



An
Bord
Pleanála

Inspector's Report

PL06D.246950

Development

Modifications to approved plans to increase the number of units from 87 to 93 at Herbert Hill, a protected structure at Sandyford Road, Dublin 16.

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D16A/0298

Applicant

Targeted Investment Opportunities
ICAV

Type of Application

Permission

Planning Authority Decision

Grant Permission

Appellant

Andrew and Delyth Parkes and
others

Observers

None

Date of Site Inspection

20th October 2016

Inspector

Mairead Kenny

1.0 Introduction

1.1 This application relates to an existing planning permission for a residential multi-unit development. The purpose of the application is stated to be to take account of Guidelines for Planning Authorities: Design Standards for New Apartments published in December 2015. The proposal is stated to involve internal changes to provide additional units (6 no.) with no alterations to the height, massing, volume or position of the building.

1.2 The provisions of the Planning and Development (Amendment) Act 2015 applies. As such there may be restrictions to the rights to appeal and to considerations of the Board.

2.0 Site Location and Description

2.1 The site is located very close to Dundrum Town Centre and to the Luas Balally stop. It is the site of a stated area of 1.07 hectares which is the location of Herbert Hill House, a protected structure and associated gate lodge and mature trees. The site entrance is from Sandyford Road.

The permitted development largely would be positioned in the northern half of the overall site, which is presently the location of a tennis court and mature vegetation. The northern half of the site also contains the site entrance from Sandyford Road and the gate lodge and the existing avenue to the main house. The main house is positioned in the centre of the southern half of the site and is surrounded by lawns and mature trees.

The north-west boundary is positioned at Sandyford Road. At that location is a residential development 'Ridgeford' and broadly to the north and south of 'Ridgeford' is Dundrum Town Centre. The north-east boundary of the site is defined by the Luas line, which is in cut. Beyond the Luas line is a residential street with detached houses, Sydenham Villas. This is an Architectural Conservation Area. The northern boundary is shared with low rise (two-storey) residential development beyond which there is a surface car park. To the south of the site and to the south-east are newly constructed residential blocks. The wider context includes Airfield Park and a number of two-storey residential streets.

Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

3.0 **Proposed Development**

The stated purpose of the application is to take account of specific planning policy requirements of the new guidelines as they relate to the previously permitted development. The development to consist of 93 dwellings within the grounds of Herbert Hill a protected structure.

The development amends the previously permitted scheme by way of internal modifications to the apartment building to result in an increase of 6 apartments within the permitted apartment building envelope and the consequential increase in car and bike parking spaces in the basement.

There is stated to be no change to the building height, footprint, massing and volume, which are the same as the previously permitted scheme. The planning report accompanying the application states that there is no materially significant change to the external structure of the development including elevation treatment, materials, window design and location of balconies and terraces as compared to the permitted scheme. As outlined below under the planning history section of this report the permitted scheme comprises 87 no. units.

The planning report notes that the overall development would consist of a total of 93 residential units:

- 90 units in Block A – 15 no. 1-bedroom apartments, 65 no. 2-bedroom apartments, 10 no. 3-bedroom apartments
- 2 no. houses within the converted Herbert Hill House
- 1 no. dwellinghouse at the extended Gate Lodge.

The stated gross floor area of the existing buildings on site is 482 m². The stated gross floor area of the development is 11,940m².

The application submissions include

- Planning report
- Architectural design statement
- Landscape design report
- Bat Survey report
- Site specific flood risk assessment report
- Construction management plan
- Construction and demolition waste management plan
- Infrastructure design report
- Traffic and transport assessment report
- Appropriate Assessment Screening report
- Ecology report.

4.0 Planning History

Under reg. ref. PL06D.245456 the Board overturned a decision of the planning authority and granted permission for a development generally described as:

Construction of 114 units consisting of 111 apartments within the grounds of Herbert Hill and conversion of Herbert Hill into 2 no. houses and Gate Lodge into 1 no. house (protected structure).

Application details

The considerations of the Council's planner and conservation officer and the prescribed bodies, which led to a decision to refuse permission related primarily to the impacts of Blocks A and B on the architectural character of the protected structure and open space provision.

In terms of the impact on Sydenham Villas the planner's report states that there are two areas of concern (which are inter-linked) namely the building height and the impact on the protected structure.

The planner also states that the north-east and north-west elevations are visually unappealing referring to the lines of rows of windows.

Regarding Sydenham Villas the planner notes that neither the conservation officer or DAHG referred to impacts on the ACA and overlooking does not result – the separation distance is considered acceptable.

The permitted development of 84 units is stated to consist of 17 no. 1 bedroom units, 62 no. 2-bedroom units and 5 no. 3-bedroom units.

Appeal details

The applicant submitted an amended scheme for consideration of the Board – this provided for construction of 89 residential units consisting of:

- Block A – 84 no. apartments in a 5 to 7 storey over basement block containing 89 car parking spaces, bicycle parking and service areas
- Block B – 2no. apartments in a 2-storey block
- 2no. units in the converted protected structure and 1no. in the gate lodge
- Associated modifications to the external site works and landscaping.

The modifications to the scheme as submitted in response to the appeal provided for a reduction in the main block from 6-8 storeys to a 6-7 storey scheme with modifications also to the external finishes. Photomontages presented with the first party appeal submission emphasise (by use of red arrows) the reduction of the northern and southern portions of Block A. A subsequent submission shows photomontages of the revised scheme as viewed from Sydenham Villas.

The Inspector's recommendation to refuse permission related to the design, scale, bulk, form and location of the proposed development within the curtilage of the protected structure. The inspector consider that the degree of separation between the existing dwellings and the site are such that the proposal would 'have no

significant impact adverse or otherwise' on the character and setting of the ACA. The inspector referenced specifically the view from the public realm.

In deciding not to accept the inspector's recommendation the Board had regard to the revised proposals submitted with the appeal and considered that subject to the removal of Block B the proposal would not have an adverse effect on the setting of a protected structure. The Direction makes no reference to the ACA.

The Board adopted the modified scheme as indicated by condition 1 of the permission. Block B (2no. units) was omitted by condition 2. The **permitted development therefore comprises 87 no. residential units**. Condition 3 related to a full delineation of communal open space and in the event of a shortfall a contribution shall be paid in accordance with the development plan.

5.0 Planning Authority Decision

5.1 Planning and Technical Reports

Planner's report – Circular Letter PL6/2016 supports development of the type proposed and applications of this type are acceptable and were envisaged. The planning authority is restricted in its assessment to the modifications proposed. The mix of units is acceptable and the size, aspect, floor to ceiling heights, units per core, minimum kitchen/living/dining areas, double bedroom floor area, storage areas and private open space areas are all achieved and the block is consistent with the 2015 Apartment Guidelines. Changes to the internal configuration including bin store, plant, parking are made. The overall length of the block is increased from 76.77m to 68.1m and the width from 41.17m to 42.334m. There are limited increases in the overall basement footprint, the ground floor footprint is similar but not exactly the same although it is difficult to make easy comparisons as the measurement methods are changed. The alterations may be negligible but the permitted and proposed footprints are not identical. Equally there are small changes (a few hundred millimetres) to ridge heights. In all there are cumulative increases.

Regarding elevation changes at the lower levels there is an increase in the number of windows and balconies proposed. The north-east elevation appears more imposing with additional windows which would lead cumulatively to an intensification of overlooking.

Appendix 2 of the Circular letter refers to situations where change gives rise to a significant intensification of concerns raised by third parties in the application process for the original permission and whether the change proposed could have a negative effect on the neighbouring or wider public amenity relative to the original existing permission.

Overlooking was cited as a significant concern by third parties during the course of the parent planning application. It is considered that the cumulative intensification of overlooking and additional windows and some longer balconies servicing the apartments to the north east elevation does give rise to the intensification of concerns by third parties particularly given the fact that a submission from the occupants of three affected properties to the north-east has been received. It is not considered that permission should be refused but it is considered that a 'materially significant change' to the approved external appearance of the proposed development' has occurred and therefore this application should be open to appeal to An Bord Pleanála.

The alterations are not of particular concern even though they are materially significant from the original permission. The additional units are consistent with the Guidelines. The number of balconies and windows has increased and are a 'materially significant' change but are not in themselves a significant concern. Overlooking was addressed previously and it was not considered primarily due to the separation distances involved that overlooking was a concern. It is not considered that the additional windows and balconies affect this position although there is an intensification of the 'concern' of overlooking as raised by the third party.

The planning notices do not materially affect the application or leave third parties at a disadvantage. The attachment of new conditions is not appropriate. Contributions for 90 no. dwellinghouse is appropriate.

Municipal Services – Drainage Planning – no objection subject to conditions.

Transportation Section – no objection subject to conditions including:

- Revision of the TTA to clarify whether it is envisaged to provide traffic lights
- Measures to be put in place to prevent use of car parking by commuters
- Noise assessment to be undertaken in respect of Luas line
- Details of lighting

- Details of 45 bicycle parking spaces for visitors at ground level
- 1 car parking space per residential unit
- All residential car parking spaces to be capable of accommodating future electrical charging points
- Compliance with Construction Management Plan.

Housing Section – proposal is capable of complying with the requirements of Part V. A condition should be attached requiring the applicant/developer to enter into an agreement in accordance with Part V.

5.2 Other

Irish Water – no objection subject to conditions.

An Taisce – application does not differ substantially from permission available to the applicant. There is no purpose in re-stating our objection.

5.3 Decision

The planning authority decided to grant permission subject to conditions including:

- Expire on date of expiry of PL06D.245456
- In accordance with conditions of PL06D. 245456
- Part V
- Bonds and contributions.

6.0 Grounds of Appeal / Observations

6.1 Grounds of Appeal

The main points of the third party appeal are:

- Proposal will result in material changes to an approved scheme which would give rise to intensification of overlooking and resultant injurious impact on residential amenity and privacy of residential properties at Sydenham Villas
- The north-eastern elevation overlooking Sydenham Villas is of most concern - the six additional units proposed are all positioned on the elevation facing
- The separation distances do not less the impact on our clients and to suggest so is a dereliction of duty and the primary consideration must be to protect and or improve residential amenity in accordance with the statutory development plan zoning for the appeal site – to do so the Board must refuse permission
- The approved scheme does not fail to comply with the new standards – the new guidelines are being used to justify a reduction in standards
- The intention of the new guidelines is to increase accommodation standards, not decrease it as presented in this scheme.

6.2 Planning Authority response

The provision of the additional windows and balconies intensifies the permitted overlooking but it is considered that there is sufficient separation distance between the subject site and the appellants' properties and the additional 6 no. apartments should not lead to a refusal of permission. Applications of this type are acceptable and were envisaged under the Apartment Design Standards guidelines.

6.3 First Party response

The first party lodged an appeal which was invalidated. The purpose of that appeal was to pre-empt a third party appeal as the applicant felt strongly that the right of such an appeal should not exist.

The Design Statement illustrates the approach taken by the design team to minimise changes to the approved scheme and to maximise the potential of the site in accordance with the new Guidelines. The changes are unquestionably minor.

The appellant's state that they are most concerned with the north-east façade. The guidance letter 6/2016 shows that the Department envisaged change to the external appearance as being a constituent part of a proposal and strengthens our case that the addition of windows and balconies is immaterial and is not materially significant. If this application does not fall within the parameters set by the Department then none will and the legislation will be meaningless.

Regarding the impact on residential amenity section 9.6.1 of the Inspector's report under PL06D.245456 refers to the degree of separation being sufficient to preserve residential amenity. The separation distance of over 63.3m in all cases far exceeds the 22m distance required for first floor opposing windows in 2-storey scenarios and we note that there is no figure set for greater heights it must be concluded that the distance is more than adequate.

The planning authority does conclude that the alterations proposed do not have an adverse impact on the residential amenity of the appellants' properties and the applicant fully supports this conclusion.

The development is confirmed in the planning officer's report to be in compliance with the new Apartment Design Standards. The Board is invited to dismiss the appellant's assertions regarding an inferior design, which is unfounded. The applicant seeks permission for a scheme which is more efficient to build, makes greater use of the site which is well located relative to shops and services and public transport and in a period of significant housing shortage.

The appeal is considered invalid. In the alternative the Board is requested to uphold the decision of the planning authority.

7.0 Policy Context

Design Standards for New Apartments – Guidelines for Planning Authorities – this document published in December 2015 takes precedence over development plan standards and it incorporated *inter alia* different minimum floor areas.

Circular Letter PL6/2016 refers to amendments to section 34 of the Planning and Development (Amendment) Act 2015. This notes that the assessment of

applications shall be restricted to the modifications proposed for the purpose of complying with new guidelines. It provides that where there is no materially significant change to the external structure of the development, the amendment precludes the right of third party appeal. Appendix 2 provides general guidance.

Under the provisions of the **Dun Laoghaire County Development Plan 2016-2022** the site is zoned objective 'A' (residential). The development plan takes on board the Apartment Design Standards guidance document. Herbert Hill House is a protected structure. There is an objective relating to the protection of trees and woodlands at the site. There is a specific local objective to prepare a Local Area Plan for Dundrum. Sydenham Villas is an ACA.

8.0 Assessment

The two issues arising in this appeal concern the validity of the appeal / right to appeal and the impact of the amendments proposed on the properties at Sydenham Villas.

Circular Letter PL1/2016 clarifies that the amendments to section 34 enacted under the 2015 Planning and Development Act are aimed at stream-lining the assessment of applications for modifications to extant permissions in respect of multi-unit housing developments on foot of any revised apartment guidelines. The amendment restricts the assessment of such applications to the modifications proposed for the purpose of complying with the new guidelines and to avoid re-opening of questions relating to the suitability of the development for housing. As such the Board is restricted in this case to considering the modifications proposed by the applicant.

Appeal Validity

The requirements set out under the Planning and Development (Amendment Act) 2015 are subject to Circular Letter 1/2016 and 6/2016. Where the planning authority is satisfied that the application complies with the requirements of section 34(3A) and 34(3B) apply including that the development is intended to comply with guidelines and does not give rise to materially significant change to the approved external appearance it may issue a final decision. It is clear that the onus is on the planning

authority to decide on whether an appeal may be made in view of the provisions of section 34(3B).

The planning authority has decided that the development is subject to section 34(3A). I consider that the conclusion of the planning authority is reasonable – I am satisfied that the development subject of this application is for the purpose of taking account of specific planning policy requirements, in this case the revised Apartment Design Standards. As such the Board is restricted in its determination of the application to considering the modifications proposed by the application.

The planning authority has decided that section 34(3B) does not apply as the development would relate to a ‘materially significant change to the approved external appearance of the proposed development’. The deliberations of the officials on this matter are set out in some detail earlier in this report. The right to appeal has been determined by the planning authority. The Board has no role in this matter.

Impact on Sydenham Villas

I have set out in some detail above the reasoning which lead to the decision of the Board and the consideration of the Board's inspector and of the officials of the planning authority in the previous permission. There was no concern in the previous appeal in relation to the impact of the development on the architectural integrity of the ACA which governs Sydenham Villas. In terms of architectural heritage the overwhelming matter of concern related to the protected structure on site.

A copy of the Sydenham Villas ACA is on the history file attached. There is no indication from the relevant document that the architectural interest of the four houses is likely to be diminished by the development on the site of Herbert Hill House. I consider that if there was such concern that matter would have been raised in the publication, which dates only to 2014. The stated threats to the character of the ACA relate primarily to potential developments within the ACA or on the street.

I am satisfied that while the outlook from the public realm at Sydenham Villas and from the rear gardens and interior of the houses would be altered by the permitted development there would be no significant additional change arising from the modifications proposed under the current application and appeal. In this regard the Board is advised that I inspected the rear gardens and ground and first floor levels of

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the appellant's houses. The views from the houses are shown in Photomontages 6, 7 and 8. I consider that the images presented are accurate and representative. I consider that they demonstrate the very marginal difference between the permitted and proposed developments.

The streetscape would be largely unaffected by the development, apart from glimpsed views to the distant development. There are already buildings of significant height and not dis-similar character in the general area. I do not consider that the character of the outlook from within the ACA is materially altered or diminished by the modifications subject of this appeal. The modifications proposed are acceptable in terms of architectural heritage.

Regarding residential amenity the issue raised in the Council's planner's report and in the appeal relates to the increased concern / perception of overlooking. The conclusion of the planning authority however was that a refusal of permission would not be warranted.

It is clear that there will be a larger number of windows visible from the rear of houses at Sydenham Villas and from the street as a result of the modifications subject of the current appeal¹. There will be views to balconies which are longer than those previously permitted, as is evident from the various drawings and images. There are very minor alterations to the length and height of elements of the development (e.g. 88.670mOD parapet height compared with the permitted height at the same location of 88.625mOD). In general, I consider that the applicant's description of the development, that it is within the same volume, footprint and height is generally reasonable, insofar as a member of the public or occupant of a residential property is concerned.

In terms of the external appearance of the apartment scheme I cannot conclude that the development subject of the current appeal would materially detract from the residential amenity of the houses at Sydenham Villas (or any other residential property in the area) either by reason of impacting on views from the gardens and

¹ The appellant states that the increase in windows and balconies that will overlook Sydenham Villas is 10 additional windows and 3 no. additional balconies or terraces – the planning authority calculates 12 no. additional windows and 4 no. additional balconies in total for the north-east elevation.

patios or from the interior of the houses. I disagree with the appellants in that regard. The separation distance between the existing and proposed / permitted facades is typically about 60m and as such the actual concerns relating to overlooking are a matter of perception rather than actual overlooking or reduction in privacy. The façade separation appears marginally reduced compared with the previously permitted scheme – however when the two site layouts are overlaid there is no change and the apparent difference relates only to the position or line of measurements.

When account is taken of the distance and the screening provided by trees and walls within and close to the residential plots I am satisfied that the changes proposed under the current appeal would be barely discernible compared with the permitted scheme. I do not consider that a refusal of permission or modification by condition is warranted for reason related to residential amenity.

Other issues

I have read all of the reports submitted with the application and appeal and have considered the submissions made as well as the planning history and the prevailing policy context.

I am satisfied that the current development plan, which was adopted since the decision on the permitted development does not contain any particular provisions which materially alter the planning policy context pertaining to this site. As such there is no significant change in the circumstances since that decision. In any case the provisions of section 34 as amended restrict the consideration of the application.

Having regard to the nature of the current application, which does not involve any significant changes to the permitted footprint, height or mass of buildings and to the nature of the submissions, the provisions of the development plan and the consideration of the Board under PL06D.245456, I am satisfied that further consideration of the following issues is not required:

- Ecological impacts including impact on trees and bats
- Flood risk

- Construction management and waste plans.

The increased density resulting in higher occupancy levels would give rise to marginally higher requirements for infrastructural services including wastewater and surface water disposal and water supply and would result in a minor increase in additional traffic generation. I agree with the conclusion of the planning authority that the conditions recommended by the relevant sections are not relevant in view of the limited scale of the additional development (6 no. residential units). These matters are adequately controlled under the previous permission conditions.

The applicant has presented an indicative preferred option in relation to complying with Part V of the Act, which is to provide 9 no. 1 bedroom apartments. I am satisfied that this matter can be addressed by a standard condition allowing for further detailed agreement between the applicant and the planning authority.

The appellant states that a 'poorer scheme' is proposed and should be refused on the basis of a material reduction in the quality of accommodation for the future residents. I am satisfied that the development complies with national standards and that a refusal of permission is not warranted.

Appropriate Assessment

The Appropriate Assessment screening report on file refers. I agree with the general thrust of this report which identifies the marginal increase in discharge of wastewater and the potential for increase surface water run-off as being of interest in terms of the likely effects.

All wastewater discharges to the municipal system in relation to which I am unaware of any capacity or other issues. The incorporation of sustainable drainage systems will minimise potential for reduction in water quality.

Having regard to the nature of the proposed development, which comprises only modifications to a permitted development in a suburban location on serviced lands I am satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

I recommend that permission be granted for the reasons and considerations and subject to the conditions below.

Reasons and Considerations

It is considered that the internal modifications and external changes to the façades resulting from the proposed development comprising modifications to a permitted development of 87 no. residential units to provide an additional 6 no. units at this site

- (a) would be in accordance with the provisions of the *Sustainable Urban Housing Design Standards for New Apartments – Guidelines for Planning Authorities* published by the Department of Environment, Community and Local Government in December 2015 and in accordance with the Dun Laoghaire Rathdown County Development Plan 2016-2022
- (b) would constitute a sustainable use of serviced lands close to community facilities and a high quality public transport route
- (c) and would not adversely affect the residential amenities or architectural heritage 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 details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This permission relates solely to amendments to the development permitted under PL06D.245456 and shall expire on the expiry date of that permission.

Reason : In the interest of clarity.

3. The conditions of the previous permission PL06D.245456 shall apply except where modified by the conditions herein.

Reason : In the interest of clarity.

4. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

5. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

6. 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.

Mairead Kenny
Senior Planning Inspector
24th October 2016