



An
Bord
Pleanála

Inspector's Report

ABP-306112-19

Development	Retention to an entrance door and retention to a 1 no. bedroom flat. New 1 no. bedroom flat .
Location	23 Boroimhe Hazel, Swords, Co. Dublin, K67 AH01.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F19B/0245
Applicant(s)	John Redmond
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	John Redmond
Observer(s)	Dublin Airport Authority.
Date of Site Inspection	18 th January, 2020
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located in a residential area approximately 1km to the south west of Swords town centre. The site comprises a two storey house located on a corner site within the Boromhe Hazel residential development. The existing dwelling on the site is an end unit in a terrace of three houses at this location. The house is located on a corner with the result that the site splays out to the rear and has a roughly triangular shape. .
- 1.2. The existing dwelling on the site has a stated floor area of 78.6 sq. metres existing and proposed (retained) floor area of 61.2 sq. metres based on the figures given on the planning application form. From an inspection of the submitted plans however it is evident that the development for which retention permission is sought has a lower floor area of c.38.5 sq. metres on the basis of internal dimensions of c.9.9 metres in length and c.3.95 metres in width.
- 1.3. The original dwelling on site has been extended with the addition of a part two storey and part single storey extension to the side and rear of the house, with the extension to the side (west) of the original house being two storey and the extension to the rear of the original building line being single storey. It is noted that the existing adjoining house to the west which is located at right angles to that on the appeal site has been extended in a similar manner to that on the appeal site with a two storey extension to the side set back from the front building line and a single storey extension to the rear.
- 1.4. Part of extended kitchen area and utility room constructed to the rear of the original house have been converted to a self contained residential unit. Access to this unit is provided from the side of the original house at No.23 and a new doorway has been created in the west facing elevation to the side of the extended house. A new gate has been erected to the side of the house that provides independent access to the new residential unit from the street.
- 1.5. If ever provided, the originally proposed connection between the permitted extension and the rest of the house has been closed off and the rear garden to the site has been divided to provide an independent area of private open space for each of the two residential units that are now on site.

- 1.6. At the time of inspection the main house at No.23 was observed to be rented. No access was available to the new unit at No.23A at the time of inspection, however the new unit was observed from the rear garden of No.23 and from the front.
- 1.7. The stated area of the site is 0.0266 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of the entrance door constructed in the west facing elevation of the extended house and the retention of the sub division of the house and the creation of a one bedroom flat to the side / rear of the existing house. The newly created unit to be referred to as No.23a Boroimhe Hazel.
- 2.2. Notwithstanding the floor areas cited in the planning application form submitted to the Planning Authority, the internal floor area of the unit indicated for retention (No.23A) is measured as being a total of approximately 38.6 sq. metres (inclusive of internal walls) with the extension measuring c.9.9 metres by 3.9 metres. The bedroom as indicated on the submitted plans measures approximately 3.9 metres by 2.95 metres giving a total floor area for the bedroom of c.11.5 sq. metres. A separate kitchen and sitting room are indicated on the floorplan in addition to the bedroom.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to refuse Permission for 5 no. reasons that can be summarised as follows:

- 1 That the development for which retention is sought is considered to constitute a one bedroom apartment and when assessed as such fails to meet the minimum required standards as set out in the *Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018* particularly with regard to inadequate apartment size, bedroom floor area and the absence of storage.

2. That the proposed development would result in a substandard form of residential accommodation that would provide inadequate residential amenity for the occupants of both the apartment proposed for retention and the original dwelling at No.23. The access to the apartment via the 1.2 metre wide side passage would reduce the level of residential amenity to existing dwelling and materially alter the character and residential pattern of development such that it would seriously injure the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.
3. That the proposed development would contravene materially a condition attached to a permission for development that being condition No.3 attached to Ref. F18B/0111 which requires that the extended dwelling at No.23 Boromhe Hazel would be used as a single dwelling unit.
4. That the lack of parking for the one bedroom apartment to be retained may exacerbate the existing issue of overflow parking in the area and would tend to create serious traffic congestion such as would be contrary to the proper planning and sustainable development of the area.
5. That the proposed development would set an undesirable precedent for other similar forms of sub standard development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the planning history to the site, the observations on file and the residential zoning objective. The fact that the unit for retention is for rent was noted. The fact that the site is within the inner noise zone of Dublin Airport is also noted. Report notes that the layout of the unit does not meet the residential design standards of either the Fingal development Plan or the ministerial guidelines on apartment development (2018). Refusal of permission consistent with the Notification of Decision which issued is recommended.

3.2.2. Other Technical Reports

Transportation – Recommends refusal on the basis of inadequate car parking on site to meet the requirements of two units.

Water Services – No objection.

3.3. Prescribed Bodies

DAA – Initial submission on file notes the fact that the site is located within the Inner Noise Zone of Dublin Airport.

Irish Water – No objection.

3.4. Third Party Observations

Observations to the Planning Authority on file raised a number of concerns that can be summarised as follows:

- Overdevelopment of a restricted site,
- Inadequate provision of car parking,
- Form of development out of character with the area,
- That the issue of a new unit being created was raised in objections to the application for the extension (Ref. F18B/0111).
- That the neighbouring house at No.24 is already over developed and impacts on residential amenity.
- Negative precedent that would be set by a grant of permission.

4.0 Planning History

The following planning history is noted and considered to be of relevance to the assessment of this appeal:

Fingal County Council Ref. F18B/0111 – Permission granted for the construction of a two storey extension to the side and rear of the existing house at No.23 comprising kitchen extension, utility and television room at ground floor level and bedroom at first floor level. Condition No. 3 attached to this permission specifies that the house on the site shall be occupied as a single dwelling unit.

Fingal County Council Ref. F05A/0912 – Permission granted for a revised house type on the current appeal site comprising an extension to the side and rear of the original house type to convert what was proposed to be a three bedroom unit into a five bedroom unit. The extension proposed comprised a living room and sun room at ground floor level and two additional bedrooms at first floor level. The proposed total floor area of the house inclusive of the extension would be c.192 sq. metres. On the basis of the planning history available, and specifically the application Ref. F18B/0111, it would appear that this permission was not implemented.

Fingal County Council Ref. F03A/1664 – Permission granted for the development of 41 no. residential units in the general area of the appeal site comprising what is now the Boromhe Hazel residential development. This is the parent permission on the site.

5.0 Policy Context

5.1. Development Plan

The site is located on lands that are zoned Objective RS under the provisions of the *Fingal Development Plan, 2017 – 2023* with the objective ‘*to provide for residential development and protect and improve residential amenity*’. The stated vision for this zone is that any new development would have a minimal impact on and enhance existing residential amenities.

At the time of assessment by the planning authority the site was located within the Airport Inner Noise Zone where it is policy to actively resist new residential development. It is noted that the plan has since been varied and the noise policy / noise zones have been amended, (see DAA observation on ABP file).

The minimum floor area for a 1 bed residential unit under the provisions of the development plan is 45 sq. metres.

5.2. Natural Heritage Designations

The site is not located in or close to any European sites.

5.3. EIA Screening

Having regard to the nature and limited scale of the proposed development for which retention is sought, its location within an existing residential area and the fact that it is proposed to be connected to existing foul drainage and water supply networks, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal submitted:

- That the decision of the planning authority is disagreed with.
- The development would assist people in getting accommodation that they can afford such as the person who currently lives in it who works at the airport.
- That part of the rental agreement is that there is no car parking space available. Stated that the current tenant of the flat / apartment uses the bus.

- That refusal no. 2 regarding privacy is incorrect and there is no impact on the privacy of adjoining houses.

6.2. Planning Authority Response

None on file.

6.3. Observations

An observation / submission has been received by the Board from the DAA, (received by the Board on 13.1.2020). The issues raised in this submission can be summarised as follows:

- That, since the making of the previous submission by the DAA on this application, the *Fingal Development Plan 2017-2023* has been varied with the result that the subject site is no longer within the Inner Noise Zone of Dublin Airport.
- Objective DA07 states that it is policy to strictly control residential development and to require noise insulation where appropriate and in accordance with Table 7.1 and in noise zones B, C and D.
- The following issues are requested to be addressed by way of further information or condition:
 - That the existing and predicted future noise environment of the site be fully assessed,
 - That the applicant shall demonstrate that appropriate internal noise levels to habitable rooms can be achieved.
 - That appropriate noise mitigation measures shall be identified and implemented.

7.0 Assessment

7.1. The following are considered to be the main issues relevant to the assessment of this appeal:

- Principle of Development
- Compliance With Residential Design Standards
- Impact on Visual and Residential Amenity
- Traffic and Parking
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The site is located on lands that are zoned Objective 'RS' under the provisions of the *Fingal Development Plan, 2017 – 2023* with the objective '*to provide for residential development and protect and improve residential amenity*'. The stated vision for this zone is that any new development would have a minimal impact on and enhance existing residential amenities. Residential development is a permitted use on lands zoned Objective 'RS' and so the sub division of the site of No.23 Boroimhe Hazel into two independent residential units is a form of development that is considered to be acceptable in principle subject to other relevant considerations and design criteria being complied with.

7.2.2. I note the fact that the third parties in this case highlight the fact that it was flagged to the Planning Authority at the time that permission for the extension to No.23 was sought (Ref. F18B/0111) that it was likely that the extension would be separated from the main house in terms of occupancy. I also note that Reason for Refusal No. 3 attached to the decision issued by Fingal County Council notes that the proposed development would materially contravene Condition No. 3 attached to planning Ref. F18B/0111 which required, inter alia that the extended house at No.23 would be occupied as a single dwelling unit. The planning history of the site is noted as is the wording of reason for refusal No.3, however reference to material contravention in the context of Refusal No.3 does not mean that the provisions of s.37(2)(a) of the Act

regarding the circumstances where the Board can overturn a refusal of permission are applicable.

7.3. Compliance With Residential Design Standards

- 7.3.1. The nature of the development for which retention is sought, and specifically the sub division of the site into two residential units, is such that the development for which retention is sought constitutes a one bedroom flat or apartment. The use of this apartment is clearly stated in the application documentation and appeal to be as an independent residential unit and not as any form of family accommodation or other arrangement connected to the residential use of the original house at No.23, and no connection between the two residential units has been provided in the development for which retention is sought. The provisions of the development plan relating to family accommodation are not therefore in my opinion applicable and, given the form and one bedroom nature of the accommodation and its complete separation from the original house in terms of accommodation, access and private amenity space, I would agree with the Planning Authority that the appropriate standards against which the development should be assessed are those set out in the *Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018*.
- 7.3.2. As per section 3 of these apartment design guidelines, which is a specific planning policy requirement (SPPR), the minimum floor area for a one bedroom flat / apartment is 45 sq. metres. In the case of the development for which retention is sought the floor area is c.38.5 sq. metres (9.9 metres in length by c.3.95 metres in width internally) and thus fails to comply with this SPPR. On floor area, I note that the report of the Planning Officer makes reference to a floor area of 43 sq. metres, however I do not see where this figure comes from.
- 7.3.3. The development would appear to meet the minimum floor area for a two person / double bedroom (11.4 sq. metres). No specific provision is made for storage, however there are likely options for the provision of such space that could be incorporated into the layout. It is also noted that storage outside in the dedicated garden could be provided. Based on the drawings submitted, other minimum room sizes and dimensions set out in Appendix 1 of the 2018 apartment guidelines relating

to the bedroom and combined living / dining / kitchen area (23 sq. metres minimum) and room width are met. I would however note the fact that the layout as submitted for retention indicates a kitchen, sitting room and bedroom with no indication of where a bathroom or washing facilities are located. As internal access to the unit at No.23A was not possible at the time of inspection of the site, it is not possible to verify what the position is with regard to the provision of these facilities on site. Therefore, In the event that the Board was considering a grant of permission in this case, it is recommended that this issue would be clarified in advance of a decision being made.

- 7.3.4. In terms of open space, the apartment / flat created on site has its own dedicated private amenity space in the form of a section of the garden of the original house at No.23 that has been separated by a timber fence. The area of open space to serve the apartment / flat unit is significant with c.65 sq. metres to the rear of the building line and an additional area provided to the side (west) of the unit (c.35 sq. metres).
- 7.3.5. The unit does have a multi aspect layout with windows facing north, west and south. It is however noted that the indicated sitting room does not have any window with the original window permitted under Ref. F18B/0111 replaced by a door. It is also noted that the proximity of the apartment / flat unit to the two storey extension to the side of No.24 to the west is such that there would likely be significant restriction on light to the south and west facing elevations of the unit proposed for retention.
- 7.3.6. Overall, it is considered that the flat / apartment unit for which retention is sought would result in a sub standard level of residential amenity for future occupants by virtue of inadequate unit size and poor quality layout and access to daylight and sunlight. The proposed development does not meet the requirements of the *Sustainable Urban Housing: Design Standards for New Apartments (2018)*, and in particular the requirements relating to minimum unit size which is a SPPR. The development for which retention is sought would therefore constitute a sub standard form of residential development and be contrary to the proper planning and sustainable development of the area.

7.4. Impact on Visual and Residential Amenity

- 7.4.1. In addition to the size and layout of the residential unit for which retention permission is sought, the development undertaken has the effect of potentially impacting on the amenity of the original house at No.23 and on other houses in the vicinity. These issues form the basis for Reason for Refusal No.2 included in the Notification of Decision to Refuse Permission issued by the Planning Authority.
- 7.4.2. As noted above, the original rear garden area to No.23 was observed to be subdivided at the time of inspection and, on the basis of the wording of Reason for Refusal No.2, this was not the case when the site was inspected by the local authority Planning Officer. As set out in 7.3 above, the manner of the sub division of the open space is such that a significant area of open space is available to serve the flat / apartment unit. The impact on the existing house at No.23 however is such that what was originally a large triangular shaped garden has now been reduced to a small c.8.5 metre long by 4.5 metre wide (c.34 sq. metre) rear garden. This is to serve a house with three bedrooms as per the revised layout following the two storey side extension permitted under Ref. F18B/0111 and does not meet the minimum private amenity space standards for a three bedroom dwelling as provided for under the *Fingal Development Plan, 2017-2023* or the Sustainable Residential Development in Urban Areas Guidelines.
- 7.4.3. The access arrangement to the apartment / flat unit created is now via the gateway located to the side of the original house at No.23. The access route to the flat involves access via this gateway and then passing to the side of the house and past the south west corner of the extension where the gap to the boundary fence with No.24 Boroimhe Hazel narrows to c.1.1 metres. While access to the apartment / flat unit requires the persons to walk to the front of the sitting room window of No.23, the overall layout of the site is such that I do not see that this access arrangement would have any material impact on the residential amenity of the occupants of No.23. Those at No.24 to the west of the site would have the impact of persons using the side passage area of the appeal site to access the created flat / apartment unit with resulting potential for some disturbance. On balance however, I do not consider that such impacts on residential amenity for the occupants of Nos. 23 or 24 Boroimhe Hazel are likely to be significantly negative or such as to have a significant negative impact on the residential amenity of the occupants of these houses.

7.4.4. In terms of visual impact, with the exception of the provision of a door opening in place of the permitted window (Ref. F18B/0111) in the west facing elevation of the permitted extension, no changes to the previously permitted appearance of the buildings on site are proposed. As noted above however, the combined effect of the proposed development with the two storey extension done to the adjoining site at No.24 and the fact that there is no window proposed to the living room in the created flat / apartment proposed for retention would in my opinion have a negative impact on the residential amenity of the occupants of the flat / apartment unit by virtue of lack of access to daylight and sunlight.

7.4.5. Overall, it is my opinion that the proposed development would result in a substandard form of residential accommodation that would provide inadequate residential amenity for the occupants of both the apartment proposed for retention and the original dwelling at No.23. The level of private amenity space to serve the retained dwelling at No.23 would in my opinion be deficient for a three bedroom house and the layout and orientation of the side extension converted to the flat / apartment unit, when taken in conjunction with the development undertaken on the adjoining site to the north at No.24, is such that there would be an overall poor level of residential amenity for future occupants of the flat / apartment unit and such that the retention of the development as sought would seriously injure the residential amenities and depreciate the value of property in the area and therefore be contrary to the proper planning and sustainable development of the area.

7.5. Traffic and Parking

7.5.1. The appeal site is located in a development where the parking to the units is provided in spaces that are located in shared or communal areas to the front of the units. Spaces are arranged such that the parking space for a particular unit are not necessarily located immediately in the vicinity of the relevant unit. In the case of the original house on the appeal site, this has been extended under Permission Ref. F18B/0111 such that it is now a three double bedroom dwelling. At the time of inspection of the site the area in the general vicinity of the appeal site was observed to be significantly parked up and few if any spaces were available. In any event, the format of parking is that there are dedicated parking spaces identified for each

residential unit with the numbers painted on the ground. I did not observe any shared spaces in the general vicinity of the appeal site.

- 7.5.2. From my inspection of the site, it is not clear where the parking space(s) for No.23 is / are and whether there are one or two spaces dedicated to this unit and it may be the case that the original two bedroom unit on the site only had a single parking space. This information is not provided with the application of appeal submission. The first party appeal does however state that no additional car parking is proposed to serve the proposed retention of the sub division of the site into two separate residential units.
- 7.5.3. I note the provisions of the Fingal County Development Plan and the content of the Transportation Department report which states that the application for retention of the independent one bedroom unit has the effect of increasing the car parking requirement for the overall site from two to three spaces, that no additional parking appears to be proposed and that there is no scope to provide additional parking within the curtilage of the site of No.23 or 23A. Even if the development were to be assessed against the parking provisions of the Sustainable Urban Housing Guidelines on Apartment Development, (paragraphs 4.18-4.27), the appeal site is not especially well served by public transport and is an intermediate or less accessible urban area where the guidelines indicate that some degree of parking provision should be made.
- 7.5.4. Having regard to the above, it is my opinion that the lack of dedicated parking for the one bedroom apartment to be retained would likely exacerbate the existing issue of overflow parking and general parking congestion in the area and would tend to create serious traffic congestion such as would be contrary to the proper planning and sustainable development of the area. I note the fact that the first party appeal states that the current tenants do not to have a car and that this is identified as part of the agreement at the time of rental. This is not in my opinion a relevant consideration to the assessment of the subject appeal as there is no means of enforcing such a requirement by way of the planning system and it is possible that the unit could in future be separated by sale from the main house. There is also the issue of the accommodation of visitor parking, with the sub division of the site likely to result in the generation of additional demand for visitor parking.

7.6. Other Issues

- 7.6.1. With regard to servicing of the site, it is noted that the submissions from Irish Water and the Water Services section of the council indicate that there is no objection to the proposed development.
- 7.6.2. I note the comments on file from the Dublin Airport Authority (DAA), both at the time of the initial assessment of the application by the Planning Authority and the subsequent submission to the Board dated 13th January, 2020. I also note the fact that since the assessment of the proposal by the Planning Authority, the *Fingal Development Plan 2017-2023* has been the subject of a variation which has altered the policy with regard to development within the noise zones defined around Dublin Airport. I specifically note the fact that the site is no longer located within the inner noise zone of Dublin Airport. Objective DA07 of the plan (as varied) states that it is policy to strictly control residential development and to require noise insulation where appropriate and in accordance with Table 7.1 and in noise zones B, C and D. The submission received from the DAA identifies a number of issues relating to the assessment of the noise environment of the site and the identification of mitigation measures by the applicant that indicates how the required noise levels can be achieved within habitable rooms in the development. It is requested by the DAA that these issues would be addressed by way of condition or further information as considered appropriate by the Planning Authority (or by An Bord Pleanála). I note, and would agree with, the comment contained in the report of the Planning Officer relating to noise and the impact of airport generated noise. As highlighted by the Planning Officer, the appeal site is located within an existing permitted residential development/ area and it would not appear reasonable that excessive restriction would be placed on the applicant with regard to the undertaking of noise surveys or remedial works. In the event that the Board were considering a grant of permission in this case this is an issue which it may consider appropriate to address by way of condition.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the restricted floor area of the flat / apartment unit for which retention is sought, its design layout and orientation including position relative to surrounding properties (specifically the extension at No.24) and fenestration to habitable rooms and the subdivision of the private amenity space on the overall site and significantly reduced area of private amenity space to the house at No.23, it is considered that the proposed development would result in a poor quality of residential layout that would have a negative impact on the residential amenities of occupants of both the residential unit for which retention is sought and the original house at No.23. The development proposed for retention would therefore be contrary to the provisions of the *Sustainable Urban Housing: Design Standards for New Apartments (2018)* with regard to the floor area and layout of the flat / apartment for retention, would be contrary to the provisions of the *Fingal Development Plan, 2017-2023* regarding private amenity space for houses and overall would be such as to seriously injure the amenities and depreciate the value of property in the vicinity and be contrary to the proper planning and sustainable development of the area.

2. The proposed development would materially contravene a condition attached to an existing permission for development, being Condition No.3 attached to Fingal County Council Ref. F18B/0111 which permitted the extension in which the flat / apartment for which retention is sought is located on the basis that the dwelling at No. 23 Boroimhe Hazel would be used as a single dwelling unit apart from such use as may exempted development for the purposes of the Planning and Development Regulations.
3. Having regard to the suburban location of the site and its location relative to public transport routes, to the current restricted availability of car parking in the Boroimhe Hazel development and the observed evidence of significant parking congestion and demand in the vicinity of the site, together with the lack of clarity regarding dedicated car parking provision for the existing extended three bedroom house at No.23 Boroimhe Hazel, it is considered that the lack of parking provision for the apartment for which retention is sought would exacerbate the current parking issues in the vicinity of the site and lead to serious congestion in the vicinity of the site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

20th January, 2020