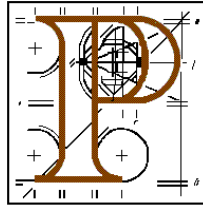


An Bord Pleanála



Inspector's Report

Development: Modifications to the permission for residential development of 30 no. dwelling houses as granted under planning reg. ref. SD14A/0280 (An Bord Pleanála Ref. PL.06S.244897). The development will provide for a revised layout and change of house type to units 2 to 30 to provide for 2 no. detached 3 bedroom houses, 22 no. semi-detached 3 bedroom houses and 5 no. terraced 3 bedroom houses. The houses are 3 storey with a dormer window to the rear.

Site Address: Rear of 643-659 Whitehall Road Cottages and east of Pearse Brothers Park, Rathfarnham, Dublin 16.

Planning Application

Planning Authority:	South Dublin County Council
Planning Authority Reg. Ref.:	SD16A/0079
Applicants:	Rosemount Properties Ltd
Type of Application	Permission
Planning Authority Decision:	Refuse permission

Planning Appeal

Appellant:	Rosemount Properties Ltd.
Type of Appeal:	First Party v Refusal
Date of Site Inspection:	26/07/2016

Inspector: **Joanna Kelly**

1.0 SITE DESCRIPTION

The appeal site is accessed via a local cul-de-sac L-8381 off Taylor's Lane in close proximity to Pearse Brothers and Glenmore Park housing developments in the Ballyboden area in South Dublin. The site, a backland location, has a stated site area of 1.14 hectares. The lands in question are bounded by residential uses and appear to be an assemblage of residual private amenity space that once formed part of the Whitechurch Cottages. There is a difference in levels across the site of approx. 12m rising from north to south.

Construction work is currently being carried out with hoarding located to the site frontage. Access to the site, at time of inspection, was constrained due to the presence of larger construction vehicles within the site close to the entrance and vehicles parked along the road serving the construction site.

There are single storey dwellings at the site entrance which are former protected structures. The cottages along Whitechurch Lane, Taylor's Lane and the appeal site itself are located within the newly designated Architectural Conservation Area (ACA) in the current development plan. Pearse Brothers and Glenmore Park are characterised typically by two storey terraced housing. There appears to be a pedestrian right of way to the rear of units 13-18 Pearse Brothers Park from which the site is highly visible. There would also appear to be a similar access to the rear of units 7-18.

2.0 PROPOSED DEVELOPMENT

The applicant is seeking modifications to the permitted residential development of 30 no. dwelling houses as granted under planning reg. ref. SD14A/0280 (An Bord Pleanála Ref. PL.06S.244897). The development will provide for a revised layout and change of house type to units 2 to 30 to provide for 2 no. detached 3 bedroom houses, 22 no. semi-detached 3 bedroom houses and 5 no. terraced 3 bedroom houses. The houses are 3 storey with a dormer window to the rear.

Of note, pursuant to site inspection units 2-6 are under construction. The implication being that should the remainder of the development be constructed as per the proposed revised layout now sought, that the number housing units would equate to 31 and not 30.

The main modifications are outlined in detail within the assessment section of this report however in the main modifications pertain to revision of house types from terraced to semi-detached units, increase in overall ridge height and minor design alterations.

3.0 PLANNING HISTORY

File Reg Ref. No. SD14A/0280/PL.06S.244897 Permission to grant permission upheld on appeal for a residential scheme on the appeal site. Condition 2 of the permission required the omission of 2 no. units and therefore 30 no. units were permitted under this parent permission.

3.0 PLANNING AUTHORITY DECISION

The Planning Authority refused permission as follows:

1. *The proposed development adjoins a number of dwellings which are protected structures under the South Dublin County Development Plan 2010-2016 (Schedule 2 ref. 306) and also adjoins the residential area of Pearse Brothers Park to the west.*

By reason of excessive height, width, size, bulk and scale and overall design, the visual impact of the modifications proposed would materially interfere with the architectural integrity of the protected structures and detract from the established character and setting of the protected structures located along Whitechurch Road and Taylors Lane (Whitechurch cottages) and would be visually obtrusive from Pearse Brothers Park. Thus, the proposed development would seriously injure the amenities of property in the vicinity and be contrary to the proper planning and sustainable development of the area.

2. *The proposed development would materially contravene conditions 1 and 2 of the Bord Pleanála permission SD14A/0280 (ABP Ref. PL06S.244897).*

4.0 REPORTS TO THE PLANNING AUTHORITY

Planning report

The planners report recommends a refusal of permission as the proposal would detract from the established character and setting of protected structures and would be visually obtrusive from Pearse Brother's Park. It is also set out that the proposal would materially contravene the previously permitted development under PL.06S.244897.

Water Services Report

No objection subject to conditions

Roads Report

Changes to layout are not significant from a roads perspective.

Landscape Architect

21st April 2016 No objection as this application relates to a house type amendment. However, the previous report requested a revised landscape plan to be agreed, based on many deficiencies in the originally lodged landscape plan.

27th April 2016 It appears that this report considers the modifications now being proposed under the current application are not considered acceptable. The change of house types, their overall design, height, mass and scale allows the proposed new dwellings to be increasingly visually obtrusive from along Whitechurch Road and Taylor's Lane. The proposed modifications do not adhere to previous advice given as to the suitability of a proposed development at this location. The side elevations of proposed units no. 6 and 23-27 show high dormers and the overall fenestration and design allows this gable elevations to have a negative visual effect on view from the front site of the existing single storey protected structures. It is recommended that permission be refused as the modifications proposed and overall design shown for the proposed development would materially affect the protected structures located along Whitechurch Road and Taylors Lane.

Housing Procurement Section

Applicant is to transfer 3 no. units to the local authority.

Environmental Health Officer and Environment, Water & Climate Change Section

Proposal is acceptable subject to conditions

External Bodies

Irish water

Concerns are raised about the layout of watermain drawing which is significant as there are water mains traversing the site. The conditions in respect of the Water Services Report for previously approved scheme remain applicable.

An Taisce

The application should be assessed with regard to impact on the amenity of the area, the relevant provisions of the development plan and particular care should be taken to see that the works do not interfere with the protected cottages.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- The application seeks minor modifications to the layout and improvements to the permitted house types. There will be no increase in the number of units and there will be no negative impact on the amenities of the adjoining dwellings. The modifications will provide an improved standard of accommodation by providing slightly larger and better dwellings.
- A full set of compliance plans addressing Condition 2 of the parent permission were issued to the planning authority. It is set out that no decision in respect of the compliance drawings has been issued (up to time of appeal).
- The original design rationale for the scheme provided for the direct overlooking of the main area of public open space by a terrace of 5 houses. Condition 2(a) of the permission required significant changes to this part of the development. The design team concluded that the amended layout afforded an opportunity to improve the development by providing slightly larger and better dwellings and a greater representation of detached and semi-detached units. The overall layout structure would remain fundamentally as permitted.
- The modified scheme would facilitate the provision of slightly larger and better dwellings compared to those permitted.
- It is submitted that when compared objectively to the scheme as permitted by An Bord Pleanála, the Planning Authority's unduly harsh assessment of the proposed modifications is difficult to comprehend.

- The criticisms of the design, height, mass, scale and bulk of the modified houses are not substantiated in the assessment. The only quantitative analysis is in relation to height, with an irrelevant comparison to 'standard 2 storey dwellings' of 8.2m. The dwellings as permitted accommodate three levels of accommodation with a ridge height of 9.22m. The relevant comparison therefore is between the permitted ridge heights and the proposed ridge heights – a differential of 140mm if even. The change is introduced to facilitate a higher ground floor ceiling height of 2.65m.
- Similarly the increase in house width, while significant in terms of providing better quality dwellings, would be imperceptible in terms of visual impact.
- The reference in the planner's report to an increase in the depth of the dwellings is entirely incorrect. In fact, the depth of the gables at first floor level are reduced by 800mm from 10.3m to 9.5m as a result of the redesign, as the bay windows are now stepped in from the side elevations thereby reducing the bulk of the houses, as shown on the permitted and proposed first floor House Type A plans below.
- Unit 11 was previously granted by SDCC approximately 1m from the boundary with no's 7 and 8 Pearse Brother's Park. In this context, the assertion by the Planning officer that the modified proposal would be visually unacceptable in the context of the Pearse Brothers Park dwellings is bewildering. (Note to Board: this unit was re-positioned by way of condition)
- The architectural conservation officer was particularly critical of the gable elevations of no. 6 and no's 23-27 referring to high dormers and the overall fenestration. When compared to what is permitted, it is evident that the gable elevations in question are not materially different.
- It is submitted that the planning authority's assessment was flawed and did not constitute an objective assessment of the minor modifications proposed. The first reason for refusal therefore, cannot be sustained.
- The second reason for refusal refers to a material contravention of conditions attached to the parent permission. Should such a reason be valid, the implication would be that no development could ever be modified through planning permission.
- The subject application seeks to optimise the layout of the scheme and improve the quality of the houses through modifications which will have no impact on adjoining properties.
- Construction has commenced on infrastructure development and initial show houses in the scheme. Should showhouses located on sites 2 to 6 be completed by the time a decision on this appeal for the modified scheme, ABP include a note indicating that the grant of permission does not cover sites 2 and 6 inclusive in the submitted layout.
- It is requested that permission be granted for the modifications.

6.0 RESPONSES

Response from Planning Authority

The Planning Authority confirms its decision and issues raised are covered in planner's report.

7.0 Observers

7.1 David Reilly, 13A, Pearse Brothers Park

The observer is strenuously opposed to any increase in height of the dwellings, given the proximity of the proposed house to the site boundary and to this bedroom window.

- It is set out that the Inspector on the previous appeal file was acutely aware of the impact of the proposed development on the observer's property as she recommended a reduction in height of units 13-14 to single storey and a half. However this recommendation was not included by the Board.
- Reference is made to the permission under which the dwelling in which the observer resides PL.06S.218640 was granted. A retention permission SD08B/0814 also applies to the site. As a result of the close proximity of the first floor bedroom window in no. 13A to the site boundary and given the modest side garden available as the only private amenity space, the proposed dwellings have a potential impact resulting from overlooking.
- The roof height now proposed is to be increased from 9.2m to 9.37m. While this increase is modest in itself, having regard to the relative height of the proposed dwellings in comparison with the adjoining flat roofed two storey houses on one side and the protected structures on the other, it is considered that this increase is inappropriate and not necessary.
- The appellant submits that comparing the proposed height with a standard type dwelling house, is not relevant in this case because permission has already been granted. This assessment is however relevant bearing in mind that the original application proposed houses that were already considered quite high.
- The observer's house is directly overlooked from the bedroom windows of units 12, 12A and 14 and it is important that this is considered in relation to the design and window type of said units. The parent permission required the provision of opaque glazing in the rear facing master bedroom window of units 12-15. No reference is made to this requirement in the design drawings or the planning report that was submitted with the planning application.
- It is difficult to ascertain the precise distance of the proposed dwellings to the boundary of his site. It is noted that the rear garden depth cannot be identified from the drawings on the website given the small font of the measurements. The observer wishes to be certain that the relevant boundary as marked on the site layout plan relates to the original boundary wall and not to the wooden

fencing that has been placed on the inside of this wall on the side of the observer's garden.

- The submission concludes by re-iterating that the proposed increase in the ridge height of the proposed dwellings would seriously injure the residential amenity of adjoining property and would give rise to overlooking.
- In the event that the Board grants planning permission, a condition requiring the installation of opaque glazing in the rear facing master bedroom window of units 12-15 should be conditioned.
- It is requested that permission be refused for the proposed development.

7.2 Ronnie and Patricia Flood

The relevant planning issues set out are summarised as follows:

- A copy of the latest objection to SD16A/0079 is submitted.
- The submission makes reference to extracts from the previous Inspector's report in respect of PL.06S.244897 and that Unit 11 would seriously compromise the residential amenities of no. 7 Pearse Brother's Park.
- The latest application requesting the inclusion of a new house no. 6 has a major negative impact on the observer's house.

7.3 Mary and Ernest Gorman

- The developer has decided he wants to go higher and bigger and push another house up to the observers' property (no. 8 Pearse Brother Park).
- The appeal talks about the new houses having a height of 9.36m compared to a standard two storey height of 8.2m but he fails to take into account that the observers' flat roof houses where he wants to build up to have a height of 5.5m something which the Council recognises in their report and proves the point they will tower over their houses.
- The site has a major incline from the entrance to the end of the site of about 11 metres so the houses will be higher as you move up the site which will add to the visual impact they will have in the area and means the observers will be overlooked by most of the houses on the site.
- It is set out that one of the cottages has recently been demolished with just the front wall remaining which seems to change its status.
- The site has been cleared of all existing trees and shrubs, many of which were mature and included in the developer's plan to act as screening by blocking some views of the new build and a series of ten drawings were supplied to show this.

8.0 PLANNING POLICY

8.1 South Dublin County Council Development Plan 2016-2022

This development plan was made on 16th May 2016 and took effect from 12th June 2016 and hence it is the policies and objectives contained in this plan that apply to the proposed development and not that of the 2010-2016 plan.

Chapter 2 of the development plan deals with housing. Housing Policy 7 Urban Design in Residential Developments provides:

It is the policy of the Council to ensure that all new residential development within the County is of high quality design and complies with Government guidance on the design of sustainable residential development and residential streets including that prepared by the Minister under Section 28 of the Planning and Development Act 2000 (as amended).

Section 11.3.0 deals with Land uses.

Schedule 2 of the development plan contains the record of protected structures. It is noted that the previously protected structures along Whitechurch and Taylor's Lane are no longer included in the record. However the area has been designated as an ACA in light of its distinctive character.

9.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following headings:

- Design and layout
- Impact on character and setting of ACA
- Appropriate assessment

9.1 Design and Layout

9.1.1 The proposal relates to modifications to a permitted residential development on the appeal site. The decision of the Board in respect of this parent permission sought the omission of 2 no. units thereby permitting 30 no. units on the appeal site. Condition 2 of this permitted development is of relevance in the consideration of the impact arising from the proposal in this instance and is cited as follows:-

The proposed development shall be amended as follows:

- (a) *Unit No. 11 together with associated car parking and circulation areas shall be omitted from the proposed development. Units 7-10 inclusive shall be repositioned to address road no. 1 the main spine road serving the development. In addition, these house types shall be revised to include semi-detached units (House types A and B) and not a terrace. Road no. 2 and circulation area shall be laid out as additional open space.*
- (b) *Unit no. 31 shall be omitted and the remaining 3 no. terraced houses shall be repositioned so that the mid terraced dwelling is located at the midpoint of the resultant site.*
- (c) *Opaque glazing shall be installed and maintained in the rear facing master bedroom windows to house numbers 12-15.*
- (d) *A block wall render and capped shall be erected along the eastern site boundary between the subject site and Whitechurch cottages. Revised drawings showing compliance with this condition shall be submitted to and agreed in writing with the planning authority prior to commencement of development.*
Reason: In the interest of residential development

9.1.2 This application seeks a number of modifications which appear to have arisen as a result of the stipulations in the condition and the applicant's desire to provide dwellings to meet the demand in the current housing market. The main modifications are outlined as follows:

- a) The repositioning of units 7-10 referred to under condition 2 of the parent permission. The proposed layout in this appeal generally accords with the requirements of this condition. An additional dwelling is being located within this area compared to the permitted layout. However the dwellings are no closer to the party boundary than already permitted in the parent permission. With regard to design, the proposed amendments are, in my opinion, *de minimis*. The rear elevations of the semi-detached units remain unchanged other than the overall increase in ridge height from 9.22m to 9.36m. The front elevations have been modified such that the semi-detached units are now mirrored in terms of overall design i.e. a new bay window has been provided to some units to mirror the adjoining permitted semi-detached design. The rooflights on the front roof slope has been repositioned such that they are more centrally located. With regards to the concerns raised by the observers about impact on the existing residential amenities of the area, I am unconvinced that the proposed layout is such that gives rise to any additional overlooking when compared to the permitted residential development. There is a slight increase in the width of the units from 5.5m to 5.7m. However, this does not prejudice existing residential amenities.

- b) With regard to area where units 28-30 are located (south-western corner of site) the parent permission conditioned that the four terraced units at this location be reduced to three terraced units and were to be positioned centrally on the site at this location. The applicant is now seeking to provide a detached and two semi-detached units at this location. This in effects means that the gables of the proposed units are closer to the party boundaries than those of the permitted units, however, I do not consider that there is any additional overlooking or overshadowing issues arising from the proposed layout. There is a slight reduction in private amenity space associated with these units due to the increased floor area of the dwelling at ground floor level.
- c) The other proposed modification is the replacement of the terraced units 2-6 with four no. semi-detached units (units 2-5) close to the entrance serving the development. However, the applicant has since constructed the permitted terraced housing units at this location as per the parent permission.
- d) Opaque glazing was conditioned to be fitted to units 12 to 15 at the third floor level i.e. the rear window serving the master bedroom. I note that no details on the plans have been submitted that would indicate whether it is proposed to provide opaque or translucent glass. In any event, it is reasonable to determine that the purpose of this condition was to ameliorate the overlooking from these rooms to the properties to the west. It is therefore also reasonable that the re-positioned units i.e. Units 6 -15 would all be fitted permanently with opaque glass so as to protect existing residential amenities.

9.1.3 Whilst I acknowledge the concerns raised by the observers, I do not consider that the modifications are such that give rise to a development that could be considered excessive in scale, mass or bulk in light of the permitted development on the site. The applicant has in the main revised the layout so as to comply with Condition 2 of the parent permission PL.06S.2244897 and has also provided for some slight modifications to units so as to provide for *“an improved standard of accommodation by providing slightly larger dwellings”* as set out in the appeal grounds. I generally concur with the applicant that there would be no negative impact on the existing residential amenities that would reasonably give rise to a refusal of permission in this instance. The greatest visual impact will be to the rear of the single storey units on Whitechurch Road however the proposed units are set back at minimum 42m from these units. The marginal overall increase in proposed ridge heights of the semi-detached units cannot reasonable be considered such that would result in over-development or otherwise detract visually from the Whitechurch Road and Taylor’s lane ACA.

9.1.4 As already stated, construction has commenced on site with units 2-6 at an advanced stage. These units are being constructed as per the parent permission. The applicant provided a note within the appeal, requesting the Board to revise the layout to reflect the provision of terraced units at this location should they be constructed by the time the appeal is decided. The Board may consider that the more correct application in this instance would be one for “retention and completion of development...” However, I consider in light of the extant permission, the minor amendments to the overall development in the context of the permitted development and in particular condition 2 requiring revisions that this issue can be dealt with by way of condition, requiring an accurate revised site layout plan. Further the public notices referred to 30 no. dwellings. However, the provision of terraced units 2-6 and the remaining units as shown on the site layout plan would result in 31 no. dwellings and not 30. Again, I consider that the omission of unit 6 as indicated on site layout plan 1302MOD-0041 can adequately deal with this issue. The Board may consider that the public notices are satisfactory in terms of alerting the public to the nature and extent of development and may wish to permit the additional unit.

9.1.5 With regard to the second reason for refusal, which cites that the proposal would materially contravene conditions of the parent permission, I consider that this is irrelevant on the basis that the applicant is seeking through this permission to modify the development as permitted.

9.2 Impact on character and setting of ACA

9.2.1 I note that there is no reference to 306 in Schedule 2, record of Protected Structures in the new development plan. I also note that the development plan 2016-2022 does not provide any record of protected structures in the vicinity of the site upon which the proposal would unduly detract from. The nearest record is record 296 which refers to entrance pillars to Grange Golf Club, Rathfarnham. There are a number of protected structures such as records 338,345 located much further south of the appeal site along Whitechurch Road. Pursuant to inspection of the previous development plan 2010-2016, I note that ref. 306 afforded protection to a number of cottages along Whitechurch Road. The current development plan has designated Whitechurch Road and Taylor’s Lane Cottages, Rathfarnham as an Architectural Conservation Area, where it is the policy of the Council to preserve the historic character and visual setting of Architectural Conservation Areas and to carefully consider any proposals for development that would affect the special value of such areas. It is within this context that the proposal is assessed.

9.2.2 The primary reason for refusal cites “*the modifications proposed would materially interfere with the architectural integrity of the protected structures and detract from the established character and setting of the protected structures located along Whitechurch Road and Taylors Lane (Whitechurch cottages) and would be visually obtrusive from Pearse Brothers Park.*” Having regard to the omission of the formerly protected structures along Taylor’s Lane and Whitechurch Road, this reason for refusal cannot be sustained. However, the proposed amendments should be assessed in light of the ACA designation. The ACA comprises of the appeal site and 12 semi-detached cottages along Whitehall Road, two semi-detached cottages and two semi-detached, two-storey houses which are congruent with the development on Taylor’s lane. They are designated for their distinctive group with significant architectural interest as well as social interest.

9.2.3 Having regard to the permitted development on the appeal site, and the extent of modifications proposed, consisting mainly of an increase in ridge height of approx. 140mm of dwellings, a slight increase in the width of units approx. 200mm and the provision of a box window to the first floor level of units 6, I find it difficult to determine how such modifications detract from or interfere with the architectural integrity of the structures within the ACA. The box window to the gable of unit 6 is perhaps the more visible of the modifications, however the set back from the former protected structures is approx. 40m to the party boundary. Having regard to the permitted development and the limited extent of modifications proposed I do not consider that the proposal unduly detracts from or compromises the setting of the ACA.

9.3 Appropriate Assessment:

Having regard to the extant permission on the appeal site and the limited nature and scale of the proposed development and the nature of the receiving environment and proximity to the nearest European site, 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.

10.0 CONCLUSION AND RECOMMENDATION

I therefore recommend that permission be granted subject to conditions.

REASONS AND CONSIDERATIONS

Having regard to the development permitted under File Ref. No. 06S.244897, the amendments required by Condition 2 of that permission, and the minor

modifications proposed in this application, it is considered that the proposed development would not interfere with or unduly detract from the Whitechurch Road and Taylor's Lane Architectural Conservation Area. The proposal subject to conditions hereunder would not unduly detract from the existing residential amenities of the area and as such would generally 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 points of detail to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the 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 Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission(s) granted on 29/09/2015 under appeal reference number PL.06S.244897, planning register reference number SD14A/0280, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).

3. Within four weeks of this permission, the developer shall submit a revised drawings providing for 30 residential units on the site which provides for the following amendments:
 - a) Omission of unit 6 as indicated on drawing no. 1302MOD-001 and the incorporation of this area into the public amenity space at this location.
 - b) The omission of semi-detached units 2-5 and the replacement of these units with the previously permitted units 2-6 as indicated on drawing no. 1302-AI-003 of File Ref. No. SD14A/0280/PL.06.244897.
 - c) Revised numbering scheme for the dwellings to reflect the amendments in this permission.
 - d) Opaque glazing shall be installed and permanently maintained in the rear facing master bedroom windows to houses 7-16 as indicated on Drawing 1302MOD-001.

These details shall be agreed in writing with the planning authority prior to the commencement of any semi-detached units on site.

Reason: In the interests of clarity, orderly development and residential amenity.

Joanna Kelly
Planning Inspector
19th August 2016