



An
Bord
Pleanála

Inspector's Report

ABP-320760-24

Development

PROTECTED STRUCTURE: Change of use of light industrial building to a one-bedroomed dwelling plus retention permission for minor changes to elevations and layout.

Location

39 Fortescue Lane, Dublin 6, D06 E5F6, to rear of 39 Mountpleasant Avenue Lower, Dublin 6, D06 E972

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3911/24

Applicant(s)

Kieron Walsh and Alicia O'Keefe

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

As above

Observer(s)

None

Date of Site Inspection

21st November 2024.

Inspector

Kenneth Moloney

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1.0 Site Location and Description

The appeal site is located to the rear of no. 39 Mountpleasant Avenue Lower in Rathmines, Dublin 6.

The appeal site consists of an existing single storey building, formerly in light industrial use, with access onto Fortescue Lane. The said single storey building includes a modern roof finish, comprising of corrugated steel roof and the side external elevation comprise of modern block walls.

The front elevation, facing onto Fortescue Lane includes a mix of stone wall and glazing. The subject building includes a roller shutter to the front of the existing glazing elevation facing onto Fortescue Lane.

The adjoining site either side to the appeal site, i.e. the sites to the rear of no. 38 and no. 40 Mountpleasant Avenue Lower respectively, are both vacant. Fortescue Lane is an existing mews lane with established uses facing onto the lane including residential units, workshops and offices. There is a row of three existing residential mews immediately north to the rear of no. 40 Mountpleasant Avenue Lower.

No. 39 Mountpleasant Avenue Lower and its curtilage, including the appeal site is a protected structure.

2.0 Proposed Development

The proposal relates to planning **permission** sought for a change of use of an existing single storey building, a protected structure, from light industrial building/use to a one-bedroomed dwelling, to the rear of 39 Mountpleasant Avenue, Dublin 6.

The proposal also includes the **retention** permission for previous minor layout and elevational changes to the existing building including provision of an open landscaped courtyard to the rear and glazed screen facing onto the existing laneway.

The floor area of the proposed unit is 73 sq. metres, and the proposal includes private open space, in the form of a patio, to the rear of the proposed unit. The patio measures approximately 24 sq. metres.

The proposed unit is accessed from Fortescue Lane, which is situated to the rear of no. 39 Mountpleasant Avenue. The proposal includes no car parking provision.

3.0 Planning Authority Decision

3.1. The Planning Authority decided to **refuse** permission for the following reason;

Having regard to the existing pattern of development on Fortescue Lane, including the existing level of parking demand and the limited capacity of the lane to accommodate vehicular traffic including emergency and service access, and in the absence of a plan for the co-ordinated development of the mews lane, it is considered that the proposed mews development would be contrary to the aims and objectives of the Dublin City Development Plan 2022-2028, section 4.3.8 of Appendix 5, in terms of the width of the laneway and stipulations in regard to the safe access and egress for all vehicles and pedestrians, which must be demonstrated. The proposed development would create an undesirable precedent for similar type development and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. The Planner's report, in summary makes the following points;

- The proposed floor spaces meet the minimum requirements in the Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).
- The proposal meets the minimum requirements of the CDP in relation to private open space provision.
- No harmful overbearing impact or loss of privacy to the neighbouring properties.

3.2.2. Conservation Officer's Report, in summary makes the following points;

- The CO is satisfied with the proposed change of use, in particular the glazed entrance-front which is architecturally sympathetic to the special character of the structure.
- The rear elevation facing courtyard also considered acceptable.

3.2.3. Transportation Planning Division

- Appendix 5 of CDP requires mews laneway to have a minimum width of 4.8m, or 5.5m, where no verges or footpaths are provided.
- Proposed access for emergency vehicles at Fortescue Lane is inconsistent with Chapter 15 of the CDP.
- No in-curtilage car parking provided.
- No bin or cycle storage provided.
- The change of use from light industrial would remove an internal car parking space and provision for bin and cycle storage.
- The proposed development is unacceptable in terms of non-compliance with CDP standards.

3.2.4. Engineering Department – Drainage Division

- No objections.

3.3. **Prescribed Bodies**

- None

3.4. **Third Party Observations**

- None

4.0 **Planning History**

On site

Section 5 – 0092/21 – Split decision in relation to work upgrading of the envelope and protection of basic services to an existing steel-clad workshop shed.

The works the subject of this Section 5 application are separate to the works the subject of the retention permission which is currently before the Board.

Relevant adjoining site planning history

3653/22 – ABP 313829-22 (Rear of 38 Mountpleasant Avenue)

Permission **refused** by local authority for two-storey flat roofed mews dwelling as the mews development does not comply with aims and objectives of the Dublin City Development Plan 2016 – 2022, Section 16.10.16 'Mews Dwellings', in terms of width of the existing laneway. Permission **refused by ABP**, on appeal, as the width of the laneway was considered inadequate having regard to section 4.3.8 Appendix 5 of the Dublin City Development Plan, 2022 – 2028.

2449/21 (Rear of 38 Mountpleasant Avenue)

Permission **refused** for 2-3 storey mews unit due to (a) the mews development does not comply with the Dublin City Development Plan 2016 – 2022, Section 16.10.16 'Mews Dwellings', in terms of width of the existing laneway, and (b) detrimental impact on protected structures.

5.0 Policy Context

5.1. National Policy Guidelines

The Architectural Heritage Protection Guidelines for Planning Authorities, 2004, offers guidance to planning authorities on determining planning applications in relation to protected structures.

Chapter 2 of the Guidelines deals with Protected Structures, while Chapter 3 deals with Architectural Conservation Areas.

Chapter 6 deals with Development Control in relation to Protected Structures. This outlines the requirements in relation to the content of applications involving protected structures, notification of prescribed bodies (para 6.6), and the advisability of requiring applicants to submit, with their proposals, an architectural heritage impact assessment (para 6.4.15). Advice is given on the framing of conditions, including recording where the dismantling of part of a protected structure is permitted. It is noted that the demolition of a protected structure, or of elements which contribute to

its special interest, may only be permitted in exceptional circumstances (Section 57(10)(b) of the 2000 Act).

5.2. Development Plan

Dublin City Development Plan, 2022 – 2028

The appeal site is zoned objective 'Z2' in the Dublin CDP, the objective of which is *'to protect and improve the amenities of residential conservation areas'*.

Relevant policy provisions include the following;

- Policy Objective BHA2 Development of Protected Structures
- BHA9 Conservation Areas

Chapter 15 (Development Standards) are relevant to the appeal.

15.7.1 Re-use of Existing Buildings

- Where development proposal comprises of existing buildings on the site, applicants are encouraged to reuse and repurpose the buildings for integration within the scheme.

15.13.5 Mews

- Mews dwellings are typically accessed via existing laneways or roadways serving the rear of residential developments.
- The relationship between the historic main house and its mews structure remains a relevant consideration for architectural heritage protection.
- It is an objective of the City Council to protect the character and setting of mews dwellings and to ensure all new proposals are respectful and appropriate in its context.

15.13.5.1 Design and Layout

- The distance between the opposing windows of mews dwellings and of the main houses shall ensure a high level of privacy is provided and potential overlooking is minimised. Innovative and high-quality design will be required.

- Private open space shall be provided to the rear of the mews building to provide for adequate amenity space for both the original and proposed dwelling.

Appendix 5 (Transport and Mobility: Technical Requirements).

4.3.8 Mews Parking

- All parking provision in mews lanes, where provided, will be in off-street garages, forecourts or courtyards, subject to conservation and access criteria.
- Car free mews developments may be permitted in certain circumstances where there are specific site constraints and where alternative modes of transport are available. Each development will be assessed on a case-by-case basis.
- Potential mews laneways must provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles.
- A minimum carriageway of 4.8m in width (5.5m where no verges or footpaths are provided) is required.
- In circumstances where these widths cannot be provided, safe access and egress for all vehicles and pedestrians must be demonstrated.
- All mews lanes will be considered to be shared surfaces, and footpaths need not necessarily be provided, save for lanes where existing footpaths are present.

5.3. Natural Heritage Designations

- Non relevant

5.4. EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is

also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. The following is the summary of a first-party appeal submitted on behalf of Kieron Walsh and Alicia O'Keefe;

- Building already exists (for the last 60 years) and does not alter the width of the laneway.
- Proposal will be less impactful on the laneway than the established use.
- Proposal should be considered differently due to the extant existence of a previous historic development.
- Previous occupier of the existing building was a steel fabricator which required the movement of large loads of fabricated elements being manoeuvred from the workshop onto the lane and into large vans for transport.
- Proposal will remove the permitted extant traffic associated with the current use from the lane and reduce traffic on the laneway.
- The Transportation Section considered that the previous use involved the manoeuvring of vehicles into the building and thus disapproved permission for a glazed screen onto the laneway. Appellant argues the conclusion by the Transportation Section was incorrect as it was never possible to manufacture steel with vehicles parked in the workshop.
- Proposal provides for an urban dwelling with no associated car parking provision and is consistent with the City Council's sustainable transport strategy having regard to the location of the proposed unit well served by sustainable pedestrian, public and cycle transport provision. This includes proximity to multiple bus routes, LUAS, and several 'Go-Car' stations.
- The Transportation Section concluded that the proposal would provide for car parking provision which is not the case.

- In relation to bin and bike storage there is considerable space within the unit, and the courtyard for bike storage. There is adequate space in the courtyard for bin storage and also can be placed in the deep recess between front of old stone façade wall and the setback glazed screen.

6.2. Planning Authority Response

The Planning Authority submits the following;

- Should permission be granted a condition is recommended to the grant of permission requiring the payment of a section 48 Development Contribution.

6.3. Observations

- None

6.4. Further Responses

- None

7.0 Assessment

Having examined the application details and all other documentation on file, carried out a site inspection, and having regard to the relevant local/regional/national policies and guidance, I consider that the key issues on this appeal are as follows:

- Principle of Development
- Vehicular Access and Traffic Congestion
- Architectural Heritage

7.1. Principle of Development

I would note that the appeal site is zoned Z2, where the land use zoning objective is *'to protect and improve the amenities of residential conservation areas'*, in accordance with the provision of the Dublin City Development Plan, 2022 – 2028. Furthermore, Fortescue Lane, where it is proposed to access the proposed

development, has established residential mews developments on both sides of the lane, and I would consider that a precedent that the principle of the proposed is appropriate is therefore set for such development.

7.2. Access and Traffic Congestion

I would note that the proposal relates to a residential mews development with no proposed associated car parking provision. In addition, I would acknowledge the appeal submission argues that the proposed development is well served locally by public transport provision. Further I would note that the appeal submission argues that the proposed use replaces a more intensive development in respect of vehicular movements.

While acknowledging the above I note the Transportation Section of the City Council recommend a refusal for the proposed development on the basis of non-compliance with the development plan standards with regard to the width of the laneway.

Notwithstanding the appellants arguments, noted above, the current City Council Development Plan, at Appendix 5, section 4.3.8 provides guidance in relation to car parking provision for mews developments. In this respect section 4.3.8 advises that

‘all parking provision in mews lanes, where provided, will be in off-street garages, forecourts or courtyards, subject to conservation and access criteria’.

The guidance advises that car free mews developments maybe permitted in certain circumstances where there are specific site constraints and where alternative modes of transport are available.

I would specifically note that section 4.3.8 requires that mews laneways must provide adequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles. In this regard a minimum carriageway of 4.8m in width (5.5m where no verges or footpaths are provided) is required in accordance with development plan provisions.

Based on my site inspection, I noted that Fortescue Lane has established mews developments, particularly to the north of the laneway, from the rear of no. 44

Mountpleasant Avenue Lower northwards, where the width of the laneway is wider than at the point of the Lane, where the appeal site is located. I also noted that the laneway has no footpaths.

The width of the laneway narrows as it approaches the southern end of Fortescue Lane, particularly at the point of the appeal site. The width of Fortescue Lane to the north of no. 44 Mountpleasant Avenue Lower is approximately 5 metres, whereas at the appeal site the lane width narrows to approximately 4 metres, which is less than that required for safe access and egress in accordance with section 4.3.8 requires of the City Development Plan.

At the northern component of the laneway, from no. 44 Mountpleasant Avenue Lower northwards, there is established parallel car parking on one side of the laneway and sufficient space for a passing vehicle, whereas this would not be possible at the point of the appeal site due to the inadequate width of the laneway at this point.

I would consider that the laneway at the point of the appeal site, based on the width of the laneway, would not provide for safe access and egress for all vehicles and would provide inadequate accessibility in terms of private vehicular movements, emergency vehicles and refuse vehicles.

In addition to the above I also note the appellant's argument that the former use on the appeal site, which was a light industrial use, had more traffic impacts on the laneway than the proposed use and that the proposed change of use, given no car parking is proposed, will reduce traffic along the laneway. I noted from my site inspection that the light industrial use is no longer in operation, and it would appear from the modifications to the structure that the former use has not been in use for some time. Further I note from the appeal documentation that the appeal building is approximately 60 years old, however it is not clear from the information when the previous use on the appeal site ceased.

Although I acknowledge the appellant's argument regarding vehicular intensification, I would consider that the nature of the laneway, including the length of the laneway and the fact that it is a single access laneway, that the proposed development, given the width of the laneway at the point of the appeal site, would set an undesirable precedent for other such development in the immediate area.

Further I would have concerns that at a future date that an occupant of the property may have a car. Although I acknowledge the appellant's argument in relation to the use, I would consider that the permitting of the proposed development would be contrary to the aims and objectives of the Dublin City Development Plan, 2022 – 2028, section 4.3.8 of Appendix 5, in terms of width of the laneway and given that safe access and egress for all vehicles and pedestrians must be demonstrated.

I would also note that the Planning Authority's refusal reason includes the absence of a plan for the co-ordinated development of the mews lane, and this reason is consistent with the Section 15.13.1 of the Development Plan which actively promotes schemes to provide a unified approach to the development of residential mews lanes and where consensus between all property owners has been agreed. The Development Plan advises that this unified approach framework is the preferred alternative to individual development proposals. The current application for mews development is an individual application and would not therefore be consistent with Section 15.13.1 of the Development Plan.

In addition to the above I would note a recent decision by the Board, in respect to the adjoining property (no. 38 Mountpleasant Avenue Lower) to the immediate south of the appeal site. In this case the Board decided to refuse permission for a two-storey mews development. The Board refused permission as the proposed mews development would be contrary to the aims and objectives of the Dublin City Development Plan, 2022 – 2028, section 4.3.8 of Appendix 5. The Board also concluded that the specific nature of the site, including the length of Fortescue Lane and the reducing width of the lane towards the subject site and further given that the lane provides the sole point of access for the proposed development, that the proposed development would be contrary to the aims of the Development Plan and set an undesirable precedent in terms of the width of the laneway.

In conclusion I would consider that the proposed mews development would be contrary to the aims and objectives of the Dublin City Development Plan, 2022 – 2028, section 4.3.8 of Appendix 5, in terms of the width of the laneway. I would consider that the proposal would set an undesirable precedent and would therefore be contrary to the proper planning and sustainable development of the area.

7.3. Architectural Heritage

The subject development relates to an established building which is located within the curtilage of a protected structure, and the planning application, the subject of the appeal relates to a permission for a change of use and retention for internal layout and elevational changes.

I would note, as referred to above, that there are established residential mews developments located along Fortescue Lane, which is a designated Residential Conservation Area in accordance with the provisions of the Dublin City Development Plan, 2022 – 2028. Further I would note that all mews developments are located within the curtilage of Protected Structures.

The rear elevation (east facing) of the proposed mews is reasonably set back from the rear elevation of the principle building (no. 39 Mountpleasant Avenue Lower) by approximately 18 metres which, in my view, would mitigate any adverse impacts. Also, the single storey height of the proposed development is generally consistent with the character of the area for mews developments facing onto Fortescue Lane and would not adversely impact on the architectural character of no. 39 Mountpleasant Avenue Lower.

I do not consider the proposal to be out of character with existing development in the vicinity nor does it detract from the character or setting of any Protected Structures in the vicinity or from the Residential Conservation Area.

I note that the Conservation Officer of the Planning Authority did not express concern in this regard, subject to recommended conditions.

The proposed development, given it is an established building, would not unduly impact on the architectural character of the area. I am satisfied that the proposed development is in accordance with the provisions of the Dublin City Development Plan, 2022 – 2028, in this regard.

8.0 AA Screening

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a

significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 Recommendation

I recommend that planning permission be refused for the reason set out below.

10.0 Reasons and Considerations

Having regard to the existing pattern of development on Fortescue Lane, to the existing level of parking demand, to the limited capacity of the lane to accommodate vehicular traffic including emergency and service access, and in the absence of a plan for the co-ordinated development of the mews lane, it is considered that the proposed mews development would be contrary to the aims and objectives of the Dublin City Development Plan 2022-2028, section 4.3.8 of Appendix 5, in terms of the width of the laneway and given that safe access and egress for all vehicles and pedestrians must be demonstrated. The proposed development would set an undesirable precedent and would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Kenneth Moloney
Senior Planning Inspector

12th December 2024

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320760-24		
Proposed Development Summary	Change of use of light industrial building to a one-bedroomed dwelling plus retention permission for minor changes to elevations and layout.		
Development Address	39 Fortescue Lane, Dublin 6 (rear of 39 Mountpleasant Avenue Lower, Dublin 6)		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
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 further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	N/A		
No	✓		Proceed to Q4
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	✓	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____