



An
Bord
Pleanála

Inspector's Report ABP-306592-20

Development

Demolition of existing three storey, part single storey house, located within an Architectural Conservation Area (ACA) and construction of a part three storey, part two storey detached house. All associated site works and a new privacy screen on top of the existing wall on the south west boundary.

Location

'La Scala', Vico Road, Killiney, Co. Dublin.

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D19A/0856

Applicant(s)

Bernard McEvoy

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Liam & Mary Rose McDonnell

Jack Coffey

Pauline & Michael Crowe

Date of Site Inspection

7th May 2020

Inspector

Paul O'Brien

1.0 Site Location and Description

- 1.1. 'La Scala' is a three-storey detached house on an irregular shaped site, with a stated site area of 0.045 hectares, located to the northern side of the Vico Road, Killiney, Co. Dublin. There is no vehicular access to the site with only pedestrian access from the Vico Road and by way of steps upwards to the house. The pedestrian access is gated at its entrance and access was not possible on the day of the site visit. It was evident from the site visit that the subject area has become overgrown with vegetation. The site is not easily visible from the Vico Road, with only glimpses of it available between other houses.
- 1.2. The house is significantly above the road level and overlooks the coast facing south east. A garden area is located to the front of the house and the rear/ sides of the house are set into the hillside. The site is surrounded by detached houses on their own plots of land and which are positioned at different levels on the hillside. The Dublin to Rosslare railway line passes under the site in a tunnel.
- 1.3. The site is in an area that is characterised by a mix of housing types, though predominantly in the form of detached units on generous sites. Houses face east or south depending on their view of the Irish Sea and sites are constrained by the steep rise to the rear/ west towards Killiney Hill. The subject site is located within the Vico Road Architectural Conservation Area.
- 1.4. The site is circa 1 km to the south of Dalkey Village and a similar distance to Dalkey DART station.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - The demolition of the existing three storey house with a stated floor area of 241 sq m.
 - The construction of a new part three storey, part two storey detached house on this site with a stated floor area of 327 sq m.
 - New privacy screen on existing wall to south-west boundary.
 - Site landscaping, drainage works and including a rainwater harvesting tank.

- All associated site works including necessary repairs.
- 2.2. The proposed house to be of a contemporary architectural style with flat roofing rather than pitched roofing.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to grant subject to conditions. The conditions are generally standard. Condition no.2 requires the submission of a Construction and Environmental Management Plan (CEMP) prior to the commencement of development and Condition no.4 prevent the use of the roof as a balcony/ amenity area. A number of notes are included including Note 4: which refers to the Railway Safety Act 2015 putting an obligation on persons working on or near the railway to ensure that there is no safety impact on the operation of the railway.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planning report reflects the decision to grant permission for the proposed development. The demolition and replacement of the existing house was considered to be acceptable and no negative impacts were foreseen on existing residential units in the area. The non-provision of car parking was considered to be acceptable. The need for a Construction and Environmental Management Plan (CEMP) prior to the commencement of development was considered to be necessary and comment was made on the letter received from CIÉ.

3.2.2. **Other Technical Reports**

Waste Section: No objection to the outline Demolition Waste Management Plan subject to conditions and a Construction and Environmental Management Plan (CEMP) to be submitted.

Drainage Planning – Municipal Services Department: No objection subject to recommended conditions.

Conservation Division: No objection to the demolition and replacement of the existing house on site. The existing house 'is not considered to be of any significant architectural merit' and 'the streetscape character of the Vico Road ACA will remain unaffected by the replacement building'.

Transportation Planning: No objection subject to recommended conditions.

3.2.3. **Prescribed Bodies**

Iarnród Éireann Infrastructure: Object to the proposed development for a number of reasons including: no consent has been received for the development, concern about the lack of foundation design details and lack of site investigations that would clearly indicate no impact on the tunnel and the applicant has not demonstrated that the proposed house is designed to withstand vibration from trains passing through the tunnel. Other points are raised in the form of conditions/ notes.

3.2.4. **Objections**

A single letter of objection was received. Issues raised are similar to those in the grounds of appeal and include the character and nature of the development, impact on residential amenity, inadequate assessment in respect of visual impact, site layout/ design details, pedestrian safety through no footpath on Vico Road, insufficient details regarding the demolition/ construction phase of development, flooding/ drainage issues and contravention of Development Plan Policy and Objectives.

4.0 **Planning History**

There are no relevant, recent planning applications on the site.

5.0 **Policy and Context**

5.1. **Development Plan**

- 5.1.1. Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, this section of Vico Road including the subject site is zoned A 'To protect and/or improve residential amenity'. Residential development is listed within the 'Permitted in Principle' category of this zoning objective.

5.1.2. The site is located within the 'Vico Road Architectural Conservation Area'. The 'Vico Road Architectural Conservation Area Character Appraisal' document was prepared in 2011.

5.1.3. Chapter 8 of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 refers to 'Principles of Development' and the following are relevant to the subject development:

8.2 'Development Management' – with particular reference to section 8.2.3 'Residential Development' and 8.2.3.4 'Additional Accommodation in Existing Built up Areas'.

5.2. **Natural Heritage Designations**

5.2.1. Dalkey Coastal Zone and Killiney Hill proposed Natural Heritage Area (pNHA) is located to the south of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The appellant have engaged the services of Reid Associates – Planning Development Consultants, to appeal the decision of the Planning Authority to grant permission for this development.

Issues raised in the appeal include:

- The decision to grant permission was Ultra Vires as legal consent was not requested from CIÉ to undertake the development. The land directly over the tunnel is owned by CIÉ. Refers to legal case – 'Southwood Park Residents Association and An Bord Pleanála'.
- Insufficient details are provided in relation to works in the vicinity of the railway tunnel.
- The Planning Authority did not adequately address the concerns raised by Iarnród Éireann. Concerns were raised in relation to foundation design, site investigation and the fact that the tunnel is a protected structure.

- Traffic hazard from construction has not been adequately considered. The development will generate traffic during the demolition and construction phases and the narrow road prevents the placing of skips on it.
- The development would impact negatively on third parties through unacceptable risk to property/ public safety. The appellant has engaged the services of DBFL to carry out a structural appraisal of the proposed development.
- The development would set an undesirable precedent for similar development in the area.
- Insufficient hydrological assessment has been undertaken with particular reference to the impacts from demolition.
- The proposed house design is overbearing and is out of character with the existing form of development in the area.
- Overlooking leading to a loss of privacy will occur.

6.2. **Planning Authority Response**

- 6.2.1. The grounds of appeal do not raise any new matters, so no additional comment is made by the Planning Authority.

6.3. **Applicant's Response**

The Applicant's agent – Boyd Cody Architects, has made the following comments in response to the appeal:

- There is no evidence that Iarnród Éireann have legal right over these lands.
- La Scala was constructed prior to the development of the tunnel. Supporting evidence has been provided by Gartlan Furey Solicitors.
- Outlines the need for the replacement of this house and the appellants comments regarding the need for additional surveys etc. would put an undue cost on the applicant. Refers to Condition 2 of the grant of permission and the reference to Section 34 (13) of the Planning and Development Act 2000 as amended.
- Reference is made to a retaining wall in-situ and how this was constructed over the tunnel setting a precedent for the subject development.

- Three access points to the site from the Vico Road have been identified.
- The design is contemporary and sits within the footprint of the existing house.
- Neighbouring houses (refers to Baymount, Milano and Violet Hill) are at a lower level than the subject site and overlooking will not occur.
- The issue of overbearing relative to the neighbouring properties is overstated in the appeal.
- Further supporting details are provided by LMC Consulting Engineering regarding the structural aspect of the development.

7.0 **Assessment**

7.1. The main issues that arise for assessment in relation to the appeal can be addressed under the following headings:

- Principle of Development
- Design/ Impact on the Character of the Area
- Residential Amenity
- Impact on Railway Infrastructure
- Other Issues
- Appropriate Assessment Screening

7.2. **Principle of Development**

- 7.2.1. The site is zoned 'A' and the development of a house is therefore acceptable in terms of the zoning objective that applies. There is an existing house on site that is proposed for demolition and therefore the subject development will see the like for like replacement.
- 7.2.2. 'La Scala' is not listed on the Record of Protected Structures and I note the report of the Planning Authority Conservation Officer, who does not consider the existing house to be worthy of retention as the building is not of any significant architectural merit. The site is located within the Vico Road Architectural Conservation Area (ACA) and again the Planning Authority Conservation Officer and Case Officer have

reported no concern in relation to potential impact on this area. The principle of development is therefore acceptable.

7.3. Design, Impact on the Character of the Area

- 7.3.1. The site is located within the Vico Road Architectural Conservation Area and residential development should have regard to the 'Vico Road Architectural Conservation Area Character Appraisal' document. This sets out the character of the area and notes that there are a mix of house types in the area and that *'Modern structures stand amongst their historic counterparts. These vary in date and style, some bear a modernist approach and others have traditional pitched roofs'*.
- 7.3.2. The proposed development provides for a contemporary design of house and again I refer to the report of the Planning Authority Conservation Officer who reports that 'the streetscape character of the Vico Road ACA will remain unaffected by the replacement building'. From the site visit it was evident that there is no standard design of house in the immediate area, unlike the row of houses on Sorrento Terrace. The house design provides for a large unit on this site but one that is of a relatively simple exterior design and a design that is appropriate to this location.
- 7.3.3. The existing house is not of any important architectural merit and I would consider that the proposed house will be no more visible than the existing unit from the Vico Road. The use of a flat roof ensures that the overall height is reduced from what is currently in situ, there is a reduction of circa 2.7 m from the existing roof ridgeline. The bulk of the proposed house is larger than the existing unit but again I would suggest that the reduction in height is significant and benefits the overall development. The bulk is exaggerated by the angular/ diagonal nature of the design rather than the existing house based on right angles. It therefore considered that the proposed house will integrate with its surroundings and will not negatively impact on the character of the area.
- 7.3.4. Whilst issues of overbearing were raised in the appeal, I would dismiss these comments as the design and location of the proposed house on site does not give rise to such concerns. The house is set back from the boundary to the east and north and is set back against the hillside, it should not be argued that the house is more overbearing than the hillside/ existing topography and it does not impact on the

existing views over the sea, therefore it does not impact on existing houses to the south or east.

7.4. Residential Amenity

- 7.4.1. Included with the applicant are a 'Photographic Survey' and 'Engineer's Plan & Elevation' that indicate that the current house is in poor structural condition. I would ignore the removed slates from the roof as this can be repaired at a cost but the cracks in the walls of the house appear significant and combined with the need for a significant modernisation of the house I would accept that the unit should be demolished and replaced.
- 7.4.2. The proposed replacement house provides for an indicated three-bedroom unit, however the floor area is large and rooms sizes including habitable floor area and bedrooms are more than adequate. Storage provision is adequately provided for. No car parking is proposed which is acceptable considering that the existing house has no such provision and on-site parking is not possible due to the difference in levels between the site and the Vico Road. Amenity space is provided to the front/ east of the house and having regard to the views/ quality of amenity space, this is acceptable.
- 7.4.3. Overlooking leading to a loss of privacy was raised as an issue in the appeal in addition to overbearing. I accept that the standard separation distance of 22 m between houses is not provided however this only applies to the rear separation of houses rear elevations at first floor level. The concern here is that the front of the house/ open space will overlook the rear of the existing houses to the south and east. From the submitted plans and site levels, I would dismiss this as an issue of concern. There is adequate separation and distance in levels to address this issue. I would assume that in the case of 'Milano' (to the east) and 'Baymount' (to the south east) that the primary habitable living areas and amenity spaces are to the front/ east/ south east and not in the area to the rear between them and the subject site. I also note that the applicant has proposed a privacy screen to the south of the site adjacent to 'Baymount'. The amenity of those residing in these houses will not be negatively impacted by this aspect of the proposed development. It must be restated, that this is a replacement dwelling and the applicant is not proposing to develop on a greenfield site.

7.5. Impact on Railway Infrastructure

7.5.1. I note the report submitted by Iarnród Éireann in relation to the proposed development. I would agree with the applicant and the Planning Authority that the issue of consent can be addressed outside of the planning process. The applicant has made adequate effort to demonstrate that they can submit this application and I note the supporting legal documentation in this regard and the reference to Section 34(13) of the Planning and Development Act 2000 as amended. The legal issue of building over the tunnel and who has the right of way is complicated and I note that Iarnród Éireann have submitted no supporting documentation in this regard. This is a matter that can be addressed outside of the planning/ appeal processes.

7.5.2. I do recommend that permission be refused for the development due to potential impact on the railway line below. The development is located over the existing tunnel and whilst the ground levels may be significantly above the tunnel roof, no such information has been provided with the application or in support of the appeal. The Iarnród Éireann report highlights concern regarding:

- Potential impact on the structure integrity of the tunnel
- Unintentional diversion of existing drainage/ watercourses into the tunnel
- Impact on the tunnel during construction works referencing rock breaking as an example.

The submitted engineering comments prepared by LMC Consulting Engineering does not directly reference the impact on the tunnel and I would be concerned about the site investigation been undertaken following the receipt of permission. This may be acceptable in most cases, but I am not satisfied in this case where the site is immediately over a railway tunnel. There are too many uncertainties here and the applicant nor their agents have demonstrated that the development will not impact negatively on the railway tunnel. This is a significant piece of national infrastructure and the lack of detail does not demonstrate that the railway will not be negatively impacted upon by this development.

7.5.3. I also note Section 3) of the Iarnród Éireann report, that highlights the lack of supporting detail that the development will not be impacted by vibrations from the railway/ tunnel. I would suggest that normally this would be an issue for

consideration under the Building Control Regulations, however the applicant, through the submission of supporting photographs, has highlighted large cracks in the existing house. It is not clear what has caused these and the age of the house/ ground conditions are likely factors, vibrations from trains passing underneath may have added to these issues. The lack of suitable supporting technical details does not provide certainty that a replacement house can be safely constructed here.

7.5.4. The Planning Authority effectively dismissed the concerns of the railway company and that the issues raised would be addressed under Section 34(13) of the Planning and Development Act as amended and by way of note referring to the Railway Safety Act 2005. I consider this approach to be flawed as the Planning Authority do not appear to have adequately considered what the impact on the tunnel/ railway may be. The proposed development is immediately over/ on the tunnel (which I note was opened in 1854) and the development would have a far greater direct impact than on a development adjacent to a railway line. The potential risk for a direct impact on the railway with a consequent negative impact to public safety has effectively been dismissed by the Planning Authority as a matter for applicant; I would consider that there is an onus on the Planning Authority to adequately protect public safety and national infrastructure. I note **ABP Ref. PL 29N.231812**, where permission was refused for a residential development in Whitehall, Dublin 9 and one of the reasons for refusal referred to concern that there was insufficient evidence that the development would not negatively impact on the Dublin Port Tunnel. I consider that the subject development could have a greater impact on an operating tunnel.

7.6. Other Issues

7.6.1. I have reported on the concerns raised by Iarnród Éireann and have attempted to explain my rationale for why these matters are more than just Building Control/ Regulation issues. I also note the concern raised in the appeal regarding the issue of how this development is to be undertaken. There is no doubt that the demolition of existing structures and the construction of a new house will be difficult to achieve on this site. In particular the method of demolition waste removal and material delivery will be difficult to achieve in an area of narrow roads which facilitate a significant volume of pedestrian/ cyclist activity. I note the report from the Environment Enforcement Section and the long list of issues that they raised.

However, it may be possible for the applicant to address these issues to the satisfaction of the Planning Authority/ Building Control Section.

- 7.6.2. I note the contents of the Drainage Planning report and would be concerned that the report is very generic and does not suggest that it is site specific. LMC Consulting Engineers, submitted a Drainage Report with the application and which primarily refers to existing/ proposed services. No reference is made to any existing natural drainage on site other than to propose a rainwater harvesting tank on site to 'reduce the overall run-off from the site'. The amount of demolition and the new foundation construction have not been adequately considered with regards to impact on surface water drainage on site.
- 7.6.3. I have already addressed the issue of car parking and consider it appropriate to not require such at this time. I also accept that the nature of the site is such that full accessibility to the house may not be achievable due to the use of stairs to provide this access.

7.7. Appropriate Assessment Screening

- 7.7.1. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, it is considered that the development would not give rise to a significant effect individually or in combination with other plans or projects on an European site.

8.0 Recommendation

- 8.1.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the limited information submitted in support of the planning application and the appeal, the Board is not satisfied that the proposed development, including the demolition of an existing house and construction of a larger dwelling, would not have a negative effect on the stability and structural behaviour of the railway tunnel immediately beneath the site. The proposed development would, therefore, endanger public safety by reason of hazard to those using the railway.

2. Having regard to the limited information submitted in support of the planning application and the subsequent appeal, the Board is not satisfied that the proposed development has adequately considered the impact of the operating railway beneath the site and the potential for negative impacts arising from vibration. National Policy is to increase the use of public transport and it is likely that the railway at this point will see increased numbers of trains operating on daily basis. The applicant has demonstrated that the existing house is in poor condition with a number of cracks evident and there is no supporting evidence that the railway did not contribute to these. The proposed development may therefore endanger the health or safety of persons occupying the structure.

Paul O'Brien

Planning Inspector

19th May 2020