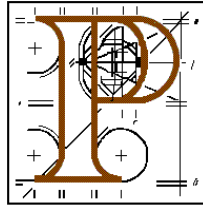


# An Bord Pleanála



## Inspector's Report

<b>Appeal Ref. No:</b>	PL06F.246514
<b>Proposed Development:</b>	Two-storey detached house with associated site works to the side
<b>Location:</b>	2 Oakwood Avenue, Swords, Co. Dublin
<b>Applicant:</b>	Sean Gormley
<b>PA Reg. Ref:</b>	F15A/0597
<b>Planning Authority:</b>	Fingal County Council
<b>P.A. Decision:</b>	Grant
<b>Appeal Type:</b>	Third
<b>Appellants:</b>	Moira Foster & Others
<b>Date of Site Inspection:</b>	22 July 2016
<b>Inspector:</b>	Una Crosse

## **1. SITE AND SURROUNDINGS**

The appeal site has a stated area of 0.0247 hectares and comprises the side garden of an existing two storey semi-detached dwelling which has been extended over both floors. The site is located at the junction of Brackenstown Avenue and Oakwood Avenue to the west of Swords town centre. The area in the vicinity of the site is residential with predominately two-storey semi-detached properties addressing the public roads.

## **2. PROPOSED DEVELOPMENT**

### **2.1 As Submitted**

The proposal is for the development of a two-storey detached dwelling, 97 sq.m in area, to the east of No. 2 Oakwood Avenue within what is the side garden of No. 2. The dwelling is a 3-bed unit which is 7.78 metres in height and two storey for most of its width with the final c.2 metres to the rear of the property single storey, 3.54 metres, where it extends beyond the rear building line of the existing property at No. 2. A rear garden of 106 sq.m is proposed with a 1.8m boundary wall proposed between the existing house at No. 2 and the proposed dwelling. The existing entrance into No. 2 is revised to provide 2 new entrances one to the existing property and one to the proposed.

### **2.2 Revisions in Response to Further Information**

The submission provides two options to address the concerns of the PA as follows:

Option A – provides for a 3m wide clearance between the proposed house and existing sewer with unit reducing slightly in width towards the rear of the property due to a slight splay on the eastern elevation with the 2.1m height existing blockwork wall reinstated.

Option B – provides for a mini-piled solution that with a clearance of between 2.9m and 2.51m would allow contractors to work on the sewer with no fear of undermining the new house;

Details of boundary treatments were also provided;

## **3. PLANNING HISTORY**

**F14A/0171** – permission sought for a two-storey detached dwelling on the site but no response made to the additional information request.

**F09A/0313** – Permission refused for a two-storey dwelling by reason of its limited site area and its relationship to adjoining properties would by reason of the restricted nature of the site and proximity to the site boundary result in overdevelopment of the site and would as a consequence seriously injure the amenities of the area and the adjoining dwelling (No. 2 Oakwood Ave).

**F07A/0667 (PL06F.224912)** – Permission granted for a detached two-storey dwelling and refused on appeal by the Board, having regard to the location of the site on a prominent corner site, the pattern of development in the neighbourhood, the configuration of the site and its relationship to adjoining properties, it is considered that by reason of the restricted site, the proximity of the proposed dwelling to the boundary with the adjoining road, its location forward of the building line on Brackenstown Road and the proposed access

arrangements, that the proposal would result in overdevelopment of the site and would seriously injure the amenities of the area and the amenity of the adjoining property.

**F07A/0061** – Permission refused for a dwelling for 4 reasons which can be summarised as follows:

- Substandard provision of private amenity space, materially contravening policies OSO29 and OSO31 of the CDP and overdevelopment of the site;
- Injury to the amenities of adjoining properties by way of overlooking;
- Visually obtrusive given location of dwelling forward of building line on Brackenstown Ave;
- Deterioration of public footpath by reason of additional entrance;

**F00A/1329** – outline permission refused for a dwelling to rear and entrance to the side.

### **Immediate Area**

No. 1 Oakwood Avenue (opposite the site)

**F11A/0024 (PL06A.238749)** – Permission refused by the PA for the demolition of an existing extension to side of house, construction of extension to rear and the development of a two-storey dwelling in side garden. Permission granted on appeal by the Board.

**F08A/1157 (PL06A.233006)** – permission granted by the PA for a detached dwelling adjacent to No. 1 and refused on appeal by the Board due to restricted nature of the site, location forward of building line on Brackenstown Ave, inadequate access and constricted car parking resulting in overdevelopment of the site.

## **4. PLANNING POLICY FRAMEWORK**

### **4.1 COUNTY PLANNING POLICY**

Fingal County Development Plan 2011-2017

Site is located on land zoned 'RS' – to provide for residential development and protect and improve residential amenity.

In relation to Infill and Backland sites Objective RD10 states “*encourage and promote development of underutilised infill and backland sites in existing residential areas subject to the character of the area being protected*”.

### **4.2 NATIONAL POLICY**

Guidelines for Sustainable Residential Developments in Urban Areas 2009

Section 5.9(i) refers to Inner suburban/infill sites.

## **5. PLANNING AUTHORITY DECISION**

The Planning Authority decided to grant permission subject to 15 conditions which include the following:

- Development to be carried out in compliance with Revised Site Layout Option A Drawing No. AI-01 lodged on 11 March 2016;

- Revised floor plans required prior to commencement demonstrating internal layout based on Option A Drawing No. AI-01 with floor areas complying with Table RD03;
- Minimum clear distance of 3m between existing foul sewer on Brackenstown Avenue and proposed development as per Option A;
- Prior to commencement surface water connection of the existing house rectified by installing a soakaway of maximum permitted size, with an overflow into the existing (diverted) private surface water drain, surface water from proposal to be treated by installing a soakaway of maximum permitted size with an overflow into the existing (diverted) private surface water drain, waterbutts to be installed at existing and proposed dwelling, soakaway design calculations to be submitted;
- Parking for two cars to be provided in-curtilage for both dwellings;
- Construction hours;
- Entire premises to be used as a single dwelling;
- Development Contribution and Metro north contribution;

The original Planners Report notes the infill development that has occurred on a site to the south at No. 1 Oakwood Avenue with the existing extension demolished and also notes the extensive planning history on the appeal site. It is noted that in the most recent application under Ref. F14A/0171 that the applicant was invited to demolish the existing extension with no response made to same. It is stated that it is accepted that the dwelling will project forward of the building line of properties to the rear along Brackenstown Ave, however the permitted infill dwelling at No. 1 has set a precedent for breaching the established building line. The report continues by stating that while the removal of the previously constructed two-storey extension would improve the assimilation of the new dwelling on the site that it is not vital for the success of the proposed development and the proposal would appear in keeping with the scale of the original dwelling on the site. The marginal set down of the new dwelling below the ridge of the existing aids its integration. In respect of third party objections it is stated that the issues raised have been taken into full consideration. It is considered that the proposal would not result in overdevelopment as internal floor areas and garden areas accord with requirements of the CDP and it is noted that the Transportation Section indicate access arrangements are acceptable. While the principle of development is considered acceptable, additional information is required in respect of the concerns raised by Irish Water.

**Transportation Section** – no objection subject to conditions.

**Water Services Section** – Further information sought regarding the infiltration tests and test location and the construction of a soak away.

**Irish Water** - Further information required in respect of the maintenance of a minimum 3m clearance between the existing foul sewer within Brackenstown Avenue and any part of the proposal with compliance to same required;

**Third Party Submissions** - A number of observations were received by the Planning Authority the grounds of which are addressed in the grounds of appeal below.

**Further Information** was requested as follows:

- Applicant is requested to submit a revised site layout plan to an appropriate scale, clearly demonstrating a 3m wide clearance between the existing foul sewer within Brackenstown Avenue and any part of the proposed development including foundations. The applicant is also requested to submit a detailed cross section complete with levels at the most critical location at the interface between the existing sewer and the proposed development;
- The applicant is requested to clearly indicate on a revised site layout plan and by way of elevational drawings, all proposed boundary treatments on site;

Following the submission of further information the Planner's Report noted that two options proposed in the response and outlines same and notes the response from Irish Water preferring Option A. In response to Item 2 it is noted that Option A provides that the concrete 2.1m block wall to Brackenstown Ave may be retained/reinstated with the wall lowering to 900mm to the front of the dwelling and a 900mm wall separating the driveways. In conclusion it is stated that the Planner has had full regard to the issues raised in the third party objections and the planning history of the subject and neighbouring sites. Regard has also been had to the Guidelines for Sustainable Residential Development in Urban Areas 2009 with appropriate separation distances from neighbouring properties achievable. The proposal integrates with the main dwelling.

**Water Services Section** – no objection;

**Irish Water** – no objection subject to minimum 3m clearance as per Option A submitted;

**Observations** – reiterate profound objection to the proposal particularly proposed alteration to the drainage/sewerage system;

## 6. APPLICANT'S GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- Questions how the proposal can be considered to be an improvement in residential amenity;
- Planners report outlines the history of the site and of No. 1 with no explanation as to why precedent and history of refusals on this and neighbouring sites has been dismissed;
- Current decision directly contradicts all other planning decisions in the area and find inconsistency difficult to comprehend;
- Proposal for 2 parking spaces is insufficient given that it is a multi-dwelling development;
- Not all points listed in objections were listed in the Planning Officers report with only a cursory reference to the issues and little regard for a number of points of planning concern;
- Reference made to existing property at No. 2 being a multi-dwelling site subdivided into 2 units which is poorly maintained with issues of litter;
- No analysis from Planner of the subdivision of the existing house with comments disregarding residents' concerns;

- The proposed solution of building the unit so close to a foul sewer and junction is inadequate and a serious concern to residents;
- Note that considerably more distance between new house and gable wall at No. 1 than on current site with some points of precedent ignored;
- Insufficient open space remains and an unsightly 2m fence built to act as a screen to works undertaken to sub-divide the property and question if fence is to remain;
- Substantial planning history is outlined in detail;
- Permission granted on No.1 was dependent on demolition of the side extension with same not proposed in current proposal on No. 2 therefore contrary to precedent at No. 2;
- Proposal would be contrary to the zoning objective to protect and improve residential amenity as it would lead to overshadowing, proximity to pathways and roads, inadequate parking and access arrangement and inconsistent with prevailing pattern of development;
- Permission for current proposal would set undesirable precedent for other corner sites particularly given the substantial 2-storey extension;
- Proposal would breach the existing building line contrary to proper planning;
- Proposed access arrangement is a traffic hazard creating conflicting movements, minimises on-street parking, proximity to junction with heavily trafficked road, creates safety concern with impaired sightlines, impact on paths and verges;
- Houses have small drives with parking for 2 cars not achievable;
- Proposal will create overlooking of existing property with impact on visual amenity of properties to the rear;
- Existing property at No. 2 subdivided into 2 properties and rented with new entrance on gable wall of extension with proposal a potential third rental property on the site devaluing adjoining properties;
- Existing access has been widened without permission;
- Property poorly maintained with wall removed and replaced with a fence;
- Proximity of proposal to the foul sewer is of concern;

## **7. RESPONSES**

### **7.1 PLANNING AUTHORITY RESPONSE**

The planning authority commented on the appeal as follows;

- Notes the significant planning history;
- Most recent planning history determined on the site was made under previous County Development Plan;
- Current decision made under current Plan;
- Third party issues raised at PA stage were considered;
- Concerns regarding litter do not preclude assessment of applications for further development;
- Reinstatement of Brackenstown Avenue wall required by condition;
- Precedent for infill development exists at No. 1 Oakwood Ave directly to the south of the application site;
- Proposal complies with development plan standards and will not impact negatively on the residential amenities of neighbouring dwelling units;

- Vehicular access and off-street parking requirements for both dwellings have been assessed and found to be satisfactory;
- Proposal acceptable to Irish Water and Water Services Division satisfied after Additional Information response.

## **7.2 Applicants Response to Third Party Appeal**

No response received.

## **8. ASSESSMENT**

This assessment will consider the following;

- Principle of Proposal and Compliance with Policy
- Access and Parking
- Proximity to Sewer
- Provision of Open Space and Existing Fence
- Other Matters
- Appropriate Assessment

### **8.1 Principle of Proposal and Compliance with Policy**

In terms of the matter of principle, a number of issues have been raised by the appellants which I will address in turn. Firstly, the zoning of the site would support the development of residential units subject to normal planning considerations. The appellants state that the proposal would be contrary to the zoning objective for the site which seeks to provide for residential development and protect and improve residential amenity. They reference, overshadowing, overlooking and visual amenity amongst the concerns. The proposal would not create significant overshadowing, in my opinion, as the house proposed is not of a scale or height which would create overshadowing of any adjoining properties. Neither would overlooking cause a detrimental impact on any adjoining property given the separation distances between the proposal and adjoining properties. The distance from the rear of the existing property on the site to the rear of No. 100 Windmill Avenue to the rear of the site is c. 30 metres which exceeds the 22m standard. While the visual amenity of the area would be altered by the proposal, the area is not protected by any specific policies relating to the protection of views or other visual amenity considerations. In this regard the visual amenity impacts are not adversely impacted.

The appellants go into considerable detail in respect of what is an extensive planning history on the site. There have been numerous applications on the site refused for a development of the type proposed and the most recent application prior to the current one was deemed withdrawn as an additional information request was not responded to within the defined period. While it is reasonable to suggest that there are contradictions, it is also reasonable to suggest that planning policy evolves with developments previously refused considered on their merits under a new Development Plan. Urban sites provide a valuable asset in respect of creating new homes, where other planning considerations are met as is set out in Objective RD10 which encourages and promotes the development of underutilised infill and backland sites in existing residential areas subject to the character of the area being protected. Therefore, while I acknowledge the concerns expressed about

perceived contradictions I would suggest that each application is considered on its merits within the context of the planning policy pertaining at the time.

The precedent referred to in particular by the PA to support their decision is the decision to grant permission for a new house at No. 1 Oakwood which is opposite the appeal site. In order to facilitate the new house, an existing extension was demolished on the original house on the site. I would note that the existing extension on the original house on the appeal site is to remain. I would also note that the additional information request on the most recent application requested that the applicant revise the existing house and to relocate the proposed unit such that no part of the proposed house is within 4m of the boundary to the east of the subject site which may require amendments to the existing house and cutting back of the existing extension. This was not responded to by the applicant and the application was deemed withdrawn. I would note that the new house constructed at No. 1 Oakwood at 120 sq.m is a substantially bigger house than that proposed on the appeal site which is 97sq.m. In that regard the situation is slightly different. However I would note that the house built at No. 1 has a greater separation distance between the side wall and the boundary of the site as it addresses Brackenstown Avenue than the proposal although it is not significantly different. The concerns expressed about the building line while of merit do not support the requirement to make the most sustainable use of urban land particularly on sites with large side gardens. The area is not one of conservation interest and therefore there is no express need to preserve the setting of the dwellings or streets.

## **8.2 Access and Parking**

The appellants consider that the proposed access arrangement is a traffic hazard creating conflicting movements, minimises on-street parking, creating a hazard due to the proximity to the junction with a heavily trafficked road, and creates safety concern with impaired sightlines and impacts on paths and verges. The Transportation Section in Fingal County Council did not have any issue with the proposal and therefore without any technical evidence to support the appellants concerns, I do not consider that the proposal would create a traffic hazard. It is stated that parking for two cars is not achievable however the curve in the proposed driveway would provide a distance of c. 10 metres between the entrance and the dwelling which would facilitate two cars. Reference to the widening of the access without permission is not a matter for the Board who are not an enforcing authority.

## **8.3 Proximity to Sewer**

This matter was raised by the Planning Authority at further information. The applicant's agent submitted two options in response. Option A providing the 3m clearance requested by Irish Water and Option B providing a piled construction. The PA, it is noted, have conditioned Option A which provides a clearance of 3m from the sewer and which meets the requirements of Irish Water. I would suggest to the Board that a condition may be attached requiring revised layout plans for the proposed dwelling in light of the proposed amendments and a detailed site layout plan in respect of boundary



treatment, landscaping and surface water. Therefore the matter of potential impact on the sewer has been adequately addressed in my opinion.

#### **8.4 Provision of Open Space and Existing Fence**

I would agree with the appellants that the existing fence particularly its location within such close proximity of the existing house creates a negative visual impact, the proposal as set out proposes to reinstate the boundary wall with the fence removed to facilitate the house, if the Board are minded to grant permission. The open space proposed for both the existing and proposed units is in accordance with the requirements set out in the County Development Plan.

#### **8.5 Other Matters**

In terms of issues raised in respect of procedure and consideration of issues raised, the Board is considering the appeal de novo therefore the appellants considerations are considered herein. Matters related to the alleged subdivision of the existing dwelling, while I note the door in the side of the house, is a matter for the PA as is the matter of litter and maintenance of the property as the Board is not an enforcing authority.

#### **8.6 Appropriate Assessment**

Having regard to the nature and scale of the proposed development, nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and proximity to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **9. CONCLUSION**

While the concerns of the appellants are acknowledged the proposal accords with the zoning provision pertaining on the site and the matters relating to the foul sewer and the surface water drainage have been addressed. The concerns related to traffic are not supported by any evidence and the matter of precedent has arguably already been set by No. 1 Oakwood Avenue.

### **10. RECOMMENDATION**

Having regard to the foregoing I recommend that permission is granted.

#### **REASONS AND CONSIDERATIONS**

Having regard to the residential zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions in set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, 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 as amended by the drawings referred to as Option A received by the Planning Authority in response to further information on the 11th day of March, 2016, 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. Prior to the commencement of development the following shall be submitted and agreed in writing with the planning authority:
  - (a) Revised floor plans required prior to commencement demonstrating internal layout based on Option A Drawing No. AI-01 with floor areas complying with Table RD03 of the Fingal County Development Plan 2011-2017; A minimum clear distance of 3m between the existing foul sewer on Brackenstown Avenue and the proposed development as per Option shall be maintained in perpetuity.
  - (b) A detailed layout plan describing all proposed landscaping, surface and boundary treatment on the site.

**Reason:** In the interests of orderly development and visual amenity.

3. The external material, colours and finishes on the proposed development shall match/harmonise with existing house on the site.

**Reason:** In the interests of visual amenity.

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution

6. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 13.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will 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.

7. The entire residential unit shall be used as a single dwelling unit.

**Reason:** In the interest of clarity.

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interests of sustainable waste management.

9. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

10. The developer shall pay to the planning authority a financial contribution in respect of Metro North in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Una Crosse  
**Senior Planning Inspector**  
July 2016.