

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL 06S.245566

Development: Demolition of porch, new wall with entrance door and window, front boundary piers, construction of house in side garden with new boundary walls, piers and off-street parking.
14 Rushbrook Crescent, Templeogue, Co. Dublin.

Planning Application

Planning Authority: South Dublin County Council

Planning Authority Reg. Ref.: SD15A/0091

Applicant: Tom and Kathy McCarthy

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Tom and Kathy McCarthy

Type of Appeal: First Party v Refusal

Observers: Niall & Amanda Jones
Russell & Deirdre Lalor
WORK Residents Association
Margaret Meagher
Padraic & Imelda McManus
Declan Wrenn & Others
Robert & Sue Macken

Date of Site Inspection: 6th January 2016

Inspector:

Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

1.1 The site is located at the end of a cul-de-sac in the established suburban area of Templeogue, Co. Dublin. It is within an estate characterised by semi-detached houses with private gardens to the rear. The site is currently occupied by an existing detached 2 storey house, no. 14 Rushbrook Crescent, which has private areas to the side and rear and a vehicular entrance from the end of the cul-de-sac. The house has a stated total floor area of 85 sq.m and a gable profile facing the public road. This house was originally permitted in 1999 (see planning history below) and was constructed in the side garden of no. 12 Rushbrook Crescent, which forms the southern site boundary. The proposed development site has a stated area of 0.03 ha and comprises lands to the side of no. 14 Rushbrook Crescent and lands currently within Tymon Park, which is adjacent to the site.

2.0 PROPOSED DEVELOPMENT

2.1 The development involves:

- Demolition of single storey porch to the side of the existing house, construction of a new wall and entrance door and window to the front elevation.
- Subdivision of the existing site and construction of a new 2 storey detached 2 bedroom house (floor area 89 sq.m.) to the side/north of the existing house on the site.
- New entrance and off-street car parking area.

2.2 The applicant submitted a revised proposal to the PA on 14th August 2015 in response to a request for further information. The revised design comprised:

- Semi-detached dwelling attached to the existing house on the site, with similar gable front elevation (floor area 87 sq.m.).
- Reduced ridge height such that both houses are now the same height.
- Revised site layout and landscaping scheme.

3.0 PLANNING HISTORY

3.1 Permission was granted for the existing detached house at the site under **S99A/0549 PL06S.116686**. Permission was granted for a new bay window to the front of the house under **S02B/0073**.

3.2 Under **SD13A/0165**, permission was sought to demolish the existing side porch and to construct a new 2 storey 2 bed house in the side garden, also widening of the existing vehicular entrance to facilitate access. The PA refused permission for the 2 no. reasons relating to:

- Unsatisfactory car parking provision for the proposed house, which would result in on-street parking at the turning bay of Rushbrook Crescent,

creation of traffic congestion and obstruction of road users within the estate. Creation of a traffic hazard.

- Proposed development would result in a 32 sq.m. private amenity space to the rear of the existing 3 bedroom dwelling no. 14 Rushbrook Crescent; failure to comply with the requirements of development plan policy SN25 which requires a minimum private amenity space of 60 sq.m. for a 3 bed roomed house. Overdevelopment of a restricted site and contravention of the zoning objective A '*To protect and/or improve Residential Amenity*'.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

4.1.1 The following technical reports are noted on file:

- Environment, Water & Climate Change report dated 14th May 2015. No objection subject to conditions.
- Roads Department report dated 14th April 2015. Recommends conditions. Second report dated 14th August 2015 on foot of further information recommends refusal.
- Water Services report dated 18th May 2015. No objection subject to conditions.
- Irish Water report dated 19th May 2015. No objection subject to requirements.
- Parks & Landscape Services report dated 21st May 2015. Proposed layout unacceptable, recommends additional information request for revised plans.

4.1.2 The planning report on file dated 3rd June 2015 states concerns about visual impacts. Recommends an additional information request. The second planning report on file (undated) recommends refusal on grounds relating to inadequate private amenity space for the existing and proposed houses, also inadequate parking provision.

4.2 Third Party Submissions

4.2.1 I note that several third party submissions were submitted by or on behalf of local residents, which objected to the proposal on grounds relating to adverse visual impact; design out of keeping with the area; contravention of building line; inadequate open space provision; provision of poor quality residential accommodation; increased density of development within the cul-de-sac; traffic/parking issues including adverse impacts on the cul-de-sac turning area; contravention of the zoning objective to provide for public open space and recreational amenities; contravention of the terms of the sale of land within the park to the applicant by South Dublin County Council; failure to address refusal reasons of SD13A/0165; drainage/flooding issues associated

with increased hard area; adverse impacts on residential amenities due to overlooking; questions of applicant's legal right to use the lands enclosed within the site boundary. There are also submissions on file from Councillors John Lahart, Paul Foley, Francis Timmons, Dermot Looney, Fintan Warfield, Pamela Kearns, Eamonn Maloney TD and Senator Cáit Keane which all object to the proposal.

4.2.2 There were several further third party submissions in relation to the applicant's response to the additional information request. These objected to the proposal on similar grounds to those set out above. Also further submissions by Councillor Pamela Kearns and Eamonn Moloney TD, which again objected.

4.3 Planning Authority Decision

4.3.1 The PA requested additional information on 3rd June 2015. The request stated serious concerns about impacts on visual amenity due to excessive height, proximity to the street, detached style of dwelling and extremely negative impact on the boundary to the park. The applicant was advised to submit an amended proposal to address these issues.

4.3.2 The PA refused permission on 7th September for 2 no. reasons relating to:

- Proposed development would result in a private open space of 50 sq.m. to the rear of the existing house at no. 14 Rushbrook Crescent. Contravention of development plan Policy SN27 relating to private amenity space. The proposed development would result in overdevelopment of a restricted site and materially contravene the zoning objective 'A'.
- Inadequate parking including low amenity of proposed parking would generate permanent parking in the turning bay endangering public safety by creating an obstruction of road users.

5.0 GROUNDS OF FIRST PARTY APPEAL

5.1 The main points made may be summarised as follows:

- The applicant has overcome the previous refusal reasons, i.e. provision of private amenity space for each dwelling and off street parking. The PA request for additional information was based on concerns about the design and location of the proposed new house. The additional information request issued by the PA was very detailed and directed a certain design approach. The revised proposal addressed this design approach but was refused permission. The PA has been inconsistent in its approach to the development of the subject site. Details of the planning history of the site are submitted as Appendix B of the appeal. Details of permissions at other houses within Rushbrook Crescent are submitted as Appendix C.

- It is submitted that the private amenity space provided for each house is not substandard and compares favourably with existing local development. Drawings indicating the areas of the open spaces proposed are submitted for the Board's information. These indicate a space of 60.1 sq.m. for the existing 3 bed house and 55.3 sq.m. for the proposed new 2 bed house. It is submitted that both gardens would enjoy adequate sunlight and both houses would have access to good quality private amenity space. Drawings are submitted in support of this statement, which have been prepared by an independent land surveyor.
- The current development plan allows for flexibility in the provision of residential car parking, i.e. 1-2 spaces per dwelling depending on design. The proposed layout would comply with this requirement as a total of 3 no. off-street spaces can be provided. There would be no parking in the turning circle as adequate off-street parking is provided and hence no traffic hazard.
- With regard to zoning, the applicants have made a submission to rezone the area within Tymon Park for consideration in the new draft development plan.

6.0 RESPONSE OF PLANNING AUTHORITY

6.1 The PA confirms its decision and states that the issues raised in the grounds of appeal have been covered in the planner's report on file.

7.0 OBSERVATIONS

7.1 An observation has been submitted by Architectural Construction Technology Architects and Design Consultants on behalf of a group of observers who are all residents of Rushbrook Crescent. There are also several individual observer submissions on file, which object to the development on similar grounds. The main points made may be summarised as follows.

- The PA refusal reasons of SD99A/0546, the original permission on the site, are noted. The residents did not object to or appeal this decision. The conditions imposed in the Board decision to grant permission differed from those recommended in the Inspector's report on file. It is submitted that the permitted house was out of keeping with the original houses on Rushbrook Crescent, which displeased the residents. The permission of a bay window to the front of the house under S02B/0073 exacerbated the already uncharacteristic appearance of the permitted house. Inaccuracies in previous applications relating to the development site are noted.
- Addressing the refusal reasons of SD13A/0165 alone would not make the subdivision of the site more acceptable in planning terms. The PA request for further information placed local residents at a disadvantage as the applicants were given detailed instructions. The revised proposal is a completely new application.
- It is submitted that the proposed development is commercial and speculative in nature.
- The proposed house would be out of keeping with existing houses on Rushbrook Crescent due to its height, non-compliance with the established building line.
- The proposal would result in overdevelopment of a restricted site and disorderly development, would injure residential amenities and depreciate the value of property in the vicinity.
- The application drawings submitted are misleading and inaccurate. The drawings submitted with the grounds of appeal do not include figured dimensions. This is misleading. The stated areas include the side passageway of no. 12 Rushbrook Crescent, this is not useable amenity space.
- Development does not comply with the zoning objectives A or GB. It reduces general amenity and would result in substandard accommodation and development.
- Development would set an undesirable precedent for similar substandard developments.
- The proposed development has inadequate parking provision as there is insufficient space for turning vehicles. This restrictive layout would create

demand for on-street parking in the adjacent turning area at the end of the cul-de-sac. The development would result in dangerous turning movements on the public road and traffic hazard.

7.0 POLICY CONTEXT

7.1 Most of the site has the zoning objective 'A', '*To protect and/or improve residential amenity*'. Relevant policy on housing extensions is set out in section 1.2 of the South Dublin County Development Plan 2010-2016. The western part of the site has the zoning objective GB '*To provide a Green Belt between Development Areas.*' See enclosed map.

7.2 Section 1.2 of the plan sets out policies on residential development. Corner site development is defined as the sub-division of an existing house curtilage to provide an additional dwelling in existing built up areas and is considered under separate policies to those for infill developments in residential areas. Policy H17: Corner Site Development states:

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

- *Contemporary design is promoted with a building language that is varied and forward-looking rather than repetitive and retrospective;*
- *Scale that respects adjoining development;*
- *Gable walls should not be blank. Buildings should be designed to turn the corner and provide interest and variety to the streetscape;*
- *Compliance with standards set out in the Plan for both the existing and proposed dwelling;*
- *Maintenance of existing front building lines and roof lines where appropriate and*
- *Proximity to piped public services.*

7.3 Other standards for residential development set out in section 1.4 of the development plan, *Sustainable Neighbourhoods*.

7.4 Development plan policy SCR49 '*Retention of Open Space*' is to retain in open space use, lands with established recreational uses where practicable.

7.5 Table 2.2.4 of the Development Plan sets out standards for car parking, such that 1-2 spaces are required for residential development.

8.0 ASSESSMENT

8.1 The following are the issues considered relevant in this case:

- Section 37(2)(b) of the Planning and Development Act 2000 (as amended)
- Principle of Development

- Quality of Residential Accommodation
- Impacts on Visual and Residential Amenities
- Access and Parking
- Other Issues

These may be considered separately as follows.

8.2 Section 37(2)(b) of the Planning and Development Act 2000 (as amended)

8.2.1 Refusal reason no. 1 states that the proposed development would materially contravene the zoning objective 'A' of the site '*To protect and/or improve residential amenities*'. Section 37(2)(b) of the Act provides that where a PA has decided to refuse permission on the grounds that a development materially contravenes the development plan, the Board may only grant permission where it considers that:

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

Each of the above may be considered separately as follows.

8.2.2 (i) the proposed development is of strategic or national importance

This is not considered to be the case with regard to the nature and scale of the development.

8.2.3 (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government

Sections 1.2 and 1.4 of the South Dublin County Development Plan 2010-2016 set out policies on the design of residential developments, including infill development in residential areas and the development of corner sites. These policies have been prepared with regard to the Core Strategy and the Housing Strategy of the plan, also the strategic recommendations of the *Regional Planning Guidelines for the Greater Dublin Area 2010–2022*, development plans of adjoining local authorities and to guidance provided in the section 28 ministerial guidelines on residential development in urban areas, i.e. *Sustainable Residential Development in Urban Areas* (2009) and its companion document *Urban Design Manual – A Best Practice Guide* (2009), also *Quality Housing for Sustainable Communities* (2007).

The relevant objectives on residential development in urban areas are clearly set out and are consistent with the other policies and objectives of the development plan and with the regional and national policies and guidelines.

On this basis, it is considered that sections 37(2)(b)(ii) and (iii) do not apply.

8.2.4 (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan

The current development plan was adopted on 8th September 2010. The appeal submission cites several planning permissions as precedents, including SD13A/0021, under which permission was granted for a detached 2 storey house to the side of the semi-detached house no. 1 Rushbrook Crescent, at the junction with Rushbrook Road. I do not see any evidence of permissions granted in the immediate vicinity that would set a precedent for the subject proposal such that section 37(2)(b)(iv) would apply, e.g. permission for a second house in original side garden. Indeed, I note that an application for a similar development at the subject site was refused under SD13A/0165.

8.2.5 I therefore conclude that section 37(2)(b) of the Act does not apply and that the Board is precluded from granting permission in this case. However, I now propose to consider the case on its merits, in order to provide as full an assessment as possible.

8.3 Principle of Development

8.3.1 Most of the site is within the grounds of the existing house has the residential zoning ‘A To protect and/or improve residential amenity’ but an area at the northern end of the site is currently within Tymon Park and has the green belt zoning ‘GB To provide a green belt between development areas’. The appeal submission states that the applicants purchased the relevant lands from South Dublin County Council in January 2015, also that they have made a

submission to the new draft County Development Plan to have the area rezoned. Residential development is '*Open for Consideration*' in the GB zone, i.e. the proposed development can be considered on its merits with regard to development plan policies and objectives and to consistency with the proper planning and sustainable development of the area.

8.4 Quality of Residential Accommodation

- 8.4.1 The design and layout of the scheme may be considered with regard to national planning guidance on residential development and to the policies set out in section 1.4 of the development plan, '*Sustainable Neighbourhoods*'.
- 8.4.2 With regard to the overall layout, I note that the original proposal indicates rear garden spaces for both the existing and proposed houses with stated areas of 60 sq.m. This complies with the minimum private amenity space standard of 55 sq.m. for a 2 bedroom dwelling as per Table 1.4.2 of the development plan. I note that the planning report on file assesses private open space provision for a 3 bed house with regard to the existing house, however I consider that the quantitative requirement for a 2 bed is reasonable given that the third bedroom is an attic which is indicated as '*non-habitable*' on the floor plan. The spaces are west facing but are awkwardly shaped, which would reduce their amenity value. The revised layout submitted as additional information shows an open space to the rear of No. 14 Rushbrook Crescent that runs behind both houses. The rear elevation of the proposed new house has been design such that no windows to habitable windows look onto the space. However, the arrangement also results in an open space with reduced amenity value. To conclude, it is considered that both layouts would result in private open spaces to the rear that have minimal amenity value, notwithstanding the fact that the total areas marginally exceed the development plan minimum.
- 8.4.3 Refusal reason no. 1 states that the development would contravene development plan policy SN27 '*Private Amenity Space*', which provides guidance on qualitative standards for private amenity space in residential development. It states a policy that each dwelling should be provided with adequate, usable private amenity space in the form of a garden, patio or balcony. Each private amenity space is to be designed and located so that it has an open feel and receives sunlight. Where areas of private open space are located at ground floor level they should be clearly defined from adjacent areas, separation should be provided between dwellings, and screening devices, such as trees and planting, should be included to enhance privacy levels and to minimise the impact of overlooking. I also note that development plan policy SN28, '*Private Gardens*', states that rear gardens should not back onto public roads or public open space. I consider that the proposed development would contravene these policies due to the design and layout of the private open space areas.

8.4.4 The internal layout of the scheme complies with the minimum requirements of the *Quality Housing for Sustainable Communities Best Practice Guidelines*, which require a minimum gross floor area of 80 sq.m. for a 2 bedroom house. This aspect of the scheme is considered acceptable.

8.5 Impacts on Residential and Visual Amenities

8.5.1 Given that the site is at the end of a terrace, there is little potential for adverse impacts on the residential amenities of other properties on the street by way of overlooking or overshadowing.

8.5.2 With regard to visual impacts, Rushbrook Crescent is characterised by semi-detached 2 storey houses of traditional design. The houses are set well back from the street with front gardens and there is a grass verge with mature trees along the road frontage. The existing house at the development site stands out at the end of the cul-de-sac due to its differing detached, gable fronted design and to its front building line, which steps forward c. 2 m from the front of no. 12 Rushbrook Crescent to the south. The development as originally proposed would step further forward of the building line and have a greater ridge height than no. 14 Rushbrook Crescent, resulting in a stronger visual presence. The revised semi-detached design submitted as further information has a lower height but also steps forward c. 1.5m forward of no. 14 Rushbrook Crescent. In addition, both layouts involve the replacement of the existing front garden with car parking. I also note that a street tree in front of the site would have to be removed to facilitate vehicular access, as per the Roads report on file dated 14th April 2015.

8.5.3 I note the report on file by the Parks and Landscape Services Department of the PA, dated 21st May 2015. This comments that the development would be unacceptable for reasons relating to (1) the boundary wall facing Tymon Park would compromise the privacy and peace of residents of the proposed house; (2) the layout could facilitate anti-social activity within the park and (3) the layout would involve the removal of a significant number of trees within the park. The report requests a revised proposal to address these issues. The revised layout submitted as further information is set back from the Tymon Park boundary and would not present a gable frontage to the park. There is no further comment on file by the Parks Department, however I consider that the revised layout addresses the concerns raised regarding anti-social impact but not those about the removal of existing mature trees. While there is no tree survey on file, I noted at site inspection that there are several mature trees within Tymon Park close to the boundary, which would be impacted by the proposed development.

8.5.4 The third party submissions on file state concerns that the development is out of keeping with the surroundings. I consider that these concerns are valid. The scheme is not in accordance with the existing building line and has a gable fronted design that differs from the established pattern of development

in Rushbrook Crescent. In addition, the development would result in the removal of several mature trees both on Rushbrook Crescent and in Tymon Park. It is therefore considered that the development is out of keeping with the character of the area and would have adverse visual impacts.

8.6 Access and Parking

8.6.1 The existing vehicular access to no. 14 Rushbrook Crescent is from the turning area at the end of the cul-de-sac. The original layout submitted indicates 2 no. car parking spaces in front of each house, all accessed directly from Rushbrook Crescent. The revised proposal involves 1 no car parking space in front of each house, however the space in front of the proposed house is perpendicular to the street. I note the second Roads report on file, dated 14th August 2015, which states that the Roads Department generally seeks 2 spaces for houses of this size and comments that the proposed parking spaces have low amenity. Refusal is recommended on the grounds that the development is likely to result in permanent parking within the turning bay, endangering public safety by creating an obstruction of road users. I note that refusal reason no. 1 of SD13A/0165 refers to this issue and I consider that the proposed development does not address this refusal reason. I agree that the layout would create a traffic hazard as a result of vehicles accessing directly to/from the turning area.

8.6 Appropriate Assessment

8.6.1 Having regard to the nature and scale of the development within a fully serviced suburban location, 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.

8.7 Conclusion

8.7.1 Having regard to the above assessment, it is considered that section 37(2)(b) of the Planning and Development Act 2000 (as amended) applies in this case and that the Board is precluded from granting permission. In addition, it is considered that the proposed development would result in overdevelopment of the site and would have adverse impacts on the visual amenities of the area. The proposed vehicular entrance would also result in a traffic hazard. I therefore consider that permission should be refused for this development.

9.0 RECOMMENDATION

9.1 Having regard to the foregoing, I recommend that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. Having regard to the restricted nature of the site, to the design of the proposed house and to the removal of mature trees that the proposed development would entail, it is considered that the proposed development would result in overdevelopment of this restricted site and in adverse impacts on the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The inadequate parking including low amenity of the proposed parking area would generate permanent parking in the turning bay creating a traffic hazard due to obstruction of road users.

**Sarah Moran,
Senior Planning Inspector
21st January 2016**