



An  
Bord  
Pleanála

## Inspector's Report PL06F.246722

Development	(a) Demolition of house, (b) 2 new replacement houses, (c) new house to rear and (d) all associated alterations and site works including new vehicular access to the south of the site.
Location	'St. Jude's', Tower Street, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F15A/0408
Applicant(s)	B. Smyth
Type of Appeal	Third Party
Planning Authority Decision	GRANT
Appellant(s)	1. Lorraine Allen, Thomas Knappe and Therese O'Regan-Artaud
Observer(s)	None
Date of Site Inspection	31 <sup>st</sup> August 2016
Inspector	Niall Haverty

## 1.0 Site Location and Description

- 1.1. The appeal site is located in a coastal location on Tower Street in Rush. The site is roughly rectangular in shape and has a stated area of 0.165 ha. It is bounded by Tower Street to the west, the foreshore to the east, and existing residential development to the north and south. The site is relatively level, except at the eastern boundary, where there is a steep slope down to the foreshore. This slope is grassed, and there is no apparent evidence of recent erosion. The site currently accommodates a derelict detached single storey house fronting onto Tower Street, while the remainder of the site is undeveloped and overgrown.
- 1.2. The surrounding area is residential in character, with semi-detached housing located to the south and west. The sites immediately north and south of the subject site feature infill detached houses to the rear.
- 1.3. A Martello Tower is located c. 22m to the north of the site. This is a Protected Structure (RPS No. 265) and is included in the Record of Monuments and Places (Record No. DU008-015). The Tower is also recorded in the National Inventory of Architectural Heritage as being of 'National' interest (Reg. No. 11324023).

## 2.0 Proposed Development

- 2.1. The proposed development (as amended on foot of a request for additional information) consists of:
  - Demolition of existing single storey detached house on the site.
  - Construction of two semi-detached two storey houses on the site of the demolished house. Houses have three bedrooms with floor area of 125 sq m.
  - Construction of one detached dormer house to the rear (east) of the proposed semi-detached houses. House has four bedrooms with a ridge height of 6.8m and floor area of 207 sq m.

- New vehicular access to south of proposed houses, with all car parking provided in a courtyard area between the rear of the semi-detached houses and the detached house.

2.2. No development is proposed on the foreshore, although a post and rail fence and landscaping works are proposed at the top of the incline which drops down to the foreshore.

2.3. A revised layout and design for the three houses was submitted on foot of a request for additional information.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

3.1.1. Fingal County Council decided to grant planning permission on 17<sup>th</sup> May 2016 and the following Conditions are of relevance to this appeal:

- **C3:** Planted rear boundary treatment.
- **C5(i) and (ii):** Restriction on height of front boundaries to provide adequate visibility envelopes.
- **C6: Foul Sewer (i) and (ii):** Restriction on occupation of two dwellings until the Portrane, Donabate, Rush & Lusk Waste Water Treatment Scheme is complete and commissioned and connection of the detached dwelling once WWTS is commissioned.

#### 3.2. **Planning Authority Reports**

3.2.1. The report of the area planner can be summarised as follows:

- Verbal report from Conservation Officer expresses serious concerns in respect of the siting and design of the detached dwelling and its impact on the

Martello Tower. [Note: this related to the original proposal. There is no indication of whether the Conservation Officer commented on the amended proposal on foot of the RFI].

- The proposed development is considered to be acceptable in principle having regard to the 'RS' zoning objective.
- Proposal complies with Development Plan requirements for room sizes and widths and private amenity space, but storage provision in semi-detached houses was considered inadequate.
- No undue overlooking or overshadowing.
- Serious concerns in relation to siting and design of detached house to rear of site due to location in transitional zone adjoining 'High Amenity' zoned lands and proximity to Martello Tower. It is considered that rear building line established by house to the north allows for an effective buffer between infill development and the Martello Tower.
- Design of detached house considered to be of poor architectural quality.
- Site boundaries are ambiguous, specifically at the centre of the site, where the car parking area is proposed. Further information on landscaping and boundary treatments required.
- Front elevations of semi-detached houses should be simplified to integrated with the character of the adjoining area.

3.2.2. On foot of the Planning Officer's assessment, additional information was sought in relation to the following four items: the design of the proposed semi-detached houses; the siting and design of the detached dormer house; car parking and footpath provision; and surface water management proposals.

3.2.3. The Planning Officer considered that the applicant's response, which included revised designs and layouts, addressed the outstanding issues and recommended a grant, subject to Conditions.

### 3.3. **Other Technical Reports**

- **Heritage Officer:** Subject to the proposal meeting the requirements of the Development Plan in relation to foul and surface water management there will be no adverse impacts to Natura 2000 sites.
- **Water Services:** No objection subject to Conditions.
- **Irish Water:** No objection subject to Conditions. Replacement of existing dwelling is acceptable, but second and third houses on site should not be occupied until the Portrane, Donabate, Rush & Lusk WWTS is complete. Report notes "*this scheme is expected to be completed by the end of 2018*".
- **Transportation Planning:** No objection subject to Conditions, which seek to improve passive surveillance of parking area and to address traffic hazard arising from parking arrangements for proposed house to rear of site.

### 3.4. **Third Party Observations**

3.4.1. Four third party observations were made. Two of the Observers subsequently made further observations in respect of the applicant's response to the request for additional information. I consider that the principal planning issues raised in the observations were similar to those set out in the grounds of appeal below.

## 4.0 **Planning History**

### 4.1. **Subject Site**

4.1.1. There is no record of any planning history on the appeal site.

## 4.2. Neighbouring Sites

4.2.1. The following planning applications relate to the site immediately north of the appeal site:

- **F14A/0199:** Permission granted in August 2014 for revised dormer bungalow type dwelling (including integrated garage) and all associated siteworks to that approved under Ref. Ref. F14A/0067.
- **F14A/0067:** Permission granted in May 2014 for retention of demolition of existing dwelling and two garages; new replacement dwelling (a dormer bungalow) to rear; and all associated site works including new boundary walls and new vehicular access to new replacement dwelling.
- **F13A/0290:** Permission granted in October 2013 for demolition of existing dwelling and two garages; new replacement dwelling (a dormer bungalow) to rear; alterations (incl. part demolition) and construction of a new single storey extension to rear and (south) side of existing two storey dwelling; and all associated alterations and siteworks including new boundary walls and new vehicular access to new replacement dwelling at rear.

## 5.0 Policy Context

5.1. The western portion of the site is zoned 'RS' in the current *Fingal Development Plan 2011-2017*, the objective of which is to "*provide for residential development and protect and improve residential amenity*". The eastern portion, extending to the foreshore, is zoned 'HA', the objective of which is to "*protect and enhance high amenity areas*". The transition between these two zones comprises the development boundary for Rush Town. Residential is a permitted in principle use in HA zoned lands, subject to compliance with the rural settlement strategy.

5.2. The three proposed houses are located entirely within the 'RS' zoned portion of the site, while the proposed surface water soakaway associated with the three houses

and the private open space associated with the detached house are located in the 'HA' zoned portion.

5.3. The Green Infrastructure maps in the Development Plan indicate that:

- Site is part of a Highly Sensitive Landscape.
- Foreshore adjoining the site to the east is part of a County Geological Heritage Site.
- Site is partially within a Fingal Rare Flora Site.
- Site is in area designated as within 100m of coastline vulnerable to erosion.
- Eastern boundary of site (cliff face) is designated as Annex 1 Habitat outside designated sites.

5.4. Section 5.2.1 of the *Development Plan* states that the development of houses between a road and the sea will be discouraged because of the possible impact of climate change such as rising sea levels and coastal erosion, the potential impact of any new development upon scenic landscapes or vistas and the potential cumulative impacts of rural housing on Natura 2000 sites. No new houses will be permitted on lands with a High Amenity zoning objective which are located between the sea and the coast road.

5.5. The following Objectives are considered to be relevant:

- **Objectives RH34 and RH36** which seek to control development on coastal sites and High Amenity lands between the sea and the coast road in order to protect visual amenity and ensure no negative impacts on natural//built heritage.
- **Objective HA01** which seeks to protect High Amenity areas.
- **Objectives CT04, CT05, CT06 and CT11**, which seek to control development in coastal areas in order to protect the character of the coastline and the visual amenity of the area.

- **Objective RD10** which seeks to encourage development of infill/backland sites in existing residential areas subject to the character of the area being protected.
- **Objective Z04** which relates to development in the vicinity of zoning boundaries.
- **Objectives BD 15, BD16, BD17** which seek to protect, inter alia, Annex 1 habitats.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- Dense infilling has started to overwhelm Tower Street, which is a narrow street.
- Replacing one derelict house with three houses on a small plot adjacent to the high amenity zone line is excessive and will impact on traffic, on-street parking and overall living quality as well as historical and coastal nature of the high amenity zone.
- Revised design did not adequately respond to request for additional information.
- FCC Conservation Officer expressed serious concerns regarding the impact of the original design on the Martello Tower, but does not appear to have reviewed the response to the request for additional information.
- Proposed development is a poor quality infill scheme that will detract from visual amenities of the area.
- Infill schemes on Tower Street and in Rush in general are often ad hoc and of poor design, resulting in a very disjointed visual appearance.



- Proposed development will have significant impact on neighbouring properties. The two semi-detached houses will directly overlook neighbouring properties, while the detached dormer house will have its parking and front entrance overlooking the house to the south, with large bedroom windows looking into the houses to the north and south at close proximity.
- Plans include an area that is within the ownership of the adjoining property to the south, 'Island View'.
- Car parking arrangement is not adequate/workable and all six cars will have to use same narrow entrance.
- Concern regarding the policing of Condition 6 (which requires the Rush Waste Water Treatment Scheme to be complete and commissioned prior to occupation of the two semi-detached houses).

## **6.2. Planning Authority Response**

6.2.1. The Planning Authority's response is summarised as follows:

- It remains the opinion of the Planning Authority that the overall development is acceptable subject to Conditions.
- In the event that their decision is upheld, the Planning Authority requests that Conditions 17 (Development Contribution) and 18 (Security) be included.

## **6.3. First Party Response**

6.3.1. The applicant submitted a response to the third party appeal, which is summarised as follows:

- Having regard to the zoning, location, scale and context of the site, the proposal would represent an appropriate form of development.

- The proposal would not be seriously injurious to property in the vicinity or the area generally and residents would not suffer a material loss of amenity.
- Traffic would not jeopardise road safety to an unacceptable degree.
- The applicant's opinion is reinforced by the affirmative stance taken by the Planning Authority.
- Proposal involves the development of an underdeveloped resource.
- Proposal is compatible with principles of sustainable development and consistent with Development Plan.

#### 6.4. **Observations**

6.4.1. No observations are on file from any other party.

#### 7.0 **Assessment**

I consider the key issues in determining this appeal are as follows:

- Impact on coastal area/High Amenity Zoned Lands.
- Impact on Martello Tower.
- Car Parking.
- Overlooking/Overshadowing.
- Wastewater management.
- Boundary issues.
- Appropriate Assessment.

## 7.1. Impact on Coastal Area/High Amenity Zoned Lands

- 7.1.1. The *Development Plan* seeks to control development on coastal sites, particularly those sites between a road and the coastline, in order to protect visual amenity, the character of the coastline and due to risk of erosion. The coastal landscape character is identified as being of exceptional value and high sensitivity. I consider that the High Amenity zoned area represents the most sensitive part of the site and note the *Development Plan's* requirement to give careful consideration to development in transitional zoning areas. In addition to the High Amenity designation, a number of other Green Infrastructure designations apply to the site and the surrounding area, as outlined in Section 5.0 above.
- 7.1.2. Since the appeal relates to an infill residential development, including the replacement of an existing house, within the development boundary of Rush Town, I consider that it is acceptable in principle on the residentially zoned portion of the site. However, while the detached house is located on the residentially zoned portion of the site, the majority of the private open space associated with the house is located on the High Amenity zoned part of the site. This private open space forms a key ancillary element of the overall residential use, and I note that residential use is only permitted on High Amenity lands subject to compliance with the rural settlement strategy. No evidence of compliance with the rural settlement strategy was submitted with the planning application. Also, should permission be granted there is a risk of further piecemeal development in the HA lands, such as sheds and extensions, although this could be restricted by Condition.
- 7.1.3. The two proposed semi-detached houses will not significantly impact on the High Amenity or coastal areas due to the fact that they address the street and are at a significant distance from the more sensitive part of the site. With regard to the detached house, while there is a pattern of backlands development in the area, including on the sites to the north and south of the appeal site, I consider that this

house will negatively impact on the character of the High Amenity lands and the coastal area. It represents a further suburban style intrusion into this wild and exposed promontory location and while the landscaping plan goes some way in attempting to preserve this character, I consider that it would be an inappropriate form of development in this sensitive transitional zonal area.

7.1.4. With regard to coastal erosion, the site is located within an area designated as being at risk from coastal erosion. While I noted on my site inspection that the cliff down to the foreshore was grassed and did not have any apparent signs of recent erosion, the applicant has not submitted any evidence to demonstrate that the site is not at risk from coastal erosion. Should the site be developed for residential use, any future works to try and prevent erosion would have the potential to impact on the Annex I habitat and County Geological Heritage Site at the coastal boundary of the site.

7.1.5. Having regard to the issues identified above, I recommend that permission be refused on the basis of the impact of the proposed detached house and associated works on the coastal and High Amenity areas. I do not consider that a split decision refusing only this element of the development would be appropriate in this instance, as it would result in the most sensitive part of the site being left as an unresolved area to the rear of the semi-detached houses.

## **7.2. Impact on Martello Tower**

7.2.1. The appeal site is located c. 22m from a Martello Tower, which is both a Protected Structure and a Recorded Archaeological Monument. The curtilage of the Tower is defined by a circular enclosure, which is separated from the appeal site by the private open space associated with the detached house to the north of the appeal site. I do not therefore consider that the appeal site forms part of the curtilage or attendant grounds associated with the Protected Structure.

- 7.2.2. The Martello Tower is located to the rear of a residential street within Rush Town Centre, and only glimpsed views of the Tower can be had from the street. I consider that the setting and character of the Tower is primarily established by its relationship to the coastline, as befitting its original purpose as a coastal defence, rather than to the street. However, as backlands development has encroached towards the Tower, its character and setting has been negatively affected, in particular by the construction of the detached house to the north of the appeal site.
- 7.2.3. With regard to the original development proposal, I would share the Planning Authority Conservation Officer's concerns regarding the potential impact on the setting and character of the Tower, since I consider that it contributed to the degrading of the Tower's setting by not respecting its primacy in this promontory location. However, following the redesign and relocation of the house within the site on foot of the request for additional information, I consider that the potential impact has been sufficiently mitigated. The detached house now shares a common eastern building line with the house to the north and this establishes a clear buffer zone between backlands development on Tower Street and the Tower itself. The detached house will fit within a staggered line of development that runs from north to south along Tower Street. As a result of this and the fact that the house will be at a greater remove from the Martello Tower than the house to the north, I do not believe that the proposed development will exacerbate the existing impact on the setting or character of the Protected Structure.
- 7.2.4. I note, however, that the layout of the house to the north from which the building line has been taken is that from planning permission Reg. Ref. F14A/0067. That permission was subsequently superseded by Reg. Ref. F14A/0199 and that is the house that has been built. The eastern building line is therefore in a slightly different position to that shown on the drawings. If the Board is minded to grant permission, I therefore recommend that a Condition be attached clearly re-stating this

requirement, and requiring a compliance submission to be made to the Planning Authority prior to commencement.

### **7.3. Car Parking**

7.3.1. The appellants claim that the proposed car parking arrangement is inadequate, that car parking will end up in the High Amenity zone and that the courtyard design is out of keeping with the area.

7.3.2. I concur with the Planning Authority's Transportation Planning Section that the car parking arrangement, as proposed, is substandard. The requirement for reversing manoeuvres within a confined area gives rise to the potential for conflicts between cars and between cars and pedestrians, while the fact that all three houses present their rear elevations to the courtyard area creates the potential for a poor quality space with inadequate passive surveillance. The drawings submitted do not indicate where bins for the three houses will be stored. Given that each house will likely have three bins, the storage of bins in the courtyard area would further reduce the space available for manoeuvring vehicles.

7.3.3. It is clear that this situation has arisen due to the applicant's attempt to replicate the eastern building line of the house to the north (and thus remain outside the HA zoned area). This constraint has resulted in the requirement to insert a substandard car parking arrangement between the houses.

7.3.4. With regard to car parking arrangements for the detached house, I note that the proposed main entrance door is located on the south elevation, adjacent to the car parking area. Having regard to this, and the constraints imposed by the proposed landscaping design, I do not foresee any potential for car parking to occur on the High Amenity lands. However, I consider that the provision of two parallel car parking spaces in this narrow side area is representative of the substandard car parking arrangement for the proposed development.

7.3.5. While the modifications to boundary treatments and the requirement to maintain an obstruction-free visibility triangle, as imposed by Conditions 5(i) and 5(ii) will serve to mitigate these concerns to some degree, I nevertheless consider that the car parking arrangement is fundamentally inadequate and gives rise to significant traffic safety issues as well as impacting on the residential amenity of both the existing and proposed houses.

#### 7.4. **Overlooking/Overshadowing**

7.4.1. Having reviewed the drawings and inspected the site, I do not believe that any undue overlooking impact will arise. To the front, the proposed semi-detached houses will be c. 28m from the existing houses on the west side of Tower Street. The houses have no windows to the side elevations and to the rear, the separation distance from the proposed detached house (the closest house to the rear) will be c. 22m. This is compliant with *Development Plan* requirements.

7.4.2. With regard to the detached house, I note that the house has a shared rear building line with the house to the north and no windows on its northern elevation. There is therefore no potential for overlooking of that house. The house to the south is located further eastward than the proposed detached house and only has rooflights facing north towards the appeal site. There will therefore be no directly opposing first floor windows. The parking and front entrance area of the proposed house will face a garage structure which has no windows facing north and I do not consider that any significant degree of overlooking will occur.

7.4.3. The appellants claim that the proposed development will cause light reduction for neighbouring properties. Having regard to the separation distances involved and the alignment of the existing and proposed houses to take advantage of sea views to the east, I do not consider that any significant overshadowing or loss of daylight/sunlight will occur.

## 7.5. Wastewater Management

- 7.5.1. It is intended to connect the three proposed houses to the public foul sewer on Tower Street. While this proposal was acceptable to the Planning Authority, a Condition was imposed on foot of a submission from Irish Water restricting occupation of the two semi-detached houses to the front of the site until the upgraded wastewater treatment scheme serving the area is completed and operational.
- 7.5.2. The *Development Management Guidelines for Planning Authorities* (2007) state that *“it may be unreasonable to make a permission subject to a condition which has the effect of deferring the development for a very long period, by requiring, for example, that the permitted development should not be carried out until a sewerage scheme for the area - which may only be at the preliminary design stage - has been completed. If the development is genuinely premature, the application ought to be refused.”*
- 7.5.3. In this case I note that the Irish Water submission states that the wastewater treatment scheme *“is expected to be completed by the end of 2018”*. Given that Irish Water have indicated a reasonable completion date well within the five year duration of a permission, I consider that the applicant’s proposal to connect to the public foul sewer is acceptable and I do not believe that the issue of prematurity arises in this instance. If the Board is minded to grant permission, I recommend that a Condition be imposed to restrict occupation of all three houses until the wastewater treatment scheme is completed, as the existing house on the site is boarded-up and appears to be derelict.
- 7.5.4. With regard to the appellants’ concern regarding monitoring compliance with the foul sewer Condition, I note that the applicant will be required to make an application to Irish Water in order to connect to the public foul sewer, and I consider that this represents an appropriate form of control in this instance.



## 7.6. **Boundary Issues**

- 7.6.1. The appellants claim that the plans submitted with the application include an area that is in the ownership of the adjoining property to the south, known as 'Island View'. The area in question is located along the southern boundary, towards the centre of the appeal site, where there is an old stone wall in a poor state of repair with a more modern blockwork wall built to the south.
- 7.6.2. The stone wall is adjacent to the proposed parking area for the detached house, and the landscaping plan indicates a hedgerow along this boundary. I do not consider that the presence of the stone wall would significantly interfere with the ability of the applicant to undertake the development.
- 7.6.3. This is a civil/legal matter rather than a planning matter as a person shall not be entitled solely by reason of a permission to carry out any development.

## 7.7. **Appropriate Assessment**

- 7.7.1. The closest Natura 2000 sites to the appeal site are as follows:
- Rockabill to Dalkey Island Special Area of Conservation ('SAC'; Site Code 003000): c. 0.46km to the east.
  - Rogerstown Estuary SPA (Site Code 004015) and SAC (Site Code 000208): c. 0.72km to the south east.
  - Lambay Island SPA (Site Code 004069) and SAC (Site Code 000204): c. 4km to the south west,
  - Rockabill SPA (Site Code 004014): c. 5.1km to the north east.
  - Skerries Islands SPA (Site Code 004122): c, 5.3km to the north.

- Malahide Estuary SAC (Site Code 000205) and Broadmeadow/Swords Estuary SPA (Site Code 004025): c. 6.6km to the south west.

7.7.2. As noted above, I recommend that if the Board is minded to grant permission, that a Condition be attached restricting occupation of the three proposed houses until the upgrade of the public wastewater treatment system is completed. Since the development will connect to the public wastewater system, I do not consider that there is any direct pathway between the development and any Natura 2000 site once the development is completed and occupied.

7.7.3. However, due to the proximity of the site to the coastline and the Rockabill to Dalkey Island SAC, I consider that potential impacts could arise during the construction stage of the project. An Appropriate Assessment Screening Report was not submitted with the planning application or appeal, and no details of the proposed construction management measures were provided.

7.7.4. Therefore, on the basis of the information provided with the application and appeal and in the absence of an Appropriate Assessment Screening Report or construction management plan, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Rockabill to Dalkey Island SAC, or any other Natura 2000 site.

## 8.0 Recommendation

8.1. I recommend that planning permission should be refused for the reasons set out below.

## 9.0 REASONS

1. The site of the proposed development is located in a transitional zonal area partially designated as High Amenity in the current Development Plan for the area. This zoning objective seeks to protect and enhance high amenity areas and is considered reasonable. The site is also located in a coastal area designated as being a Highly Sensitive Landscape, and it is an objective of the Development Plan to protect the special character of the coast by preventing inappropriate development along the coast. Having regard to the location and layout of the proposed detached house and associated private open space, it is considered that the proposed development would seriously injure the visual amenities and landscape character of the area, would be contrary to the High Amenity zoning objective, and would set an undesirable precedent for other such development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the limited extent of the courtyard area and access requirements, it is considered that the car parking arrangement for the proposed development would be seriously substandard, would lead to conflict between vehicular traffic and pedestrians and would endanger public safety by reason of traffic hazard.
3. On the basis of the information provided with the application and appeal and in the absence of an Appropriate Assessment Screening Report or construction management plan, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Rockabill to Dalkey Island SAC, or any other Natura 2000 site. In such circumstances the Board is precluded from granting approval/permission.

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Niall Haverty

Planning Inspector

27<sup>th</sup> September 2016