



An
Bord
Pleanála

Inspector's Report PL06D.246756

Development	Demolition of existing buildings on site, including St. Anne's Convent and the construction of 8 houses with all associated site works at St. Anne's Convent, Kilmacud Road Upper, Blackrock, Co. Dublin .
Planning Authority	Dun Laoghaire-Rathdown
Planning Authority Reg. Ref.	D16A/0214
Applicant(s)	St. Annes Kilmacud SPV Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Appellant(s)	First Party v. Refusal
Observer(s)	1. Mr Paul & Saffron Hennigan. 2. Cathy Leeney & Eric Alexander.
Date of Site Inspection	7 th September 2016
Inspector	Dáire McDevitt

1.0 **Site Location and Description**

- 1.1. The site is located in a mature suburban area, nestled within established residential developments, to the west the older estate of Marsham Court and encircled on the remaining sides by Whaley Place (mixture of houses types) which was developed on the original grounds of St. Anne's Convent in the early to mid 2000s.
- 1.2. Blackrock is c.5km east of the site and Stillorgan village c 1.3km south of the site. The site has a stated area of 0.2525ha and is located within walking distance of public transport links (200m from a Quality Bus Corridor (QBC) and within 1km of Stillorgan Luas Green Line), employment, neighbourhood and district centres.
- 1.3. Map and Photographs included in the pouch on file.

2.0 **Proposed Development**

- 2.1. Permission is sought for the demolition of St. Anne's Convent and permission for the construction of 8 houses, consisting of:
 - House Type A: 2 no. 4-bed detached 3 storey (gfa 184sq.m)
 - House Type B1: 2 no. 3-bed detached 3 storey (gfa 138 sq.m)
 - House Type B2: 2 no. 2-bed detached 2 storey (gfa 108sq.m)
 - House Type C: 2 no. 4-bed semi-detached 3 storey (gfa 176sq.m)

3.0 **Planning Authority Decision**

3.1. **Decision**

Planning Permission was refused for the following reasons:

1. It is considered that the proposed development would result in an efficient and unsustainable pattern of development on serviced zoned land in a location close to public transport links, employment and neighbourhood and district centres. The proposed development, at a density of thirty-two (31.68) units per hectare, is not considered to be of sufficiently high density as envisaged by the County Development Plan and Ministerial Guidelines at this location. The proposed development, therefore, contravenes Policy RES3 'Residential Density' of the Dun Laoghaire Rathdown County Development Plan, 2016-2022 and Section 5.8 of the Sustainable Residential Development in Urban Areas Guidelines (DoEHLG 2009). The proposed development is, therefore, contrary to the proper planning and sustainable development of the area.
2. It is the Policy of the Planning Authority as set out in the County Development Plan 2016-2022 that residential development is provided with adequate public and private open space in the interest of residential amenity. The proposed development is deficient in the quantum, location and quality of public open space. The proposed development would therefore not be in accordance with the Development Plan Section 8.2.8.2 (i) Residential/Housing Developments, and would seriously injure the residential amenity of future residents and the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development does not meet the Quantitative Standards as set out in Section 8.2.8.4 of the County Development Plan 2016-2022 with regard to Quality of Public Open Space, and minimum rear garden depth. It is considered that the proposed development would seriously injure the residential amenities of the neighbouring properties and depreciate the value of property in the vicinity

and, would therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

The main issues highlighted in the Planner's Report can be summarised as follows:

- Re-use of existing building
- Residential Amenity.
- Residential Density
- Residential Mix.
- Overlooking/separation distances.
- Open Space (public and private) & Landscaping
- Access & Parking
- Drainage

3.3. Other Technical Reports

- **Municipal Services Department (Drainage):** Further Information recommended on ground condition investigations, attenuation system maintenance, possible conflict between water and foul pipes.
- **Irish Water:** connection agreement required.
- **Transportation Planning Section:** Further Information recommended on access, sightlines, circulation, street lighting, Construction Management Plan, Site development works.

- **Municipal Services Department (Parks and Landscaping):**
Recommendation to refuse permission on the grounds of insufficient Open Space and non-compliance with the Development Plan standards.

3.4. **Third Party Observations**

There were four submissions on the Planning Application:

- 1) Residents of Whatley Place and Whatley Place Management Company.
- 2) Marsham Court Residents Association.
- 3) Cathy Leeney & Eric Alexander
- 4) Michael Nolan

The main issues are largely in line with the comments made by the Observers on the appeal documentation and are summarised under that section of this report.

4.0 **Planning History**

- 4.1. There are a number of Planning Applications pertaining to the application site and the wider original curtilage of St. Anne's Convent.

4.1.1. **Application site**

SD15A/0706: Permission was refused in January 2016 for the demolition of existing buildings onsite, including St. Anne's Convent (585sq.m) and the construction of 8 dwellings. Permission also included a revised entrance onto Whatley Place to provide for pedestrian and vehicular access. Reasons for refusal included density, Open Space and private garden standards

4.1.2 **Adjoining site within the Original curtilage of St. Anne's**

D97A/0786 (PL.06D/105367) Jackson Properties Limited were granted permission in July 1998 for the demolition of existing building, Redsdale House, erection of 44 duplex apartments and 26 houses with access from Upper Kilmacud Road at St. Michael's House/St. Anne's Convent, Upper Kilmacud Road.

D00A/0409 Jackson Properties Limited were granted permission (no date on registry) for an additional six two storey houses to the south of the convent.

D002A/0438 (PL06D.200272) B. Cullen granted permission in December 2002 for four houses and a three storey block containing eight duplex units, demolish residential block and relocated refuse store at Whatley Place, Upper Kilmacud Road. (4 houses omitted from the grant of permission).

D04A/0203 (PL06D.207230) Darragh Davenport refused permission in September 2004 for a dormer style dwelling at The Orchard, Whatley Place, Kilmcaud Road Upper (3 grounds for refusal) on the grounds that the proposal would not comply with condition no. 1 of PL06D.200272 and provision of open space.

5.0 Policy Context

- Sustainable Urban Residential Development Guidelines (DoEHLG 2009)
- Urban Design Manual - A Best Practice Guide (DoEHLG 2009).
- Quality Housing for Sustainable Communities (DoEHLG 2007).
- Irish Design Manual for Urban Roads and Streets (DTTaS and DoECLG, 2013).
- National Climate Change Adaptation Framework - Building Resilience to Climate Change (DoECLG, 2013).

5.1 Dun Laoghaire-Rathdown County Development Plan 2016-2022

5.1.1 The relevant plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022.

5.1.2 The site is zoned under Land Use Objective 'A' with a stated objective 'to protect and/or improve residential amenity'.

5.1.3 **RES3:** *It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines....*

.....As a general rule the minimum default density for new developments in the county (excluding lands on zoning objective 'GB', 'G' and 'B') shall be 35 units per hectare. This density may not be appropriate in all instances, but will serve as a general guidance rule, particularly in relation to 'greenfield' larger sites or larger 'A' zoned areas.

5.1.4 **RES4:** *It is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.*

5.1.5 Section 8.2.8.2 Public/Communal Open Space-Quantity

(i) Residential/Housing Developments.

Open Space: For all developments with a residential component - 5+ units – the requirement of 15sq.m-20sq.m of Open Space per person shall apply based on the number of residential/housing units. For calculation purposes, open space requirements shall be based on a presumed occupancy rate of

3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. A lower quantity of open space (below 20sq.m per person) will only be considered acceptable in instances where exceptionally high quality of open space is provided on site and such schemes may be subject to financial contributions as set out under Section 8.2.8.2 (iii).

5.1.6 Section 8.2.8.3 Public/Communal Open Space-Quality

....where any open space is to be provided on foot of a planning permission, the space should be well overlooked and designed and located to sympathetically complement the layout of the development and should be visible from, and accessible to, the maximum number of dwellings/units within the proposed scheme. Inaccessible, hidden or otherwise backland open space, and narrow linear strips of open space within a development layout which result specifically from the necessity to protect existing site features (eg a stand of mature trees) may not be included in the calculation open space requirement, as they are necessary to ensure the protection of existing amenities.

5.1.7 Section 8.2.8.4 Private Open Space-Quantity

(ii) Separation distances:

A minimum standard of 22 metres separation between directly opposing rear first floor windows should usually be observed, normally resulting in a minimum rear garden depth of 11 metres. However, where sufficient alternative private open space (eg to the side) is available, this may be reduced to 7 metres for single storey dwellings – subject to the maintenance of privacy and protection of adjoining residential amenities. In all instances, private open space should not be unduly overshadowed and where there is the potential for the proposed development to overshadow or overlook existing/future development adjoining the site, minimum separation distances to boundaries should be increased.

5.1.8 Zoning Map attached in pouch.

5.2 Sustainable Residential Development in Urban Areas (DoEHLG 2009)

(c) Section 5.8 Public Transport Corridors

Walking distances from public transport nodes (e.g. stations / halts / bus stops) should be used in defining such corridors. It is recommended that increased densities should be promoted within 500 metres walking distance¹⁸ of a bus stop, or within 1km of a light rail stop or a rail station. The capacity of public transport (e.g. the number of train services during peak hours) should also be taken into consideration in considering appropriate densities. In general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes...

(d) Section 5.9 Inner suburban/Infill

The provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the revitalising areas by utilising the capacity of existing social and physical infrastructure...

(i) Infill residential development

Potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill. The local area plan should set out the planning authority's views with regard to the range of densities acceptable within the area...

5.3 Natural Heritage Designations

None of relevance.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged against the decision of the Planning Authority to refuse permission. The grounds of appeal are as follows:

- Site is bounded on all sides by established residential development (mixture of semi-detached, detached and terraced houses, all with front and rear gardens in a generally linear design with pockets of public open space dotted around. which affects the type of development that can be accommodated on the site as well as the density of development.
- The BER rating of the existing structure (St. Anne's Convent) proposed to be demolished is E1, and therefore it is more economically viable to demolish the structure and build new units rather than retrofit and convert the existing structure to apartments.
- There is a current shortage of family sized homes in the Dublin area, it is proposed to construct 8 generously sized family homes in keeping with the design of the existing dwellings surrounding the site.
- Due to the size of the site, its rectangular shape and location of the adjoining dwellings, the layout of the proposed dwellings will be in an L-shape. This will ensure that no dwellings will overlook adjoining properties or any of the new dwellings proposed within the site.
- RES3 and Section 5.8 of the Sustainable Development In Urban Area Guidelines are general guides and a balance is required between the reasonable protection the amenities and privacy of adjoining properties and the established character of the area. The County Development Plan provides minimum densities as a guide for the county and there is scope to reduce this density on specific sites where higher density simply cannot be achieved. A lower density should be accepted here in order to protect the established character of the area, the residential amenities of adjoining properties and to ensure a high quality scheme is provided on site where the future inhabitants can enjoy good quality standards of living.

- A higher density on the site would compromise the quality of units and residential amenity of adjoining properties could be affected.
- Precedent in the Dun Laoghaire Rathdown area for similar developments and reduced densities.
- A public Open Space area of 143sq.m has been provided, this represents a shortfall of 109sq.m as required under section 8 of the County Development Plan. The applicant argues that as only 8 units are proposed on a small infill site, all of which have large rear gardens with communal frontages which include a large surfaces surface area within the scheme, the shortfall in public open space should be acceptable. There is a large public park within 1km of the site and there is provision under section 8 to impose a financial contribution in lieu of public open space.
- Dun Laoghaire Rathdown have used the discretion of a financial contribution in a number of cases for similar developments to that currently proposed. The applicant notes that having regard to the siting of the site within 60m of open space serving the adjoining residential scheme, proximity to public parks and the infill nature of the site that a financial contribution in this instance should be acceptable in relation to the shortfall in Public Open Space.
- All units provide for the minimum (and in some cases exceed) rear garden areas as set out in the Dun Laoghaire Rathdown County Development Plan.
- The applicant submits that as the boundaries of the site are bounded by established residential development with long rear gardens, in particular the houses along the western boundary (Marsham Court) have rear garden depths of 15m and therefore it is argued that reduced rear garden depths are acceptable as the minimum 22m separation distance is still achieved.

- In relation to the houses along the southern boundary. The proposed houses would back onto a gable. The rear first floor gable window of no 3 The Orchard serves a landing and therefore overlooking is not an issue.
- The applicant is willing to introduce a screened boundary with the property to the south to address overlooking concerns of ground floor rooms and the levels of the site.
- In relation to the issue of boundary encroachment, this site boundary was drawn further to site survey, however the applicant is willing to amend the boundary if the observer can provide evidence of ownership and the Bord deem it appropriate.
- There will be no loss of residential amenity as a result of the development, on the contrary, the reuse of a vacant site would enhance the wider community and provide additional security in the area.
- The applicant contends that the proposed development has addressed previous reason for refusal and engaged in pre-planning discussions.

6.2. Planning Authority Response

Response by the Planning Authority notes that 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.

6.3. Observations

Two Observations have been received on the Appeal,

- Mr Paul & Saffron Hennigan (No. 3 The Orchard, Whatley Place)
- Cathy Leeney & Eric Alexander (No. 85 Marsham Court, Upper Kilmacud Road)

The main issues can be summarised as follows:

- Density
- Inadequate and Insufficient Public Open Space.
- Inadequate and insufficient Private Open Space
- Overlooking and residential amenity.
- Incorrect site boundaries
- Encroachment onto adjoining lands outside the applicant's ownership.
- Re-use of the existing structure and has not considered alternatives.
- No justification for the demolition of the existing structure.
- Concerns raised by third parties at application stage have not been addressed.
- Previous reasons for refusal not addressed.
- Three storey structures would be overbearing at this location.
- Drainage and sewerage concerns and impact on Marsham Court Estate.
- Loss of light
- Devaluation of adjoining properties.

7.0 **Assessment**

7.1 **Main Issues**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of the development

- Residential Density.
- Public Open Space.
- Private Open Space

7.1 Principle of the development

7.1.1.1 The subject site currently has a two storey structure (St. Anne's Convent). It would appear that the structure was in use as a private residence until 2013.

The proposed scheme is on land zoned for residential use as identified by the 'A' land use zoning attributed to the site where the objective is *to protect and improve residential amenity*. A residential Scheme is permitted in principle on lands zoned 'A' subject to site specific considerations and compliance with Development Plan Policies/Objectives and Government Guidelines.

7.1.1.2. St. Anne's Convent is not included in the Dun Laoghaire Rathdown County Development Plan as a Protected Structure. The original structure has been substantially altered (internally and externally). The principle of demolishing the structure is considered acceptable.

7.1.1.3 Having regard to the land use zoning objective for this site I am satisfied that a residential scheme is acceptable in principle at this location.

7.1.2 Residential Density

7.1.2.1 A density of 32 units per hectare is proposed. The site is located within an established residential area on lands zoned residential (A) in an area

which is the subject of development pressure due to its location vis a vis public transport routes and the M50. The wider area varies in density and layout from modern high density to more typical outer suburban densities.

7.1.2.2 Policy RES3 of the Development Plan follows the recommendations for density as set out in the 2009 Guidelines '*Sustainable Residential Development in Urban Areas*'. This clearly sets out that *...where a site is located within c. 1km pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Bus Corridor and/or 500 metres of a Bus Priority Route and/or 1km from a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged.....This density may not be appropriate in all instances, but will serve as a general rule, particularly in relation to 'greenfield' sites or larger 'A' zoned areas.*

7.1.2.3 There is a Quality Bus Corridor (QBC) c. 105m from the site (11, 47, 75 & 116 bus routes). There are bus stops within 200m (walking route) of the site (routes 11, 47, 75 & 116). The Luas Green line and Stillorgan Luas carpark is within c.1km (walking route) from the site. The M50 is within c.2.5km. Based on the definitions set out in both the Development Plan and the 2009 Guidelines – 500 metres from a Bus priority route and/or 1 km walk from a railway station – the site is considered to be on a public transport corridor.

7.1.2.4 There is scope within application site to increase the densities required (50 units per hectare), without having a detrimental impact on existing residential amenities and residential amenities of potential future residents. I am of the opinion that an increased density on this site would

be in keeping with the adjoining development (Whatley Place) notwithstanding the mix of densities present within the established pattern of development in the wider area.

7.1.2.5 Notwithstanding the site constraints and requirements to comply with public open space, private open space and car parking requirements, etc as set out in the Dun Laoghaire Rathdown Development Plan a density of 50 units per hectare (12.6 units) could be accommodated on site subject to a high standard of design and layout.

7.1.2.6 The development as proposed does not comply with RES3 of the Development Plan or Section 5.8 of the Sustainable Residential Development in Urban Areas Guidelines. I therefore agree with the Planning Authority and recommend that the first reason for refusal be substantially upheld.

7.1.3 Public Open Space

7.1.3.1 The development has one area of open space (118sq.m), located along the eastern boundary of the application site. The location and quality of the open space poor is and more akin to a large landscaped area along the margin of the site rather than usable open space. The attenuation tank is also proposed at this location.

7.1.3.2 Based on Dun Laoghaire Rathdown County Development Plan standards (for schemes of 5+units, the requirement is 15-20 sq.m per person) a minimum of 252sq.m public open space would be required to cater for the

proposed scheme of 8 houses. The proposal falls short of the minimum requirement.

7.1.3.3. There is provision in the County Development Plan for a reduction of the standards or the imposition of a contribution in lieu of any shortfall. Having regard to the quality of the public open space proposed within the site a reduction or contribution in lieu is not considered appropriate.

7.1.3.4 The proposed development does not comply with section 8.2.8.2 (i) of the Development Plan. I therefore agree with the Planning Authority and recommended that the second reason for refusal be substantially upheld.

7.1.4 Private Open Space

7.1.4.1 Section 8.2.8.4 of the County Development Plan sets out the need for a minimum separation distances of 22 metres between opposing rear first floor windows. It also refers to the acceptance of rear garden depth of 7 metres where sufficient open space is provided and the protection of existing residential amenities is ensured.

7.1.4.2 Having regard to No. 3 The Orchard (to the south of the application site) I would disagree with the observer that overlooking of their property is an issue. The proposed units back onto the gable of this house (first floor gable window of no. 3 the Orchard serves a landing). A degree of overlooking is to be expected in urban areas, however while there may be a minimum degree of overlooking, this is not considered material as it is a gable window serving internal circulation space. Additional screening of boundaries could address ground floor concerns

7.1.4.3 The applicant submits that as the site is bounded by established residential development (Marsham Court) with long rear gardens along the

western boundary and, therefore, a relaxation of the standards should be allowed.

7.1.4.4 The required minimum 22 metre separation distance from opposing first floor windows can be achieved with the houses in Marsham Court, notwithstanding that there is a marginal reduction from the Development Plan standard in rear garden depth.

7.1.4.5 The shortfall in garden depths is considered marginal, compliance with minimum separation distance are achieved. Overshadowing or overlooking are not issues. Overall the development would not detract from the residential amenities of nearby properties. I therefore disagree with the Planning Authority's third reason for refusal and recommend that it should be omitted.

7.1.5 Boundaries

Reference has been made in the Observations received that there are discrepancies in the site boundaries submitted. This issue was raised at the time of the Planning Application as a validation issue. Dun Laoghaire Rathdown deemed the Planning Application to be valid and assessed it accordingly. Any issue regarding encroachment on neighbouring lands is a civil matter. Section 34(3) of the Planning and Development Act 2000 (as amended) sets out that a person shall not be entitled solely by reason of a permission to carry out such development.

7.2 Appropriate Assessment

7.2.1 Having regard to the location of the site in a fully serviced built up suburban area, 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.

8.0 Development Contributions

8.1 Dun Laoghaire Rathdown County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended). The proposed development does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

9.0 Recommendation

9.1 I recommend therefore that planning permission for the proposed housing development be refused for the reasons and considerations set out below

10.0 Reasons and Considerations

1. Notwithstanding the residential zoning designation of the site, it is considered that the proposed residential development, which is located on a major transport corridor within 200 metres of a bus stop along a QBC and within 1km of a Luas station, is at a density which represents an unsustainable use of urban land and as such it would contravene the standards set out in policy objective RES3 of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and the density requirements in the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009). The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development, by reason of its inadequate qualitative and quantitative provision of communal open space, would conflict with the provisions of the current Development Plan for the area and with the minimum

standards recommended in the "Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities" (2009). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Dáire Mc Devitt

Planning Inspector

14th September 2016