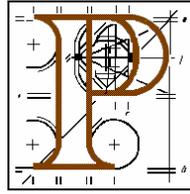


An Bord Pleanála



Inspector's Report

Development: Bungalow, vehicular entrance, site works and widened 6 metre access roadway at 13 Church Avenue, Blanchardstown, Dublin 15.

Planning Application

Planning Authority : Fingal County Council
Planning Authority Reference : FW09A/0037
Type of Planning Application : Permission
Applicant : Patrick O'Neill
Planning Authority Decision : Refuse

Planning Appeal

Appellant : Patrick O'Neill
Type of Appeal : 1st Party v. Refuse
Observers : (1) Railway Procurement Agency
(2) Ms. Sheelagh Lacy

Inspector : Pauline Fitzpatrick

Date of Site Inspection : 17/08/09

Appendix - Photographs

1.0 SITE LOCATION AND DESCRIPTION

The site, which has a stated area of 0.179 hectares, is to the rear of Church Avenue in Blanchardstown village. It is accessed from a laneway which provides rear access to the 6 no. single storey terraced dwellings which front onto Church Avenue in addition to a recently constructed dormer dwelling to the rear of No.15 and a garage used for commercial purposes to the rear of No.14. The plans accompanying the application indicate that permission has been granted for a further dormer dwelling to the rear of No. 16. The lane is approx. 3 metres wide but has been widened in the vicinity of the new dwelling. The lands to the south-east of the rear lane originally constituted the garden areas/allotments associated with the dwellings which front onto Church Avenue.

The appeal site is currently maintained as a garden area serving No. 13 with a small garage adjacent to the gated entrance. The site boundaries are delineated by trees. The site is bounded by a large shed and enclosed parking area immediately to the south-west. The lands to the north-east are undeveloped. School playing grounds bound the site to the rear.

2.0 PROPOSED DEVELOPMENT

The proposal entails the construction of a 236 sq.m. dormer dwelling. The laneway is to be widened to the front of the site with its junction onto Church Avenue to be widened to 6 metres by way of setting back of the side boundary wall of No.13. The site layout plan indicates that a similar setback to the side of No. 14 on the other side of the lane access may be ceded in the future. A letter to confirm this from the relevant landowner accompanies the application. This would result in an overall lane access of 8 metres.

Note: Observations to the proposal from an adjoining property owner and from the railway procurement agency received by the planning authority have been forwarded to the Board and are on file. The issues raised are comparable to those set out in the observations on the appeal summarised in section 7 below.

3.0 TECHNICAL REPORTS

Water Services in a report dated **25/03/09** has no objection in terms of foul sewer and water supply and requires further information regarding surface water disposal.

Transportation Planning Section in a report dated **22/04/09** requires additional information on the internal road layout.

The **Planning Officer's** report dated **06/05/09** notes that a precedent has been set for such backland development by way of planning permissions F07A/0400 & F07A/0175. The subject site and adjoining lands are some of the only remaining lands available within Blanchardstown village for back land development. It is considered that the letter from the owner of No.14 regarding future ceding of land to widen the laneway does not allow the applicant to widen the laneway as part of this application which is a necessary requirement of the Transportation Department. Any further development in this area should be refused until the issue regarding access is adequately addressed. Condition 4 attached to an earlier permission regarding lane widening has not been completed to date and the lands are outside

the applicant's ownership. The planning authority is concerned that development at this backland location is developing in a haphazard and piecemeal manner and, without the upgrade of the laneway to serve the additional dwelling, the proposal represents a traffic hazard. A refusal of permission for 4 reasons is recommended.

4.0 PLANNING AUTHORITY'S NOTIFICATION OF DECISION

The planning authority decided to refuse permission for the above described development for four reasons which can be summarised as follows:

1. The planning authority is not satisfied that the applicant has sufficient legal interest or consent from a person with sufficient legal interest to extend the laneway and provide access to the site.
2. The PA is not satisfied that the laneway can be widened to provide a safe vehicular and pedestrian access. The proposal would endanger public safety by reason of traffic hazard.
3. The proposal would result in unacceptable loss of private open space to No.13 and would materially contravene development plan standards.
4. The proposal would result in overlooking of the rear gardens of the existing dwellings along Church Avenue.

5.0 GROUNDS OF APPEAL

The submission by DPP Architects on behalf of the appellant refers and can be summarised as follows:

5.1 Reason for Refusal No.1 – Legal Interest to undertake Laneway Widening

- Drawing No. 7 accompanying the application shows how the existing laneway can be doubled in width from 3 to 6 metres by setting back the side boundary of No.13. The said lands are within the appellant's site. He is the registered owner of all lands up to the half way point on the existing laneway.
- The appellant secured consent from the owner of No.14 that she would cede land to the side of her property when she makes a similar application for a house in her backlands. This is considered to be entirely reasonable. The undertaking is all the Council are entitled to from a party not named in the application.
- It is difficult to see how the Council is precluded from considering a planning application in this case when it has approved 2 other houses on the lane. The proposal will ensure a 6 metre laneway while the other two did not provide for any improved/widened access.
- A refusal in this instance would ensure that the laneway is never widened.

5.2 Reason for Refusal No.2 – Traffic Hazard

- The existing laneway is a long established access to garages, shed and allotments. There is no evidence that it constitutes a traffic hazard in its current form. Any improvement would be a positive development and will alleviate any safety concerns perceived at this location.

- A carriageway of 6 metres is now achievable in substantial conformity with development plan standards and is a planning gain.
- It is the view that the Council is under pressure to open out these backlands for intensive development which the current laneway/access cannot serve.

5.3 Reason for Refusal No.3 – Private Open Space to No.13

- The existing garage to the rear is to be demolished.
- The total private open space remaining would be 82 sq.m. which is in excess of the 30-45 sq.m. requirement for the two bedspaces in the dwelling as set out in the development plan.

5.4 Reason for Refusal No.4 – Overlooking

- There is in excess of 30 metres between opposing windows of the existing dwellings fronting onto Church Avenue and the dormer windows in the proposed development which is in excess of the 22 metre development plan requirement.
- The Council has already approved dormer windows on adjoining sites.

6.0 PLANNING AUTHORITY’S RESPONSE TO APPEAL

The submission states that condition 4 attached to permission F07A/0400 required that a new roadway with 1.5 metre footpath, 5 metre carriageway and 0.5 metre buffer plinth be provided. To date this has not been developed. The proposal would be the 3rd dwelling accessing onto a very narrow lane. The planning authority is concerned that development at this backland location is developing in a haphazard and piecemeal manner and without the upgrade the proposal represents a traffic hazard. The letter submitted from the owner of No.14 does not allow the applicant to use the said lands in widening the laneway as part of this application which is a necessary requirement of the Transportation Section. The proposal is also deficient in terms of private open space to No.13 while the dormer windows would give rise to overlooking.

7.0 OBSERVATIONS

7.1 Railway Procurement Agency

Should the appeal be successful a section 49 levy for metro west should be attached by way of condition.

7.2 Ms. Sheelagh Lacy (submission by Peter W. Rafter Architect)

- The laneway should be upgraded to a satisfactory standard to cater for the complete development of the backlands including the observer’s lands.
- The letter from No.14 accompanying the application is not definitive. The lands to the rear of No.14 are already developed as a motor repair garage.
- Previous planning permissions have been conditioned to widen this access land but to date this has not been done.

- Should permission be granted in this instance it will lead to a substandard access which may remain indefinitely and prevent the future logical development of the observer's lands. A pre-planning meeting with the Council concluded that 5 townhouses to the rear of Nos.11 & 12 was acceptable in principle.

8.0 RELEVANT PLANNING HISTORY

F08A/1211 – application for dwelling to rear of No.13 was withdrawn.

F07A/0400 – permission granted for a dwelling to the rear of No.15. As gleaned from the planning officer's report letters from the owners of Nos.11 & 13 accompanied the application giving permission to widen the laneway as part of the development. Condition 4 attached to the permission required a roadway with 1.5 metre wide footpath, 5 metre carriageway and 0.5 metre buffer plinth. The dwelling has been constructed. The laneway has not been widened.

F07A/0175 – permission granted for a dwelling to the rear of No.16 to be served by new vehicular laneway from Church Avenue and new vehicular access to the front of No.16. No works have yet been carried out.

F05B/0302 – permission refused for two storey extension to rear of No.16.

9.0 DEVELOPMENT PLAN PROVISIONS

The site is within an area zoned RS the objective for which is to provide for residential development and to protect and improve residential amenity.

Objective OSO29

To ensure a minimum open space requirement for each house (exclusive of car parking area) of 60 sq.m to provide for an adequate level of residential amenity.

Objective OSO30

To permit a reduced standard only where narrow frontage townhouses of 1 and/or 2 bedrooms are proposed but in no instance to accept a figure of less than 48 sq.m per dwelling.

10.0 ISSUES AND ASSESSMENT

As the site is within an area zoned RS, the objective for which is to provide for residential development and to protect and improve residential amenity, the proposal for a dwelling is acceptable in principle.

I consider that the issues arising in the case can be summarised as follows:

1. Adequacy of Access Arrangements
2. Private Open Space to No.13
3. Overlooking

10.1 Adequacy of Access Arrangements

The existing laneway access to the site is relatively narrow and cannot accommodate two way vehicular movements. The said lane has historically provided access to the rear of the 6 properties which front onto Church Avenue and their associated garden/allotments. As noted on day of inspection none of the dwellings have off-street parking to the front with the majority, including No.13, availing of rear parking facilities (garage noted at entrance to the site). On-street parking is available along one side of Church Avenue. The site immediately to the south of the appeal site (to the rear of No.14) is used as a repair garage with a recently constructed dormer dwelling to the south of same again (to rear of No.15). The laneway in the vicinity of the said properties has been widened while the section to the north-east of the appeal site is in its original state and is somewhat overgrown although it is used by the properties to the north.

As inferred from the planning officer's reports on the previous planning applications pertaining to the lands reservations about piecemeal development have been consistently expressed with the existing access considered to be substandard. To date two dwellings have been granted permission on the backlands to the rear of Nos. 15 and 16 under planning refs. F07A/400 & F07A/175. As yet the dwelling to the rear of No.16 has not been developed. However as this is to be served by a new vehicular entrance from Church Avenue it will not use the existing laneway. The dwelling to the rear of No.15 has been constructed. As extrapolated from the planning officer's report on the said file the applicant had secured the consent of the owners of both Nos. 13 and 14 to widen the laneway with condition 4 attached to the said permission stipulating the requirements in terms of footpath and carriageway width. It is reasonable to assume that the planning authority considered the said improvements as detailed to be sufficient to accommodate the development potential of the backlands. As yet the said works have not been carried out. No details are given as to why this is the case or whether the planning authority is intending to pursue compliance. Condition 4 does not stipulate that the works be carried out prior to commencement of development or within a certain time frame.

The proposal currently before the Board now proposes to widen the access from 3 metres to 6 metres by setting back the side boundary to No.13 with written agreement from the owner of No.14 to setback her side boundary should she pursue a planning application for a dwelling on her lands. I would concur with the view that such an agreement is not definitive and may not arise as she may never seek permission for a dwelling on her lands.

However the proposed widening proposals which form part of the current application would provide for a much improved access than what currently exists and which serves a dwelling, a commercial garage and the requirements of the 6 dwellings facing onto Church Avenue. The additional vehicular movements which would be generated by the additional dwelling in this instance would not, in my opinion, constitute a material concern and could be accommodated on the improved lane. To refuse permission in this instance would result in the substandard access arrangement being maintained and, as such, the proposal can be seen as making a positive contribution. While I note the observer's concerns regarding the development potential of her lands I am of the opinion that to allow the current proposal would not prejudice the realisation of the remaining widening requirements in the future.

I therefore would not concur with the planning authority in its 1st and 2nd reasons for refusal in this regard but I would recommend that should permission be granted a condition be attached requiring the necessary lane improvements works to be undertaken prior to commencement of construction on the site.

10.2 Private Open Space to No.13

It is noteworthy that the planning officer in her report, while noting that approx. 90 sq.m. of private open space would be retained to serve No.13, did not elaborate on same nor give an explanation as to why such provision was not acceptable. I note that the planning authority considered a comparable private open space area to No. 15 to be acceptable on planning application ref. F07A/400 which would have been assessed in the context of the current Development Plan policies and requirements.

As per the current County Development Plan standards as set out in objectives OSO 29 and OSO 30 the minimum open space requirements for the dwelling would be between 48 and 60 sq.m. With the proposed demolition of an outhouse the dwelling would have approx. 82 sq.m. This is quite clearly in excess of the said development plan standards and cannot be considered as materially contravening same as suggested. Therefore I do not concur with the planning authority's reason for refusal in this regard.

10.3 Overlooking

Again the planning officer in her report, while noting that as the existing Church Avenue cottages are located approx. 26 metres from the proposed dwelling there would be a significant reduction in terms of issues of overlooking, did not justify why a reason for refusal on such grounds was appropriate. I note that the planning authority considered comparable separation distances on sites Nos. 15 and 16 (both incorporating dormer windows) to be reasonable. The separation in this instance exceeds the 22 metre accepted norm and in my opinion is acceptable. Therefore I do not concur with the planning authority's reason for refusal in this regard.

Note: The fact that the supplementary development contribution scheme for metro west would apply in this instance is noted.

11.0 RECOMMENDATION

Having regard to the documentation on file, the grounds of appeal, the responses thereto, the observations received, a site inspection and the assessment above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

REASONS AND CONSIDERATIONS

Having regard to the residential zoning provisions for the site in the current Fingal County Development Plan and the proposals to widen the laneway access, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic and pedestrian safety and would not seriously injure the amenities of the area or of property in the vicinity. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. Prior to the commencement of construction of the dwelling the proposed laneway widening and improvement works as delineated on the site plan (sheet nos. 4 & 7) received by the planning authority on the 20th day of March 2009, shall be carried out in full and to the written satisfaction of the planning authority.

Reason: In the interest of pedestrian and vehicular safety.

2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

3. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

4. Prior to commencement of construction, details of the materials, colours and textures of all the external finishes to the proposed houses shall be submitted to the planning authority for agreement.

Reason: In the interest of visual amenity.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

6. The developer shall pay to the planning authority a financial contribution in respect of metro west in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Pauline Fitzpatrick
Inspectorate

September, 2009