



An
Bord
Pleanála

Inspector's Report

ABP-307323-20

Development	Construction of house with shared vehicular access; shared parking and all associated development works.
Location	21, Bushfield Lawns, Clondalkin, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0379
Applicant(s)	John and James Moran
Type of Application	John and James Moran
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	John and James Moran
Observer(s)	none
Date of Site Inspection	29 th July, 2020
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located in the Bushfield area of Clondalkin, a short distance to the north of the N7 and c.1.5km to the south west of Clondalkin village centre. The site comprises the site of No.21 Bushfield Lawns, a residential development of two storey semi detached houses that is located in a wider area of similar two storey semi detached houses.
- 1.2. The stated floor area of the existing house on the site is 122 sq. metres and the site is located at the end of a cul de sac. The location is such that the site widens out to the rear with an existing large north east facing rear garden.
- 1.3. The level of the appeal site is notable in that it is at a higher level than the existing two storey houses that are to the north on Bushfield Drive.
- 1.4. The stated area of the appeal site is 0.07 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a detached two storey house on that part of the site that is located to the north of the existing house and therefore on part of what currently comprises part of the rear garden of No.21 Bushfield Lawns. The dwelling is proposed to be orientated on a north east – south west axis and parallel with the existing north west boundary of the site.
- 2.2. Access to the dwelling is proposed to be via the existing driveway to No.21 and an extensive parking / driveway area is proposed to the south east and south west of the house. An area of private amenity space is proposed to be provided to the north east (rear) of the proposed dwelling and the site is to be separated from the existing house at No.21 by the construction of a new 1.8 metre high boundary wall.
- 2.3. The floor area of the proposed dwelling is stated to be 136 sq. metres and the layout indicates a four bed house with the fourth bedroom located in the attic space. A plaster external finish is proposed and the house has an overall height to roof ridge line of 8.5 metres.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a Notification of Decision, further information was requested on the following items / issues:

- A cross section drawing of the site showing relationship with No.78 Bushfield Drive.
- Submit a daylight and shadow assessment showing the impact of the proposed development on adjacent properties.
- Lack of details regarding the proposed on site soakaway are noted. Report showing site specific percolation test results and design calculations required.

The following information was submitted in response to the request for further information.

- Cross section drawing which indicates the relationship of the appeal site and 78 Bushfield Drive to the north west. The difference in finished floor levels is indicated as 1 metre.
- A daylight and sunlight assessment which indicates the 'summer shadow' impacts at 9am, 12 noon, 3pm and 5pm. Noted that impact is mitigated to some degree by the 2 metre high boundary wall and 5 metre building / shed to the rear of No.80 Bushfield Drive. Submitted that the winter sun situation would not be made any worse by the proposed development.
- Regarding surface water, proposal altered to omit the on site soakaway and to provide permeable paving on the site with a surface water connection into the existing surface water manhole on site.

3.2. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for 3 no. reasons that can be summarised as follows:

1. That having regard to the scale of the proposed development, its proximity to the site boundary and to the change in levels, the proposed development would have an overbearing visual impact on the adjacent properties in Bushfield Drive, such that it would have an adverse impact on the residential amenity of these properties. The proposed development would therefore be contrary to the Objective RES zoning objective for the site and would be contrary to the proper planning and sustainable development of the area.
2. That having regard to the information submitted with regard to shadowing and overshadowing, the applicant has failed to demonstrate that the proposed development would have an acceptable impact in terms of overshadowing. The proposed development would therefore be contrary to the Objective RES zoning objective for the site and would be contrary to the proper planning and sustainable development of the area.
3. That inadequate information has been submitted with regard to surface water and in particular surface water attenuation and associated calculations, such that, on the basis of the information presented, the Planning Authority is not satisfied that the proposed development would not be contrary to public health and contrary to the Green Infrastructure policies contained in the County Development Plan.

It is noted that reasons for refusal Nos. 1 and 2 states that the development would '*contravene the RES zoning objective*, however the wording does not clearly state that the development would materially contravene this objective. It is not therefore considered that the provisions of s.37(2)(b) of the Act are applicable in this case.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the planning officer notes the planning history (refusal of permission for 2 houses), internal reports, the third party objections and relevant development plan policy including that relating to infill sites and corner / side garden sites (Paragraph 11.3.2).

3.3.2. Other Technical Reports

Water Services Department – Initial report identifies that no soil percolation results submitted and that these and revised details of the soakaway are required. No objection in terms of flood risk. Second report subsequent to further information states that the applicant has not demonstrated how surface water run off will be attenuated to green field rates. Clarification of further information required.

Roads Department – The report of the Planning Officer notes that Roads have no objection to the proposed development. This report is not on file.

3.4. Prescribed Bodies

Irish Water – No objection.

3.5. Third Party Observations

A number of third party submissions were received by the Planning Authority and the following are the main issues raised:

- Inadequate access for additional dwelling,
- Restricted size of site,
- Inadequate parking / parking congestion in the vicinity,
- Negative impact on amenity of adjoining houses from loss of light and overlooking,
- Issues raised in previous refusal of permission not adequately addressed,
- Negative precedent that this form of development would set,
- Negative history of the applicant in dealings with residents and implementing previous permissions.

4.0 Planning History

South Dublin County Council Ref. SD19A/0093 – Permission refused for the construction of two semi detached three bedroom houses on the current appeal site with shared access via the existing access to No.21 Bushfield Lawns and all associated site works. Permission was refused for 5 no. reasons including (1) overbearing visual impact and over development of the site contrary to the RES zoning objective, (2) serious adverse impact on the visual and residential amenity of the surrounding area, (3) inadequate information to enable a full visual impact of the impact of the development on the wider streetscape, (4) deficient information to enable an assessment of the access and circulation arrangements within the site to be undertaken and (5) inadequate information submitted regarding surface water to enable full assessment.

5.0 Policy Context

5.1. Development Plan

The site is zoned Objective RES under the provisions of the *South Dublin County Development Plan, 2016-2022* with a stated objective ‘*to protect and / or improve residential amenity*’. As per Table 11.2, residential development is listed as a Permissible in Principle use on lands zoned Objective RES.

Policy H17 Objective 2 relates to urban consolidation and states that ‘*it is an objective to maintain and consolidate the County’s existing housing stock through the consideration of applications for housing subdivision, backland and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 11.*’

Section 11.3.2 of the Plan relates to Residential Consolidation and states that infill residential development can take many forms, including development on infill sites, corner or side garden sites, backland sites and institutional lands. The following provisions relating to infill sites and backland development are noted:

(i) Infill Sites

Development on infill sites should meet the following criteria: Be guided by the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities DEHLG, 2009 and the companion Urban Design Manual. A site analysis that addresses the scale, siting and layout of new development taking account of the local context should accompany all proposals for infill development. On smaller sites of approximately 0.5 hectares or less a degree of architectural integration with the surrounding built form will be required, through density, features such as roof forms, fenestration patterns and materials and finishes.

(iii) Backland Development

The design of development on backland sites should meet the criteria for infill development in addition to the following criteria: Be guided by a site analysis process in regard to the scale, siting and layout of development. Avoid piecemeal development that adversely impacts on the character of the area and the established pattern of development in the area. Development that is in close proximity to adjoining residential properties should be limited to a single storey, to reduce overshadowing and overlooking. Access for pedestrians and vehicles should be clearly legible and, where appropriate, promote mid-block connectivity.

5.2. Natural Heritage Designations

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

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, including the proposed connection to public water supply and drainage 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:

- That the reasons for refusal and the issues raised in the further information request were addressed in the application / design and that the proposal is respectful of neighbouring properties.
- In response to reason for refusal No.1 regarding overbearing visual impact and contravention of the RES zoning, the density of development was reduced on foot of the reduction in units from 2 no. to 1 no. The scale is therefore consistent with the surrounding area and the accommodation was designed / laid out to avoid a loss of amenity for surrounding properties.
- That the shadow assessment undertaken indicates that the proposed development would have a '*minor impact on the adjacent properties, particularly a small area close to the boundary wall of House 76 and 78 Bushfield Drive and it does not make the existing situation worse*'.
- That there are precedents in the vicinity that indicate that the proposed development would be acceptable (circled red on submitted plan). The following are noted within 500 metres of the site (SD07A/0859; SD06A/0738; S01A/0289; SD19B/0256).
- That the issue of storm water was addressed in the application. No drainage calculations were requested by the planning authority and calculations would indicate that there is no attenuation system that would operate for the limited discharge from the site and that adequate attenuation would be provided in the pipe network.
- That the access meets all requirements regarding width and circulation. The private amenity space is significantly above the minimum 60 sq. metres and 7 metre width. There is adequate separation to surrounding houses and there are no windows to habitable rooms that face the boundaries.

- That the proposal complies with the development plan requirements for backland or infill development and the development is of a form that would set a positive precedent for infill development and urban densification.

6.2. **Planning Authority Response**

The Planning Authority response states that it confirms its decision and that the issues raised in the appeal are addressed in the planning Officers report.

6.3. **Observations**

An observation Mr Paul Brady submitted on behalf of the residents of Nos. 74, 76, 78 and 80 Bushfield Drive. The submission supports the decision of the Planning Authority to refuse permission and the main points raised can be summarised as follows:

- That the site is part of the back garden of No.21 and should therefore be considered as an infill site. The scale and design of the proposal does not meet the guidelines (development plan and Sustainable Residential Development Guidelines) for infill sites. Development plan guidance indicates that development should only be a single storey.
- The building height, bulk and scale and proximity to existing houses are such that they would be such that they would negatively impact on the amenity and privacy of surrounding properties and particularly those to the north in Bushfield Drive.
- That the reference to the planning history is noted however all applications should be assessed on their individual merits. The fact that the number of units is reduced from 2 to 1 does not mitigate the negative impacts on surrounding properties.
- That the scale is not consistent with the surroundings due to the design and the fact that the site is at a higher level.
- That the layout of accommodation will result in overlooking of the rear gardens of 74 and 76 Bushfield Drive and 19 Bushfield lawns.

- The dwelling would overshadow the back gardens of the houses on Bushfield Drive.
- The assessment of the Planning Authority regarding the submitted shadow assessment is agreed with. The level of the site is such that it would significantly impact on light. A right to light assessment should be commissioned in the event that consideration is given to a grant of permission.
- That the boundary walls are 1.7 metres and not the 2.0 metres stated. The outbuilding at the rear of No.80 is 4 metres in height and not the 5 metres stated.
- That the precedent at No.48 Bushfield Drive is not comparable as that dwelling was permitted as part of the original residential layout.
- That the drain and sewer capacity in the area is already at capacity and the concerns of the council regarding surface water are noted and agreed with.
- No clear precedent examples for similar developments are cited. The precedent examples given are all different to the appeal site for the detailed reasons given in the observation.
- A photograph showing the sunlight to No.78 Bushfield Drive at 10.30 am on 23rd Feb. is attached as is the submission made to the planning authority.

7.0 **Assessment**

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

- Zoning and Principle of Development
- Design, Layout and Impact on Visual Amenity
- Impact on Residential Amenity of Surrounding Properties
- Access and Site Servicing
- Appropriate Assessment

7.2. Zoning and Principle of Development

- 7.2.1. The appeal site is located on lands that are zoned Objective RES under the South Dublin County Development Plan, and therefore on lands where residential development and an infill dwelling is permitted in principle. The site is also located in an established residential area.
- 7.2.2. I note the provisions of Policy H17 Objective 2 of the Development Plan which relates to urban consolidation and which states that *'it is an objective 'to maintain and consolidate the County's existing housing stock through the consideration of applications for housing subdivision, backland and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 11.'* The appeal site is not large, however the existing garden of No.21 Bushfield Lawn is of a significant size and in my opinion the option of an infill house on such a site has some potential and would be consistent with the provisions of Policy H17, Objective 2.
- 7.2.3. The first party appeal contends that there are precedents for infill residential developments in the vicinity that indicate that the proposed development would be acceptable, and a number of cases are specifically referenced, (South Dublin County Council Refs. SD07A/0859; SD06A/0738; S01A/0289; SD19B/0256). I have reviewed these cases, and I do not consider that they are directly comparable with the situation in the subject appeal. In particular the specific cases identified do not relate to clear backland development of the form currently proposed, or have the same type of relationship with third party properties as in this case. It is also noted that none of the cases cited by the first party were the subject of consideration by the Board.

7.3. Design, Layout and Impact on Visual Amenity

- 7.3.1. The location of the proposed development is clearly infill development, however it is not a house in a side garden given its location to the rear of the established building line and given the layout of the site which tapers out to the rear. The form of development proposed is rather a backland development and therefore falls to be assessed in accordance with the paragraph 11.3.2 of the Development Plan.

- 7.3.2. The design of the proposed house on the site is generally consistent in design, scale and materials with the existing houses on Bushfield Lawns, however the height of the proposed new house is c.500mm higher than the existing on site. In principle, I consider that the design proposed is acceptable and is such that it would meet the requirement for consistency of built form on smaller infill sites as required under Paragraph 11.3.2.
- 7.3.3. By virtue of its location to the rear of the established building line and in the existing rear garden of No.21 Bushfield Lawns, the proposed house would not be clearly visible from the public road in Bushfield Lawns and would not therefore have any significant impact on the wider visual amenities of the area. The proposed development would however be clearly visible from within the curtilages of a number of surrounding houses and the impact of these views on residential amenity is considered in the following sections of this report.
- 7.3.4. As per Paragraph 11.3.2 of the Plan, the design of development on backland sites should meet the criteria for infill development in addition to a number of other criteria including the avoidance of piecemeal development and ensuring that development that is in close proximity to adjoining residential properties should be limited to a single storey, to reduce overshadowing and overlooking. In the case of the appeal site, the layout is in my opinion such that there is no clear relationship with the existing development form in either Bushfield Lawns or in the wider residential area, in particular the developments to the north in Bushfield Drive and Hazelwood Close. The layout is therefore in my opinion haphazard and piecemeal in nature.
- 7.3.5. Internally, the proposed house is consistent with the requirements for internal layout and room sizes as set out in the South Dublin County Development Plan and in the DoE Guidance Quality Housing for Sustainable Communities.
- 7.3.6. Private amenity space to serve the proposed house is proposed to the rear (east) of the house and measures in excess of 100 sq. metres and the sub division of the site would result in the retention of an area of c.120 metres to the rear of No.21 Bushfield lawns. Adequate private amenity space to serve both the existing and proposed dwellings is therefore available.

7.4. Impact on Residential Amenity of Surrounding Properties

- 7.4.1. The basis for Reason for Refusal No.1 issued by the Planning Authority relates to the scale of the proposed development and its proximity to site boundaries is such that it would have an **overbearing visual impact** on the adjacent properties in Bushfield Drive, such that it would have an adverse impact on the residential amenity of these properties. The location of the proposed dwelling is such that it would be c.1.6 metres from the north west site boundary which separates the site from the two storey houses on Bushfield Drive. The gable facing these houses would be 8.5 metres high, or 9.5 metres when account is taken for the at least 1 metre lower ground level on the sites in Bushfield Drive.
- 7.4.2. The separation between the north west facing gable of the proposed house and the rear of the houses on Bushfield Drive is c.10.5 metres to the extension and 16.5 to the original rear elevation in the case of No.78 and 9.5 and 12.0 metres respectively in the case of No.76. Notwithstanding the fact that there are not proposed to be any windows in the north west facing side elevation of the proposed dwelling, I consider that these limited separation distances are such that the proposed development would have a significant negative impact on the residential amenity of the closest houses in Bushfield Drive (Nos. 76 and 78 in particular) by reason of visual obtrusion and overbearing visual impact. These impacts are exacerbated by the difference in levels between the appeal site and the houses on Bushfield Drive. In my opinion, the proposed development would also have an intrusive visual impact on other properties including Nos. 74 and 80 Bushfield Drive, No. 19 Bushfield Lawns and No.28 Hazelwood Close, albeit that these are at an increased separation and relative angle.
- 7.4.3. In terms of **overlooking**, I do not consider that the proposed development would have a significant negative impact on the existing houses to the north or east (Nos 78 and 80 Bushfield Drive and No.28 Hazelwood Close). I do however consider that some overlooking of the rear of Nos. 74 and 76 Bushfield Drive would occur and, more significantly, that the private amenity space to the rear of No.19 Bushfield Lawns would be negatively impacted.

- 7.4.4. Reason for Refusal No.2 attached to the Notification of Decision to Refuse Permission issued by the Planning Authority relates to the impact that the proposed development would have on the amenity of surrounding properties due to **overshadowing**. As part of the response to further information a Shadow Analysis drawing was submitted (Drg. No. IF005). This drawing indicates the predicted shadow impacts during the summer period at 9am, 12 noon, 3pm and 5pm, and the appellant contends that the shadow assessment undertaken indicates that the proposed development would have a '*minor impact on the adjacent properties, particularly a small area close to the boundary wall of House 76 and 78 Bushfield Drive and it does not make the existing situation worse*'. In the response to further information submission to the Planning Authority, the first party contends that the winter sun situation would not be made any worse by the proposed development.
- 7.4.5. My view of the submitted shadow diagrams is that they appear to indicate a very limited extent of shadow impact, notwithstanding that it is stated to be representative of mid summer. The difference in the extent of shadowing at 9am and midday appears to be very limited and it would appear to me that that the scale and relative height of the proposed dwelling is such that it could be expected to cast a significant degree of shadow over the rear gardens of the properties in Bushfield Drive (in particular Nos. 74 and 76), most significantly around the spring and autumn equinoxes. Having regard to the scale and siting of the proposed dwelling relative to surrounding properties, and the relative site levels, I agree with the assessment of the Planning Authority that the information submitted is not sufficient to address the concerns with regard to shadowing, and that the first party has failed to satisfactorily demonstrate that the proposed development would not have a significant negative impact in terms of overshadowing and resulting loss of residential amenity.

7.5. Access and Site Servicing

- 7.5.1. Reason for Refusal No.3 included in the Notification of Decision states that inadequate information has been submitted with regard to **surface water** and in particular surface water attenuation and associated calculations, such that, on the basis of the information presented, the Planning Authority is not satisfied that the

proposed development would not be contrary to public health and contrary to the Green Infrastructure policies contained in the County Development Plan.

- 7.5.2. It is noted that, as part of the response to further information, the applicant altered the design to omit the on site soakaway and to provide permeable paving on the site with a surface water connection into the existing surface water manhole on site. Notwithstanding this, I note and generally agree with the assessment of the second Water Services Report on file, dated 14th April, 2020, which states that further details of how a 1 in 100 year storm event could be attenuated on site via attenuation and or infiltration to ground are required and I do not agree with the first party appeal that the issue of storm water was adequately addressed in the application. In particular, I note the extensive area of paving that is proposed to be used to the south east and south west of the proposed dwelling. This is, however, an issue that could be addressed by the applicant in the form of more detailed proposals and calculations in any future application for development on the site. Given the outstanding issues regarding dwelling scale, siting and associated impact on residential amenity I do not consider it appropriate that permission would be refused for reasons relating to surface water drainage.
- 7.5.3. With regard to **water supply and foul drainage**, I note that Irish Water state that there is no objection to the proposed development. In the event of a grant of permission, it is recommended that a condition requiring the developer to enter into water and waste water connection agreements with Irish Water prior to the commencement of development would be attached.
- 7.5.4. With regard to the use of a **shared access** with the existing access to No.21 Bushfield Lawns, I do not have an objection in principle to such a layout. I also note that Drg. No. 004 submitted with the application indicates a swept path analysis which shows how a car would be able to turn and access the parking spaces indicated within the curtilage of the proposed house. What is not however clear to me is the extent of off street parking that would remain with No.21 Bushfield Lawns and, in particular, how parking to the front of No.21 would not impede access to the proposed new house. In the event of a future application, I consider that this issue requires further clarification.

7.6. Appropriate Assessment

- 7.6.1. 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 is refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the scale of the proposed dwelling and its position on the site, and in particular its proximity to the north west site boundary and to the rear of houses in Bushfield Drive, and to the relative level of the appeal site and surrounding properties it is considered that the proposed development would have a significant negative impact on the residential amenity of surrounding properties due to overlooking, overshadowing and in particular overbearing visual impact. The proposed development would therefore seriously injure the amenities and depreciate the value of surrounding properties and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

5th August, 2020