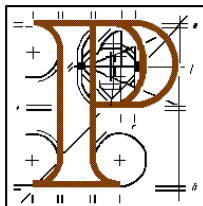


An Bord Pleanála



Inspector's Report

An Bord Pleanála Ref.:

PL. 06.S.245900

Development:

Permission for residential development comprising of 10 no dwellings, the proposed development is comprised of

- (1) 4 no Type A, 2 bed two storey semi-detached houses with attic conversions;**
- (2) 4 no type B, 3 bed two storey end terrace houses with attic conversions**
- (3) 2 no type C, 2 bed two storey mid terrace houses with attic conversions,**
- (4) Proposed new vehicular access road from St John's Road. (Passing over lands owned by South Dublin County Council) and**
- (5) Connections to all services and all ancillary site development works.**

Location:

Lands fronting Fonthill Road and to Rear of St Johns Road, Clondalkin, Dublin 22.

Planning Application

Planning Authority:

South Dublin County Council.

Planning Authority Reg. Ref.: SD15A/0294

Applicant:

Paul Crowley

Type of Application:

Permission.

Planning Authority Decision:

Refuse permission.

Planning Appeal

Appellant: Paul Crowley.

Type of Appeals: 1st Party v Refusal

Observers: None

Date of Site Inspection: 22 March 2016.

Inspector: Bríd Maxwell.

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.3137 hectares (overall site incorporating Commons Road land owned by south Dublin County Council), is located to the rear of St John's Road, Clondalkin. The development site (0.2786hectares) is a backland vacant plot of land enclosed by the old Common's Road, Fonthill Road, houses fronting onto St John's Road and a HSE health centre site containing a single storey flat roofed structure. To the north east is a bungalow type dwelling and to the north east a two storey commercial building.¹ Access to the appeal site is from St John's Road via Commons Road. The northern boundary of the site adjoining houses fronting onto St John's Road is defined by a 2.1m high boundary wall. The eastern site boundary is defined by post and wire fence and hedging. The boundary with Fonthill road is defined by a boundary wall approximately 2.1m in height. There is an existing 225mm diameter public foul sewer with 6m wide wayleave running through the western part of the site. There is an open space to the west of Commons Road and a single storey dwelling to the west of this. Adjacent dwellings on the southern side of St John's Road which back onto the site are predominantly two storey whilst those on the northern side of St John's road are of dormer type.
- 1.2 The general area is mixed use in character. There are a number of schools to the north east of the site with retail / commercial uses also. To the south of Fonthill Road there is an apartment block which is generally 3 storeys in height but also contains a limited 4 storey element. The lands to the west and south are generally characterised by suburban 2 storey housing. The Commons Road, formerly a through pedestrian route is closed off by way of railing and is overgrown and unkempt. Documentation provided on the appeal file indicates that this

¹ The HSE site, site of two storey commercial building and bungalow dwelling site were subject to amalgamation to create the site of proposed Primary Care Centre permitted under PL06S239890 (SD11A/0135).

pedestrian route which is not overlooked was closed off due to concerns over dumping and anti-social behaviour.²

1.3 The Fonthill Road is identified as an intended location for the Metro West Rail line and documentation is provided from the RPA outlining the extent of the strip of permanent land along the Fonthill Road which would be required for the proposed Metro Service.

2.0 PROPOSED DEVELOPMENT

2.1 The proposed development is permission for a residential development comprising of 10 no dwellings as follows:

- 1)** 4 no Type A, 2 bed / 3 person two storey semi-detached houses with attic conversions;
- 2)** 4 no type B, 3 bed / 5 person, two storey end terrace houses with attic conversions
- 3)** 2 no type C, 2 bed / 4 person, two storey mid terrace houses with attic conversions,
- 4)** Proposed new vehicular access road from St John's Road. (Passing over lands owned by South Dublin County Council) and
- 5)** Connections to all services and all ancillary site development works.

2.2 The proposed layout provides for a linear open space area of 361m² along the Fonthill Road. It is envisaged that this open space area will be subject to future CPO as permanent land take if / when the metro west line is constructed. The proposed layout provides for the construction of a 2.4m high blockwork wall as part of the development works for the proposed metro service.

² SD15A/0329 Note concurrent application which sought permission for pedestrian access gate at the intersection of Common's Road and Fonthill Road. Refused 18th December 2014. Refer to 5.0 Planning History below for reason for refusal.

3.0 DEVELOPMENT PLAN CONTEXT

- 3.1 The South Dublin County Development Plan 2010 – 2016 applies. The site is zoned Objective A - to protect and / or improve residential amenities.
- 3.2 A specific objective of the plan is to provide for LRT Luas and Light Rail Transit Extension proposals along Fonthill Road.
- 3.3 Section 2 of the plan sets out policy on housing. Policy H1 '*Higher Residential Densities*' seeks to encourage higher residential densities at suitable locations, particularly close to existing or proposed major public transport corridors and nodes, and in proximity to major centres of activity such as town and district centres. Section 1.2.13 identifies the following locations as appropriate for higher residential densities: town centres, brownfield sites, public transport corridors, inner suburban/ infill – where appropriate and institutional lands.
- 3.4 Policy H4 '*Public Transport Corridors Densities*' promotes increased densities within 500m walking distance of a bus stop, or within 1km of a light rail stop or a rail station. The capacity of public transport will be taken into account. In general, minimum net densities of 50 dwellings per ha will be applied to public transport corridors, with the highest densities located at rail stations/bus stops, and decreasing with distance from such node.
- 3.5 Policy H5 '*Inner suburban/ infill Densities*' promotes the provision of additional dwellings on appropriate sites within inner suburban areas, proximate to existing or due to be improved public transport corridors, particularly to eliminate where there is proven anti-social behaviour in the area, by facilitating infill residential development or sub-division of dwellings.

- 3.6 Policy H13 '*Sustainable Development of Existing Built-Up Areas*' promotes the appropriate sustainable development of existing built-up areas in order to retain population levels and delivery of local services. Policy H14 '*Infill Development in Residential Areas*' encourages the consolidation of the County through well designed, responsive infill developments, located where there are good connections to public transport and services, and that are compliant with the policies and objectives of the plan.
- 3.7 Section 1.4 of the plan, '*Sustainable Neighbourhoods*' provides guidance for the design of housing developments including urban design, street environment, building height, residential amenity, internal layout and open space provision.

4.0 NATIONAL POLICY

4.1 Sustainable Residential Development in Urban Areas May 2009

- 4.1.1 The Guidelines encourage high quality sustainable residential development, urban form and design. They are concerned to promote a sequential approach to development and to create an overall design framework with linkages to the existing developed area. They support Local Area Plans and the phasing of development, also having regard to the availability of infrastructure. Regard is had to the availability of community facilities, public transport and the quality of open space. Chapter 3 concerns the role of design. Chapter 4 provides for planning for sustainable neighbourhoods. Chapter 6 refers to growth in small towns and villages, which it defines as 400 to 5,000 persons and provides that higher densities are appropriate in certain locations.
- 4.1.2 Chapter 7 deals with the home and its setting and discusses issues such as daylight, sunlight, privacy, open space and communal facilities.

Regard is had to the accompanying DOEHLG 'Urban Design Manual-A best practice guide 2009' and to the 12 criteria to promote quality sustainable urban design discussed in this document. Regard is also had to the application of these criteria, which are divided into three sections: Neighbourhood, Housing Site and Home.

5.0 PLANNING HISTORY

Appeal Site

- **SD15A/0329** Application by Paul Crowley for pedestrian access gate at the intersection of Commons Road and Fonthill Road. The pedestrian access gate is located on lands owned by South Dublin County Council. Permission was Refused on 18th December 2015 for the following reason:
“The provision of a pedestrian route at this time would only be feasible in the event of residential or other development taking place on the lands to the east, as such development would provide the required level of overlooking, public lighting and passive observation which would deal with issues such as dumping and anti-social behaviour which the existing dark and overgrown Commons Road would facilitate. Provision of a pedestrian link at this time would result in a dark and unattractive route which would attract anti-social behaviour. The proposal which is not linked to any redevelopment of adjoining lands is therefore premature and would not comply with Policy SN14 which requires such links to be directly overlooked.”
- **SD14A/0278** Application for residential development of 10 dwellings. Previous application deemed withdrawn as further information was not submitted within the requisite timeframe.
- **SD07A/0271** Application for construction of 4 three bedroom two storey semi-detached houses and 37 no two bedroom apartments in four blocks ranging in height from 3 to 5 storeys all with projecting balconies over basement car park. Refused on basis of prematurity pending

determination of metro west layout, overdevelopment in terms of scale and height.

Adjacent site to the east

- **PL06S2389890 (SD11A/0135)** Permission upheld on appeal for demolition of all existing buildings on site and construction of an integrated healthcare facility with vehicular access from Boot Road/ Convent road to include a 306 storey primary Care centre building with incorporated pharmacare centre, café, HSE administration, medical treatment rooms, ancillary service areas and staff facilities, a 1-3 storey nursing home building to accommodate 80 bedrooms, ancillary amenity and service areas and staff facilities; surface and basement level car parking, vehicular entrance and associated carriageway adjustments, signage, substation / switch room, revised boundary treatments, landscaping and all ancillary services and development. I note that the Inspector's report had recommended refusal on grounds of traffic and concerns regarding scale and height. The Board in its decision made a number of modifications to the proposal to address design and scale concerns. In particular condition 2 required the removal of the second floor of the nursing home, obscuring of second floor north facing windows. Condition 3 required that the first or second floor of the primary care centre be omitted thereby reducing the development by 1 floor from 5 to 4 storeys over basement level.

6.0 PLANNING AUTHORITY'S DELIBERATIONS AND DECISION

6.1 Submissions to the Planning Authority

Submission from Convent Road Area Residents Association CARA

- Generally supportive of the proposal however concerns arise regarding potential for creation of an entrance onto Fonthill Road.
- Submission from Cllr Breeda Bonner supports the application however notes significant local opposition to the opening up of pedestrian access via the Old Commons Road to Fonthill Road.

- Cllr Eoin O Broin supports the application however objects to the creation of a pedestrian access onto Fonthill Road.

6.2 Interdepartmental Reports

- Water Services Planning Report – No objection subject to conditions.
- Irish Water Report – Further information required in relation to requirement for 3 metre wide wayleave each side of the foul sewer free of structures.
- Roads Department report – no objection subject to conditions.
- Parks and Landscape Services report asserts that proposed open space should be incorporated into the private garden space of house no 10 to avoid anti-social behaviour issues. A contribution in lieu of open space should be paid to the amount of €15,000 for the development of existing local parks Clondalkin Park and Corkagh Regional Park.
- Planner's report notes significant pre-planning discussions in relation to the proposal however concerns arise in relation to overlooking, overshadowing and overbearing impact arising from permitted health care centre building. Separation distances of between 17 and 22.75m from a part three part four storey building of between 12.1m and 15.5m in height. Refusal recommended.

6.3 Decision

6.3.1 South Dublin County Council issued its notification of decision to refuse permission dated 8th September 2014 for the following reasons:

“(1) Having regard to the siting and orientation of proposed dwellings 5-10 in relation to part 3 part 4 storey primary health care centre permitted under An Bord Pleanála Ref PL06S239890 and particularly to the 17m to 22.75m separation distance from the north-west elevation of this building as permitted, it is considered that seriously inadequate levels of residential amenity would result. The identified units within the proposed residential development would be overshadowed for significant periods of the year, would be overlooked and would experience loss of privacy in addition to suffering from very significant

levels of overbearing impact. The proposed residential development would therefore materially contravene the A zoning of the area as set out in the South Dublin County Development Plan 2010-2016, which seeks to 'protect and/or improve Residential Amenity' and would be contrary to the proper planning and sustainable development of the area.

(2). The proposed development would set an undesirable precedent for other similar developments which would in themselves and cumulatively, be harmful to the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area."

7.0 GROUNDS OF APPEAL

7.1 First Party Appeal.

7.1.1 The first party appeal is submitted by Simon Clear and Associates, Planning and Development Consultants. The grounds of appeal are summarised as follows:

- Site is centrally located within a well-established residential area and there is significant local support for the proposed development.
- Decision of the planning authority raises issues other than those evident in the request for additional information which issued as part of the previous application.
- Account should be taken of the wider benefit of the development of the site on the wider amenities of the area.
- No specific references within the development plan to standards for overbearing as a context for assessment of planning applications for residential development.
- Primary care centre building is set a distance from the north western site boundary and fenestration and use of rooms arranged to minimise overlooking onto adjoining properties.
- The nearest part of the permitted primary care building is located 5.245 metres from the site boundary at the closest point and is angled away from the boundary with an increasing separation. The nearest part of the building is a substantially blank wall in its presentation towards the north western site boundary.

- The most significant glazing to the primary care building is in the south-western elevation overlooking Fonthill Road and the Dublin Mountains. The view northwest is a secondary aspect from that room at any level.
- The west end section of the building contains a stairwell located 8 metres from the site boundary which has no windows on the northwest side and side window facing north east lighting the nearest room.
- The north eastern wing has a link to the east wing which is occupied by the lift core and separate large male and female toilets, which would have obscure glazing located at 10 metres from the site boundary. This occurs at 1st and 2nd floor and the building is recessed at 3rd floor level.
- Rooms at upper levels are low occupancy rooms. Generally the primary care centre would be substantially unoccupied after 4pm and unoccupied at night at weekends and holiday periods.
- Proposed dwellings have standard rear garden length of 11m. The nearest distance from the permitted primary care centre to the nearest dwelling is c18m increasing to approximately 23m in the north-eastern wing which is angled away from the rear of the proposed dwellings. There is minimal realistic potential for injurious overlooking of the proposed units 5-10.
- Objective criteria should be applied in relation to shadowing. Shadow path diagrams submitted with the application show that the proposed development which is to the northwest of the permitted primary care centre receives shadow for a short period around 9am in the morning at the equinox. By 12 noon the shadow does not affect residential windows. By 3pm there would be no shadow on any part of the residential site and this remains the case into the evening.
- Analysis requested by the Planning Authority is not in accordance with standard guidance on the assessment of daylight and sunlight. Shadow effects at the winter and summer solstice are irrelevant.
- Morning light and shadowing are far less relevant in terms of amenity than afternoon and evening light. The proposed development will not add significantly to overshadowing of residential units or reduction in

availability of sunlight to properties located beyond the western boundary. No loss of amenity as a result of overshadowing.

- Since most residents have left before 9am and before the primary care centre is occupied neither overshadowing nor overlooking are relevant in the early part of the day. Morning is a time when there is less potential heat gain due to night time cooling. Therefore there are no amenity or sustainability parameters that are relevant in the morning.
- The proposal has been incorrectly assessed in relation to the provisions of the South Dublin County Development Plan 2010-2016. The elements assessed by the Planning Authority do not individually or cumulatively injure the residential amenity of the area in general nor do they have negative implications for the particular houses in the proposed development.
- There are no references to or standards for assessment of overbearing. Objectives of the plan are not present nor are the objectives clearly stated insofar as the proposed development is concerned to form a basis for determining material contravention or to support a reason for deciding to refuse permission.
- There are many instances in Clondalkin, Tallaght and other places where tall buildings have been permitted close to two storey houses in South Dublin in particular noting Primary Care Centre and nursing home in relation to existing dwellings on St John's Road to the north.
- Development is in accordance with the provisions of the primary zoning objective. The density is in accordance with Section 28 Guidelines on Sustainable Development in urban areas.
- An Bord Pleanála is not precluded from determining this appeal by reason of a reference to material contravention in the decision of the planning authority.
- Proposed modification to unit 10 is offered for the consideration of the Board. The rear return at ground floor level will have obscured glazing. First floor rear bedroom is re-orientated to provide a window in the side elevation where it cannot be overlooked.

8.0 RESPONSES TO THE APPEALS

8.1 Planning Authority Response to the Appeals

8.1.1 The reasoning on which the Planning Authority's decision on the application was based is set out in the planning report and has already been forwarded to An Bord Pleanála. It is not proposed to respond in detail to the grounds of appeal as the Planning authority considers that the comprehensive planning report deals fully with all issues raised and justifies its decision.

9.0 ASSESSMENT

9.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider that the key issues arising in this appeal can be considered under the following broad headings.

- Principle of development. Question of material Contravention.
- Quality of design and layout, residential amenity.
- Other matters.

9.2 Principle of development

9.2.1 As regards the principle of development, the site is zoned Objective A to protect and/or improve residential amenity and the proposal to provide residential development on the site is acceptable in principle and is appropriate in terms of the zoning objective. I note that the site is well-located in close proximity to all amenities and to existing and proposed public transport and therefore the proposal is in principle in accordance with the general policy desirability to increase densities

within serviced urban areas in the interest of efficient land use resources and economies of scale.

9.2.2 The site is presently underutilised and provides potential venue for anti social behavior and dumping and therefore its development for residential use is appropriate. Furthermore as clearly evidenced within the third party submissions to the local authority the proposal has significant local support. On the issue of reference within the Council's decision to material contravention of the development plan, I concur with the first party appeal submission that as residential development is acceptable in principle in accordance with the zoning objective the proposal does not constitute a material contravention. I refer to Section 27 of the Planning and Development Act 2000 as amended where the various circumstances in which the Board may grant a permission, even if the proposed development materially contravenes the development plan relating to the area. These circumstances include where there are conflicting development plan objectives, development is of strategic or national importance and where permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under Section 28, permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the development plan. The First Party has asserted that there are conflicting objectives and that the development should be granted having regard to the pattern of development and permissions in the area since the making of the development plan. I consider that as the development is in accordance with the primary zoning objective for the site the issue of material contravention does not arise and the Board is not precluded from granting permission.

9.3 Quality of Design and Layout – Residential amenity.

9.3.1 The site is currently underutilised and in terms of layout the proposal adopts an appropriate response to a number of the site constraints in terms of protection of established residential amenity, the adherence to public foul sewer wayleave and future RPA landtake.

9.3.2 As regards the issue of the residential amenity of the proposed dwelling units, the proposed layout and design provides for an adequate standard of residential amenity in terms of meeting the minimum standards in terms of floor areas and private open space provision. As noted above the proposal provides for a temporary linear strip of public open space along Fonthill Road which will be subject to future RPA land take. The open space proposed is poor in quality however I note that the Planning Authority recommended the imposition of a contribution in lieu of permanent open space and it is envisaged that this would be used towards the development of existing local parks such as Clondalkin Park and Corkagh Regional Park. I consider that in the context of this infill residential development proposal this approach would be appropriate.

9.3.3 On the issue of impact on established residential amenity, the proposal generally provides mitigation by design to address the impact in terms of overlooking of the adjacent dwellings. Proposed dwellings 1 and 2 are proximate (6.2m and 8.2m) to adjacent two storey residential property boundaries on John's Road and notwithstanding angled orientation a degree of overlooking of established rear gardens would arise.

9.3.4 The key issues raised in the Council's reasons for refusal relates to the separation of proposed houses 5-10 from the development permitted on the adjoining site being within the range of 17m to 22.75m. Within the Council's assessment, it was noted that the proportion of height to separation distance between the primary care building and the proposed houses would range from 1:1.1 to 1:1.8 which would give rise to a significant overbearing impact. It was further asserted that the extent of glazing on the primary care centre building would result in

significant overlooking. It was therefore concluded that the combination of overlooking, overbearing impact and overshadowing would result in a significant negative impact on the residential amenity of the proposed dwellings.

9.3.5 This issue was also envisaged in the Planning Inspector's assessment of PL06S128780 for the primary care building and nursing home where it was asserted that the proximity of the proposed building would give rise to a requirement for greater setback distances on the appeal site. The proposed layout of houses 5-10 adopts a standard minimum setback in the range of 11.6m to 12.6m. Whilst I have some sympathy with the First party in respect of the impact of the permitted development on the potential for development of the appeal site and note the acknowledgement of the Planning Authority of the extensive pre-planning discussions carried out, having reviewed the proposed development in the context of the permitted development on the adjoining site, I would tend to concur with the Planning Authority that the proximity and scale of the proposed primary care centre would give rise to significant overlooking visual intrusion and overshadowing which would result in a severe sense of the dwellings 5-10 being overwhelmed by the primary care centre. Having regard to the foregoing I would tend to agree with the conclusions of the planning authority that the proposed layout does not respond appropriately to the permitted development and therefore requires a more innovative redesign.

9.3.6 On the issue of density, the proposed development of 10 houses on a site of 0.278 hectares would result in a density of c. 36 houses per hectare. This is below the minimum net density of 50 dwellings per hectare, to be permitted at public transport corridors as per development plan policy H5. Housing policy H8 refers to a density of 35-50 dwellings per ha in residential developments, in order to ensure the greatest efficiency of land usage and states that development at net densities less than 30 dwellings per hectare will generally be

discouraged, particularly on sites in excess of 0.5 ha. I note that national and development plan policies on increased residential densities are subject to the protection of residential amenity in existing areas, ref. section 1.2.18 and policy H11 of the development plan.

9.4 Other Matters

9.4.1 As regards servicing, technical reports on file raised no specific concerns in terms of public sewer capacity and public water supply. The issue of traffic is not an impediment to development on site. I have noted above decision of South Dublin County Council in respect of associated proposal for a pedestrian access gate at the intersection of the Common's Road and Fonthill Road which was refused on the basis that it would be premature pending redevelopment of the current appeal site. Clearly the provision for improved pedestrian permeability in this area is desirable however I also note significant third party objection to same. Clearly a comprehensive approach to the overall proposal is desirable in the interest of proper planning and sustainable development.

9.4.2 As regards the issue of Appropriate Assessment, having regard to nature of the proposed development and the proposal to connect to existing public services together with the separation from any designated European Site and having regard to the source pathway receptor model, it is not considered that the proposed development is likely to have significant effect wither individually or in combination with other plans or projects on a European Site. It is therefore considered that appropriate assessment under the Habitats Directive (92\43\EEC) is not relevant in this case.

10.0 RECOMMENDATION

- 10.1 I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be refused for the following reasons.

REASONS AND CONSIDERATIONS

1. Having regard to the design, siting and orientation of the proposed development in the context of the part 3 part 4 storey over basement primary health care centre permitted on the adjoining Ref:PL06S239890 and in particular to the separation distance of proposed dwellings 5-10 in the range of 17metres to 22.5metres from the north-western elevation of the permitted primary care centre building, it is considered that the development would lead to a poor standard of residential amenity for the intended occupants of proposed dwellings 5-10 and the proposed layout thereby contravenes the objectives of the South Dublin County Development Plan 2010-2016, the Sustainable Urban Housing: Design Standards for New Apartments Guidelines, Department of the Environment Heritage and Local Government, 2007 and Quality Housing for Sustainable Communities, Department of the Environment Heritage and Local Government, 2007. The proposed development would result in a substandard form of amenity which would seriously injure the amenities of the area and would fail to provide an acceptable level of amenities for future occupants. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Brid Maxwell
Inspector
5th April 2016-