation distances between Block C and the southern boundary being unchanged to what was approved under application ref. ABP-309931-21, to the change in topography between the subject site and St. Thomas Road residential properties and to the existing and proposed screening along the southern boundary, I consider that the proposed amendment would not result in an adverse impact on adjoining residential amenity and, therefore, the development would be in accordance with Policy Objective PHP20 of the CDP in this regard.

Other Issues

- 7.10. I note the appellant also raised concern with the impact of the design change on the character of the block. Having reviewed the submitted elevation drawings, due to the minor nature and scale of the proposed amendment, I am satisfied that the proposed modification would not significantly alter the design character of the block or the wider development.

8.0 Appropriate Assessment (AA) Screening

- 8.1. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 1.2km from the South Dublin Bay and River Tolka Special Protection Area (SPA) (Site Code 004024) and approximately 1.3km from the South Dublin Bay Special Area of Conservation (SAC) (Site Code 000210).
- 8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site, including any ex-situ effects. The reason for this determination is as follows:
- To the AA screening determination of the Board under application ref. ABP-309931-21.

- To the minor scale and nature of the proposed amendments to the permitted development.
- To the location of the proposed development within a built-up urban area and to the built-up nature of the surrounding area.
- To the distance from the nearest European sites regarding any other potential ecological pathways and intervening lands.
- Taking into account the screening determination by the PA.

8.3. I consider that the development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is, therefore, not required. No measures intended to avoid or reduce harmful effects on European sites have been taken into account in reaching this determination.

9.0 Recommendation

I recommend to the Board that permission is **Granted**, subject to conditions, for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the planning history of the site, to the minor nature and scale of the proposed amendments to the parent permission, to the separation distances to adjoining residential properties being unchanged to what is already permitted, to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 and to the 'A' zoning objective for the site, it is considered that the proposed development would not seriously injure the residential amenities of property in the vicinity and would be in accordance with Policy Objective PHP20 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028. It is, therefore, considered that the proposed development would 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 application, and the further plans and particulars received by An Bord Pleanála on the 23rd day of January 2025, 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.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall comply with the conditions of the parent permission register reference ABP-309931-21, unless the conditions set out hereunder specify otherwise. This permission shall expire on the same date as the parent permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous 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.

Gary Farrelly
Planning Inspector

27th February 2025

Appendix 1

(a) Form 1: EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321472-24		
Proposed Development Summary	Modifications to previously permitted apartment development. Overall reduction in apartments from 68 no. to 67 no.		
Development Address	24-28, Fosters Avenue, Mount Merrion, Blackrock, County 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	X
		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)?			
Yes	X	Part 2: 10(b)(i) Construction of more than 500 dwelling units 10(b)(iv) Urban Development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. 13(a) Any change or extension of a development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:- (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and (ii) result in an increase in size greater than 25% or an amount equal to 50% of the appropriate threshold, whichever is the greater.	Proceed to Q.3
No			No further action required

3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?				
Yes				EIA Mandatory EIAR required
No	X			Proceed to Q.4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?				
Yes	X	<ul style="list-style-type: none"> The amended proposals will result in a total of 67 no. apartments on the 0.65-hectare site. The amended proposals would not result in the development meeting the criteria outlined under Part 2, 13(a). 	Preliminary examination required (Form 2)	
4. Has Schedule 7A information been submitted?				
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)		
Yes		Screening Determination required		

(b) Form 2 - EIA Preliminary Examination

<p>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. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
<p>Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The development site measures 0.65 hectares. The size of the development is not exceptional in the context of the existing environment. The modifications will reduce the total amount of apartment units to 67 no.</p> <p>There is no real likelihood of significant cumulative effects with existing and permitted projects in the area.</p>

Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The site is located within an established residential area. It is considered that the amended proposals will not introduce any new or greater impacts to the previously permitted development. The subject site is not located within any designated site and is located approximately 1.2km from the South Dublin Bay and River Tolka SPA (Site Code 004024) and approximately 1.3km from the South Dublin Bay SAC (Site Code 000210). My appropriate assessment screening under Section 8 of this report determined that the proposed development would not likely result in a significant effect on any European Site. The subject site is located outside Flood Zones A and B for coastal or fluvial flooding.	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the minor nature and scale of the modifications, to the fact that the modification will not introduce any new or greater impacts to the previously permitted development, to its location removed from any environmentally sensitive sites and to the absence of any cumulative effects with existing or permitted projects in the area there is no potential for significant effects on the environment.	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	
There is no real likelihood of significant effects on the environment.	EIA is not required.	X
There is significant and realistic doubt regarding the likelihood of significant effects on the environment	Schedule 7A Information required to enable a Screening Determination to be carried out.	
There is a real likelihood of significant effects on the environment.	EIAR required.	

Gary Farrelly
Planning Inspector
27th February 2025