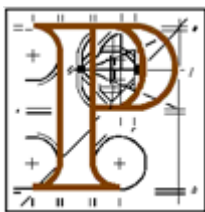


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL06D.246176

Development: House with new vehicular and pedestrian access of the Fosters.

Location: 18 Foster's Avenue, off The Fosters, Mount Merrion, Co. Dublin.

Planning Application

Planning Authority: Dun Laoghaire-Rathdown County Council

Planning Authority Reg. Ref.: D15A/0732

Applicant: Robert Stack

Planning Authority Decision: Grant permission

Planning Appeal

Appellants: Peter & Renata Duggan

Type of Appeal: Third party

Date of Site Inspection: 15/4/16

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

- 1.0.1 The site of the proposed development is located at no. 18 Foster's Avenue, Mount Merrion, Co. Dublin. Foster's Avenue is located to the western side of the Stillorgan Road (N11) in South County Dublin. The site has a stated area of 0.02966 hectares. It comprises the southern section of the plot of no. 18 Foster's Avenue, a property containing a single storey dwelling.
- 1.0.2 The site has frontage of 19m along The Fosters. The Fosters is a cul-de-sac which contains five detached dwellings. The eastern boundary adjoins the rear garden of no. 16 Foster's Avenue which is the appellants' property. The southern site boundary adjoins the side boundary of no. 5 The Fosters.

2.0 PROPOSED DEVELOPMENT

Permission is sought for the house with new vehicular and pedestrian access of the Fosters. Features of scheme include;

- Site area – 0.02966 hectares,
- Area of proposed dwelling – 123.8sq m.
- Ridge height of new dwelling – 2.6m & 3.7m

3.0 PLANNING HISTORY

Reg. Ref. D15A/0281 & PL06D.245135 – Permission was granted for the demolition of outbuildings, partial demolition of external and internal walls and 2 No. chimneys of house. Construction of extension, refurbishment of house and all associated works.

Reg. Ref. D15A/0282 – Permission refused for the construction of a single-storey dwelling to the rear of no. 18 Fosters Avenue. Refused on the grounds of overdevelopment of the site and impact on residential amenity of adjoining properties.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Internal Reports:

Water and Environmental Services: No objections subject to conditions.

External Reports:

Irish Water: No objections subject to conditions.

Submissions

The Planning Authority received one submission in relation to the planning application. The issues raised are similar to those set out in the appeal and observations.

4.2 Planning Authority Decision

The Planning Authority granted permission subject to 13 no. conditions.

5.0 GROUNDS OF APPEAL

A third party appeal was submitted by Auveen Byrne Associates on behalf of Mr & Mrs Peter & Renata Duggan on the 18th of February 2016. The content of the appeal submission can be summarised as follows;

- The appellants have resided at no. 16 Foster's Avenue for the past 27 years.
- Pre-planning consultation took place and the applicant was advised that the main issues of concern were the impact on the amenity of no. 16 16 Foster's Avenue. It was stated that it would be preferable to retain all mature trees.
- In early 2015 the applicant Mr Stack sought and received the agreement of the Duggans for the removal of all mature trees. The Duggans were not aware of the plans for the proposed new dwelling and would not have agreed to the removal of the trees had they known. The subject trees have now been removed.
- It is considered that the proposed dwelling should be assessed as backland development and not as a side or corner site.

- It is stated that the massing and proximity of the proposed dwelling to no. 16 Foster's Avenue is similar to the scheme proposed under Reg. Ref. D15A/0282.
- It is requested that the Board consider the subject site as part of the garden of no. 18 Foster's Avenue.
- The proposed new dwelling would be 14m from the rear of no. 18 and 12m from the rear extension. The proposed development is considered contrary to the development plan policy in relation to backland development as there should be 15m between the two properties.
- The private amenity space to serve the new dwelling at 43.5sq m is considered contrary to the development plan requirement of 48sq m.
- The applicant states that there is a total of 131sq m of amenity space on site. The appellants content that much of these areas do not constitute private amenity space.
- The proposal to provide one on-site car parking space is considered insufficient as the dwelling could be extended to have three bedrooms.
- The proposed dwelling would be 0.5m higher and it would be located close to the party boundary. The setback between the proposed dwelling and the appellant's property no. 16 is considered inadequate.
- The flat roof and brick finish is considered out of character with the surrounding development.
- It is considered that the current proposal does not differ materially from the previous refusal on site to warrant a grant of permission.
- Condition no. 5 attached by the Planning Authority de-exempts otherwise exempt extensions. This indicates that proposal represents tight development.
- The applicant's architect stated that the permission granted by the Board (ABP ref: PL06D. 244431) was a grant in almost identical circumstances. In the assessment of that appeal the proposal was considered backland development rather than a corner site. Having regard to the similarity between the subject site and the site of the development granted under PL06D. 244431 it is stated that the proposal at no. 18 Foster's Avenue should also be considered backland development.

- In conclusion, it is requested that the Board refuse permission for reasons similar to those in respect of the previous application on site Reg. Ref. 15A/0282 and also Reg. Ref. D14A/0721 at no. 21 Woodlands Park.

A further submission was received from Auveen Byrne Associates on behalf of the appellants on the 19th of April 2016. The main issues raised are as follows;

- The report of Dermot Casey Tree Care is significant further information in relation to the felling of mature trees on site. The applicant has stated that the trees were felled on site on foot of the recommendation of the report. The appellants contend that the tree report is inadequate to justify the removal of the trees on site.
- It is noted that policy RES 4 of the Dun Laoghaire Rathdown County Development Plan 2016–2022 is similar to that of the 2010-2016 Development Plan.
- It is also noted that the policy in relation to backland development set out in the current development plan is similar to that of 16.3.4 (vi) of the 2010-2016 Development Plan.
- In relation to the proposed private amenity space the proposed north-eastern courtyard is considered substandard due to potential overlooking.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 First Party response

A response to the third party appeal has been submitted by Mahoney Architecture on behalf of the applicant Mr. Robert Stack on the 16th of March 2016. The main issues raised concern the following;

- The currently proposed dwelling has been designed in response to the previous reason for refusal on site.
- In relation to the matter of pre-planning the proposal was considered favourably by the Planning Authority during the pre-planning consultation process.

- The removal of the trees on site was carried out by the applicant prior to the original planning application. The trees were removed following a detailed condition survey and report.
- Regarding the determination of whether the site is classed as a corner/side garden site or a backland site. It is considered that the site has been correctly determined to be a corner/side garden site.
- The proposed development is fully in compliance with the relevant quantitative standards in the Development Plan. The Planning Authority concluded that the development is a corner/side garden development and should be assessed in accordance with the quantitative appropriate standards.
- It is suggested that the proposed two bedroom dwelling could be extended to a three bedroom property. The proposed development is a modest two bedroom dwelling and the previous application was also for a two bedroom dwelling.
- There is no real potential to modify the layout to provide an additional bedroom as suggested in the appeal.
- The proposed single storey dwelling will not over shadow or overlook the adjacent properties.
- The proposed development is fully in compliance with section 16.3.4 (v) of the Development Plan.
- One on-site car parking space is proposed which is in accordance with the Development Plan.
- Regarding the private open space provision the rear garden has an area of 48sq m and the front garden has an area of 43.8sq m.
- The appellants state that the proposed development would be overlooked from a dormer window at no. 5 The Foster's and the upper floor windows of no. 1 The Foster's. It is argued that these concerns are unfounded as the windows are situated at oblique angles and positioned in such a way that there would be no material effect on the amenity of the proposed dwelling.
- The applicant requests that the issues raised in the appeal response will be taken into consideration by the Board.

6.2 Planning Authority response

A response to the third party appeal was submitted by the Planning Authority on the 26th of February 2016. The main issues raised concern the following;

- The site is not considered backland development.
- The dwelling which is proposed is single storey and the site levels to the rear of no's 16 & 18 Fosters Avenue are lower than the at the footprint of the dwellings.
- No. 16 Fosters Avenue has a rear garden with a length of 28m. The proposed dwelling would be located between 14m and 17m from the rear of no. 16. The proposed dwelling would be located 3.5m from the boundary with no. 16 a small projecting section of the dwelling would be located 1.7m from the boundary.
- The height of the proposed dwelling is between 2.6m and 3.7m. It is proposed to retain the existing hedge boundary and a new 2.4m hardwood fence will separate the sites.
- Having regard to the site levels, boundary treatment and separation distances proposed it is not considered that the proposal would detract from the residential amenity of no. 16. In order to ensure that no impact could arise from potential extensions it is recommended that if permission is granted that a condition be attached restricting the construction of exempted development extensions to the rear.
- In relation to the proposed private open space, a courtyard layout is proposed. The proposed front garden has an area of 43.8sq m and the area to the rear is 49sq m. The rear garden has a depth of 3m and the front garden has a depth of 6.5m. The quantum of private open space exceeds the development plan requirement for two-bedroom houses. The quality of the space in the front garden area is considered suitable to serve the dwelling in terms of its orientation and depth.
- The proposed scheme has been designed to overcome the reason for refusal of Reg. Ref. D15A/0282. The footprint of the dwelling along the site boundary with no. 16 has been modified and reduced. The floor area was reduced from 131sq m to 123.8sq m. The previous proposal was set back 1.19m from the boundary with no. 16 for a distance of 14.8m. The current proposal is set back 3.5m and a small element is set back 1.7m from the site boundary.

- The extension granted under Reg. Ref. D15A/0281 & PL06D.245135 to the rear of no. 18 has not been constructed to date. The proposed dwelling would be set back 13.9m from the main dwelling of no. 18. If the extension is build the proposed dwelling would be set back between 9-11.8m. This is considered an acceptable separation distance for single storey dwellings.

7.0 POLICY CONTEXT

Dun Laoghaire Rathdown County Development Plan 2016 – 2022

The subject site at 18 Fosters Avenue, off The Fosters, Mount Merrion, Co. Dublin is located on Map 2 of the Dun Laoghaire Rathdown Development Plan and is identified as being Zoned Objective 'A' to protect and/or improve residential amenity.

- Chapter 8 refers to Principle of Development
- Section 8.2.3.1 refers to Quality Residential Design

8.0 ASSESSMENT

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

- Principle of development
- Design
- Impact upon amenity
- Vehicular access and car parking
- Appropriate Assessment

8.1 Principle of Development

8.1.1 The appeal site is located in an area zoned Objective 'A', which aims to protect and/or improve residential amenity'. Under this zoning objective

residential development is permitted in principle. The appellants have raised the matter of the suitability of the subject site to accommodate the proposed dwelling.

8.1.2 The subject site comprises the southern section of a subdivided plot of an existing single storey dwelling located on a corner site. I note the concerns of the appellants regarding the site size and also the potential impact on the amenities of neighbouring properties these matters will be addressed in the subsequent sections of the assessment.

8.1.3 Accordingly, while the development of the dwelling on the site may be acceptable in principle, in terms of zoning, it is subject to all other relevant planning issues being satisfactorily addressed. In particular proposed design of the development is acceptable subject to a design which does not impinge on the residential amenities of adjoining residences and offers sufficient residential amenities for the future occupants.

8.2. Design

8.2.1 The proposed development involves the construction of detached single storey dwelling. The site area is 296.6sq m. The proposed floor area of the dwellings is 123.8sq m. The floor plan indicates a kitchen/dining room, living room and 2 no. bedrooms, a bathroom and an en-suite bathroom.

8.2.2 Section 8.2.3.4 (v) of the Development Plan refers to Corner/Side Garden Sites and Section 8.2.3.4 (vi) refers to Backland Development. The subject site is located to the rear of no. 18 Foster's Avenue and not to the side of the dwelling. Due to the configuration of the site to the rear of the existing dwelling and with frontage of 19m along The Fosters it has characteristics of both a backland and corner/side garden site.

8.2.3 Section 8.2.8.4 (i) of the Development Plan refers to private open space. The minimum required private open space for the new dwelling with two bedrooms is 48sq m. The Development Plan requirement for minimum rear garden depth of 11 metres is not required as the proposed dwelling is single storey and therefore the issue of directly opposing first floor windows does not arise. The proposed layout indicates four areas in each site corner where there is a grassed or paved area. The area to the north-eastern corner has an area of circa 17.5m. This area is also indicated as a bin storage location. The amenity space to the south-eastern corner has an area of circa 24.5sq m. The main area of amenity space is indicated on the layout plan as the front garden. This paved patio has an area of 43.8sq m and is accessible from the

living room and master bedroom. The area to the north-western corner of the site is paved and adjoins the parking space and front door therefore I would not include this in the calculations of amenity space within the site. Overall, I consider that there is circa 85sq m of private amenity space serving the dwelling. The area of the remaining rear garden of no. 18 is in excess of 150sq m. The private open space provision for both existing and proposed dwellings is in accordance with Development Plan requirements. Accordingly, a satisfactory level of private amenity space has been provided for both dwellings.

8.2.4 The appellants have expressed concern at the design of the proposed dwelling relative to the surrounding dwellings. In terms of its design character the proposed dwelling is single storey, flat roofed and of a contemporary architectural style. The proposed ridge height ranges from 2.6m to 3.7m. The proposed external finish comprises bonded brickwork, stone coping to the roof edge and double glazed hardwood framed windows. While it is noted that proposed design is contemporary and differs from the dormer bungalows within the cul-de-sac, having regard to the quality of the proposed design and finishes, I consider that the proposed dwelling would be acceptable.

8.3 Impact upon amenity

8.3.1 The appellants have raised concern regarding the proximity of the proposed dwelling to their property and the existing dwelling no. 18. The issue of potential overlooking of the private amenity space of the new dwelling and the removal of mature tree planting on the site are also raised.

8.3.2 The proposed dwelling would be situated at the closest point 1.71m from the party boundary with the appellant's property no. 16 Foster's Avenue. I note that this set back relates to a projecting section of the dwelling which runs for 5.2m. The main section of the eastern wall is setback 3.5m from the appellant's party boundary. The side wall of the master bedroom is set back 1.5m from the garage of the neighbouring property to the south.

8.3.3 As indicated on the proposed ground floor plan there would be a separation distance of 12m from the new dwelling to the rear of no. 18 at the closest point. It is also noted that should the granted rear extension be constructed a separation distance of between 9m and 11.8m would be provided. Regarding the appellants dwelling the separation distance between it and the new dwelling would be a minimum of 16m. The appellant's Planning Consultant states that the proposed development should be assessed on the basis that it is backland development rather than a corner/side garden site. Section 8.2.3.4 (vi) of the Development Plan refers to Backland Development and requires that a single storey backland dwelling shall be located not less than

15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres. In the case of the current proposal a minimum separation distance of 12m is provided and the front garden has a depth of 7.5m. I also note that the appeal site is lower than the floor levels of the dwellings to the north. Having regard to the single storey nature of the dwelling and the limited height of the property at between 2.6m and 3.7m. I am satisfied that there is sufficient separation provided between the proposed dwelling and the neighbouring properties.

8.3.4 In relation to the matter of potential overlooking of the private amenity space of the new dwelling, I consider having regard to the siting and design of the dwelling and the amenity space relative to the neighbouring properties that there would not be any undue overlooking of the proposed private amenity space.

8.3.5 As stated in the report prepared by Dermot Casey Tree Care a number of mature trees within the rear garden of no. 18 Foster's Avenue were recommended for removal for safety reasons. The appellants stated that they agreed to the removal of the trees however they were not aware at that stage of the proposal to construct a dwelling to the rear of no. 18. The proposed development is being assessed on the basis of both the details submitted and the current situation. The removal of the trees was clearly necessary as they posed a safety risk. The boundary treatment proposed between the subject site and the appellant's party boundary along 17.5m is indicated on the ground floor plan as a 2.4m high treated hardwood screen and the retention of the existing hedge. Similar boundary treatment is proposed along the southern boundary and a 2.4m timber screen is proposed along the boundary with the rear of no. 18. The roadside boundary features a 2.4m hardwood timber fence. I consider the proposed boundary treatment along the party boundaries and the roadside boundary is visually acceptable and would satisfactorily protect the amenities of all properties.

8.4 Vehicular access and car parking

8.4.1 A new vehicular entrance with access off The Fosters is proposed to serve the dwelling. The design includes a sliding hardwood gate which matches the boundary fence proposed along the south-western elevation. The proposed entrance is located at a straight section of road within the cul-de-sac and 36m from the junction between The Fosters and Foster's Avenue. I consider these proposals are acceptable.

8.4.2 Table 8.2.3 of the Development Plan refers to Residential land use car parking standards. It is required under the Development plan that for a two bedroom dwelling that a minimum of 1 no. car parking space be provided. The proposed site layout indicates that one on-site car parking space is

proposed to the north-western corner of the site. The vehicular entrance has a width of 3m which will allow space for a vehicle to manoeuvre in and out of the site safely. Accordingly, I consider the proposed development is acceptable in terms of access and parking considerations.

8.5 Appropriate Assessment

8.5.1 Having regard to the nature of the proposal a dwelling and the nature of the receiving environment, namely a suburban and fully serviced location, 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.

9.0 CONCLUSIONS AND RECOMMENDATION

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

REASONS AND CONSIDERATIONS

Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016 - 2022, to the nature and scale of the proposed development, to the pattern of existing development in the area and the planning history of the site it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would respect the existing character of the area. 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 and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed dwelling and the boundary fencing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall be in accordance 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.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall be erected on the site, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

6. 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 commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

7. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Siobhan Carroll,
Inspectorate
12th of May 2016