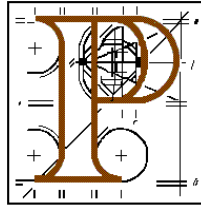


# An Bord Pleanála



## Inspector's Report

<b>Appeal Ref. No:</b>	PL06F.245787
<b>Proposed Development:</b>	Demolition of existing store and construction of a single storey two bedroom detached bungalow..
<b>Location:</b>	St. Judes, Carrickhill Heights, Portmarnock, Co. Dublin
<b>Applicant:</b>	Fintan Monahan and Fiona Monahan
<b>PA Reg. Ref:</b>	F15A/0419
<b>Planning Authority:</b>	Fingal County Council
<b>P.A. Decision:</b>	Refuse
<b>Appeal Type:</b>	First
<b>Appellants:</b>	Fintan Monahan and Fiona Monahan
<b>Observers:</b>	Mr & Mrs John Dolan
<b>Date of Site Inspection:</b>	22 <sup>nd</sup> January 2016
<b>Inspector:</b>	Una Crosse

## 1. SITE AND SURROUNDINGS

The appeal site is located within Portmarnock and comprises an area of ground measuring 393sq.m located to the south east of an existing property known as St Judes and its associated garden areas. St Judes comprises a two storey red brick dwelling which is located at a higher level than the appeal site. Ground level of the existing house is approximately 1.6m higher than the ground level of the proposed unit. The appeal site currently accommodates a store which it is proposed to demolish. Access to the site is via a laneway between No. 55 and No. 56 Carrickhill Heights and along the laneway to the adjoining properties which is accessed from Carrickhill Road Middle. The site is adjoined by dwellings within the Carrickhill Heights estate with a cul de sac of properties within Carrickill estate to the east of the site. To the north the site is adjoined by properties on Portmarnock Drive and to the west/northwest by detached properties on larger sites.

## 2. PROPOSED DEVELOPMENT

Development comprises the demolition of an existing store measuring 41.8sq.m and the construction of a new single storey two-bedroomed dwellinghouse with a ridge height of 4.3m providing a floor area of 96sq.m. Access is proposed via the existing access to the existing dwelling on site. A new boundary is proposed separating the proposal from the existing dwelling.

## 3. PLANNING HISTORY

The following is relevant to the appeal site:

**F15A/0261** Permission refused (July 2015) for the demolition of an existing store and construction of a single storey two bedroom detached bungalow for 4 no. reasons as per the reasons outlined by Fingal County Council in the present application as set out in section 5 below;

**F13A/0462** - Permission refused (Jan 2014) for the demolition of an existing store and construction of a single storey two bedroom detached bungalow for 2 no. reasons which are the same as reasons No. 2 and No. 4 outlined by Fingal County Council in the present application as set out in section 5 below

**PL06F.228019 - F07A/1557** – demolition of store and erection of a single-storey detached three-bed bungalow. The board refused permission for the following reason:

*“Having regard to the restricted size of the site, the design and siting of the proposed dwelling and its relationship to the adjoining properties, Saint Judes and 48 Carrick Hill Heights, it is considered that the proposed development would constitute overdevelopment and would result in substandard living conditions for future dwelling occupiers by reason of overlooking, loss of privacy and inadequate overlooked private amenity space. The proposed development would conflict with the standards for the provision of usable private open space, as set out in the current Development Plan for the area, and would, therefore, be contrary to the proper planning and sustainable development of the area”.*

**F01B/0421** - first floor extension to St. Judes granted permission.

#### **4. PLANNING POLICY FRAMEWORK**

##### **4.1 COUNTY PLANNING POLICY**

Fingal County Development Plan 2011-2017

##### Zoning

The site is zoned objective 'RS' in the Fingal Development Plan 2011-2017 which seeks to 'provide for residential development and to protect and improve residential amenity'

##### Policies and Objectives

Section 7.4 – residential development.

##### Objectives

RD04 - housing mix;

RD05 - adaptable homes;

RD10 - relating to infill and backland sites,

RD13 – daylight, sunlight and overshadowing,

RD19 - separation distance,

OS35 – private open space;

OS38 - open space.

#### **5. PLANNING AUTHORITY DECISION**

The Planning Authority decided to refuse permission for 4 no. reasons as follows:

1. The proposed development is located in an areas zoned objective 'RS' in the Fingal Development Plan 2011-2017 which seeks to 'provide for residential development and to protect and improve residential amenity'. Having regard to the restricted nature of the subject site, it is considered that the proposed development would, by reason of its layout and proximity to adjoining dwellings, be visually obtrusive, would appear as overdevelopment and would seriously injure the amenity of property in the vicinity by reason of overlooking and loss of outlook. The proposed development would therefore contravene materially the zoning objective for the area and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the restricted size of the site, the design and siting of the proposed dwelling and its relationship to the adjoining properties 'St Judes' and No. 48 Carrickhill Heights' it is considered that the proposed development would constitute overdevelopment and would result in substandard living conditions for future occupiers by reason of overlooking and loss of privacy. The proposed development would conflict with the standards for the provision of usable open space as set out in the Development Plan and would, seriously injure the amenities of the area.

3. The proposed dwelling by virtue of its design, scale and form would be out of keeping with the existing design, form and pattern of development in this backland area. The development would therefore contravene the zoning

objective of the Fingal Development Plan 2011-2017 which seeks to 'provide for residential development and to protect and improve residential amenity'. And as such would be contrary to the proper planning and sustainable development of the area.

4. The subject development would if permitted set an undesirable precedent for other similar development, which would in themselves and cumulatively be harmful to the residential amenities of the area, would seriously injure the amenities of the area. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.

Transportation Planning Section – No objection subject to conditions;

Water Services Planning Section – No objection subject to conditions

Parks Planning Section – Clear detailing required of proposal to retain hedgerow and a bond of €5,000.

Environment and Water Services Department – no objections subject to conditions;

Irish Water – no objection subject to conditions.

Three third party submissions were received the issues raised in which are included in the Planning Authority's reasons for refusal and the observation outlined below.

The Planners Report notes the following:

- The provision of a new dwelling is acceptable in principle on this zoning with the dwelling complying with the space requirements and room sizes set out in section 7.4 of the CDP;
- Planning history on the site is noted with reasons for refusal related to overdevelopment of the site, Impact on the amenities of both future and existing properties and the precedent that would be set;
- Proposed dwelling in current application repositioned from previous proposal such that it is staggered in nature with result that distances to boundaries are largely the same with distance to southern boundary reduced in places;
- Proposed to supplement existing boundary with combination of 3m high trees and 2m high screen block wall to mitigate impact on neighbours;
- Given variation in height between subject site and existing properties proposal has potential to give rise to unacceptable loss of residential amenities;
- Private open space of proposed dwelling would be unacceptably overlooked;
- Proposal constitutes significant overdevelopment of the site;
- Inconsistent and out of character with established pattern of development;
- Unacceptable impact on existing dwelling given proximity of proposal and loss of outlook;
- Applicant has failed to adequately address the previous reasons for refusal;

## **6. APPLICANT'S GROUNDS OF APPEAL**

The grounds of appeal may be summarised as follows;

- Layout and footprint redesigned with proposal c.8.6m south of existing dwelling;
- Internal layout revised with north facing windows removed to provide no perceived overlooking;
- Proposed boundary between existing and proposed units will be a 1.5m wall supplemented with 3m high trees;
- Separation of 10.15m between proposed and the eastern boundary with No. 48 Carrickhill Heights and 10.4m to No's 51-53;
- Fully useable private open space of 215sq.m provided;
- Propose to construct 2m high wall alleviating concerns regarding retention of trees with proposal single storey and 4.33m in height;
- Cross sections provided with application which shows relationship with existing property with site never viewed from existing property;
- No objection to proposal from other departments in the Council;
- Proposal appears to have been appraised solely under objective S35;
- Proposal accords with objectives set out in the Development Plan;
- The overdevelopment indicated by the PA relates only to distance and boundaries;
- Block Plan (Drwg PA2002) shows revised separation distances to St Jude to the north and 48 Carrickhill to the east;
- Appeal includes a traced overlay of the proposed site and invited PA to place same over the plot sizes of adjoining houses on Carrickhill Heights with proposal exceeding size of many existing sites including No. 48;
- Proposal cannot be considered overdevelopment given changes made and context;
- Concerned PA did not take due cognisance of revised application with revised bungalow type, repositioned on site to adequate screened private open space and windows omitted from northern elevation;
- Cannot understand how bungalow of 4.3m in height with 10.15 m rear garden could give rise to loss of residential amenity;
- No evaluation of how proposal would give rise to overlooking, impact on amenities, constitute overdevelopment or be inconsistent or out of character with the established pattern of development;
- Appeal deals with reasons No. 1 & 2 of the grounds of refusal;
- Reasons set out in No. 3 & 4 were previously adjudicated by the Board under PL06F.228019 where principle of infill was not precluded;
- Precedent concerns stated by PA were not accepted by the Board in case outlined above;

## **7. RESPONSES**

### **7.1 PLANNING AUTHORITY RESPONSE**

The planning authority commented on the appeal as follows;

- Appeal does not raise any additional issues that have not been addressed;
- Planning officer did visit the site but not deemed necessary to access the existing dwelling;

- Proposal comprises overdevelopment of a restricted site which if permitted would impact unacceptably on the amenities of the existing dwelling and other properties at Carrickhill Heights;
- Quality of the amenity space proposed to serve the existing dwelling severely compromised by reason of overlooking and contrary to objective OS35;
- Proposal would set an undesirable precedent for similar such inappropriate, haphazard and piecemeal developments in the area.

## 7.2 OBSERVATIONS

An observation was received from the owner of Lissadell, Carrickhill Heights which is summarised as follows:

- Proposal is fourth application for a new dwelling on the site;
- Little has changed from previous proposals with the site the same size but an altered dwelling;
- Open space standards are not met with new proposed unit;
- Store/garage was supposed to have been demolished to make way for the existing dwelling;
- Original dwelling extended under F01B/0421;
- Site would be overdeveloped;
- Drawings appear to indicate access from the property onto Carrickhill Heights however owners of appeal site and adjacent property use observers driveway onto Carrickhill Road;
- Additional traffic generated by the appellants business and St Michaels House bus collecting a passenger at observers property daily;
- Traffic using the laneway often required to reverse to let oncoming traffic pass;
- Additional traffic on driveway not appropriate as it is deteriorating with drawings showing no use of this lane;
- Main existing foul and water drainage running to the main road not shown with observer owner of the main private drain and no permission obtained to use same;

## 8. ASSESSMENT

This assessment will consider the following;

- Material Contravention
- Impact on Residential Amenity and Overdevelopment
- Appropriate Assessment

### 8.1 Material Contravention

At the outset of this assessment I would note that the first reason for refusal, referring to the zoning of the site, states that *“the proposed development would therefore contravene materially the zoning objective for the area and would be contrary to the proper planning and sustainable development of the area”* (my emphasis). Section 37(2)(b) of the Planning and Development Act 2000, as amended states that *“Where a planning authority has decided to refuse permission on the grounds that a proposed development materially*

*contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) 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”.*

Therefore where the Planning Authority refuse permission on material contravention grounds, the proposal must meet one of 4 tests in order to allow the Board to permit the proposal. The first of these tests as outlined above is that the development is of strategic or national importance. I do not consider that the proposal would meet this test. The second test is that there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned. I do not see any examples within the relevant policies and objectives which would suggest such conflict. The third test relates to regional policies, guidelines and directives etc. I do not consider that the proposal could be argued on the basis of any such policy, guideline or directive. The fourth test provides that 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. I do not see any examples in the area nor has the applicant provided evidence of same which would indicate that the pattern of development in the area or permissions granted would support the proposal. This application is the fourth such application made by the applicant for an additional dwelling on the site. In this regard it is considered that the proposal has failed to meet any of the four requirements and therefore the Board are not in a position to grant permission for the proposed development.

Notwithstanding, the matter of the material contravention and the test required to overcome same I shall address the other salient matter in this case that being the impact on residential amenity.

## **8.2 Impact on Residential Amenity and Overdevelopment**

The first three reasons for refusal cite matters relating to the impact of the proposal on residential amenity and to the overdevelopment of the site caused by the proposal. Reference is made to the restricted nature of the subject site and the relationship of the proposal to the adjoining properties. It is considered that the proposal would be visually obtrusive, would appear as overdevelopment and would seriously injure the amenity of property in the vicinity by reason of overlooking and loss of outlook. It was also stated that the proposal would result in substandard living conditions for future occupiers by reason of overlooking and loss of privacy. I will address these matters in turn.

### **8.2.1 Overdevelopment and Overbearing**

One of the main concerns highlighted throughout the planning process on this site is the consideration that the site is restricted and that the development of an additional property would appear as overdevelopment particularly given the relationship of any new building to the adjoining properties. The appellant is of the opinion that the proposal cannot be considered overdevelopment given the changes made and the context. The proposed unit while smaller and lower than previous proposals with the bulk broken up into effectively two small blocks is proposed within an area of ground to the south of the existing property. It is close to the south/southwestern boundary of the property with the access road directly to the north of the unit and a screening fence of 1.5m and 3m proposed to the northeast and east. The remaining site area to the north accommodates the existing property and an area of open space to its side and rear. The proposal would constitute the provision of two compromised properties on the site in my opinion. The existing property while retaining private open space will have a 1.5m boundary located 4.6 metres from its front elevation which I consider would be visually overbearing. While the site area of the proposed unit is at a lower level the amenity of the property will be compromised by the proximity of the roof and side gable of the new dwelling creating I consider an overbearing impact.

The proposed property is located 1.5metres below the ground level of the existing unit and would be adjoined directly by the access road and the south-eastern boundary and located 3.5 metres from the boundary with the existing property. The screening boundary with the existing property is 1.5m and the boundary with the properties in Carrickhill Heights is stated to comprise a 2m high wall and 3m and 5m screening boundaries. In my opinion, the amenity created for the proposed unit would be overbearing and oppressive and would lead to a substandard living environment within which the proposed development would have inadequate amenity. The form of development proposed, having regard to the measures proposed to preserve the amenities of other properties, would be substandard, in my opinion.

### **8.2.2 Parking**

The layout submitted shows two cars parked in front of both the existing and proposed properties. However, the cars shown are extremely small – approximately 3.5m in length and 1.5m in width. These measurements are well below the size of a family car and of the standard car parking space which is 5m x 2.5m. As an example an Opel Insignia measures 4.8m in length and c.2m in width. The layout also fails to indicate how two cars parked outside the proposed house would safely egress the property given the turning movements that would be required and the space available.

### **8.2.3 Overlooking**

The planning authority refers throughout their report and decision to overlooking and loss of outlook. It was also stated that the proposal would result in substandard living conditions for future occupiers by reason of overlooking and loss of privacy. In my opinion the proposed unit given its orientation, single storey aspect, location of windows would not lead to



overlooking. The overlooking from St Judes would be oblique from the first floor given the pitch on the roof of the single storey element of the existing property as it adjoins the proposed site and the lower level of the proposed unit. In this regard I do not consider that the proposal would create adverse overlooking.

### **8.3 Appropriate Assessment**

Having regard to the nature and scale of the proposed development, nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and proximity to the nearest European sites, 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.

## **9. CONCLUSION**

The proposal herein does not meet any of the four tests to overcome the material contravention cited in the planning authority's first reason for refusal. In this regard the Board are not in a position to overturn this reason for refusal. In relation to the protection of residential amenity, while I do not consider that the proposal would give rise to adverse overlooking, I consider that the proposal would comprise overdevelopment of a restricted site. It is my opinion that the proposal would compromise the amenity of the existing unit by creating an overbearing impact and would result in a substandard level of amenity for the proposed development.

## **10. RECOMMENDATION**

Having regard to the foregoing I recommend that permission is refused in accordance with the reasons and considerations set out below.

## **REASONS AND CONSIDERATIONS**

1. The site is located in an area zoned objective 'RS' to provide for residential development and to protect and improve residential amenity in the current development plan for the area. The Board considers that the proposed development would materially contravene the zoning objective, as set out in this plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b ) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the limited area and configuration of the site and its relationship to adjoining property, it is considered that the proposed development would be an inappropriate form of development at this location and would represent significant overdevelopment of this constrained site and

would result in a substandard residential unit and would seriously injure the amenities of adjoining residential property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Una Crosse  
Senior Planning Inspector  
February 2016.