

# An Bord Pleanála



## Inspector's Report

PL29N. 245661

**DEVELOPMENT:** Extension to nursing home

**ADDRESS:** 5-7 Clontarf Road, Dublin 3

### PLANNING APPLICATION

**Planning Authority:** Dublin City Council

**Planning Authority Reg. No.:** 3926/14

**Applicants:** Silver Stream Healthcare Ltd

**Application Type:** Permission

**Planning Authority Decision:** Refuse permission

### APPEAL

**Appellants:** Silver Stream Healthcare Ltd

**Type of Appeal:** 1<sup>st</sup> party vs. refusal

**Observers:** Glenn and Sandra Murphy

**DATE OF SITE INSPECTION:** 26<sup>th</sup> January 2016

**INSPECTOR:** Stephen J. O'Sullivan

## **1.0 INTRODUCTION**

- 1.1 This report deals with a first party appeal against a decision by Dublin City Council to refuse permission for an extension to the nursing home

## **2.0 SITE**

- 2.1 The site is in a suburban area c.3km north-east of Dublin city centre. It has a stated area of 1,309m<sup>2</sup>. It is occupied by a nursing home with a stated floor area of 1,194m<sup>2</sup>. The home is accommodated in 3 Victorian terraced houses that have been amalgamated, with a more recent two-storey extension to the rear. Residual signage at back of the older buildings indicates that the amalgamation is of long standing and was done to accommodate a hotel. The adjoining houses to the west in the terrace remain in residential use. Those to the east are in commercial use. There is a separate building of 25m<sup>2</sup> at the rear of the site that accommodates a laundry. The area between the front of the terrace and the public footpath is paved. At the time of inspection 9 vehicles were parked there, with no spaces remaining. There is an unpaved lane that provides access to the rear of the site and other properties in the same terrace. A railway embankment stands on the other side of the lane. A car park that serves a train station lies on the opposite side of the Clontarf Road from the site. The shores of Dublin Bay are c250m south-east of the site.

## **3.0 PROPOSAL**

- 3.1 It is proposed to demolish the laundry building and erect a two-storey extension behind to the rear of main building. The stated floor area of the extension is 336m<sup>2</sup>. The roof ridge height shown on the revised drawings submitted as further information is 7.65m above the lower ground floor level in the extension. That floor level is similar to the lower ground floor level in the existing building. The extension would contain 6 single rooms and 2 assisted bathrooms. The extension would be built up to the north-eastern boundary of the site.

## **4.0 POLICY**

- 4.1 The *Guidelines for Planning Authorities on Flood Risk Management* issued by the minister and the OPW in November 2009 refer to three flood risk zones – A, B and C. The OPW's published Eastern CFRAM study identifies the front of the site and an area immediately to the rear of the main building as being in with the 0.5% Tidal AEP Event, and thus within Flood Zone A for the purposes of the guidelines. The back of the site where the extension would be built is in the 0.1% Tidal AEP, and thus within Flood Zone B. The building occupied by the nursing home is outside the flood risk area, and is thus in Flood Zone C. A nursing home would be a class of development that was highly vulnerable to flooding, according to table 3.1 of the guidelines. This class of development would only be appropriate in zones A or B if it met a justification test. Box 5.1 sets out the criteria for such a test, which is –

- That it complies with a zoning for the use set down in a development plan adopted after the guidelines were taken into account.
- That the proposal had been subject to an appropriate flood risk assessment that demonstrated that it would not increase flood risk elsewhere; that measures have been put in place to minimise flood risk as far as reasonably possible; that measures are proposed to manage residual risks to the area and development can be managed to an acceptable extent; that the development addresses these issues in a manner compatible with wider planning objectives.

The acceptability or otherwise of the residual risk should then be made with consideration of the type and foreseen use of the development and the local development context.

However section 5.28 of the guidelines states that applications for minor developments including extensions and additions to existing enterprises are unlikely to raise significant flooding issues unless they obstruct important flow paths, introduce significant additional numbers of people into flood risk areas or entail the storage of hazardous substances. The justification test does not apply to proposals for such development. But there should be a commensurate assessment of risks of flooding to show that the development would not impede access to a watercourse, floodplain or flood protection and management facilities, and that it would follow best practice in the management of health and safety for users and residents.

- 4.2 The Dublin City Development Plan 2011-2017 applies. The plan refers to the guidelines above. The site is in an area zoned Z2 as a residential conservation neighbourhood. Policy NC19 of the plan is to facilitate the development or expansion of hospitals, community based healthcare facilities, respite homes and daycare centres for the elderly in residential areas. Table 17.1 sets a parking standard for nursing homes 1 space for every 2 bed spaces in this area. Section 17.40 of the plan says should be regarded as the maximum provision. Section 17.2 refers to nursing homes. It stated that they should be integrated into the established residential area of the city. Relevant issues when considering proposals for nursing homes include the effect on the amenities of adjoining properties, the adequacy of off-street parking, private open space, proximity to local services and facilities, and the appropriateness of its size and scale to the locality.

## **5.0 HISTORY**

- 5.1 No previous applications were cited by the parties.

## **6.0 DECISION**

6.1 The planning authority decided to refuse permission for one reason –

*DCC's Drainage Division notes that the site is located within the OPW's Flood Zone A 'High Probability of flooding' as defined in the OPW's 2009 guidance document 'The Planning System and Flood Risk Management, Guidelines for Planning Authorities', and which also categorises residential care homes as 'highly vulnerable development' which it recommends should not be located within Flood Zone A unless all the criteria in the OPW's required Justification Test can be met. As the Drainage Division considers that the applicant has not fulfilled the requirements of this test the development which would be located in an area which is at risk from flooding and would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.*

## **7.0 REPORTS TO THE PLANNING AUTHORITY**

7.1 Submission – A third party objected to the proposed development on grounds similar to those raised in the subsequent observation on the appeal. It also queried the accuracy of the information submitted with the application with regard to the right of way along the laneway behind the site and the drawings of the proposed development.

7.2 Drainage Division – The initial report stated that the site was in the 1 in 200 year hazard area for coastal flooding. The applicant should consult with the division. Permission should not be granted until flood risk issues are addressed. The report on the further information stated that the OPW's Justification Test cannot be met and permission should be refused.

7.3 Planner's report – The report on the initial application stated that the proposed rear extension would not affect the streetscape or the residential conservation area. The bedspace provision can be capped by condition. The site coverage and plot ratio would be below the recommended limits for the Z2 zone. The parking standards in the development plan are maximum limits. Bin storage is outside the scope of the current application. The issues of overlooking and overshadowing should be examined, and screening for appropriate assessment should be carried out. It was recommended that further information should be sought. The subsequent planner's report cited the report from the Drainage Division and recommended that permission be refused. The response to the other items of the request for further information were stated to be acceptable.

## **8.0 GROUNDS OF APPEAL**

8.1 The grounds of appeal can be summarised as follows-

- The nursing home is an established part of the local community that provides much needed accommodation for local elderly residents in need of residential care. The applicant took over its operation in 2014 and wishes to improve it to meet current HIQA standards by reducing the number of shared bedrooms by providing additional single occupancy rooms. At present the home has 40 residents with 15 of them in five triple rooms; 18 in nine double rooms; and 7 in single rooms. The proposal would result in accommodation being provided for 41 residents, with 6 new single rooms and the removal of one occupant from each of the triple rooms. The proposed assisted bathrooms would improve residents' welfare and the working conditions for staff.
- The flood risk assessment submitted as further information to the planning authority acknowledged that the site was within the 1:200 year coastal flood zone, but highlighted that proposed development would not introduce a significant additional population into the zone. The development would not obstruct flow paths. A flood response and evacuation plan was submitted. The applicant would accept a phased approach to development, with the construction of only the ground floor before the council's flood defence works for Clontarf are underway.

## **9.0 RESPONSES AND OBSERVATIONS**

9.1 The planning authority did not respond to the appeal.

9.2 The observation from Glenn and Sandra Murphy can be summarised as follows—

- The observers are the owners and occupiers of house at No. 4 Clontarf Road, which adjoins the western boundary of the application. The proposed development would represent over-intensification and would diminish the value of their property
- The applicants have failed to demonstrate compliance with the OPW's flood guidelines.
- The scale of the development would be out of keeping with the character of the area and would contravene the Z2 zoning objective for the area and the development standards for nursing home set down in the development plan. The extension would overbear the observers' house and garden. The site coverage of 53% would be unacceptable in a residential conservation area. The detailed design of the extension, including the window openings, eaves and double kinked plan are not in keeping with its surrounds.

- The development would increase the number of bedspaces in the nursing home and the applicant's suggestion that it would involve the omission of 5 bed spaces in the existing nursing home is misleading.
- Visitors to the nursing home frequently park across the observers' driveway and block access to their property. The proposed development would not meet the parking standards set out in table 17.1 of the development plan which would require 23 car parking spaces for the extended nursing home, rather than the 6 provided, even allowing that standards are for the maximum level of parking. The proposed development would not address the current service and delivery arrangements which often block access to the observers' house and involve large and unsightly bins being placed permanently in front the nursing home.

9.3 The OPW submitted an extract from Floodmaps.ie that refers to Clontarf.

## 10.0 ASSESSMENT

The planning issues arising from the proposed development can be addressed under the following headings-

- Policy and the principle of development
- Flood risk and the justification test
- Impact on the character and amenities of the area
- Parking and access
- Appropriate assessment

### *Policy and the principle of development*

10.1 The use of the site for a nursing home is established. The use is in keeping with the residential zoning of the area. The use is supported by policy NC19 of the development plan which is to locate such uses in residential areas. The site is in an established residential location close to a wide range of social and commercial facilities and transport links. It would therefore be supported by the criteria set out in section 17.2 of the development plan. The proposed development would therefore be supported by planning policy. The principle of the development is acceptable.

### *Flood risk and the justification test*

10.2 The decision of the planning authority referred to a failure to comply with the justification test set out in the guidelines on flood risk management, based on a recommendation from the planning officer which is in turn based on a report from the engineering division. However the provisions of the guidelines were not properly followed with respect to the applicability, or the application, of the justification test. The land on which the proposed extension would be built would be in 0.1% Tidal AEP Event (according to the CFRAM study which superseded the historical information on Floodmaps.ie), and thus within flood zone B as defined in the guidelines. The use of the proposed extension would be a highly vulnerable category of development under the guidelines' categories. However the proposed development would be an extension to an existing building that accommodates a facility which is both residential and commercial in nature. It would not result in a significant increase in the occupancy of the nursing home, as it would provide a total of 41 bedspaces compared to the existing total of 40. Contrary to the assertions of the observers, this is an integral fact of the proposed development. It can be specified in a condition on a grant of permission that would be enforceable. Therefore the proposed development would not introduce a significant number of people into the flood risk zone. The site is at the edge of the tidal flood risk zone and would not obstruct important flow paths. It would not entail the storage of hazardous substances. Therefore, according to section 5.28 of the guidelines, the justification test does not apply. The planning authority's stated reason for refusal therefore does not reflect the guidelines which it cites. The

current application was accompanied by a commensurate risk assessment which shows that the proposed development would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. It outlines operational measures for the nursing home to manage the residual flood risks and its consequences and so comply with best practice in the management of health and safety for its residents. A grant of permission for the proposed development would therefore be in keeping with the guidelines on the management of flood risk.

- 10.3 However if the board were minded to apply the justification test set out for development management set out in box 5.1 of the guidelines, I would advise it as follows. The site is zoned for the proposed use by a development plan that was adopted after the guidelines were taken into account, as stated in paragraph 10.1 above. The development would not increase flood risk elsewhere. The applicant's proposals includes operational measures to manage the residual flood risks and its consequences. As stated in the paragraph 10.4 below, the development is compatible with wider planning objectives regarding good urban design and active streetscapes. The proposed development would therefore satisfy criteria 1, 2(i), (ii), (iii) and (iv) of the justification test. The justification test explicitly requires consideration of the type and foreseen use of the development within the local development. In this case such a consideration would demonstrate that the proposed development was justified under the test, given its compliance with the criteria of the test and the limited increase in the population of the nursing home to which it would give rise.

*Impact on the character and amenities of the area*

- 10.4 The front of the nursing home is an important part of a prominent terrace that makes a significant positive contribution to the streetscape along a major arterial road, and thus to the architectural and historical character of Clontarf. The proposed development would have no impact on the front of the property or on the streetscape. The proposed extension would not be directly connected to the historic structures on the site. It would instead follow the line and form of a previous extension to them along the side and rear boundary of the site. Its scale and form would be subservient to the existing buildings. It would not, therefore, have a negative impact on the character of the site, or upon that of the wider area.
- 10.5 The proposed extension would reach the rear boundary of the site. The land on the other side of that boundary is occupied by an access track that serves the rear of the neighbouring properties. The proposed extension would be mostly behind a line of ancillary buildings at the rear of the neighbouring properties, including a two storey building at abuts the northern end of the western boundary of the site. Given its size, position and orientation, the proposed development would not unduly overlook, overbear or overshadow any dwellinghouse or private amenity space. It would not, therefore, injure the



amenities of properties in the vicinity of the site. With the removal of the laundry building, the proposed development would maintain the quantity and quality of private open space on the site available to its residents. The proposed development would not significantly increase the number of those residents, but would provide a better level of residential accommodation for them. The proposed development would therefore have a positive impact on the amenities of the area.

*Parking and access*

- 10.6 The site is located in an established residential close to a wide range of facilities and public transport links. There are public parking facilities within walking distance of it. The proposed development would not significantly increase the occupancy of the existing nursing home. In these circumstances, the fact that the proposed development does not include new parking or access arrangements would not justify refusing permission or substantially modifying the proposed development. The comments from the observers regarding the obstruction of their driveway and the continuous presence of bins in front of the nursing home are noted. The line of the kerb in front of the observers' house relative to the on-street parking immediately to the west is unclear and motorists could easily overlook the observers' right of way there. However this matter is not within the control or the responsibility of the neighbouring nursing home. Several large wheelie bins were observed on the footpath at the time of inspection, while a van was parked on the curtilage of the nursing home in the position marked for the storage of bins. I do not know if that was one of the days on which bin collections in the area are authorised. However the placing of bins on the public road is governed by specific regulations under the waste management acts, and it would not be proper to try and replicate or circumvent the enforcement procedures for those regulations in the context of a planning application.

*Appropriate Assessment*

- 10.7 The appeal site is not in a Natura 2000 site. The proposed development involves a small extension to an existing building on its own curtilage in a built-up urban area. There is no conceivable way in which it would be likely to have any significant effect on any Natura 2000 site, either individually or in combination with other plans or projects.

## **11.0 CONCLUSION**

11.1 The proposed development is an extension to an existing premises that would not introduce a significant additional population into the flood risk zone. So, under section 5.28 of the flood management guidelines, the justification test would not apply to it. The proposed development would comply with the provisions of the development plan, including the Z2 zoning objective, policy NC19 and the standards for nursing homes set out in section 17.2. of the area. It would not injure the character of the area or the amenities of neighbouring properties. It would improve the residential amenities afforded to the residents of the nursing home. It would be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

## **12.0 RECOMMENDATION**

12.1 I recommend that permission be granted subject to the conditions below.

## REASONS AND CONSIDERATIONS

The proposed development would be an extension to an established nursing home that would not introduce a significant additional number of people onto the site. It would therefore be consistent with the *Guidelines for Planning Authorities on Flood Risk Management* issued by the minister in November 2009, having regard to section 5.28 of those guidelines . The proposed development would be in keeping with the provisions of the Dublin City Development Plan 2011-2017, including the Z2 zoning of the site as a residential conservation area, policy NC19 regarding the provision of social infrastructure in residential areas, and the standards for nursing homes at section 17.20. It would not injure the character of the area or the amenities of property in the vicinity, and it would improve the amenities afforded to the residents of the site. It would be acceptable in terms of traffic safety and convenience, and would not require new parking or access facilities. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 4<sup>th</sup> day of September 2015, 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. The total number of residents in the nursing home on the site shall not exceed 41.

**Reason:** In the interest of clarity and so that the occupancy of the authorised development is in accordance with that assessed in the course of the application and appeal.

2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Prior to the commencement of development that developer shall submit full details and specification of the proposed drainage arrangements for the written agreement of the planning authority

**Reason:** To ensure adequate servicing of the development, and to prevent pollution

3. The external finishes of the proposed extension (including roof tiles/slates) shall be the same as those of the existing building to which it would be attached in respect of colour and texture.

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

4. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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.

5. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interests of sustainable waste management

6. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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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Stephen J. O'Sullivan  
2<sup>nd</sup> February 2016