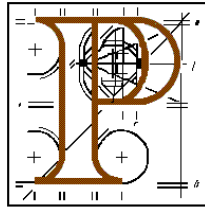


An Bord Pleanála



Inspector's Report

PL06S.243924

Retention of House with attached shed, Alterations top House to be retained including porch, new vehicular entrance, subdivision of site to facilitate two existing dwellings at St. Enda's, Sarah Curran Avenue, Rathfarnham, Dublin 16

PLANNING APPLICATION

Planning Authority: South Dublin Co. Co.

Planning Authority Reg. No: SD14A/00152

Applicant: Jean Raymond

Planning Authority Decision: Refuse

APPEAL

Appellants: Jean Raymond

Type of Appeal: Refuse Permission

Inspection: 25-11-2014

1.0 THE PLANNING APPLICATION

1.1 THE SUBJECT SITE

The subject site is large residential curtilage (0.25ha) at the junction of Whitechurch Road with Sarah Curran Avenue. This area is residential with a relatively modest density in the general vicinity. The property is accessed off Sarah Curran Avenue which has only a small number of accesses off it. The access is difficult to manoeuvre on the approach from the east due to its narrow splay and angle to the road. The eastern site boundary is a river which separates the site from the large public park, St. Enda's Park.

On the site there is a larger dormer bungalow surrounded by mature planting. To the side of the dormer bungalow (family home) is a small cottage, which is the subject of this appeal. The cottage is on a parallel building line to the existing dwelling, and it is not visible from the front of the property or from the surrounding road network. There is a timber fence dividing the private curtilages of both dwellings to the rear.

The grounds are very well maintained, and the curtilage has a large amenity area to the front and a smaller garden area to the rear. There is a tall stone wall along the northern and eastern site boundary.

1.2 PROPOSED DEVELOPMENT

The public notices state the subject of the planning application is:

Retention of existing bungalow with attached shed

Retention of alterations to the front and rear elevations of existing bungalow, including new porch

Planning permission for new vehicular entrance with improved sightlines and for the existing vehicular entrance to be blocked up

Subdivision of site to facilitate the two existing dwellings with a new shared vehicular access.

1.3 SUBMISSIONS RECEIVED

There were no third party submissions.

1.4 **PLANNING AUTHORITY'S REPORTS**

Environment Services Department: Additional information required

Irish Water: Additional information required

Roads Department: Additional information required

Parks: No report

Planning Report:

- Condition No. 16 of planning history file S99A/0886 stated the proposed dwelling cannot be occupied until the existing single storey dwelling on the site is demolished. This has not occurred therefore the development materially contravenes a previous permission and it should be refused for that reason
- The zoning for the site and area is Open Space and Recreation, and the increase in residential density on the site is contrary to the objective.
- The existing dormer bungalow does not impact negatively in terms of overlooking or overbearing impact.
- The location of the bungalow is north-east, and the one and half storey dwelling does not impact on the amenity of the bungalow in terms of overshadowing.
- The stated floor area of the two bedroom bungalow seeking retention is 72sq.m. which complies with the development plan
- Open space requirement is 55sq.m. for a two bedroom dwelling and 70sq.m. for a 4 bedroomed dwelling
- There is a new boundary fence to be provided between the two dwellings
- Additional information is required in respect of the new double entrance proposed in terms of an existing sign, the dropped kerb, and sightlines.
- Irish water has requested additional information for a separated metered connection.
- In terms of overcoming Reasons for Refusal as outlined under reference SD13A/0135 the current application is to overcome condition No. 16 of the original permission S99A/0886. However the reason has not been overcome under the current proposal, the increased density issue has not been overcome. The new application has overcome the planning authority's previous concerns regarding overlooking, and overbearing impact.
- The applicant has not demonstrated that the development will not impact on the Kilmashogue River and thereby on protected species and natural habitats downstream in Dublin.

1.5 **PLANNING AUTHORITY'S DECISION**

South County Dublin Refused the development for three reasons:

1. Under the previous planning application S99A/0996, permission was refused for the demolition of a single storey dwelling and the construction of a new two storey dwelling. Condition No. 16 of the permission required that the new dwelling is not occupied until the existing dwelling is demolished. The current proposal materially contravenes a condition of the previous permission.
2. The zoning for the area is **F : To preserve and provide for Open Space and Recreational Amenities**. The permission will contravene the zoning by increasing the residential density on the site.
3. The applicant has not demonstrated the development does not impact on the Kilmashogue River, i.e. the protected species and natural habitats downstream in Dublin Bay.

2.0 THE APPEAL

2.1 **THE GROUNDS OF APPEAL**

Enda Fanning Architect has taken this appeal on behalf of the applicant Jean Raymond. The following is a summary of the appeal.

Background

Nearly fifteen years ago a planning application was lodged by Jean Raymond for a new dwelling. The permission for the new dwelling was granted under reference number S99A/0886. A condition of the permission was that the existing dwelling on the site would be demolished. The applicant decided to regularise the retention of the dwelling in 2013 under reference SD13A/0135. The planning authority has not approached the site or the applicant on this matter since 1999. The planning authority refused permission for retention of the structure in 2013 based on limited information.

The current application was prepared presenting a full set of drawings of the development and improvements proposed to the current situation on site.

Reason for Refusal No. 1

There is no way of complying with Condition no. 16 of reference S99A/0866 without demolishing the existing single storey dwelling. The current application is for retention of the same dwelling that has remained in situ for nearly fifteen years without any

objections from the Council or third parties. A permission will supersede the first reason for refusal.

Reason for Refusal No. 2

The zoning of F – Open space and Recreational Amenities mainly relates to the adjoining St. Enda’s Park. This is a private site containing two dwellings and therefore there is no intensification of use. The site and the locality have been unaffected by the existence of two dwellings. Furthermore the current proposal is an improvement on the current situation as the existing access to the site is dangerous and the current proposal provides a new safer access. There are aerial photographs included which illustrate development in the locality where much smaller dwelling sites have been permitted than the current proposal. The subject site is large and can readily accommodate two dwellings. The reason for refusal should be rejected as this does not represent an intensification of use.

Reason for Refusal No. 3

The issue of an NIS was not raised under the previous refusal in 2013 by the planning authority, and the applicant has not been afforded sufficient time in the appeal period to engaged an expert to prepare such a document. With the exception of a new vehicular entrance and minor alterations to the existing single storey dwelling, there are no alterations to the property. The NIS request is unfair given that the development has existed for 15years on the site. If the Board considers it to be necessary, then the applicant is prepared to engage the appropriate expertise if the Board were to give the applicant sufficient time.

2.2 THE PLANNING AUTHORITY’S RESPONSE

There is nothing further to add to the planning report on file.

3.0 PLANNING HISTORY

SD13A/0135

Permission refused for a single storey dwelling, attached shed and existing entrance as constructed, to subdivide part of the site as per Planning reference S99A/0886. Permission was refused for five reasons:

- i) Contravenes a condition of a previous permission
- ii) Contrary to zoning objective F
- iii) Overlooking, overbearing impact on single storey dwelling

- iv) Traffic hazard
- v) Additional entrance is a traffic hazard at this location.

S99A/0886

Permission granted for existing bungalow to be demolished, and the construction of a new dormer bungalow on the subject site.

4.0 STATURY FRAMEWORK

South County Dublin Development Plan 2010-2016

F: To Preserve and provide for Open Space and Recreational Amenities

The site is adjacent to a Longterm roads Proposal along Whitechurch Road which is detailed in Table 2.2.6 of the Development Plan 2010-2016 as *'Whitechurch Road Improvements from Sarah Curran Avenue to Taylor's Lane'*.

The site is the subject of a specific objective on the Development Plan Book of Maps – *'To protect and preserve Trees and Woodlands'*.

Section 1.2.29 Corner Site Development

Corner site development refers to subdivision of an existing house curtilage to provide an additional dwelling in existing built up areas.

Section 1.2.30 Policy

Policy H17:-

It is the policy of the Council to favourably consider proposals for the development of corner sites or wide side garden locations within established areas, subject to the following:

1.2.30.i Policy H17: Corner Site Development

- Contemporary design is promoted with a building language that is varied and forward-looking rather than repetitive and retrospective;
- Scale that respects adjoining development;
- Gable walls should not be blank. Buildings should be designed to turn the corner and provide interest and variety to the streetscape;

- Compliance with standards set out in the Plan for both the existing and proposed dwelling;
- Maintenance of existing front building lines and roof lines where appropriate and
- Proximity to piped public services

5.0 ASSESSMENT

5.1 Having inspected the site and examined the appeal file I intend to examine the appeal under the following headings:

- Background/ Planning Histories
- Zoning Objective
- Development Plan Policy
- Traffic/ Access
- Appropriate Assessment

5.2 Background/ Planning Histories

It was fifteen years ago when the applicant Jean Raymond applied for planning permission to demolish the single storey dwelling on site and to construct a four bedroomed dormer bungalow on this 0.25ha residential curtilage off Sarah Curran Avenue in Rathfarnham. The property is alongside St. Enda's Park and the general residential density of the area is moderate. The applicant did not demolish the single storey dwelling, and it has remained on the site in use for the past fifteen years. Recently, the applicant decided to regularise the planning status of the dwelling on site. The planning authority was not aware of its presence and there had been no third party complaints about the dwelling over the years. The planning authority refused retention of the single storey dwellinghouse in 2013 for five reasons. The applicant made this current application addressing the reasons for refusal, and the planning authority refused the current application for three reasons as stated above.

In terms of the first reason for refusal which states the development materially contravened Condition no. 16 of the original permission granted under reference S99A/0886. I would agree it does materially contravene the condition. However the permission applied for at the time included for the demolition of the structure. This current application includes for the retention of structure which should be assessed on its own merits and not directly linked to a fifteen year old permission. There was no third party complaint or objection to the structure during the intervening fifteen year period and the planning authority were unaware of the structure.

I consider the Board is not bound by the original permission S99A/0886 or by the terms of Condition No. 16 attached to that permission. It is questionable whether the planning authority could now enforce the condition. Therefore I consider the Board is free to examine the merits of retention of the structure without linking it to the previous permission in 1999 which clearly related to the demolition of the structure, a completely and materially different type of development to the current application. Therefore reason No. 1 for refusal can be dismissed by the Board.

5.3 Zoning Objective

The zoning objective for the area and the site is **F – To preserve and provide for Open space and Recreational Amenities**. The subject site adjoins a large public park, St. Enda's Park to the east. Under this zoning objective the use 'residential' is 'open for consideration'. The planning authority considered the development to be an intensification of the use of the site and an increase in the residential density of the area. The planning authority in its decision has not acknowledged that the use of the site is in fact residential. The residential use of the site pre-dates the development plan. Therefore the existing use of the site is a material consideration and both dwellings have existed on the site for fifteen years. When one examines the existing pattern of development in the general vicinity of the site, and the prevailing density, it is apparent that two dwellings on 0.25ha is a complimentary density and in keeping with the character of the residential developments in the area. Having regard to the actual zoning objective which is to preserve and provide for open space and recreational amenities, I consider the retention of the dwelling to the rear of the existing dormer dwelling does not impact materially on this objective. Furthermore the site cannot be viewed from St. Enda's Park, and the proposal does not impact on the visual or recreational amenity of the Park. Therefore, I recommend reason number two of the refusal is dismissed by the Board.

5.4 Development Plan Policy

The subject site is located on a corner, at the junction of Whitechurch Road with Sarah Curran Avenue. Therefore I believe **Policy H17** is applicable, *'It is the policy of the Council to favourably consider proposals for the development of corner sites or wide side garden locations within established areas, subject to the following:*

- *Contemporary design is promoted with a building language that is varied and forward-looking rather than repetitive and retrospective;*
- *Scale that respects adjoining development;*
- *Gable walls should not be blank. Buildings should be designed to turn the corner and provide interest and variety to the streetscape;*

- *Compliance with standards set out in the Plan for both the existing and proposed dwelling;*
- *Maintenance of existing front building lines and roof lines where appropriate and*
- *Proximity to piped public services'*

As the development pre-dates the development plan policy a certain amount of flexibility should prevail. The curtilage of the site is considerable. From my general observations on site, the property has been subdivided at the rear, creating adequate open space/ amenity areas associated with both dwellings, and in line with the development plan requirements for two and four bedroomed dwellings. I note there is no fixed building line in the area due to the configuration of the road layout, however the building line of the cottage is in line with the adjoining dwelling to the south. The single storey dwelling is not evident from the surrounding road network as it is a low profile dwelling and the site has a high stone wall along the roadside boundary. The development is discreet and along with the substantial dormer bungalow on the site, they respect the existing pattern of development in the area. Furthermore, it is accepted by the planning authority and should be acknowledged in this report that the retention of the dwelling will not impact negatively in the existing residential amenities of both dwellings in terms of privacy or overshadowing.

5.5 **Traffic/ Access**

The existing access to the development off Sarah Curran Avenue is restrictive. I approached the site from the west, and I experienced difficulty with car turning movements into the entrance. The angle of the entrance and the restrictive splay associated with the existing entrance is designed to cater for cars coming from the east only. The existing entrance is unacceptable to service two dwellings, as the traffic turning movements and lack of visibility at the entrance cause a serious traffic hazard.

Under the current application it is proposed to block up the existing access and provide an new splayed entrance along Sarah Curran Avenue. According to the Road Department report on file adequate visibility splays are required at the proposed entrance, and this could form a condition of any permission. There were two additional requirements of the Road Department concerning the relocation of a sign and dropping the kerb fronting the new entrance. The carparking proposals are adequate.

5.6 **Natura Impact Statement**

In the third reason for refusal the planning authority stated the applicant has not demonstrated that the development does not impact the Kilmanshogue River thereby on the protected species and natural habitats downstream in Dublin Bay. On appeal the applicant has stated this was a new issue introduced by the planning authority and was not mentioned under the earlier planning application for retention, SD13A/0135.

The applicant did not have sufficient time to prepare an NIS for the appeal, however it is also submitted that apart from a new entrance and a number of minor alterations to the dwelling, there are no alterations been carried out to the property that would impact on the river.

The Kilmanshogue River along the eastern site boundary is noted. However the proposed development including alterations to the dwelling house and a new entrance will not impact on the river as the construction works associated with these developments are positioned a sufficient distance from the stream to ensure there will be no discharge into the river. Both dwellings are served by public infrastructure and there is no proposal to discharge surface water into the river. I consider an NIS is not necessary in this instance.

6.0 RECOMMENDATION

I recommend the Board overturn the planning authority's decision and grant retention of the development and permission for a new access to the site.

REASONS AND CONSIDERATIONS

Having regard to the provisions of the South Dublin County Development Plan 2010-2016, and the nature, form, scale and design of the development relative to the existing dwelling and the pattern of development on the general vicinity of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area, and would comply with the provisions of the development plan and traffic safety. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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. The boundary treatment within the subject site dividing both dwellings shall be submitted to and agreed with the planning authority within three months of this decision.

Reason: In the interests of residential amenity.

3. 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.

4. The external finishes of the proposed works including roof tiles/slates shall harmonise with those of the existing dwelling in respect of colour and texture.

Reason: In the interest of visual amenity.

5. Within three months of this decision the applicant shall agree in writing with the planning authority the following:-
 - a) Adequate visibility splays at the proposed entrance along Sarah Curran Avenue;
 - b) Proposals for the relocation of the existing signpost;
 - c) Proposals to drop the kerb fronting the site
 - d) A timeframe for the commencement and completion of the new access and closure of the existing access

Reason: In the interests of traffic safety.

6. The developer shall pay to the planning authority 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 within two months of the date of this Order, 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.

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.

Caryn Coogan
Inspector
10/12/2014