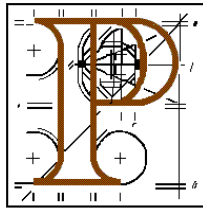


An Bord Pleanála



Inspector's Report

PL06D.245665

DEVELOPMENT:-

Retention of extension and conversion from storage to residential use of a single-storey structure into single-storey residential unit known as 'Pinecroft Lodge' and retention of landscaping and site works to rear of The Birches, Torquay Road Foxrock.

PLANNING APPLICATION

Planning Authority: Dun Laoghaire Rathdown County Council
Planning Authority Reg. No: D14B/0405
Applicant: Karl & Amanda Mulvee
Application Type: Permission
Planning Authority Decision: Grant

APPEAL

Appellant: Ms. Terry Gahan & Others
Type of Appeal: 3rd-V-Grant
DATE OF SITE INSPECTION: 19th January 2016
Inspector: Colin McBride

1. SITE DESCRIPTION

- 1.1 The appeal site is located in Foxrock and to the east of Leopardstown racecourse. The site is located in a residential area and consists of the entire curtilage of a detached dwelling at no. 6 The Birches (revised site boundaries include whole curtilage). No 6 is a substantial detached dwelling part of a small housing development of detached properties arranged around an open space area. The site is large and irregular in shape with an existing single-storey residential unit (subject to retention) located on the south western portion of the site. At present there is a wooden fence splitting the curtilage of the dwelling with the southern part of the site physically separated. The southern part of the site that includes the single-storey residential unit has been landscaped and features a parking area with vehicular access from an existing laneway and public road (The By-Way) that joins Westminster Road to the south of the site and continues as a pedestrian path into the Birches housing development running along the eastern boundary of the site. Boundary treatment on site is a mixture of existing trees and hedgerow and wooden panel fencing. In regards to adjoining development, there are detached dwellings to the east and west of the site (no. 5 and no. 7 the Birches). To the south and immediately adjacent the single-storey residential unit (subject to retention) is a two-storey dwelling, which has access from the Westminster Road. To the west of the site and immediately west of the garden area serving the single-storey unit is a detached dwelling fronting onto Torquay Road.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought to retention of extension and conversion from storage to residential use of a single-storey structure into single-storey residential unit known as 'Pinecroft Lodge' and retention of landscaping and site works to rear of The Birches. The residential unit has a floor area of 88.3sqm and a ridge height of 3.75sqm. The dwelling is in part of the curtilage of no. 6 the Birches and is effectively a subdivision of the existing curtilage of the main dwelling. The site is accessed from an existing laneway (extension of The Birches) that runs north from Westminster Road and along the western boundary of the site. The road and laneway serves existing dwellings to the south and east.

3. LOCAL AND EXTERNAL AUTHORITY REPORTS

3.1

- (a) Transportation Planning (09/01/15): No objection.

- (b) Planning Report (27/01/15): Further information required including clarification regarding the site boundaries and the works for retention, the size of the site, details of access to the site and clarify the situation regarding the status of the unit in regards to the existing dwelling within whose curtilage it is located.
- (c) Planning Report (20/04/15): Clarification of further information is required including clarification of the status of the proposed residential unit in relation to the existing dwelling within whose curtilage it is located.
- (d) Planning Report (23/07/15): Clarification of further information is required including clarification of the status of the proposed residential unit in relation to the existing dwelling within whose curtilage it is located.
- (e) Planning Report (25/09/15): It was considered that the proposal is for a unit that is ancillary to the main dwelling (no. 6 The Birches) and not a subdivision. The development was considered to be acceptable in regards to design, scale and land use. A grant of permission was recommended subject to the conditions outlined below.

4. DECISION OF THE PLANNING AUTHORITY

- 4.1 Permission granted subject to 9 conditions. Of note are the following conditions...

Condition no. 3: Development to be occupied by an immediate member of the family of the occupant of no. 6, The Birches and shall not be used as a separate dwelling, shall not be let or sold other than part of the overall property.

Condition no. 4: Within one year of the grant of permission the temporary wooden fencing separating the structure from no. 6 The Birches is to be removed.

5. PLANNING HISTORY

- 5.1 DA05A/1567: Permission was refused to A. Cassidy to construct a two-storey, detached dwelling on the application site.

1. The proposed development is on a site, zoned with the development object A 'to protect and /or improve residential amenity' and in a Conservation Area where the objective CA1 applies 'All proposals for new development should enhance the character and quality within a Conservation Area'. It is considered that the proposed dwelling, being located in parts only 1 metre from the southern boundaries is too close to this boundary, excessive in footprint and height, and therefore would have an overbearing visual impact on adjoining properties to the south and the rural character of the

Conservation Area. The proposed development is therefore contrary to the Policy CA1 of the Dun Laoghaire Rathdown County Development Plan 2004-2010. It is also considered that the proposed development would seriously injure the amenities and depreciate the value of the property in the vicinity. This is contrary to the proper planning and sustainable development of the area.

2. Policy 9.2.10 of the Dun Laoghaire Rathdown County Development Plan 2004-2010 seeks to retain as many trees as practicable in a residential development. In the case of a Conservation Area, which has a rural character, the retention of trees is more pertinent. In this regard a tree survey has not been submitted and the proposed development is shown to be constructed in close proximity to trees on the southern boundary. It is therefore considered that the proposed development is contrary to policy 9.2.10 of the Dun Laoghaire Rathdown County Development Plan 2004-2010.

3. Inadequate drainage details have been submitted; the proposed development is therefore considered to be prejudicial to public health.

5.2 PL06D.219078: Permission refused for a dwelling to rear of no. 6 The Birches.

1. The proposed development is located on a site zoned with the objective as set out in the current Development Plan for the area to protect and / or improve residential amenity” and in a Conservation Area where the objective to preserve or enhance the character and quality of the environment within a Conservation Area applies. Having regard to the restricted nature of the site and its location in relation to surrounding properties, the extensive tree cover on the site which contributes to the character of the area and the location of the house in close proximity to the road frontage and to boundaries, it is considered that the house as proposed on this site would constitute overdevelopment of the site resulting in an unacceptable loss of trees and hedgerows which would seriously injure the visual amenities of this Conservation Area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.3 D03B/0561: Permission granted to Noel and Ann Cassidy for an extension at first floor level to side over existing garage comprising master bedroom suite, single storey extension to living room to rear of house, removal and replacement of existing roof finish and alterations to front elevation at “Inishowen”, The Birches, Torquay Road, Foxrock, Dublin 18. This development was subject to a third party appeal and was granted by the Board subject to conditions under ref no. PL06D.204632.

6. PLANNING POLICY

6.1 The relevant plan is the Dun Laoghaire Rathdown County Development Plan 2010-2016. The site is zoned 'Objective A' with a stated objective 'to protect and/or improve residential amenity'.

6.2 Policy RES4: Existing Housing Stock and Densification

It is Council policy to improve and conserve housing stock levels of the County, to densify existing built up areas and to maintain and improve residential amenities in existing residential developments.

7. GROUNDS OF APPEAL

7.1 A third party appeal has been lodged by Feargall Kenny Planning Consultant on behalf of

Mr Eamon Williams, "Chesterbrook", The By-Way, Westminster Road, Foxrock, Dublin 18.

Mr Eoghan Clear, "Silkwood", The By-Way, Westminster Road, Foxrock, Dublin 18.

Ms Terry Gahan, "El Rincon", The By-Way, Westminster Road, Foxrock, Dublin 18.

Mr Victor Hamilton, 5 The Birches, Torquay Road, Foxrock, Dublin 18.

Mr J P McIvor, 7 The Birches, Torquay Road, Foxrock, Dublin 18.

The grounds of appeal are as follows...

- The proposal is contrary Development Plan policy in regards to Family Member/Family Flat development under Section 16.3.4 in that it is not attached and is a multi-bedroom residential unit. The unit also does not meet the criteria for a detached habitable room and is separate residential unit.
- The appellants note that the original structure was a garage and was never used as a separate residential unit despite the impression given in the documents submitted that it was.
- The appellants raise concerns regarding the carrying out of unauthorised development at this location and the lack of sanction for breaches of planning legislation. The appellants are disappointed by the lack of enforcement action by the Council.
- The appellants raise concerns regarding the fact that the no details regarding water or sewerage services and that the sewerage arrangement implemented

by the applicants without permission from the Council have resulted in blocked drains for some the appellants.

- The appellants note concerns about the breach of building regulations in regards to the extension for retention in terms of lack of submission of a commencement notice and supporting documentation prior to the commencement of works.

8. RESPONSES

8.1 Response by the Dun Laoghaire Rathdown County Council.

- The Planning Authority did not assess the proposal as a family flat/granny flat or detached habitable room and Section 16.3.4 of the Development Plan is not relevant.
- It is noted that Water and Foul Water is a matter for Irish Water and unauthorised connection is a civil issue.
- Buildings regulations are not a matter for consideration under a planning application.
- The PA considers that the decision to grant is appropriate and that conditions no.s 3 and 4 should be noted.

8.2 Response by Brock McClure Planning & Development Consultants on behalf of the applicants, Karl & Amanda Mulvee.

- The response outlines the history of the development noting it was used as a granny flat in the past and the intended use, which is accommodation for the owner of no.s 6's daughter and family.
- It is noted that it is compliant with development plan policy regarding land use and open space provision.
- It is noted that the unit in question should be assessed on its merits and that the conditions attached (no. 3) clearly link the development with the existing dwelling at no. 6 giving clarity to the situation. It is noted that there is no basis to refuse the development and that the residential unit meets all relevant standards
- It is noted that issues regarding unauthorised development relates to the dissatisfaction of the appellants with the planning process.
- In regards to drainage it is noted that the subject drains were historically linked and that blockages could be the fault of anyone connected to such. It is noted that this may be a legal issue.
- It is noted that buildings regulations are not within the remit of the Board.

9. ASSESSMENT

- 9.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development/Development Plan policy

Design, scale, physical impact

Other Issues

9.2 **Principle of the proposed development/development plan policy:**

- 9.2.1 The relevant plan is the Dun Laoghaire Rathdown County Development Plan 2010-2016. The site is zoned 'Objective A' with a stated objective a stated objective 'to protect and/or improve residential amenity'. The proposal is for the retention of the extension and conversion from storage to residential use of an existing single-storey flat roofed structure. The proposal entails the provision of a residential unit with a floor area of 88.3sqm and is a three bed residential unit. The unit in question is within the curtilage of no. 6 the Birches and the storage building subject to the change of use and extension would have been an ancillary structure to the main dwelling. In terms of land use zoning the proposed use is residential in nature and is in keeping with the zoning objective of the site subject to its physical impact being acceptable in regards to the amenities of adjoining properties. Such aspects of the proposal are to be discussed in the following sections of this report.

- 9.2.2 There is a condition confining the structure to being an ancillary structure to the main dwelling with the conditions specifying occupancy and the fact that such cannot be sold, let or rented independent of the existing dwelling. There is also a condition requiring the existing fencing that provides a degree of separation between the unit subject to this appeal and the existing dwelling be removed. It is notable that the information on the file indicates that the applicants wish the structure to be considered as ancillary to the main dwelling and not a separate independent residential unit. It would seem that what is proposed is not a subdivision of the curtilage of the existing dwelling for the purposes of providing a new separate dwelling. The appellants have highlighted policy 16.3.4 of the County Development Plan (attached). In particular Section 16.3.4 (iii) that relates to 'Family Member/Granny' Flat Extension. The appellants point out that the proposal is not compliant with this policy in that it is detached from the main dwelling and has more than one bedroom. I would consider that the proposal does not meet the criteria for a Family Member/Granny Flat Extension as set down under Section 16.3.4. The proposal is for a separate dwelling unit within the curtilage of the existing dwelling. The description on the public notices (revised notices) states that the proposal is for retention of the extension and conversion from storage to residential use of an existing single-storey structure. There is no mention in

the public notices of it being an ancillary structure. Having inspected the site I would consider that the site is more than big enough to accommodate the proposed residential unit as a unit independent of the existing dwelling on site and will discuss such aspects of the proposal in the following section. It is notable that there are differing views between the applicants and the appellants regarding the history of the structure subject to retention with the applicants noting that it was used as a granny flat in the past and the appellants noting that the application gives the misleading impression that the original structure was in residential use. I would note that this is not a relevant matter with the proposal being assessed on its merits and if it was applied for in the first instance.

9.3 Design, scale, physical impact:

9.3.1 The proposal is for a separate residential unit within the curtilage of an existing dwelling at no. 6 The Birches. The dwelling in question is located to the rear of the existing dwelling and there are a number of factors which I would consider it an acceptable standard of development. Firstly the proposal provides for more than adequate levels of private amenity space (in excess of Development Plan standards) to serve the new dwelling while retaining an acceptable level of amenity space with the existing dwelling on site (no. 6). There is independent vehicular access to the site from the existing laneway and public road (The By-Way) that lead to Westminster Road to the south of the site. In terms of physical impact the new dwelling is sufficiently separate from the existing dwelling on site and is of a modest scale. The dwelling itself relates well to the existing pattern of development and conforms to the building line of the dwelling located immediately south. The modest scale of the proposed dwelling in comparison to the adjoining dwellings and established boundary treatment would ensure that the dwelling subject to this application would have no significant or adverse impact on the residential amenities of adjoining properties.

9.3.2 The residential unit subject to retention has the benefit of separate vehicular access with the road network at this location of a reasonable standard to cater for the traffic associated with the proposed development. At present there is a fence separating the southern portion of the site from the existing dwelling to the north. It is a condition of the grant of permission that this shall be removed. I would question the need for removal of this fence as it provides for the complete separation of the existing dwelling and the residential unit subject to retention. Regardless of such I would consider that the proposal for a separate residential unit is satisfactory and provides for development of reasonable quality in terms of operating as separate independent residential unit without compromising the amenity of the existing dwellings or those on adjoining sites. In this regard I would recommend a grant of permission and

would not impose any conditions that restrict its occupancy or future use apart from a standard condition requiring it to be used as a single dwelling.

9.4 Other Issues:

- 9.4.1 One of the main issues raised in the appeal submission relates to unauthorised development and planning enforcement and the view that the applicants in this case have not faced the appropriate sanction for breaches of the planning legislation. This matter is not a planning consideration for the Board who has no function, remit or powers in regards to unauthorised development and enforcement. The proposal is being assessed on its merits and in accordance with proper planning and sustainable development of the area. I would also note that the Planning Act provides for the ability to seek retention as in the case of the proposed development. The proposal is being assessed on its merits and not based on its history in regards to unauthorised development. The issue of compliance with Building Regulations is not a planning consideration with the Board having no function in this regard.
- 9.4.2 The appellants have raised concerns regarding the water or sewerage services associated with the proposed development. I would consider that there is no reason why the dwelling in question cannot be serviced sufficiently in terms of water and sewerage services as it is in an existing serviced urban area. Notwithstanding such the Council have indicated that they are satisfaction with the proposal in regards to drainage and water supply. I would recommend applying a standard condition requiring that water supply and drainage arrangements, including disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- 9.4.3 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on a European site.

RECOMMENDATION

I recommend a grant of permission subject to the following conditions.

REASONS AND CONSIDERATIONS

Having regard to the residential zoning objective for the subject site as set out in the Dun Laoghaire Rathdown County Development Plan 2010-2016, the nature, scale and design of the proposed development, and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the

Development Plan, and would not seriously injure the visual amenities of the area or the residential amenities of adjoining property and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be in accordance with the plans and particulars lodged with the application, 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 entire premises (single-storey unit subject to retention) shall be used as a single dwelling unit only.

Reason: To prevent unauthorised development.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. 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.

Colin McBride
22nd January 2016