



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308343

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<b>Development</b>	Demolition of dormer dwelling and construction of a 2 storey over basement dwelling and store room at garden level, new vehicular access and boundary treatment, landscaping and all associated site works.
<b>Location</b>	6 Cunningham Rd, Dalkey, Co Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown Co. Council
<b>Planning Authority Reg. Ref.</b>	D20A/0501
<b>Applicant(s)</b>	Niall and Susan Coleman
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Niall and Susan Coleman
<b>Observer(s)</b>	1) Aedin Nealon + Christian Donagh 2) Paul Conway
<b>Date of Site Inspection</b>	1 <sup>st</sup> December 2020
<b>Inspector</b>	Suzanne Kehely

## 1.0 Site Location and Description

- 1.1. The appeal site relates to a detached bungalow on the north side of Cunningham Road about 400m south of the village centre. The road is characterised by a mix of house types and styles with a predominance of single storey on the north side. The site is elevated and slopes in a south to north direction down from the road. The houses on the opposite side are more elevated and more predominantly two storey.
- 1.2. The house is a double fronted c1930s bungalow with a dormer extension to the rear. The house to east is a dormer bungalow with a dormer window facing the party boundary. The house to the west is two storey and there are windows in its east elevation.
- 1.3. The house is poor repair and has been modified over the years. There is a vehicular access and driveway to the front. The rear garden and its boundaries are mature . The garden is partly terraced and slopes down to towards the end and in the direct of the sea over which there are panoramic views. No. 15 Dalkey Avenue adjoins the site to the rear at right angles.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - Demolition of the house
  - Construction of 2 storey over basement dwelling
  - Alterations to Vehicular access
  - Upgrading of boundaries
- 2.2. Revised drawings: The grounds of appeal include a modification to the design by way of lowering the height and floor levels and reducing the depth of the proposed house. The overall floor area is reduced from 327sq.m. to 285sq.m. The elevational treatment is altered in that a dormer roof and cottage style is now proposed.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to refuse permission for the following reason:

- The proposed dwelling by reason of its design, profile, bulk, scale and mass would be visually incongruous and overly dominant within the streetscape of Cunningham Road and would detract from the character of same. The proposed development would detract from the existing amenities of the area, would depreciate the value of property in the vicinity and if permitted would set an undesirable precedent for similar development in the area which would be contrary to the provisions of the development plan. The proposed development would not accord with section 8.2.3.4 regarding additional accommodation in existing built-up areas (vii) infill and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report: The report refers to concerns about:**

- The height of the rear building line and its impact on adjacent properties. The relationship with the open space to the rear of no.4.
- The potential for overlooking from the terrace over the basement level.
- Visual impact of rear elevation as viewed from the private rear garden of adjacent dwellings.
- Overshadowing and the need for shadow study.
- Dominant impact on streetscape.
- Excavation quantities and details particularly with granite bedrock.
- Details of materials such as roof need to be clarified.
- No AA or EIA issues.

#### **3.2.2. Other Technical Reports**

- Drainage Division - Engineering Department - no objection subject to conditions
- Transportation Planning Division – No objection subject to conditions.

### **3.3. Prescribed Bodies**

- Irish Water – no objection subject to conditions.

### **3.4. Third-Party Observations**

- Issues raised in observations on appeal.

## 4.0 Planning History

### 4.1. The site

There is no planning history for the site.

### 4.2. Adjacent sites.

- D13A/0634- Permission for alterations and 2 storey extension to rear of no. 8
- D20A/0089 – Permission refused for demolition of a 2-storey house of 118 sq.m. and its replacement with a 261 sq.m. house on grounds of principle of demolition in context of policy to retain where appropriate buildings that make a positive contribution to the streetscape and on grounds of design and bulk and visual impact. [Note: this proposal is outlined in blue in the submitted drawings.]

4.3. The planning authority report also refers to a number of decisions in the vicinity.

- ABP 302666 refers to a grant (on appeal) for a first floor house extension on a corner site at Dalkey Avenue/Cunningham Road. .
- ABP 300214 refers to a grant of permission to retain an garage conversion
- ABP 304356 refers to a refusal of permission for a house on a 0.9hectare site in the curtilage of a protected structure at Ardfallen Cunningham Road on grounds of representing an inefficient and unsustainable use of serviced zoned land by reference to national Objective 35 in the National planning Framework 2018.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. The objective for the site is 'To protect and/or improve residential amenities.' (Zone A)
- 5.1.2. Chapter 8 sets out housing standards.
- 5.1.3. Section 8.2.3.4 (xiv) refers to demolition and replacement dwelling in the context of building strategy.

The Council will sometimes state a preference to retain existing houses that, while not Protected Structures, do have their own merit and/or contribute beneficially to the area in terms of visual amenity, character and/or accommodation type. Demolition of an existing house in single occupancy and replacement with multiple new build units will not be considered simply on the grounds of replacement numbers only but will be weighed against other factors. Better alternatives to comprehensive demolition of, for example, a distinctive detached dwelling and its landscaped gardens, may be to construct structures around the established dwelling and seek to retain characteristic site elements. In larger proposals for demolition of existing structures, the balance between the greater energy efficiency ratios of the new build, its size for running costs/impacts, and resources used for its construction - and those of the existing dwelling and the 'embodied energy' lost in its demolition, will be considered. The Planning Authority will assess single replacement dwellings within an urban area on a case by case basis and may only permit such developments where the existing dwelling is beyond repair due to structural defects. For all applications relating to replacement dwellings, a strong justification / rationale shall be provided by the applicant. Applications for replacement dwellings shall also have regard to Policies AR5 and AR8 (Sections 6.1.3.5 and 6.1.3.8). In this regard, the retention and reuse of an existing structure will be encouraged over replacing a dwelling. Applications for replacement dwelling within the rural area will be assessed under the provision of Section 8.2.3.6(iv).

Section 8.2.4 (ii) refers to extensions.

**RES4** states that it is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

**Section 8.2.3.4 (vii)** refers to infill sites. Such proposals shall be considered in relation to a range of criteria including respecting the massing and height of existing residential units.

## 5.2. Environmental Impact Assessment - Preliminary Examination

- 5.2.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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**

A first-party appeal has been lodged and the grounds of objection are based on the following:

- The house is beyond sustainable repair. The standard of construction of the existing house is of poor quality - external walls are less than 300mm and are not structurally adequate to take first floor. 80% of the structure would require replacement and the façade altered so that it would not be economically viable.
- While recognizing the prevalence of bungalows the house is not a protected structure or within an ACA
- The design has been modified to reduce scale, bulk and mass in drawings submitted with appeal. It is a cottage style in keeping with neighbouring development.
- It meets with development plan standards for amenity space and separation.
- The reduced depth means little or no overshadowing of neighbouring properties. Shadow drawings attached.
- Lower floor levels reduce massing and lower the terrace level which will be screened each side by trellises
- The revised design significantly reduces height, profile massing and scale to the that it is in line with existing bungalows. Similar materials will be used to protect character of area. It will not therefore be visually obtrusive.
- An appended letter from a chartered surveyor (Lisneys) states that the proposal will improve and benefit the appearance of the road and increase the potential values of surrounding houses.

### **6.2. Planning Authority Response**

6.2.1. Having reviewed the modified proposal and the grounds of appeal the planning authority remains of the view that permission should be refused.

### 6.3. **Observations**

6.3.1. Aedin Nealon and Christian Donagh (residents of adjacent property, no. 8) support the decision to refuse permission on the basis that demolition is unwarranted for a number of reasons and the scale and mass of the proposed dwelling remains excessive: The following points elaborate on these issues:

- Refusal to demolish is consistent with previous decisions notably in relation to the adjacent dwelling which was refused permission.
- Development plan policies support re-use of existing dwelling which is an attractive dwelling of a bygone era that contributes positively to the character of the area.
- Insufficient justification as the house at 176sq.m. is big enough. It can be extended as has been done at no. 2.
- Condition of building is not that bad. The existing house could be refurbished to provide a modern standard of energy efficiency. Worse properties have been refurbished. It appears to be acknowledged that it is not beyond repair. Unsightly condition as described by surveyor does not mean it can not be repaired in a manner that will benefit the road.
- It will breach the height framework on the road. No single storey dwelling has been permitted to date to be replaced by a two storey house on the north side of the road.
- There is symmetry in development on the north and south. The stepped roofscape permits sea views for the houses on the southern side. The case of the Flags on Dalkey Avenue (D20A/0300) is an example of the contention that could emerge on the road
- Permission for replacement dwelling on the north side was only in the case of no 14 and at the time (2006) the site was not constrained by a re-use development plan policy. Height was however restricted and informed by the single storey height framework.
- The proposal is 160% the size of the exiting house.
- The flat roof almost spans the width of the house

- The eaves height and ridge height increases at 1.525m and .7m are excessive and the profile is blocky and inconsistent with that prevailing
- The reduced floor area from 327 to 285sq.m remains excessive.
- There is concern about overlooking from the dining room which has windows facing the boundary. These are requested to be obscured in event of permission. The trellis is stepped height and will permit overlooking from the terrace. It is requested that the trellis be continued in height to protect privacy.
- First floor windows are requested to have fins to prevent overlooking.
- Concerns about the impact of excavating the underlying granite bedrock.
- The submitted drawings lack sufficient detail and compromise full assessment particular in relation to house height, trellis design and boundary. Further details are requested.
- The revised design amounts to an new application and the time for making observations was constrained by virtue of the complexity of comparing design which was not helped by the lack of measurements and the context of a global health pandemic.
- Third party rights compromised. Concern that they have no right of appeal against the decision concerning a new proposal

6.3.2. Paul Conway (adjacent property to north) raises similar concerns as the other observing party in respect of demolition and its impact on the streetscape, the scale and mass of proposed dwelling and procedural issue regarding revised plans. It is also submitted that the chartered survey letter should be disregarded as it is not independent. His particular concerns regarding his property relate to lack of clarity on proposals to upgrade all boundaries which includes a party boundary with his property.

## 7.0 **Assessment**

### 7.1. **Issues**

7.2. This appeal relates to a proposal for demolition of a 1930s single storey detached dwelling with dormer roof and its replacement with a larger dwelling of c.280 sq.m

(as reduced in revised plans submitted with grounds of appeal. From my inspection and review of the file, the key issues centre on:

- Principle
- Streetscape
- Residential Amenity: Overlooking, overshadowing/overbearing
- Boundary treatment
- Appropriate Assessment

### 7.3. Principle

- 7.3.1. The existing house is on a relatively large and moderately elevated site in a mature low density housing area south of Dalkey village. The area is zoned for residential development and accordingly a residential use is consistent in terms of land use. The applicant is seeking to build a much larger and more modern house compliant with energy efficient building technology. There are two aspects that potentially restrict this type of development in principle and they relate to demolition of a habitable house and expansion of a domestic dwelling.
- 7.3.2. The observing parties make the case that demolition is unwarranted as the house can be refurbished as has been done with other houses of similar construction date and type. This is driven primarily by the belief that the subject dwelling contributes to the quaint character of the area which is also defined by the other houses built around the same time (c.1930s) and that the precedent for demolition of such houses would destroy the character. The sustainability is also questioned as it is further argued that the house lends itself to both refurbishment and adaption for retirement and that it is of sufficient size. The planning authority does not have an issue in this case with the principle of demolition.
- 7.3.3. Having regard to the development policy for replacement dwellings, the case has to be assessed on its merits. The policy seeks justification for demolition of habitable houses and I consider that there is a sufficient case to demolish the subject house. Primarily, it is of single storey construction with extremely limited room for expansion at roof level due to the ridge height. I also note the walls are substandard by today's standard and that the existing porch addition detracts from the elevation. These

features together with the over scaled rear dormer and add-odds have resulted in a house with limited architectural features of interest. The removal of the house would not I consider detract from the architectural vernacular of the area and would not constitute any significant loss. Furthermore, the extensive intervention necessary to provide a larger family home with good access to natural light does not in my opinion support the retention of the house. Having regard to the nature and design of the house I consider the case for a new house is sufficiently justified by reference to the development plan criteria.

- 7.3.4. I therefore conclude that the principle for a replacement house on the subject site in this instance does not conflict with the council policy to improve and conserve housing stock and is consistent with its building strategy, however, the acceptability of design is predicated on its compatible integration with the streetscape and surrounding development.

#### **7.4. Streetscape**

- 7.4.1. Notwithstanding the modified design and reduced height and scale submitted with grounds of appeal, the planning authority remains opposed to the development. This is based on what it considers to be visual incongruity and dominance in the streetscape due to its profile, bulk, scale, and mass, and for this reason it is considered that it would detract from the character of the road.
- 7.4.2. I note that in this case the proposed replacement house maintains the set back from the road which is consistent with the neighbouring dwellings and that the overall ridge height is at 56.55mODm (reduced from around 57.2mOD) which is only about 1m higher than that at present. I also note that the ridge height is about 250mm lower than no.8 despite being on slightly higher ground. I accept that the eaves level has been raised by a greater degree and adds bulk, however, the modified plans reduce the height and massing by lowering the roof and eaves and incorporate dormer windows. The depth of the main house (with the exception of the ground floor conservatory) has also been reduced as has the width – although very marginally. Having regard to site configuration and sloped terrain down from the road, I consider that the proposed house at this height can be visually assimilated into the environs without demonstrably altering the character and would not therefore be visually incongruous as viewed from the road. While I accept there are a number of single

storey houses there are also a number of two storey dwellings of varying scales and designs. The arguments that seek to maintain sea views of opposing houses as part of the equilibrium of the enjoyment of amenities in this sloped terrain is not sustainable as there is little or no basis for the protection of private views. I consider that in terms of its impact on the public realm, the proposal is acceptable.

- 7.4.3. The incorporation of a flat roof with mock pitch roof is not the most architecturally innovate – however the design is otherwise traditional and in keeping with many of the houses and would not be visually jarring.
- 7.4.4. Accordingly, having regard to the site terrain and characteristics and to the building topography in the area I do not consider impact on the streetscape to be reasonable grounds for refusal.

## 7.5. Residential Amenity

- 7.5.1. The planning authority raises a number of concerns regarding the scale and massing and relationship with neighbouring dwellings. The issues of overlooking and overshadowing are raised. There is particular concern about the raised patio, the trellis and the extent of first floor windows and these points are elaborated in the detailed grounds of appeal. Boundary treatment is also a concern due to the absence of details.

### Overshadowing

- 7.5.2. In the revised plans the overall height and depth of the house have been reduced. I note that the house proposed is set back from the boundaries with houses on each side. The proposed building line to the rear is fairly consistent with both no. 8 and the proposed plans for no.6 and only marginally beyond no.6 as exists. The appellant has submitted shadow drawings illustrating the pattern of shadow at 9 am., 1pm and 5pm on days of Spring and Autumn Equinox and Summer and Winter Solstice. The submitted shadow studies illustrate how the proposal will cast a shadow from 5pm in the garden in March and this has been marginally reduced in the revised plans but this is vastly reduced in June. I consider on balance that the extent of overshadowing is not unreasonable.
- 7.5.3. While I accept that there will be an increase in the overshadowing of the side windows in no.8 I do not consider it reasonable to expect full protection of light levels that

exist due to the relationship with the boundary to protect such would I consider unreasonably compromise development of the subject site. The windows in the front and rear elevation which typically provide light into the principal habitable rooms should I accept be protected. In this case, due to the orientation, no.8 receives limited direct sunlight into the rear elevation and so the opportunity to obstruct such is limited. Ultimately the limited depth of extension and set back will not result in any significant loss of amenity.

#### Overlooking

- 7.5.4. With respect to overlooking from the rear elevation, I do not consider the rear facing first floor windows at an oblique angle relative to the adjacent detached dwellings to constitute any significant encroachment on amenity. The opposing distance between windows is not at issue being greater than 22m.
- 7.5.5. The first floor side windows relate to bathrooms and a stairwell and are proposed to be obscured and so this will not result in overlooking. I note these have been revised from three to two in the west elevation.
- 7.5.6. With respect to the ground floor I note that the number of windows are reduced in the west elevation and increased by one in the east elevation but all but one are proposed to be obscured. I consider the additional (non-obscured) east facing window in the living area to be unwarranted in view of the proximity the rear elevation and patio doors. This could be omitted by condition. While the windows generally will not give rise to overlooking I do however accept that the raised patio and conservatory with glazing facing no.8 could potentially lead to overlooking and invasion of privacy. This has been remedied to an extent by the applicant by way of a proposed trellis. The neighbours, and not unreasonably in my opinion, request that this is addressed in detail to prevent loss of privacy. I consider that a steel structure that could be planted with a climber and raised 1.7m above the terrace level would robustly and sufficiently buffer the properties and avoid an excessively high boundary wall which might be oppressive on no.8.
- 7.5.7. On balance, I do not consider the proposed development would, subject to minor alterations by way of condition, be unduly intrusive or injurious to residential amenity of adjacent properties

#### Boundary treatment:

- 7.5.8. The proposal refers to upgrading of all boundaries. I understand the reference to this is to simply explain the context of upgrading the grounds by way of landscaping and orderly development and nothing more. The drawings show minor alterations to the front boundary and to the rear drawings show a 2.2m high wall on the eastern boundary and a 2m high wall on the western side as measured from the ground level of the site. I accept that this is not shown for the entire length of wall but it is within a normal range. As this is unspecified, the case could be made that the boundary works have to therefore be in accordance with what is exempted development which would be 2m unless replacing a higher previously permitted wall . A condition restricting the height (where it is being raised ) to no more than 2m unless otherwise agreed with the neighbour would I consider be reasonable. A condition requiring agreement with the planning authority is the best approach and standard practice. This would provide some flexibility to facilitate a moderate raising of the boundary to 2.2m in sensitive locations such as alongside the raised terrace. This however is addressed by the design of the trellis.

#### Impact of excavation

- 7.5.9. There is concern about the impact of excavation associated with the scale of development which includes a basement level and having regard to the underlying granite. I note that extent of basement level is very modest and not to a level that would I consider be of environmental concern. In the unlikely event of any impact on structural integrity of neighbouring properties consequent on site works, this would be, in my view, more of a civil matter. The planning authority states that further clarity on the matter should be provided. I consider a condition requiring an indemnified structural engineers' report addressing the structural impact will address this issue.

### **7.6. Procedural matters**

- 7.6.1. The third parties raise concerns about the lodgement of revised plans by the applicant as part of the grounds of appeal. I note that the revised design as compared to the original proposal has been reduced in overall scale, is within the original proposed footprint and will result in no material increase in overlooking or

overshadowing of neighbouring properties. The conservatory has been moderately extended to the reduced main house however and it is clear that the neighbours are concerned about all fenestration and particularly the terrace. This could be scaled back to the original depth of projection from the main house but I consider the alteration to the trellis addresses this. The issues raised in the observations are comprehensive and I consider the timescale with which to make submissions are reasonable given the scale and nature of the proposed development. I accept that measurements would aid clarity but I consider it this is a de minimus matter. I am satisfied that the third-party submissions have not been unduly compromised and that there is sufficient information to make a decision in this case.

## **7.7. Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development, nature of the receiving environment and proximity to the nearest European site, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1.1. I recommend that planning permission for the proposed development be granted based on the following reasons and considerations, as set out below.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the design and massing of the proposed development as revised, the site characteristics, the pattern of development in the area and the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would integrate in a satisfactory manner with the existing built development in the area, would not detract from the character of Cunningham Road and would not seriously injure the residential amenity of adjacent properties. Furthermore having regard to the nature and design of the existing single storey

dwelling and the extent of intervention required to extend and modernise the dwelling and also having regard to its limited visibility from the road it is not considered that loss of this dwelling would detract from the visual amenities or character of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted to the An Bord Pleanála on the 6th day of October 2020, 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 proposed development shall be modified as follows:
  - (a) The east facing ground floor window at the north end of the proposed living room shall be omitted.
  - (b) The trellis shall be of a sturdy steel structure and to a height of 1.7m for the depth of the raised terrace at ground level.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. Details of all boundary treatment which shall be no higher than 2 metres to the rear of the building façade unless agreed with the neighbouring property but not exceeding 2.2m in height shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details shall also

include boundary landscaping which shall include replacement hedging along the front boundary.

**Reason:** In the interest of clarity and residential amenity.

4. Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

5. Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.

**Reason:** In the interest of public health.

6. The excavation and site preparation work shall not interfere with the structural integrity of adjacent properties and shall be certified by a competent structural engineering firm. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of public safety and residential amenities of adjacent properties area.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

8. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

9. Details of the materials, colours and textures of all the external finishes to the proposed dwelling, including roof slates/tile, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

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

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

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Suzanne Kehely  
Senior Planning Inspector

28<sup>th</sup> October 2020