

An Bord Pleanála



Inspector's Report

<u>Appeal Reference No:</u>	PL06F.245881
<u>Development:</u>	Attic Conversion
<u>Location :</u>	53 Castlemoyne, Balgriffin, Co. Dublin
<u>Planning Application :</u>	
Planning Authority :	Fingal Co. Co.
Planning Authority Reg. Ref. :	F15B/0235
Applicant :	Conor & Louise O'Dwyer
Planning Authority Decision :	Refusal
<u>Planning Appeal :</u>	
Appellant(s) :	Conor & Louise O'Dwyer
Type of Appeal :	1 st Party
Observers :	None
Date of Site Inspection :	15 th & 23 rd February 2016
<u>Inspector :</u>	L. W. Howard

1. SITE LOCATION AND DESCRIPTION :

The application site is located on the N urban fringe of Dublin, within 'Castlemoyne' residential estate. No.53 Castlemoyne is located approx. 100m S from the main entrance into Castlemoyne, on the SW side of an area of public open space, enclosed with 2-storey housing (see attached series of photographs taken at the time of physical inspection). No.53 is located centrally within a row of 6no. 2-storey dwellings, forming a crescent & overlooking the public open space & estate road to the N. With a stated floor area of 177m², No.53 is 'wedge-shaped' (ie. narrow to the front and widening out slightly to the rear), with a redbrick projecting bay window / canopy to the front, with the 1st floor level finished with painted render. The roof is finished with brown concrete roof tiles. Several communal parking bays exist to the front, around the open space. No.53 has access to the row of parking spaces immediately to the front. There is a communal parking bay to the front that is utilised by the 6no. dwellings that form part of the terrace (see attached series of photographs taken at the time of physical inspection, together with satellite imagery series).

2. PROPOSED DEVELOPMENT :

Application was made by Conor & Louise O'Dwyer (c/o Bernard Donovan – Donovan Architectural) for permission for development on the stated 0.0156ha site, advertised as – “a new attic room with dormer window to rear & rooflight to front to existing 2-storey mid-terraced house”.

These 2no. elements may be described as :

“new attic room, with dormer window to the rear” ~

- dormer – 4.1m wide x 2.4m height;
 - to project 3.6m from the face of the roof at the max. point;
- window – 1.8m wide x 1.2m height;
- all finishes to match the existing dwelling;
- 2no. rooflight in the rear roof slope;

“a roof light to front” :

- Located to front of existing dwellinghouse;
- To measure approx. 700mm x 700mm

The development will be served by existing public services (see series of documents, plans and drawings prepared by Bernard Donovan – Donovan Architectural, date stamped received by the PA on the 08/10/2015).

3. PLANNING HISTORY OF THE APPEAL SITE AND ITS ENVIRONS:

- (1) **Application site** : No relevant planning history apparent.
- (2) **Environs** : Parent Permission.

Reg.Ref.No. F03A/1328 Permission GRANTED to Shannon Homes (Dublin) Ltd (Managers Order No.1246/99, 10/03/2004, subject to 40no. Conditions) – “73 no. one and two bed apartments and 152 no. three and four bed houses plus a reserved site for a crèche in a 2/3/4 storey development including the regrading of the Mayne River for flood alleviation purposes and the demolition of an existing disused 1940's bungalow ruin. The development also includes a substantial Public Open Space which will augment the parking already proposed as part of the North Fringe Masterplan in the Dublin City Council administrative area, with vehicular access from Balgriffin Road and one lane of the future North/South dual carriageway of the realigned Malahide Road in accordance with Fingal Dev. Plan objectives.”, all at Balgriffin Park House, Balgriffin, Dublin 17. (see print-out attached, obtained from Fingal Co. Co. – ‘Planning Lists’ website).

4. PLANNING AUTHORITY DECISION :

(1) **Planning Authority Decision :**

Fingal Co. Co. as Planning Authority, by Decision Order No. PF/1404/15, dated the 18th Nov. 2015, decided to REFUSE PERMISSION for the proposed development, for 3no. stated ‘Refusal Reasons’, summarised as follows (see appeal file) :

Refusal Reason No.1: Serious injury to residential amenity, contrary to Zoning Objective – ‘RS’ (ie. “serious overlooking, both actual & perceived, of adjoining properties”);

Refusal Reason No.2: Visual Obtrusion (ie. resultant roof profile, “would render it out of character & incongruous with the adjoining dwellings & with the pattern of dev. in the area”.

Refusal Reason No.3: “... would set an undesirable precedent” for similar development (ie. both itself, & cumulatively).

(2) Planning and Technical Reports :

The Planning Officers report dated 18/11/2015, recommends that permission be REFUSED, generally for the same 'Refusal Reasons' set out in the Manager's Order below. This recommendation was made having regard to:

- (i) Confirmation of the nature and composition of the proposed development;
- (ii) Contextualisation of the application site in its Castlemoyne surrounds;
- (iii) Reference relevant provisions of the Fingal Co. Dev. Plan 2011-2017. Notably, the '**RS**' – Zoning Objective ... "*to provide for residential development and to protect and improve residential amenity*";
- (iv) No relevant site planning history apparent in the local area – (see 3(2) above);
- (v) No Departmental, or 'Prescribed' Body comments;
- (vi) PA planning report (see 18/11/2015) states "No submissions / observations received during the prescribed period".
- (vii) Pre-Planning consultations :
No 'pre-planning consultations' confirmed at para.19 of their application 'pro-forma';
- (x) **The Key Planning Issues:**
 - Principle of Dev. at the proposed location;
 - Integration with existing dwelling & Impact on residential amenity of the area;
- (xi) **Planning Assessment of Key Issues:**

Principle of Dev. at the proposed location :

- A domestic extension proposed to an existing dwelling;
- No.53 located within an area designated with the Zoning Objective 'RS' – "Provide for residential development and protect and improve residential amenity".
- Proposed dev. "is considered acceptable in principle".

Integration with existing dwelling & Impact on residential amenity of the area :

- Proposal – convert attic space for use as a master bedroom suite;
- Works incl. – a dormer window;
– 2no. rooflights to rear; &
– 1no. rooflight to front;

- Having regard to – the layout of dwellings to the rear; & the lack of separation distance between No.53 and No.27 to the rear (approx. 16m away);
Consequence – “would give rise to unacceptable levels of both actual & perceived overlooking of the private amenity space” of adjacent dwellings;
Conclusion – “the amenities of the rear garden area of this dwelling & others in the area would be completely eroded”;
- Visual Impact : Proposed dormer window, by reason of scale & mass, would :
 - “be visually obtrusive at this location”; &
 - “be out of character & incongruous with the established pattern of dev. & streetscape”;
- Precedent : Proposed dev. would
 - “set an undesirable precedent for other similar developments in the rear”
 - “by itself & cumulatively, be harmful to contextual residential amenities; &
 - “be contrary to the proper planning & sustainable dev. of the area”;

(xii) **Conclusion :**

Proposed development should be refused because :

- it would render No.53 visually obtrusive & out of character with surrounding dwellings;
- negative impact on residential amenities of adjoining properties; &
- It would set an undesirable precedent for the area;

(xiii) **Recommendation :**

Refusal, for 3no. stated ‘refusal reasons’ (see 4(3) below).

(3) **Technical Reports :**

No reports apparent.

(4) **3rd Party Objections / Submissions:**

No 3rd party objections or submissions.

5. 1st PARTY GROUNDS OF APPEAL – Conor & Louise O’Dwyer (c/o Bernard Donovan – Donovan Architectural Ltd. – 13/12/2015) :

(1) Introduction :

- (a) surprise & disappointment of PA’s refusal of “a standard attic conversion”;
- (b) challenge how “overlooking can be created, when it already exists” (ie. having regard to surround layout of sites);
- (c) how can character of the estate be upset, when proposed dormer “will be invisible from the front”;
- (d) challenge stated undesirability of precedent;
- (e) point out the Castlemoyne estate layout was approved by Fingal Co. Co.;
- (f) “overlooking was created” when the Castlemoyne estate layout was approved;
- (g) the PA argument that the proposed dev. would create overlooking “is ignoring the fact that it is an existing reality which will be neither improved nor worsened by our development”;
- (h) assert upset re. “one rule for developers” & another for individuals (house-buyers), who are “simply trying to better our family home to give us more space”;
- (i) hope for fair & pragmatic consideration of the appeal against the PA’s refusal of “a very common & non-obtrusive attic conversion”;
- (j) assert willingness to compromise :
 - on size or positioning of the dormer; or
 - remove front roof light if required;
- (k) emphasise that no neighbours / Castlemoyne residents objected to the proposed dev., notwithstanding its high visibility from the estate entrance & proximity to the main green.

(2) Refusal Reason No.1 – “...overlooking of adjoining properties” :

- (a) Clarify the reality / facts about the existing layout of neighbouring houses to No.53 (ie. a mid-terrace house) :
 - (i) overlooking, both actual & perceived, “is already inevitable based on the layout of houses surrounding ours” (ie. the layout approved by Fingal Co.Co.);
 - (ii) illustrate how all of Houses No. 25, 27, 29 & 49 “each have a window at 2nd floor / attic level which directly overlook our & surrounding rear gardens”;

- (iii)
 - taking word ‘adjoining’ literally, the PA have identified ‘overlooking’ of directly adjacent houses to No.53, both also 3-bed mid-terraced houses;
 - Point out that from existing 1st floor rear bedroom window of No.53, “we can currently see the overwhelming majority (80-90%) of the adjoining rear gardens”;
 - The proposed attic level dormer window would only marginally increase degree of overlooking;
 - (iv)
 - re. a less precise definition of ‘adjoining’, the PA address ‘overlooking’ of houses to the rear – No’s. 25, 27 & 29;
 - clarify these are all 5-bedroom homes, with a 5th bedroom at attic level;
 - confirm houses to rear of No.53 are “the closest” and are “at almost exactly the same level”;
 - confirm that from existing rear 1st floor bedroom of No.53 visibility into neighbours bedroom window & down into their rear kitchens is possible;
 - confirm “this overlooking is obviously reciprocated”;
 - (v) emphasise there is “already perceived & actual overlooking due to the original design of the estate”;
 - (vi) argue the addition of a attic level dormer to No.53, “would do little if anything to increase the level of overlooking”;
 - (vii) point out currently, the best location to overlook neighbours from no.53, “will continue to be out 1st floor bedroom thanks to Fingal Co.Co. approved design of Castlemoyne”;
 - (viii) point out No’s. 25,27 & 49 to the rear, all have clear, non-frosted window at attic level. Emphasise these “overlook our garden and / or house”;
 - (b) emphasise frustration that Fingal Co.Co. happy to permit houses with attic level windows “overlooking my garden, but the same Council is taking issue with this now”;
- (3) **Refusal Reason No.2 – “... be visually obtrusive & out of character with adjoining properties” :**
- (a) whilst agree Castlemoyne has an “established character & streetscape”, this is only true from the front of houses;

- (b) emphasise proposed dev. would not be visible from the front of No.53 & consequently, have “no bearing on established character & streetscape”;
 - (c) assert that from the rear, Castlemoyne “is unashamedly bland & lacking in character” (ie. all rear elevation comprise – white dash render; white PVC windows & concrete roof tiles to kitchen extensions);
 - (d) confirm that all materials etc. proposed for the new dormer window, “were as existing or similar to existing materials that exist in Castlemoyne”;
- (4) **Refusal Reason No.3 – “... undesirable precedent” :**
- (a) specify only precedent would be “for other 3-bed houses to request permission for rear attic dormers”;
 - (b) argue if all approx. 10no. 3-bed houses within Castlemoyne were to build rear facing attic dormers, “Castlemoyne would look exactly as it does today from front street level & none of the estates character would have been compromised”;
 - (c) ref. to ‘precedent’ as being “undesirable, is clearly subjective”. In the case of the PA against the proposed dev. – based on creating ‘overlooking’ & being ‘visually obtrusive’;
 - (d) “if you disagree with these assertions, as we do, then the ‘undesirable’ label disappears & this point becomes null & void”.

6. RESPONSES/OBSERVATIONS TO 1st PARTY GROUNDS OF APPEAL :

- (1) **Planning Authority Response (see 18/01/2016) :**
- (a) Confirm no further comment to the PA – ‘planning report’ dated 18/11/2015;
 - (b) Were appeal to be successful, request the Board make provision for application of a ‘financial contribution’ in accordance with Fingal Co. Co’s. ‘Sect. 48 – Development Contribution Scheme’;

7. POLICY CONTEXT :

Fingal Co. Development Plan (2011-2017):

Relevant provisions incl. –

Chapt. 9 Land Use Zoning:

Zoning Objective “RS” Residential

Objective: Provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Residential’

(see Map – Fingal Co. Dev. Plan 2011 Land Use Zoning Objectives).

8. PLANNING ASSESSMENT :

(1) I have considered all of the issues argued in the 1st Party Appeal, thoroughly inspected the application site and its Castlemoyne environs (see attached photographs), reviewed the relevant parent planning permission (**Reg.Ref.No.F03A/1328**) and assessed the proposed development in the light of the Fingal Co. Dev. Plan 2011-2017, and of National Policy (ie. DoEH&LG.’s Guidelines re. Sustainable Residential Dev. in Urban Areas (2009).

I believe that the relevant issues in review of the merits of this appeal relate to:

- (a) Principle and location of the proposed development;
- (b) Visual Impact / Streetscape;
- (c) Precedent;
- (d) Section 48 – Development Contribution Scheme 2016-2020; &
- (e) Residential Amenity Impact.

(2) Principle and location of the proposed development:

I believe the planning ‘principle’ of residential development at No.53 within the existing, established Castlemoyne estate community has been established. Framed against the ‘parent permission’ granted under **Reg.Ref.No. F03A/1328**, and clearly zoned “RS – Residential”, the applicable zoning matrix designates ‘residential’ land use as being ‘permitted in principle’ within the zone (see para.7 above, together with the copy of the relevant section of the ‘Zoning Objectives Map’ attached). I do not believe that any of the PA or 1st Party interests contest this. However, in terms of the applicable “RS” Residential zoning objective, the primary consideration is to, whilst enabling residential development, ensure the protection and improvement of the residential amenity prevailing in the contextual, established

'Castlemoyne' residential neighbourhood. In fact, the "RS" Residential Vision, seeks to "Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity". Understandably, this is a weighted concern of the Planning Authority. I will discuss the threat of negative impact by the proposed development, on adjacent established residential amenities below.

In my view, access to reasonably sized and laid out living space by the applicants' – C. & L. O'Dwyer, is a reasonable expectation of their domestic 'unity of everyday life', living at No.53 Castlemoyne. Having regard to the information available on file, and to my observations made at the time of physical inspection, I understand that this would not easily be achieved in terms of the existing size, scale, composition and configuration of No.53, as purchased, and which motivated the applicants' towards extension and renovation of a size and composition, consistent with modern living and having regard to 'stage in the life-cycle' liveability needs. The challenge to the applicants' however, having regard to planning design 'principle' and the relevant requirements of the Fingal Co. Dev. Plan 2011, is to ensure their proposed rear attic conversion development has no disproportionate adverse impact on the scale & character of existing No.53; and no unacceptable impact on the amenities enjoyed by adjacent neighbours (ie. loss of privacy; access to natural light & visual). In this regard, I have had detailed review of all the plans and drawings outlining the proposed development, submitted by the applicant.

Having regard to the National and Regional Sustainability and Spatial Strategies, as well as the D.o.E.'s. Sustainable Residential Dev. in Urban Areas (2009), I affirm no objection 'in principle' to the development of an attic conversion at No.53, as proposed. Whilst only a minor conversion development to an existing 2-storey, 3-bed, mid-terrace house, I believe that the proposed development would positively enhance the economic use of existing infrastructure and serviced land within the Castlemoyne Estate, and reduce the need for new residential development & assoc. infrastructure investment by way of intensification and densification. The Fingal Co. Dev. Plan 2011 itself (see 1.5 Core Strategy – Metropolitan Consolidation Towns; 7.4 Residential Development (Objective RD01); & Housing Density (Objective RD16), commits to the more integrated and sustainable use of all existing, residentially zoned lands, to be characterised by higher

residential densities and a more compact urban fabric, whilst ensuring the quality of the proposed residential environment.

However, having regard to the discussions below, particularly that of resultant threat to residential amenity, perceived and / or actual, consequent of overlooking (ie. loss of privacy) & visual obstruction, and mitigation thereof, I believe that the proposed development is sufficiently compliant with these Fingal Co. Dev. Plan 2011 policies and objectives, and as proposed, would be in accordance with the proper planning and sustainable development of the Castlemoyne Residential Estate.

(3) **Visual Impact / Streetscape:**

The sense of place of the 'Castlemoyne' residential estate is clearly influenced by the architectural style, design, and general finishing with respect to materials and colouring of the existing 2-storey houses comprising the estate, all set in a local topographical and environmental context. All parties to the current case, in my view, understandably aspire to preserve this amenity. This amenity and assoc. sense of place, can be seen from the photographs attached, taken at the time of physical inspection. I have taken note of the established, contextual scale and pattern of residential development within Castlemoyne generally, and proximate to No.53 (ie. the application site) specifically. All parties are certainly correct in pointing out the high visibility of No.53 from the main entrance into Castlemoyne. However, what is also certain in my view, and weighting reference to my own observations made at the time of physical inspection (see attached series of photographs), is that as one moves through the estate road network, no practical visibility is reasonably possible of the rear of any of the houses comprising Castlemoyne, and including and specifically, the rear of No.53.

I do not share the PA's conviction that the proposed rear attic conversion, would cause such a fatally flawed, negative impact on the existing visual and associated residential amenity in the vicinity, so as to justify a refusal of planning permission. In fact, I share the view advocated by the applicants' that when viewed from the front and from every reasonable vantage point possible around the green, and through the estate road network, the proposed dormer window would not be visible at all. From the rear, intervisibility is restricted to the rear elevations and rear yards / gardens of surrounding properties, of which

there are only few. I weight reference to the fact that no neighbours or other Castlemoyne property owners lodged an objection to the applicants' modest rear attic conversion proposed at No.53.

In my view, a refusal decision, as argued for & applied by the PA, would be disproportionate to the argued infringement, if such were to be the case at all, and having regard to the fact that a consequent visual impact, must logically and reasonably be expected of any attic conversion, or any other type of home alteration, conversion or extension development on the application site. In my view, this cannot be avoided, subject to compliance with the Co. Dev. Plan 2011.

In my view, application of the provisions of the Co. Dev. Plan 2011, should be towards positively enabling reasonable home improvements, and protection of residential amenities both of individual property owners, as well as collectively, rather than appearing as a tool in the hands of PA's, restricting development possibility and blocking development as appears to be the case re. No.53.

Positive consideration of the proposed rear attic conversion at No.53, is assisted by the fact that the front of the existing mid-terrace house addresses the public realm (ie. main entrance; green; estate road network & communal parking areas), with the only evidence of the proposed development being the single 'rooflight' proposed to the front. In itself, and weighting reference to its functionality, I do not believe there to be any fatally flawed, negative visual externality consequent of this single 'rooflight'. I repeat that no reasonable, practical visibility of the rear elevation and roof of No.53 is possible, at all. I certainly share the conviction asserted by the applicants' that consequently, the proposed rear attic conversion at No.53 would have "no bearing on the established character & streetscape" of Castlemoyne. Further, I share their view that the architectural design and associated materials, colouring and finishing characterising the rear elevations and rooflines, is "bland & lacking in character" (ie. all rear elevation comprise – white dash render; white PVC windows & concrete roof tiles to kitchen extensions). In my view, it is to the applicants' advantage that all materials, colouring & finishes proposed for the new dormer window are, "as existing or similar to existing materials that exist in Castlemoyne";

Accordingly, I am inclined to the view of the resultant change in the prevailing 'Castlemoyne' Estate streetscape, consequent of

supplementation with the proposed rear attic conversion to No.53, as minor, and would not be overbearing on the common scale and uniformity of the immediate adjacent residents, and the neighbourhood in context, with no obvious disproportionate negative impact on the prevailing residential amenity. I believe that the proposed development would be in accordance with the proper planning and sustainable development of the area

(4) **Residential Amenity Impact:**

In as much as I understand amenity values as referring to those natural or physical qualities and characteristics of the 'Castlemoyne' estate, that contribute to residents appreciation of its pleasantness, liveability and its aesthetic coherence, I am of the view that the proposed new attic conversion at No.53, will have no serious, or disproportionate negative impact on this prevailing residential amenity.

I consider this to be the case having regard to the discussion of the impact on the prevailing visual amenity and local estate streetscape at 8(3) above, which I have argued, would not negatively influence the character and quality of the contextual residential amenity enjoyed in the neighbourhood.

Privacy or a freedom from observation is, I believe, a basic qualitative aspect of residential design, and which is acknowledged within the Fingal Co. Dev. Plan (2011). I consider that para. 7.2 Urban Design – Privacy / Amenity, and Objective OS35 – 'Overlooking' of the Co. Dev. Plan seeks to ensure that housing layouts achieve reasonable levels of such privacy. In this regard, I believe that the proposed new rear attic conversion at No.53, would not disproportionately threaten the levels of privacy currently enjoyed by adjacent and proximate residents. I reference that Objective OS35 – 'Overlooking' provides "a minimum standard of 22m between directly opposing rear 1st floor windows shall generally be observed unless alternative provision have been designed to ensure privacy". Having regard to the 'site layout' submitted, and to my own observations made at the time of physical inspection, I confirm that the rear yard / garden space serving No.53 has an approx. 12m depth. This is more than half the necessary 'Standard', that each rear garden / yard depth must reasonably be expected to provide of the 22m 'Standard'.

In this light I note with curiosity, the PA's statement that the separation distance between No. 53 and No.27 'Castlemoyne' to the rear is

approx. 16m. Rather, I believe the separation distance to be 18m. Whilst this is clearly short of the 22m 'Standard', I argue that this is no fault of the applicants', who exceed what must reasonably be regarded as their share of the 22m (ie. 11m).

Accordingly, I am empathetic to the applicants' argument that they are victims to an already fatally flawed 'site block plan' (see drawing no.15-01_P_002) approved by the PA on the 10/03/2004 under the 'parent permission' – **Reg.Ref.No. F03A/1328**. In fact, having closer regard to the 'site block plan', none of the understood 5-bed, 2-storey houses comprising the rows of houses to the W of the rear garden of No.53, have a back to back separation distance anywhere near the 22m 'Standard'. Therefore, contrary to the PA's argument I believe that it is not the proposed rear attic conversion at No.53 that will "completely erode" the amenities of the rear garden area of No.27 to the rear, and others, but rather the 'parent permission' with consequence of a series of 'sub-standard' back to back separation distances down the row, westward, away from No.53.

I do not share the PA's stated conviction argued against the proposed rear attic conversion (re. in itself will "completely erode"). Rather, a 'norm' re. separation distances was established at the time of the 'parent permission', to which all residents subscribe. I certainly do not believe such 'privacy' amenity, or rather lack of it (ie. at least to 'Standard') will be eroded by the proposed development, and certainly not worsened.

Having regard to Objective OS35, I note that a degree of mitigation has been enabled with the oblique positioning of the respective rear elevations of No's.53 & 27. I point out emphatically that the applicants' "planning hardship" can only be sharpened by the fact that all of the 5-bed, 2-storey houses to the rear (ie. S) and west (W), already have their attics converted as part of the **Reg.Ref.No. F03A/1328** 'parent permission'. It is this on-site, domestic amenity improvement via conversion of their own attic at No.53, which in my view, the applicants' reasonably aspire to.

Having regard to my own observations, I share the applicants' conviction that there is already 'perceived & actual' overlooking due to the original design of the 'Castlemoyne' estate", permitted by the PA under **Reg.Ref.No. F03A/1328**. Further, I agree with their argument that the addition of an attic level dormer to No.53, "would do little if anything to increase the level of overlooking". I strongly share this conviction. The applicants' themselves correctly point out that from their existing 1st floor rear bedroom window of No.53, "we can currently

see the overwhelming majority (80-90%) of the adjoining rear gardens”. As shown at photographs no. 8 & 9 this is clearly the case at present.

Further, visibility into rear neighbours rear gardens, rear bedroom windows & into their kitchens is possible, and which “overlooking is obviously reciprocated”. I am empathetic to the applicants’ frustration that ‘perceived & actual’ overlooking already exists due to no fault of theirs, but rather as a consequence of the original design of the ‘Castlemoyne’ estate”. In this regard they understandably emphasise frustration that Fingal Co.Co. was happy to permit houses with attic level windows “overlooking my garden, but the same Council is taking issue with this now” (ie. the row of 5-bed, 2-story houses to the rear).

I am mindful further, of reasonable mitigation enabled by boundary treatment and perimeter planting existing, and to be reasonably anticipated around the rear perimeter of the domestic properties. In this regard, I reference the rear garden at No.53 as being the exception amongst adjacent other rear gardens, which are clearly substandard. Accordingly, I have no planning objection to these design elements, and conclude no undue or disproportionate overlooking and consequent loss of privacy to contextual residents to the side or rear, will result. In this regard, I emphasise that no amenity to the rear will be worse off, in my view, consequent of the proposed development.

Having regard to the scale, height, design and placement of the proposed new rear attic conversion within the rear roof profile of No.53, no threat of negative impact on prevailing residential amenity is clearly apparent, by way of overshadowing. In this regard, I reference that Objective OS36 – ‘Overshadowing’ simply provides “Ensure private open space for all residential unit types are not unduly overshadowed”.

Again, when viewed from the front and rear adjacent gardens, I believe that the associated bulk and massing of the proposed rear attic conversion at No.53 would not be overbearing on the common scale and uniformity of the residential amenity enjoyed by the immediate adjacent residents, and within ‘Castlemoyne’ in context.

I do acknowledge the potential for negative impact of construction activity on contextual residential amenity, whilst site works and construction activity are on the go. However, I consider that these impacts are only temporary, are to facilitate the completion of the

proposed development, and certainly cannot be regarded as unique to this modest development. Further, I consider that given these impacts are predictable and to be expected, they can be properly and appropriately minimised and mitigated by the attachment of appropriate conditions to a grant of permission, should the Board be mindful to grant permission, and deem such mitigation of negative impact of site works and construction activity on contextual residential amenity necessary.

Consequently I believe that whilst the proposed rear attic conversion development at No.53 'Castlemoyne' would certainly bring a modest change to the local neighbourhood, the proposal is satisfactorily compliant with the Zoning Objective "RS" – "Provide for residential development and protect and improve residential amenity", and accordingly would be in accordance with the proper planning and sustainable development of the area.

(5) **Precedent :**

The PA are clearly of sufficient conviction to conclude that the proposed rear attic conversion development at No.53 "would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area". This opinion clearly constitutes the substance of the PA's 'Refusal Reason No.3. Having regard to the above discussion (see 8(2) – (4)), I do not share this conviction.

Rather I have had regard to the proposed rear attic conversion as on the one hand, enabling a positive domestic amenity improvement for the applicants', whilst consequentially the prevailing residential amenity being no worse off than it is at present, and in reasonable accordance with the 'RS – Residential' zoning objective. Contrary to the PA's expressed conviction, I do not consider the proposed rear attic conversion as undesirable.

In my view, land use management is not 'static', but 'dynamic'. 'Precedent', in my view is not always 'negative'. Rather, it can be positive and enabling, and depends on the application of reasonable discretion where possible. I am inclined to the view that it is up to the PA to manage the 'dynamic', not stop or block change, in fear of any decision to grant planning permission today, being used by future potential applicants, as a lever to force open the door to any decision to grant planning permission in the future. In my view, it was always to be

reasonably anticipated that this pressure would be manifest in the 2-storey, 3-bed terraces, as opposed to the 5-bed detached & semidetached houses within Castlemoyne, understood already comprising attic conversions.

If in fact the grant of planning permission for a rear attic conversion at No.53 were indeed to become persuasive, when deciding future planning applications within Castlemoyne Estate, with similar elements, issues or facts (ie. precedent), I do not believe such to be as onerous as the PA makes the case out to be, resulting in 'Refusal Reason No.3'. No.53 comprises a 2-storey, 3-bed, mid-terrace element of a row of 6no. houses, of which there are three others (ie. rows of 5no., 5no. & 5no. houses), all orientated around the central green space at the entrance to Castlemoyne. Together these comprise the minority house type, of all those comprising Castlemoyne Estate, granted under the 'parent permission' **Reg.Ref.No. F03A/1328**, and all of which potentially pose similar livability challenges to that currently being addressed by the applicants' at No.53. If so, and subject to compliance with relevant objectives & standards at that time, if 'precedent' were to be a relevant and enabling consideration consequent of any grant of planning permission at No.53, then so be it, in my view. I would have regard to this as a positive, enabling consideration. In my view, the current application at No.53 may be the first. However, I am certain it will not be the last within Castlemoyne.

In my view therefore, the PA's 'Refusal reason No.3' should not be sustained. Accordingly, I conclude the proposed rear attic conversion at No.53, Castlemoyne would be in accordance with the proper planning and sustainable development of the area. I recommend to the Board accordingly.

(6) **Section 48 – Development Contribution Scheme 2016-2020 :**

I note that in their written response (see 18/01/2016) to the 1st party appeal, the Planning Authority request that if the appeal were to be successful, that the Board make provision for application of a 'financial contribution' in accordance with Fingal Co. Co's. 'Sect. 48 – Dev. Contribution Scheme'.

I have had reference to the Fingal Co. Co's. 'Sect. 48 – Development Contribution Scheme 2016-2020' (see copy attached). I note that at para. 10(i) – 'Exemptions & Reductions', provision is included for "(b)

Attic Conversion's", as a category of development to be exempted from the requirement to pay development contributions under the Scheme. Accordingly, simply having regard to para.10(i)(b) "Attic Conversion's" of the PA's own 'Development Contribution Scheme -2016', and without any other substantive motivation to the contrary, I do not agree with the PA's request that the applicants" be required to make a 'Development Contribution' payment.

(7) **Requirement for 'Appropriate Assessment' under Article 6(3) of the Habitats Directive 92/43/EEC:**

I have had reference to Article 6(3) of the Habitats Directive (Council Directive 92/43/EEC). Having regard to the DoEHLG Directive for Planning Authorities', together with the provisions of Article 6(3); the location of the application site at No.53 Castlemoyne, proximate to Natura 2000 sites within Fingal Co. and beyond; to the nature and scale of the 'attic – conversion' development proposed; to the nature of the receiving environment, namely a suburban and fully serviced location; and to the separation distance and absence of a clear direct pathway to the nearest Natura 2000 sites, 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. RECOMMENDATION:

Having regard to all of the above, I recommend that permission be GRANTED in accordance with the following Schedules.

REASONS AND CONSIDERATIONS

Having regard to the Zoning Objective "RS" for the area and the pattern of residential development in the area, it is considered that, subject to compliance with Conditions set out in the Second Schedule, the proposed development would be in accordance with the relevant provisions of the Fingal Co. Dev. Plan 2011-2017; would not seriously injure the amenities of the 'Castlemoyne' neighbourhood, or of the property in the vicinity; would not be prejudicial to public health; and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

- (1) The development shall be carried out 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity, and that effective control be maintained.
- (2) All the external finishes shall harmonise in materials, colour and texture with the existing finishes on the house.

Reason: In the interest of orderly development and the visual amenities of the area.
- (3) The house shall be used as a single dwelling unit.

Reason: In the interest of clarity.
- (4) Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.
- (5) The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

Leslie Howard
Planning Inspector
23/02/2016