

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL06D.245679

Development: Retention of wall as constructed

Planning Application

Planning Authority: Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.: D15A/503

Applicant: Joanne & Michael Shelley

Planning Authority Decision: Refuse permission

Planning Appeal

Appellants: Joanne & Michael Shelley

Type of Appeal: First party

Date of Site Inspection: 26/1/16

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

- 1.0.1 The appeal site is located at no. 88 The Rise, Woodpark, Ballinteer, Dublin 16. The Woodpark housing estate is located off Ballinteer Avenue. It contains predominately two-storey semi-detached dwellings.
- 1.0.2 The site is situated at the southern end of The Rise within Woodpark. No. 88 The Rise is a detached two-storey dwelling which was constructed as part of the residential scheme including townhouses at The Copse, The Heights and The Dale which was built along the southern boundary of the Woodpark estate.
- 1.0.3 The subject wall was constructed from the front boundary wall of no. 88 The Rise to the boundary wall and railings at The Copse to the south. The wall extends for circa 18m and has a height of between 1.8m and 2m along the public path. On inspection of the site I noted that a section of the wall had been demolished and there are two sections of temporary construction fencing which restrict access.
- 1.0.4 The subject wall encloses an area of circa 180sq m which was formally grassed. The area has now been surfaced with loose gravel. The existing side boundary wall of no. 88 running from the rear of dwelling to the boundary with the residential properties to the west at Ballintyre Heath and Ballintyre Walk has been demolished.

2.0 PROPOSED DEVELOPMENT

Permission is sought for the retention of a wall as built to the south of the existing dwelling. Features of scheme include;

- Site area – 0.057 hectares,
- The proposed wall extends for circa 18m and has a height between 1.8m and 2m.

3.0 PLANNING HISTORY

Reg. Ref. D11B/0304 – Permission was granted for a single storey extension to the side and two-storey extension to the rear of the dwelling.

Reg. Ref. D06A/1659 – Permission was granted for the retention of a two-storey dwelling and boundary walls in revised positions from that previously permitted (Reg. Ref. No. D03A/0862) and for completion of the landscaping on adjoining public open space to the south on 0.06 of a hectare site.

Reg. Ref. D03A/0862 & PL06D.206125 – Permission was granted for 71 no. residential units at on site adjoining The Heights, The Hill and Ballinteer Road at Woodpark, Ballinteer Road, Ballinteer, Dublin 16. No. 88 The Rise was part of this overall scheme as was the area of land adjoining it to the south.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Internal Reports:

Transportation: No objections subject to conditions

Drainage Planning: No objection

Submissions

The Planning Authority received one submission in relation to the planning application. The issues raised did not directly concern the subject wall.

4.2 Planning Authority Decision

The Planning Authority refused permission for two reasons. The first reason refers to the fact the area of land enclosed by the wall is landscaped public open space identified under planning reference numbers D03A/0862/PL06D/206125, D06A/1659 & D11B/0304 and to permit the enclosure of the area set an undesirable precedent and seriously injure the amenities or depreciate the value of property in the vicinity. The second refusal reasons refers to the fact that the development would contravene materially Condition no. 1 of planning permission PL06D.205615 and conditions 1 & 3 of planning permission D06A/1659.

5.0 GROUNDS OF APPEAL

A first party appeal was submitted by Joanne & Michael Shelley on the 27th of October 2015. The content of the appeal submission can be summarised as follows;

- The appellants are appealing the decision of Dun Laoghaire-Rathdown County Council where permission was refused for the retention of a boundary wall at no. 88 The Rise Woodpark, Ballinteer, Dublin 16.
- The appellant's property which they purchased in 2006 is a three bedroom dwelling with a floor area of circa 1,050 sq feet (97.5sq m). Under Reg. Ref. D11B/0304 permission was granted for the extension of the dwelling.
- Following the extension of the dwelling the area of the rear garden was reduced and a limited area remained to serve the family including their two young children.
- There was an area of land beside the appellant's property which was owned by Park Developments. The appellants considered that the area of land was seldom used and approached the Park Developments to purchase the land to provide additional garden space.
- It was stated in the contract that the purchasers agree not to build a separate residence on the land. The subject land was purchased by the appellants and they employed the services of a solicitor and architect in this process.
- The land was made part of the existing back garden through the demolition of the existing side wall and the construction of a new boundary wall.
- The appellants were informed by Dun Laoghaire-Rathdown County Council that the construction of the wall required planning permission as it effectively annexes the public open space which was provided as part of the parent permission Reg. Ref. D03A/0862.
- The appellants state that when they purchased the land from Park Developments they were not aware that the land had been designated public open space.
- The Planning Authority did not receive any objections specific to the building of the wall. The land is not used by the community and the lack of objection indicates that residents in the area did not object to the enclosing of the land.
- The appellants request that the Board take their circumstances into account and overturn the decision of the Planning Authority.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

- To permit this proposal would set an extremely undesirable precedent for future similar development where land designated as open space could be incorporated into private gardens at the expense of the wider public and contrary to the provisions of previous grants of planning permission.
- It is clear from all planning applicants relevant to the site and the area this area of land was to be used as public open space.
- The Planning Authority consider that whether or not this matter was brought to the attention of the applicant's by the vendors is not relevant to the current planning application.
- The Planning Authority consider that the decision to refuse permission for the reasons cited in their decision was appropriate.
- The content of the original planning report should also be considered in the assessment of the appeal.

7.0 POLICY CONTEXT

Dun Laoghaire Rathdown Development Plan 2010-2016

The subject site at no. 88 The Rise, Woodpark, Ballinteer, Dublin 16 is located on Map 5 of the Dun Laoghaire Rathdown Development Plan and is identified as being Zoned Objective A 'to protect and/or improve residential amenity'.

- Chapter 5 – Residential Development
- Chapter 10 – Open space and Recreation
- Chapter 16 – Development Management

8.0 ASSESSMENT

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Planning history
- Principle of development
- Appropriate Assessment

8.1 Planning History

- 8.1.1 In order to assess the proposal to retain the wall constructed on the lands immediately to the south of no. 88 The Rise, Woodpark it necessary to establish the relevant planning history as it is pertinent to determination of the appeal.
- 8.1.2 The development of the Woodpark Estate took place over forty years ago. Under Reg. Ref. D03A/0862 & PL06D.206125 permission was granted for a residential scheme including blocks of townhouses on a site adjoining The Heights, The Hill and Ballinteer Road at Woodpark. No. 88 The Rise a two-storey detached dwelling was part of this overall scheme. The proposed original layout included a block of four residential units to the western side of the site, immediately to the south of no. 88. These units were omitted under condition no. 2. of the permission granted.
- 8.1.3 Condition no. 2 specified that block number 1 be omitted from the proposed development and the area freed shall be incorporated as communal open space and enhancement of parking arrangements at this location.
- 8.1.4 Under Reg. Ref. D06A/1659 the Planning Authority granted permission in relation to no. 88 The Rise for the retention of the two-storey dwelling and the boundary walls in revised positions from that previously permitted under Reg. Ref. No. D03A/0862 and for completion of the landscaping on adjoining public open space to the south on 0.06 of a hectare site. The permitted site plans and layout including drawing no: T156_A_504/A which clearly indicates the area of land immediately to the south of no. 88 is public open space with a 2m public footpath running along the eastern side.

8.2.1 Principle of development

- 8.2.1 The subject site is located on lands zoned objective 'A' to protect and/or improve residential amenity. It is proposed to retain the block wall constructed for circa 18m from the original side boundary of no. 88 to the boundary wall and railings at The Copse to the south.
- 8.2.2 The appellants state that they purchased the area of land to the south of their property from Park Developments to provide additional garden space. They further state in their appeal that prior to purchasing the land they were not aware that the land had been designated public open space.
- 8.2.3 While the area of land in the ownership of the appellants is not zoned objective 'F' To preserve and provide for open space, it is clear from the

planning history relating the site specifically Reg. Ref. D03A/0862 & PL06D.206125 and Reg. Ref. D06A/1659 that area of land is designated public open space. Notwithstanding the fact that the land is in the ownership of the appellants who own the adjoining residential property, the land forms part of the public open space available to the local residents which was granted under the permissions cited above.

8.2.4 It is considered that the retention in situ of the existing wall is contrary to condition no. 1 of the development permitted under planning register reference number PL06D.206125 and conditions no's 1 & 3 of the development permitted under planning register reference number D06A/1659.

8.2.5 The retention of the wall would result in the public open space area being enclosed and would therefore adversely impact on the use, enjoyment and permeability of the public open space area and consequently would seriously injure the amenities of the residential properties in the vicinity.

8.3 Appropriate Assessment

8.3.1 In relation to the matter of appropriate assessment, I consider that having regard to the nature of the proposal the retention of a wall and the nature of the receiving environment, namely a suburban and fully serviced location that no appropriate assessment issues arise.

9.0 CONCLUSIONS AND RECOMMENDATION

9.0.1 I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be refused for the following reasons.

REASONS AND CONSIDERATIONS

1. The proposed retention of the boundary wall would adversely impact on the use, enjoyment and permeability of an open space area and would therefore, seriously injure the amenities of the residential properties in the vicinity. The proposed development would set an undesirable precedent for similar development and would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development would contravene an existing condition (number 1) to a permitted development granted under appeal reference number PL06D.206125 and would contravene existing conditions (numbers 1 & 3) to a permitted development granted under planning register reference number D06A/1659 and would not be in accordance with the proper planning and sustainable development of the area.

Siobhan Carroll,
Inspectorate
29th of January 2016