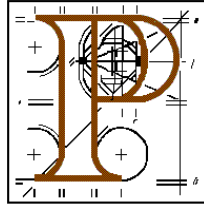


**An Bord Pleanála**



**Inspector's Report**

**Development:**

Permission for amendments to previously approved development of 5 houses (reg. ref D07A/0511/E) which include internal and external revisions with associated site works. All onsite abutting 2 protected structures at Tivoli Road, Dun Laoghaire, Co. Dublin.

Planning Application

Planning Authority: Dun Laoghaire Rathdown County Council  
Planning Authority Register Reference: D16A/0063  
Type of Application: Permission  
Applicant: Elmhill Homes Ltd.  
Planning Authority Decision: Grant permission

Planning Appeal

Appellants:  
1. Norman Noonan  
2. Mr. and Mrs. McLoughlin  
  
Type of Appeal: Third Party

Observer(s): None

**Inspector:** Emer Doyle

**Date of Site Inspection:** 16<sup>th</sup> August 2016

## **SITE LOCATION AND DESCRIPTION**

The subject site has a stated area of 0.17 hectares and is a vacant plot of land located to the rear of 'The Cottage Home', a protected structure and to the west of Royal Terrace House, a protected structure. The site is located in a predominantly residential area, approximately 500m south of the centre of Dun Laoghaire. The Cottage Home site is currently a building site with works underway to change the use of this former institutional building to 5 No. dwelling houses.

A set of photographs of the site and its environs taken during the course of the site inspection is attached.

## **PROPOSED DEVELOPMENT**

Permission is sought for development comprising the following:

- Minor amendments to previously approved development of 5 No. houses (Reg. Ref. D07A/0511/E)
- Amendments include the omission of basement level accommodation, omission of internal lift and associated revisions, revisions to rear windows and provision of velux lighting, and revisions to car parking.
- Site adjacent to two protected structures – Royal Terrace House and The Cottage Home.

## **PLANNING HISTORY**

Relevant planning history includes the following:

### **PA Reg. Ref. D07A/0511E**

Permission granted for an extension of duration of permission for the construction of a terrace of 5 No. houses up to and including the 16<sup>th</sup> day of June 2018.

### **PA Reg. Ref. 06D.225826/ D07A/0511**

Permission granted by Planning Authority and by the Board on appeal for the construction of a terrace of 5 No. houses abutting Royal Terrace House (a protected structure) and to the rear of Cottage Home (a protected structure) and associated works.

**V/128/21**

Part V Certificate of Exemption for construction of a terrace of 5 No. houses abutting Royal Terrace House.

**PA Reg. Ref. D07A/0636E**

Permission granted for an extension of duration of permission appeal for the change of use and sub-division of existing residential accommodation to 5 No. dwelling houses.

**PA Reg. Ref. 06D. 225580/ D07A/0636**

Permission granted by Planning Authority and by the Board on appeal for the change of use and sub-division of existing residential accommodation to 5 No. dwelling houses.

**PLANNING AUTHORITY REPORTS**

**Planning Report:**

The planning report noted that 3 No. submissions were received. It was considered that the development was acceptable in principal. It was noted that plans for the third floor had not been submitted and a Further Information Request was issued requiring third floor plans and details in relation to changes to windows of rear elevation and details in relation to proposed solar panels. The second report considered that the response to the Further Information Request was acceptable.

**Drainage Department**

No objection subject to conditions.

**Transportation Department**

The first report dated 9/03/16 required further information in relation to car parking development plan requirements and car parking layout. The second report recommended permission subject to conditions.

## **Conservation Department**

No objection subject to condition.

## **PLANNING AUTHORITY DECISION**

The planning authority granted permission for subject to 13 conditions.

**Condition 2** required that the development would be subject to the conditions stipulated under the parent grant of permission for the site and for all works to be completed within the duration of the parent permission.

**Condition 8** required the applicant to engage the services of an accredited Conservation Architect or Engineer who specialises in historic buildings, for the duration of the development, to advise and monitor the works, in particular the junction of the permitted terrace of houses with Royal Terrace House, to prevent any damage to the structure of the Protected Structure.

All other conditions are of a standard nature.

## **GROUNDINGS OF APPEAL**

The following is a summary of the main issues raised in the appeal submitted on behalf of Mr. and Mrs. McLoughlin:

- Applicant has no legal right to carry out the development proposed as it adjoins the home of the appellants and would require their consent and interference with the fabric of their home, a protected structure.
- No abutment detail or supporting detail was submitted by the developer either to the Planning Authority or for agreement with the appellants. An acceptable solution would be the removal of the end of terrace house adjacent to Royal Terrace House.
- The Conservation Report on file was simply resubmitted from the 2007 application unchanged with the exception of the deletion of the date and the removal of page 37. This is a serious omission where the change of ownership of Royal Terrace has not been considered.
- The impacts arising from the introduction of a new terrace to the special character of Royal Terrace ACA and its most prominent structure, the Cottage Home, have not been comprehensively addressed.

- The context of the proposed scheme differs fundamentally from that proposed originally. It is now unviable given the substantial material change in circumstances and legal ownership of the property.
- Letter attached to appeal from Mr. Rob Goodbody, author of original conservation assessment on history file stating that the report on the current file was copied without his consent.

The following is a summary of the main issues raised in the appeal submitted by Mr. Norman Noonan:

- Concerns in relation to adequacy of car parking.
- Concerns in relation to parking for construction workers and construction activities.
- Concerns in relation to significant numbers of pigeons and public health.
- Concerns in relation to design.

## **RESPONSE SUBMISSIONS**

### **PLANNING AUTHORITY RESPONSE TO GROUNDS OF APPEAL**

The response states that the grounds of appeal appear to relate to the ownership of the adjoining site – Royal Terrace House. In its grant of permission, the Planning Authority advised the applicant of section 34(13) of the Planning and Development Act 2000 as amended, which indicates that a person shall not be entitled solely by reason of permission to carry out any development.

Overall the planning authority is satisfied that the proposed development would not have a significant adverse impact on the special architectural amenities of the area.

### **FIRST PARTY RESPONSE**

Two responses (separately to the two individual appeals by Mr. and Mrs. McLoughlin and Mr. Norman Noonan) have been submitted which can be summarised as follows:

- The Planning Authority is fully aware of the change of ownership.
- Appellants are seeking to reverse both the Planning Authority and An Bord Pleanála decision.

- Royal Terrace House was excluded from the planning application site for the previous application on the site.
- Parking was redesigned in accordance with the requirements of the conditions of the An Bord Pleanála decision and the standards set out in the new Development Plan.
- Details and drawings of the proposed abutment details are attached to the appeal.
- The omission of the basement obviates any need to carry out underpinning works.
- Parking is in accordance with the standards set out in the Development Plan.
- The developer will continue to comply with the existing planning condition regarding hours of work.
- Works are underway at The Cottage Home site and as part of those works the roofs have been fully sealed and the pigeon population have left the site.

## **PLANNING AUTHORITY RESPONSE TO FIRST PARTY RESPONSE**

It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

## **OBSERVATIONS**

None.

## **POLICY CONTEXT**

### **Development Plan – Dun Laoghaire Rathdown Development Plan 2016- 2022**

The appeal site is within the area covered by the Dun Laoghaire-Rathdown County Development Plan, 2016- 2022, and has a zoning objective 'A' –'To protect and/or improve residential amenity.'

Site is located in an Architectural Conservation Area with the buildings on the immediately adjoining sites to the north and west listed as protected structures.

## **ASSESSMENT**

Having examined the file and having visited the site I consider that the main issues in this case relate to:

1. Principle of Proposed Development
2. Ownership of Site and Impact on Conservation
3. Parking
4. Other Matters

### **Principle of Proposed Development**

The subject site is located within lands zoned 'Objective A' of the operative County Development Plan, which seeks to protect and/or improve residential amenity and where residential development is permitted in principle subject to compliance with the relevant policies, standards and requirements set out in the plan. Permission was originally granted for this development under PA Reg. Ref. 06D.225826/ D07A/0511 and extended under PA D07/0511E. The amendments proposed are described in detail on the drawings submitted with the application, the planner's report and the appeal documentation. Briefly, they comprise of the omission of basement level accommodation, the omission of an internal lift, the amendment of the roof profile and internal revisions to attic accommodation, amendments to rear windows, the provision of velux roof lights and solar panels and changes to the parking layout and associated site works. The reasons for the amendments relate to requirements of the building regulations, health and safety in relation to the rear windows, condition No. 2 of the An Bord Pleanála (ABP) decision which required the removal of one of the units (6 units originally sought), condition 3 (e) of the ABP decision which required unimpeded pedestrian between the car park and the East-West pedestrian route, the requirement for bicycle parking (condition 6- ABP). From my examination of the history files and the current file, I am of the view that the principle of development has already been accepted on the site and the amendments proposed are not significant in terms of the impact on the character of the conservation area or the adjoining protected structures.

### **Ownership of Site and Impact on Conservation**

The main grounds of the appeal submitted on behalf of Mr. and Mrs. McLoughlin, the owners of Royal Terrace House (protected structure to the west) is that there has been a substantial material change in circumstances and legal ownership of property from the original permission in that Royal Terrace house is now owned by the appellant's and has become separated from the original site. The development as originally proposed in 2007, cannot be carried out due to lack of ownership interest in the adjoining property, and further, the physical impacts arising from the proposed development will place the



protected fabric of Royal Terrace House at risk of reversible loss and damage. There is a substantial amount of detail in this regard in the appeal documentation.

The Conservation Officer of Dun Laoghaire Rathdown in her report dated the 11<sup>th</sup> of March 2016, noted the adjoining protected structures and the location of the site within the Royal Terrace Conservation Area. Permission was recommended with a condition which required the applicant to engage the services of an accredited Conservation Architect or Engineer who specialises in historic buildings, for the duration of the development to advise and monitor the works in particular the junction of the permitted terrace of houses with Royal Terrace House, to prevent any damage to the structural fabric of the Protected Structure.

The Planning Authority response to the appeal states that ‘the grounds of appeal appear to relate to the ownership of the adjoining site – Royal Terrace House. In its grant of permission, the Planning Authority advised the applicant of section 34(13) of the Planning and Development Act 2000 as amended, which indicates that a person shall not be entitled solely by reason of permission to carry out any development.

Overall the planning authority is satisfied that the proposed development would not have a significant adverse impact on the special architectural amenities of the area.’

I note that whilst the land ownership was indicated in blue on the original application (D07A/0511/ PL.225826) and includes both The Cottage Home and Royal Terrace House, the red line around the site clearly indicated this particular site only so there is no change to the actual site boundary. I accept that the separation now makes the works proposed more difficult to carry out and this is of even more importance in the case of a protected structure, however, a grant of planning permission would not entitle the developer to any additional rights to carry out the development. The response to the appeal indicates that the applicant’s ownership extends up to the face of the party wall of Royal Terrace House. Technical information has been submitted with the appeal response in relation to how the developer intends to construct the development abutting the party wall. I am satisfied that the response demonstrates that it will be possible to construct the terrace abutting the existing terrace. I consider that the condition of the Conservation Officer (condition 8 of grant of permission) is satisfactory to ensure that the abutment to the terrace can be carried out without causing detrimental impacts to Royal Terrace House. The appeal considers that an acceptable solution to the appellants would be to omit the dwelling closest to Royal Terrace House and to use the space as a garden with only a terrace of four houses at this location. I am of the view that from a visual point of view in this architectural conservation area, a terrace of five houses without a gap adjacent to Royal Terrace House would be more appropriate. The previous decision of the Board in 2007 required the developer to omit one house of the terrace with the stated reason in the interest of visual amenity when viewed from Royal Park and to reduce the proximity of the development to the eastern boundary of the site. I would see no reason to further reduce the number of proposed dwellings at this

location and consider that the reduction by one house as conditioned previously by the Board will make this an attractive development when viewed from Royal Park.

I share the view of the Planning Authority that any dispute relating to land ownership is not a planning matter and is a civil matter. Section 34(13) of Planning and Development Act 2000 states the following: 'A person shall not be entitled solely by reason of a permission under this section to carry out any development.' As such, any matter relating to the land ownership is not a matter for the Board to adjudicate on.

## **Parking**

The original development provided for a total of 18 No. car parking spaces for the 11 dwellings originally proposed between the two developments on both The Cottage Home site and the current site. The Board omitted one unit by condition which reduced the number of units to 10. Condition 3 (e) of the Board decision required an unimpeded pedestrian access between the car park and the East-West pedestrian route and condition 6 required a covered bicycle parking facility. A total of 15 spaces are now proposed for the two developments together with bicycle parking and an unimpeded pedestrian access.

The Transportation Department of the Council required the developer to provide a justification/ rationale for the reduction in car parking spaces. The response submitted outlined the reduction of units from 11 to 10, the conditions of the Board, the parking standards set out in the 2016-2022 Development Plan including a requirement for disabled parking and a minimum of 600mm additional area to the side of bays adjacent to walls. It also noted that the plan allowed for a reduction in spaces having regard to certain circumstances including the proximity to the town centre and the availability of public transport. A similar justification was provided in the appeal response which stated that the site is within a 1km walk of Dun Laoghaire Town Centre, the DART train service and numerous bus services.

The Transportation Department of the Council considered that the justification submitted was acceptable and recommended permission subject to conditions. I am also satisfied that the parking proposed at this development is acceptable having regard to the location of the site and the proximity to excellent public transport links.

## **Other Matters**

### Conservation Report

A Conservation Assessment was submitted on the previous file carried out by Mr. Rob Goodbody. A letter attached to the appeal from Mr. Goodbody states that this report was copied and resubmitted without his consent. The appeal response states that 'I

personally advised Mr. Rob Goodbody that I was in possession of this report prior to resubmission and he raised no objection at the time.'

I consider that it would have been appropriate either to adjust the conservation report with the original authors consent or to resubmit a new report to identify any impacts the proposed amendments would have on the adjoining protected structure at application stage. However, I note that details in relation to the abutment to the protected structure have been submitted in the appeal documentation and I am satisfied that the works proposed can be carried out without materially affecting the character of the adjoining protected structure.

### Construction Matters

Concern is expressed regarding construction hours and parking, street cleaning and noise issues associated with construction.

The appeal response states that the developers will continue to comply with the existing condition governing acceptable hours of work, associated parking and street cleaning.

I note that there is no condition on the history file regarding construction hours, parking and street cleaning. Condition 7 of the current file deals with construction matters. At the time of the site inspection, I noted that work was ongoing on the adjacent Cottage Home site and it appeared to be a clean well run site with construction parking internally. Should the Board be minded to grant permission, I am of the view that it would be appropriate to attach a condition regarding construction activities in order to safeguard the residential amenities of the area.

### Public Health

It is requested in the appeal that the feral pigeon population on the Cottage Home site is exterminated as in recent years a pigeon colony has thrived due to the derelict nature of the site.

The appeal response states that the feral pigeon population was occupying the open attic spaces of the former Cottage Home. The development works on The Cottage Home are underway and as part of those works the roofs have been fully sealed and the pigeon population have left the site. There was no evidence of pigeons on the site inspection and I am therefore satisfied that this matter has been addressed by the developer.

## Plans

I note that the drawings submitted to the Planning Authority dated the 3<sup>rd</sup> day of February 2016 showed the same plan for both the second and third floors. This matter has been corrected in the drawings submitted to the Planning Authority dated the 15<sup>th</sup> of April 2016.

## Appropriate Assessment

Having regard to the nature and scale of the development and proximity to the nearest Natura 2000 site, I am satisfied that the proposed development either individually or in combination with other plans and projects would not be likely to have a significant effect on any designated Natura 2000 site and should not be subject to appropriate assessment.

## **RECOMMENDATION**

Based on the above assessment, I recommend that permission be granted for the proposed development for the reasons and considerations set out below:

## **REASONS AND CONSIDERATIONS**

Having regard to the zoning objective for the area as set out in the Dun Laoghaire Rathdown Development Plan 2016- 2022, the pattern of development in the area and the planning history of the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not materially or adversely affect the character or setting of the adjoining protected structures, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and 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, as amended by the further plans and particulars submitted on the 15<sup>th</sup> day of April 2016 and by the further plans and particulars received by An Bord Pleanála on the 30<sup>th</sup> day of June 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 out in accordance with the agreed particulars.

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

2. Subject to compliance with the conditions set out in this order, the proposed development shall comply with the relevant conditions of the previous planning permissions granted under PA Reg. Reg. D07A/0511E (PL06D.225826) and all works shall be completed within the duration of that permission.

**Reason:** In the interest of orderly planning and development.

3. 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. The plan shall include details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/ demolition waste.

**Reason:** In the interest of public safety and residential amenity.

4. The applicant shall engage the services of an accredited architect with architectural conservation expertise, for the duration of the development, to advise and monitor the works, in particular the junction of the permitted terrace of houses with Royal Terrace House, to prevent any damage to the structural fabric of the Protected Structure.

**Reason:** In order to safeguard the special architectural or historical interest of the building.

5. 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.

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Emer Doyle

Inspector

19<sup>th</sup> September 2016