



An
Coimisiún
Pleanála

Inspector's Report

ABP 322442-25

Development

Removal of existing pitched roof and replacement with flat (green) roof, increase in height of external walls to allow for parapet to new flat roof, removal of existing ground floor bay window, glazed entrance screen and glazed roof to lobby, removal of chimney breast, extension of ground floor by a total of 6.72sqm, extension of first floor to front and side (over existing ground floor kitchen area) by a total of 17.86sqm. Works also include for solar panels and heat pump to roof.

Location

The Mews Fairfield Court, Herbert Road, Sandymount, Dublin 4.

Planning Authority

Dublin City Council South.

Planning Authority Reg. Ref.

WEB 2019/24

Applicant(s)

Kieran & Siobhan Fay.

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|------------------------------------|--|
| Type of Application | Permission |
| Planning Authority Decision | Grant permission with conditions. |
| Type of Appeal | Third Party |
| Appellant(s) | Fairfield Court Management Company Limited. |
| Observer(s) | John Cheadle attaching affidavits from Michael Hopkins and Padraic Hannon. |
| Date of Site Inspection | 14.07.2025. |
| Inspector | Des Johnson |

1. Site Location and Description

- 1.1 The site is located to the north east side of Herbert Road, on the opposite side of the road to the Sandymount Hotel in Dublin 4.
- 1.2 The site is wedge shaped, between No.11 Fairfield Court and No.2, Herbert Road. Fairfield Court is a staggered terrace of two-storey over semi-basement dwellings fronting to the south west and set back from Herbert Road, and No.11 is end of terrace. The front wall of The Mews is behind the rear wall of No.11. No.2 to the south east is a large two-storey dwelling, and has first-floor windows facing north west over The Mews.
- 1.3 The Mews is two storey. It is separated from No.11 Fairfield Court by a wall approximately 2m in height. There is a pedestrian gate in the wall to the front of The Mews giving access to the rear garden of No.11, Fairfield Court.

2. Proposed Development

- 2.1 The proposal is for the removal of existing pitched roof and replacement with flat (green) roof, increase in height of external walls to allow for parapet to new flat roof, removal of existing ground floor bay window, glazed entrance screen and glazed roof to lobby, removal of chimney breast, extension of ground floor by a total of 6.72sqm, extension of first floor to front and side (over existing ground floor kitchen area) by a total of 17.86sqm. Works also include for solar panels and heat pump to roof.
- 2.2 The applicants state that they recently purchased the property and wish to upgrade it and make it more functional. There is no front or rear garden and it is proposed to

use the area directly in front of the new bay window as a south facing outdoor space, with existing parking at the southern end of the site retained.

- 2.3 The site area is stated to be 123sqm. The floor area proposed is stated to be 24.58sqm, and the total floor area (new and retained) is stated to be 102.74sqm. The proposed plot ratio is 0.835, and the proposed site coverage is 54%.
- 2.4 Further Information was requested on 15.10.2024 and submitted on 12.03.2025. In response, the applicants confirmed that the proposal within the red line boundary is within their ownership. The applicant states that legal freehold interest was acquired in the Mews, and 'possessory freehold interest' in the Possessory Portion over the overall property. Revised drawings show a revised window layout to the first floor windows. The first floor bay window is composed of solid panels in place of

previously proposed glass. The window to the Dressing Room has vertical louvres which are angled away from No.11 Fairfield Court meaning that it does not overlook.

3. Planning Authority Decision

3.1 The Planning Authority decided to grant permission subject to 7 conditions.

3.2 The conditions relate to the following:

1. Standard compliance including Further Information
2. External finishes
3. Noise control
4. Site and building works hours
5. Debris, soil, and other material requirements
6. Compliance with Codes of Practice
7. Drainage requirements

3.3 The Planners Report

The site is zoned Z1 'Sustainable Residential Neighbourhoods' with the objective *to protect, provide and improve residential amenities*. Three Observations were submitted. The current pitched roof has a height of 5.574m and the new roof would have a height of 5.734m. The front extension would measure 1.381m in depth and 5.3m in width. Given the range of roof designs along Herbert Road, the change from a pitch roof to flat roof design raises no concerns and is acceptable. There would be no significant loss of light to surrounding properties, or overdevelopment within the site. By way of Further Information, the applicants state that they have acquired a legal freehold interest in The Mews and a possessory freehold interest in portion of the overall property, and this response is deemed acceptable by the Planning

Authority. Permission does not confer title. Revised window layout to the first floor windows is deemed acceptable. The proposed development would be in keeping with the residential character of the area, and would not detract from residential amenities of the area.

3.3.1 Drainage Division have no objection subject to conditions.

3.3.2 Three Observations were received raising concerns regarding ownership, impact on other Fairview Court Management Company land, loss of light to No.10, loss of privacy from first floor windows, and demolition of side entrance on front wall.

4. Planning History

4.1 None recent relevant on file. Reg Ref: 1038/94 – permission granted for side porch.

5 Policy Context

5.1 Dublin City Development Plan 2022-2028 is the operative plan. The site is zoned Z1 'Sustainable Residential Neighbourhoods', with the objective *to protect, provide and improve residential amenities*.

5.1.2 Appendix 18 of the Plan sets out design principles for residential extensions. Section 1.1 States that applications for extensions of existing residential units should not have an adverse impact on the scale and character of the existing dwelling, should not affect the amenities of adjacent buildings in terms of privacy, outlook, and access to daylight and sunlight, achieve a high quality of design, and make a positive contribution to the streetscape. There is a general presumption against front extensions that significantly break the building line unless there would be no adverse impact on the character of the area, or the visual/residential amenities of directly adjoining dwellings.

5.1.3 Section 1.3 refers to extensions to the side. Ground floor side extensions are evaluated against proximity to boundaries, size, and visual harmony with existing,

and impacts on adjoining residential amenity. First floor side extensions are generally acceptable.

6. Natural Heritage Designations

- South Dublin Bay SAC - c. 710m to the east
- South Dublin Bay & River Tolka Estuary SPA & pNHA – c.710m to the east.

7 EIA Screening

7.1 The development proposed is not of a Class for the purposes of Schedule 5. As such, the development is excluded at pre-screening stage.

8. The Appeal

8.1 The grounds of appeal may be summarised as follows:

- The appellants are of the opinion that the applicants do not have freehold legal interest in the site. Information requested by way of Further Information was not answered. No Land Registry compliant map was submitted. The applicants stated that they had freehold interest, but in Further Information stated that the Freehold Interest applied for some of the site, and that the applicants had a 'Possessory Freehold Interest' for the rest of the site, but there are no documents to back up these statements. A Deed of Waiver including a coloured map is submitted. An opinion on title by DT O'Driscoll Solicitors is also submitted.
- The submitted location of the gate giving access to the rear of No.11 Fairfield Court is incorrect (survey plan submitted).
- As the applicant does not have freehold legal interest, the standards of the Development Plan, and provisions of the Planning Act have not been complied with.

- There are numerous errors in the application documentation which give an inaccurate reflection of the existing property, and give inconsistent view of the negative impact on the estate if permission is granted.

Opinion on Title by DT O’Driscoll Solicitors

The applicants note in their application that there is no front or rear garden. The proposed development would infringe on the courtyard area which is owned by Fairfield Court Management Company. No documents of title relating to the premises have been submitted. The Deed of Waiver delineates the property owned by the Management Company. “Possessory Freehold Interest” is a contradiction as there can be no such title. The property in front of The Mews has been maintained, insured, utilised, and kept in good condition by the Management Company since 2000. The applicants do not own any land in front of the Mews or any parking space. The grant of planning permission was issued without obtaining satisfactory evidence of title.

8.2 Applicants Response

1. The grounds of appeal relating to the Dublin City Development Plan are irrelevant as there is an existing dwelling on the site. The footprint is increased marginally and is of no consequence in relation to standards.
2. It is accepted that the drawings should be corrected relating to the distance shown from the front of the house and gate to the rear corner of No.11; this should be 3030mm. This is a minor error and would be to the detriment of the applicants. Revised drawings are submitted.
3. The front of the proposed Mews extension would be at least 300mm back from the existing gate opening, and will not interfere with access to the rear of No.11.
4. The window to the dressing room to second bedroom at first floor level is designed in such a way that the louvre and window are integrated, and that in the event of fire, the entire assembly can open. The appellant would accept opaque glass instead of the louvre if deemed necessary.

Submission by McGuigan Solicitors re: Title

1. The issue of Title is potentially a private civil dispute in relation to the small possessory element of the applicants' title to the property, and is not a planning matter.
2. Section 34(13) of the Planning Act states that a person shall not be entitled solely by reason of a permission under this section to carry out any development. This is accepted by the applicants. Section 5.13 of the Development Management Guidelines indicates that the planning system is not designed to resolve competing disputes about title to land.
3. The applicants title to the property derives from a Conveyance dated 7 June 2024. Portion of land was conveyed along with a legal title to the balance of the property. Sworn evidence to support the possessory element was furnished. An application has been made to register the possessory portion of the property to the applicants.

8.3 Planning Authority Response

None on file

8.4 Observations

An Observation is submitted containing two affidavits from a resident and an owner of Nos. 7 and 11 Fairfield Court.

Affidavit 1

Visitors to the Fairfield development occasionally use the courtyard area in front of the Mews as overflow parking since Fairfield Court was developed.

The Mews has been vacant from 2008 until it was purchased by the current owners in June 2024, and the courtyard in front of the Mews has not been used as a garden or for parking by the owner.

Affidavit 2

The pedestrian gate to the side of No.11 is a side entrance to the garden and is used for access constantly.

There is a sewerage manhole a few feet in front of the Mews. It is accessed every six months by a drainage company for servicing. A photograph is submitted.

The Observer arranged for tarmacadam to be placed on Fairfield roadways and courtyard in front of the Mews on behalf of the Management Company.

Visitors to the development occasionally use the courtyard area in front of the Mews as overflow car parking, and have done so since 1992.

The courtyard in front of the Mews was not used as a garden or for parking by the owner of the Mews'

9.Assessment

9.1 The proposal is for the following;

- Removal of existing pitched roof and replacement with a flat (green) roof. This involves the increase in height of external walls to allow for parapet to new flat roof (the apex of the existing roof is shown as 5574mm, and the proposed parapet height is 5734mm).
- Removal of bay window and glazed entrance screen and glazed roof to lobby.
- Extension to ground floor by 6.72sqm.
- Extension of first floor to front and side by 17.86sqm
- Solar panels and heat pump.

9.2 The Planning Authority decided to grant permission subject to 7 conditions.

9.3 There is a Third Party appeal against the decision. There is also an Observation with two affidavits effectively contradicting a number of statements made by the applicants.

9.4 I consider that the key issues to be addressed are as follows:

- Policy
- Title
- Residential amenities
- Accuracy of documentation submitted
- Appropriate Assessment

Policy

9.5 There is an existing dwelling on the site. The site is zoned Z1 'Sustainable Residential Neighbourhoods' in the Dublin City Development Plan 2022-2028, with the objective *to protect, provide and improve residential amenities*. The proposed development is permissible in principle under this zoning.

Title

9.6 In the grounds of appeal the appellants express the opinion that the applicants do not have a freehold interest in the site. It is contended that the applicants do not own any land in front of the Mews or any parking space, and the grant of planning permission was issued without obtaining satisfactory evidence of title. In response

the applicant state that the issue of Title is potentially a private civil dispute, and is not a planning matter.

9.6.1 The application form states the legal interest as 'Freehold'. The Planning Authority, in a Further Information request, sought confirmation that the proposal within the red line is within the applicants' ownership or that the applicants have the consent of the owners of the land for the proposed development. In response, the applicants confirmed that the proposal within the red line is within their ownership in that they have a legal freehold interest in the Mews and "a possessory freehold interest in the possessory portion over the overall property".

9.6.2 Both the grounds of appeal and the applicants' response to the grounds of appeal include legal opinions in relation to the overall site ownership, and the Observation submitted to the Board includes affidavits contradicting the past use of the 'overall' site in connection with the Mews.

9.6.3 The area in dispute is the area to the front of the Mews on which the front extension is proposed, and extending as far as the front wall of the adjoining No.11 Fairfield Court. A Right of Way extending along the north western boundary as far as the pedestrian gate to the rear of No.11 Fairfield Court is also indicated on the site outlined by a red line on the Planning Pack Map submitted as part of the application documents to the Planning Authority.

9.6.4 The planning permission granted indicates a series of notes relating to the permission. The first of these states "a person shall not be entitled solely by reason of a grant of Planning Permission to carry out any development".

9.6.5 The Development Management Guidelines for Planning Authorities, June 2007 addresses, in Section 5.13, 'Issues relating to title to land'. These Guidelines were issued under Section 28 of the Planning and Development Act, 2000, and Planning Authorities and, where applicable, the Board must have regard to them in the

performance of their functions under the Planning Act. The Guidelines state as follows:

The Planning System is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not (be) entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to the effect should be added at the end of a planning decision.

The Guidelines also state *only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis, and if notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission.*

9.6.6 Section 34(13) of the Planning and Development Act 2000, as amended, states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

9.6.7 Having regard to the information on file, including the decision to grant, the grounds of appeal, the response to the grounds of appeal, and the Observation submitted, I consider that there is doubt remaining regarding title of the planning application site, and that the resolution of this issue is a not a matter for adjudication by the Board but a matter for the Courts. In these circumstances, I consider that refusal of permission based on lack of title would not be warranted in the circumstances outlined.

Residential amenities

9.7 The appellants contend that, as the applicant does not have freehold legal interest, the standards of the Development Plan have not been complied with.

9.7.1 This is an existing dwelling and the proposal is for extensions and alterations to it. The proposals do not have an adverse impact on the scale or character of the

existing residential unit or any of the adjacent dwelling units. The conditioned development (which includes Further Information received by the Planning Authority on 12.03.2025) would not have any adverse effect on the amenities of adjacent dwellings in terms of privacy, outlook, and access to daylight. Having regard to the orientation of the Mews relative to adjoining dwellings, the permitted development would not result in any significant loss of sunlight or give rise to significant overlooking. The Development Plan states that there is a general presumption against front extensions that significantly break the building line. The Mews is set back from the building line of No.11 Fairfield Court and the proposal to extend to the front is visually acceptable and would not impact on the character of the area.

I consider that the demolition of the chimney, which is a prominent feature of the Mews, is acceptable and would have a positive visual impact.

Accuracy of documentation submitted

9.8 There was a discrepancy in the documentation submitted with the application related to the positioning of the side gate to the rear of No.11 Fairfield Court relative to the front of the Mews. This was corrected in the Applicants response to the grounds of appeal. I consider that the error is minor, and has been corrected.

9.8.1 I have examined the public notices relating to the application. I consider that they accurately describe the development proposed.

Appropriate Assessment

10.1 Having considered the nature, scale, and location of development, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European site. The reason for this conclusion is having regard to the

small scale and nature of the development, location in an established residential area, and distance from and absence of connectivity to European sites.

11.Recommendation

I recommend that planning permission be granted.

Reasons and Considerations

Having regard to the nature and scale of the proposal, and the Z1 zoning (Sustainable Residential Neighbourhoods) in the Dublin City Development Plan 2022-2028, it is considered that, subject to compliance with the following conditions, the proposed development would be compatible with the visual and residential amenities of the area, and would accord with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out in accordance with the plans, particulars and specifications submitted with the application, as amended by Further

Information received by the Planning Authority on 12th March 2025, save as may be amended by the following conditions.

Reason: In the interest of clarity.

2. All external finishes shall harmonise with the existing finishes of the dwelling in respect of materials and colour.

Reason: In the interest of visual and residential amenity.

3. Site and building works for the development shall be confined to the following hours:

Monday to Friday – 8.00am – 6.00pm

Saturday – 8.00am – 2.00pm

Sunday and Public Holidays – No Activity.

Any deviation from the above hours shall be subject to the advanced written agreement of the Planning Authority.

Reason: In the interest of residential amenity.

4. Site and development works shall be carried out in such a manner as to ensure that the adjacent public road is kept clear of debris, soil, and other

material and, if the need for cleaning arises, the cleaning works shall be carried out at the developer's expense.

Reason: In the interests of residential amenity and orderly development

5. Drainage works, including surface water drainage, in association with the development shall be carried out to the requirements of the Planning Authority.

Reason: To ensure the protection of public drainage infrastructure, and the management of surface water run-off.

Des Johnson

Planning Inspector

Form 1
EIA Pre-Screening

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|---|---|------------|------------|
| An Coimisiún Pleanála Case Reference | 322442-25 | | |
| Proposed Development Summary | Roof replacement, glazed entrance screen, increased ground floor area first floor, extension, solar panels and heat pump to existing dwelling, | | |
| Development Address | The Mews Fairfield Court, Herbert Road, Sandymount, Dublin 4. | | |
| 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 | Yes |
| | | No | |
| 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 | | | |
| No | No | | |
| 3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class? | | | |
| Yes | | | |
| No | | | |
| 4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]? | | | |
| Yes | | | |
| 5. Has Schedule 7A information been submitted? | | | |
| No | | | |

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| Yes | | |
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Inspector: _____

Date: