



An
Bord
Pleanála

Inspector's Report PL06D.247145

Development	House and all associated site works
Location	Site east of Entrance to Lisnaroe and Brooklands, Commons Road, Loughlinstown, Dublin 18.
Planning Authority	Dun Laoghaire-Rathdown Co. Council
Planning Authority Reg. Ref.	D15A/0502
Applicant	Florin Strimbu
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First / Third Party
Appellants	(1) Florin Strimbu (2) Rory Mulcahy
Observers	none
Date of Site Inspection	30/11/16
Inspector	Siobhan Carroll

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.11ha and is located on the southern side of Commons Road in Loughlinstown. Commons road runs parallel with the Shanganagh/Loughlinstown River for circa 670m from the junction with the N11 to the junction with the Shanganagh Road. There is a mix of house types along the southern side of the road with some backland developments.
- 1.2. The site has frontage of 13m and extends back 58m. There are detached dwellings to the east and the west of the site. The western and southern site boundaries adjoin the driveway which serves two backland properties Lisnaroe and Brooklands.

2.0 Proposed Development

- 2.1. House and all associated site works

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission for one reason.

(1) The subject site is a greenfield site located within the catchment of the Shanganagh River Stream, which is located in Flood Zone B, and the Draft Catchment Flood Risk Assessment and Management (CFRAM) outputs indicate possible flooding in this location, in particular the area along Mill Lane which has flooded in the past, both before and after construction of the defences. Section 5.3.3 of Appendix 13 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022, specifies that development in this area should be limited to Class 1 Minor Developments, (as per Section 4.6 of Appendix 13 of the Dún Laoghaire-Rathdown County Development Plan 2016-2022) until such time as the defences are accordance with Appendix 13 (Strategic Flood Risk Assessment), in particular Section 5.3.3 Shanganagh River Stream, of the 2016-2022 Dún Laoghaire-Rathdown County

Development Plan. The proposed development is located in an area which is at risk of flooding and as such, would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Further information was requested in relation to the submission of an appropriate SFRA, the boundary treatments and vehicular entrance details.

3.2.2. Other Technical Reports

Municipal Services: the applicant is proposing to construct a new house on a Greenfield site and within a Flood Zone B. This development is not in accordance with the 2016-2022 County Development Plan, in Particular Appendix 13. Refusal recommended.

Transportation Planning: No objections subject to conditions.

Irish Water: No objections

3.3. Third Party Observations

Three submissions/observations were received by the Planning Authority. They relate to the siting and design of the proposed dwelling, impact on residential amenity and flooding.

4.0 Planning History

D09A/0800: permission was granted for a two-storey house. An extension of duration of the parent permission was granted on the 8th of July 2015 until the 7th of December 2018.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Dun Laoghaire Rathdown County Development Plan. The site is zoned Objective 'A' with a stated objective 'to protect and/or improve residential amenity'.

- Section 8.2.10.3 refers to Energy Efficiency and Climate Change Adaptation

(i) Applications for Minor Development in Areas at Risk of Flooding

Minor developments will include small-scale infill, small extensions to houses or the rebuilding of houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises.

The sequential approach and justification test will not apply in these instances. However, an assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. The design of built elements in these applications should demonstrate principles of flood resilient design (Refer also to Section 4 - Designing for Residual Flood Risk of the Technical appendices to the DoECLG Flooding Guidelines).

- Appendix 13 refers to Strategic Flood Risk Assessment

5.2. National Policy

The Planning System and Flood Risk Management Guidelines 2009

These have been adopted and are the DOEHLG Guidelines for Planning Authorities (November 2009). The key principles are:

- Avoid the risk, where possible –precautionary approach.
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

Flood Zone A has the highest probability of flooding, Zone B has a moderate risk of flooding and Zone C (which covers all remaining areas) has a low risk of flooding.

The sequential approach should aim to avoid development in areas at risk of flooding through the development management process.

An appropriate flood risk assessment and justification for development in and management of areas subject to flooding and adherence to SUDS is recommended.

This document sets out how to assess and manage flood risk potential and includes guidance on the preparation of flood risk assessments by developers. This has regard Screening Assessment, Scoping Assessment and Appropriate Risk Assessment. It provides that only developments which are consistent with the overall policy and technical approaches of these Guidelines should be permitted.

5.3. Natural Heritage Designations

5.3.1. Ballyman Glen SAC is 4.5km to the south of the appeal site.

5.3.2. Rockabill to Dalkey Island SAC is 2.43km to the east of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

(1) A first party appeal was lodged by Doyle Kent Planning Partnership Ltd on behalf of the applicant Florin Strimbu on the 22nd of August 2016. The main issues raised concern the following;

- Permission was granted for a four bedroom two-storey dwelling on the site under Reg. Ref. D09A/0800. An extension of duration of the permission was granted on the 8th of July 2015 for three years up to the 7th of December 2018. Therefore, the applicant could carry out this development immediately.
- The site is zoned Objective 'A' 'to protect and or improve residential amenity.
- The proposed development would provide for some amendments to the previously approved scheme including relocating the dwelling further south on site, alternative contemporary house design, revisions to site boundaries, new entrance onto Commons Road and storm water attenuation tank with storage of 18m³.
- The floor area of the proposed dwelling at 226sq m is greater than that previously permitted at 118sq m. The proposed scheme includes SUDS drainage proposals which represents a significant improvement on the previous scheme.
- The proposed ground level of the dwelling is higher than that of the previously permitted dwelling, therefore the property would be better protected from any potential flood event.

- A site specific flood risk assessment was carried out by Envirologic which concluded that when applying the ECFRAM model a minimum finished floor level of 10.82m OD should be applied to allow 300mm freeboard above the 10.52m OD level set for a 1 in 1000 year flood event.
- Two options for finished floor levels were proposed to the Planning Authority at the further information stage. The first option was a finished floor level of 10.82m OD and the second was a reduced level of 10.36m OD. Option A would provide a finished floor level of 10.82m OD which is 300mm above the 0.1% AEP flood level stated on the draft ECFRAM maps of 10.52m OD.
- The project Architects have redesigned the proposed dwelling so that the design and height of the dwelling has not changed significantly to accommodate the new raised ground floor level.
- The dwelling originally proposed had a finished floor level of 10.00m OD and the highest point of the parapet was 17.00m OD. To accommodate the requirements of the new ECFRAM maps with a finished floor level of 10.82m OD the revised design has a parapet level of 17.107m OD.
- It is requested that the Board consider option A.
- It is stated that the proposed development as modified per Option A, substantially meets the justification test criteria set out in Box 5.1 of 'The Planning System and Flood Risk Management Guidelines for Planning Authorities.
- The applicant has endeavoured to make every possible effort to minimise the impact of the proposed development on the surrounding area and ensure the design is in accordance with the ECFRAM study.

- Having regard to extant permission on the site and the nature development which is infill, it is requested that the Board grant permission.
- (2) A third party appeal was lodged by Declan Brassil & Company Ltd on behalf of Rory Mulcahy on the 22nd of August 2016. The main issues raised concern the following;
- Mr. Mulcahy supports the decision of the Planning Authority to refuse permission. However, he considers that there are additional ground to refuse permission.
 - The Mulcahy family reside at St. Jude's the property situated to the east of the site. The applicant site is 'L' shaped it effectively wraps around their property.
 - The extant permission is for a four bedroom dwelling to the north of the site. This is considered an appropriate development which respects the character of the area. The current proposed development seeks to amend that permission by relocating the dwelling to the centre of the site.
 - The appellant opposes the development on the basis that the design, scale and layout of the proposed development fail to respect the architectural form, quality and massing of the adjoining properties and that it would be out of character with the area.
 - The Planning Authority refused permission on the basis of flood risk. The appellant fully supports the stated refusal reason. It is noted that Appendix 13 of the recently adopted Development Plan specifically references flood risk along Commons Road and states that any development should be limited to 'Class 1 Minor Developments'.
 - Section 4.6 of Appendix 13 of the Development Plan refers to Applications for Minor Developments in Areas at Risk of Flooding. It states that Minor developments are defined as Works directly associated with existing developments, such as extensions, renovations and rebuilding within the footprint of the existing development, and changes of use.

- The proposed development has been framed as an amendment to a permitted development, however the appellant states that the location and design of the dwelling have all materially and significantly changed from the permitted scheme. The proposed floor area at 346.6sq m is almost 200sq m larger than the permitted dwelling.
- Therefore, the proposed development does not fall within the definition of Class 1 Minor Developments as per Section 4.6.
- The appellant requests that Board include a refusal reason in relation to the height, scale, proximity to site boundaries and that it would result in unacceptable adverse impacts on the residential amenities of the area and adjoining properties, by reason of overlooking and overshadowing.
- The ground floor of the dwelling would be located 3.5m from the boundary wall with the appellant's property. The proposal represents a large, imposing two-storey building on a site to the rear of the appellant's property. The height and bulk of the proposed development project significantly beyond the established rear building line and would result in a development which would be visually intrusive and overbearing when viewed from the adjoining property.
- The design, scale and form of the dwelling does not integrate into the character of the streetscape. It is considered that it would set an undesirable precedent.
- It is requested that the Board refuse permission for the reasons set out above.

6.2. Applicant Response

A response to the third party appeal was received from Doyle Kent Planning Partnership Ltd on behalf of the applicant Florin strimbu on the 20th of September 2016. The main issues raised concern the following;

- In relation to the refusal issued by the Planning Authority, cumulatively the Design Team has addressed the issues of concern raised by the Planning Authority.

- The grounds of the third party appeal refer to the adverse impact on residential amenity cause by overlooking, overshadowing, overbearing and obtrusive development. In response it is stated that the proposed dwelling is of a high architectural standard and the design has responded to the site's constraints. It is not accepted that the 'L' shaped flat roof contemporary design would present a visually dominant, overbearing and obtrusive development. The proposed dwelling would be located 13.8m from the rear building line of the 'St Judes'.
- The proposed design of the dwelling is considered a significant improvement over the extant permission for a hipped roof two-storey dwelling.
- In relation to overlooking the proposed dwelling would be located between 13.8m and 17m from 'St Judes' and it does not directly face the rear elevation. It is noted that first floor windows to the north include aluminium privacy screens to prevent any overlooking.
- A Solar Analysis was prepared by Sketch Render and is included with the appeal response. It indicates the very limited effect of the positioning of the dwelling to the rear of the site and particularly on St. Judes.
- The third party appellants state that the siting, design and scale of the dwelling would be out of character with the predominately two-storey dwellings with a similar building line. In response the first party state that the nature of the building line and pattern of development at this location on Commons road is not uniform.
- Regarding trees and planting on site it is intended to clear the site but retain trees along the site common boundaries to maintain privacy. The applicant proposes to repair and render the existing boundary wall and construct a new block wall on the southern and western site boundaries. They also propose to provide a replacement timber fence around the site boundary with St. Jude's and have no objection to a condition requiring this.
- In conclusion, it is considered that the proposed development would make a positive overall contribution to the amenities of the area and would not be detrimental to adjoining residential amenity or the visual amenities of Commons Road.

6.3. Planning Authority Response

- The grounds of the 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.

6.4. Further Responses

A further response was received from Declan Brassil & Company Ltd on behalf of Rory Mulcahy on the 21st of September 2016. It is in response to the first party appeal. The submission refers to the following issues;

- It is submitted that the Applicants Agent has failed to fully address the reason for refusal which specifically refers to non-compliance with Appendix 13 of the Dun Laoghaire-Rathdown County Development Plan 2016-2022.
- In relation to the consideration of Option A or Option B as set out in the further information, it is noted that the principal difference between the options relates to the finished floor level. The location of the dwelling and proposed floor area are the same in both.
- The first party has failed to acknowledge that a material change in planning context has taken place since permission was granted for extant permission Reg. Ref. D09A/0800.
- The first party's commitment to implementing the permission granted under Reg. Ref. D09A/0800 is noted and the third party appellant states that they have no issue with this.

A further response was received from Declan Brassil & Company Ltd on behalf of Rory Mulcahy on the 24th of October 2016. The submission refers to the following issues;

- The proposed development is not an alteration of the dwelling permitted.
- The reference to exempted development provisions in relation to the development of a dwelling are not relevant to the assessment of the current proposal.
- The proposed dwelling will increase the impervious area of the subject site, which will therefore exacerbate the predicted flooding issues at the site and surrounding area.
- The 'Flood Zone Maps' clearly indicate that the site falls within 'Flood Zone B' area.
- Section 5.3.3 of Appendix 13 of the Development Plan refers to the 'Shanganagh River' and states that development at this location should be limited to Class 1 Minor Developments until the flooding defences are upgraded from a 1 in 50 year to a 1 in 100 year standard.
- The first party response does not address the appellant's concern in relation to the overbearing and visually dominant nature of the proposed dwelling.
- The loss of mature screening trees and vegetation at the rear boundary is of concern.

7.0 **Assessment**

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Principle of development and Flood Risk
- Design and Impact upon amenity
- Appropriate Assessment

- 7.1. Principle of development and Flood Risk
- 7.1.1. The subject site at Commons Road, Loughlinstown is zoned objective 'A' in the Dun Laoghaire Rathdown County Development 2016-2022. There is an extant permission on the site for a two-storey detached dwelling with a floor area of 148sq m and a maximum ridge height of 7m. The permission is valid until 7th of December 2018. Therefore, the principle of a dwelling on the site is established.
- 7.1.2. The currently proposed dwelling has a floor area of 346.6sq m and a ridge height of 7.1m. The site is situated within the catchment of the Shanganagh River. The Planning Authority refused permission for the proposed dwelling on the basis that it is located in Flood Zone B, and the Draft Catchment Flood Risk Assessment and Management (CFRAM) outputs indicate possible flooding in this location, in particular the area along Mill Lane which has flooded in the past, both before and after construction of the defences. It is further stated in the refusal reason that development in the area should be limited to Class 1 Minor Developments, (as per Section 4.6 of Appendix 13 of the Dún Laoghaire-Rathdown County Development Plan 2016-2022) until such time as the defences are accordance with Appendix 13 (Strategic Flood Risk Assessment).
- 7.1.3. Section 4.6 of Appendix 13 refers to the Applications for Minor Developments in Areas at Risk of Flooding. Minor developments are defined in class 1 as "Works directly associated with existing developments, such as extensions, renovations and rebuilding within the footprint of the existing development, and changes of use." Class 2 is defined as "Works in relation to infill development, which may include development of previously unused (greenfield) land, or building within the curtilage of an existing development, but outside the footprint of the building."
- 7.1.4. As part of the further information the Planning Authority required that the applicant prepare an appropriate SFRA and meet the criteria for the justification Test. That the ECFRAMS flood maps form the basis for the SFRA, that proposals should be provided where the finished floor levels of the proposed development shall be above the 1% AEP flood level in accordance with Section 5.16 of the Planning System and Flood Risk Management Guidelines for Planning Authorities. The applicant was also required to provide proposals for appropriate SUDS measures.

- 7.1.5. In relation to the classification of the proposed development it represents an alternative house design and location on the site while the proposed floor area is 198sq m greater than that the dwelling granted under the extant permission, I consider that it is reasonable to consider the proposed amended house type and location subject to addressing flood risk concerns.
- 7.1.6. The first party appeal sets out proposals to ensure they adequately address flood risk. In the first party appeal they have asked the Board to consider Option A as submitted with the further information. Option A with a proposed finished floor level of 10.82m OD would provide 300mm freeboard above the 0.1% AEP flood level stated on the draft ECFRAM maps of 10.52m OD.
- 7.1.7. The first party stated that the proposed development as modified per Option A, substantially meets the justification test criteria set out in Box 5.1 of 'The Planning System and Flood Risk Management Guidelines for Planning Authorities. The justification test requires that it is an urban settlement is targeted for growth, is zoned land within the core of an established settlement, will be essential to provide sustainable urban growth and that an adequate flood risk assessment has been carried out.
- 7.1.8. The proposed design will ensure that the property itself would be above the 0.1% AEP flood level. In relation to matter of reduction in the area of the undeveloped land within the flood zone it is noted that Envirologic Ltd. Hydrogeological and hydrological Consultants state that the subject site is located within a defended area and does not serve as a functioning floodplain. Therefore, they state that any infilling of the site with a raised footprint will not result in increased flood risk downgradient.
- 7.1.9. The applicant has provided revised SUDS drainage proposals. A rainwater harvesting system is proposed to collect runoff from the roof. The overflow from the rainwater harvesting tank will be collected by the on-site surface water sewer and then discharged to an attenuation holding tank. The proposed attenuation tank has a capacity of 18m³. The proposed discharge rate for the attenuation tank will be designed in consultation with the Council to ensure rates are within specified limits.
- 7.1.10. In conclusion, subject to the dwelling being constructed with a finished floor level of 10.82m OD and the installation of the surface water drainage system in accordance

with the details submitted with the further information, I am satisfied that the proposed development would be acceptable in terms flood risk considerations.

7.2. Design and Impact upon amenity

- 7.2.1. The third party appellant has raised concern at the siting, design and scale of the proposed dwelling. Due to the 'L' shape configuration of the site it is proposed to set the house back 24m from the roadside boundary. In relation to the issue of the front building line, I would note that the building line is not consistent and that there are variations in the setbacks.
- 7.2.2. The house design is contemporary, it features a flat roof and a mix of rendered and cut stone finish is proposed. The proposed ridge height of circa 7.1m is consistent with that of the surrounding development. There are a mix of house types along Commons Road and having regard to the setback of the proposed dwelling I consider that it would not unduly impact upon the streetscape character.
- 7.2.3. The third party appeal refers to issues of overlooking and overshadowing. Firstly, regarding overlooking, I note that first floor window to the front elevation features a privacy screen to prevent overlooking of the rear of the dwelling to the north 'St. Judes'. Furthermore, the separation distance provided is over 13m. In relation to the western side elevation and the first floor windows, 4 no. high level windows are proposed to serve two bedrooms and en-suite bathrooms a timber screen is proposed to protect overlooking from the rear window of bedroom no. 2. The eastern side elevation at first floor level features three windows. A privacy screen is proposed to the window serving bedroom no. 1 and the other central window serves an en-suite. The southern rear elevation of the dwelling is setback over 20m from the front of the neighbouring dwelling Brooklands. While this elevation features three large bedroom window, I am satisfied that the separation distance provided ensures no undue overlooking of neighbouring property.
- 7.2.4. Secondly regarding the matter of overshadowing the first party have submitted a Solar Analysis prepared by Sketch Render. As indicated on the shadow diagrams there is some very limited additional shading of the corner of the rear garden of St. Judes at 3pm on the 21st of March. At 6pm on the 21st of June there is some limited additional shading of the western side of the rear garden of St. Judes. At 3pm on September 21st there is some very limited additional shading of the corner of the rear

garden of St. Judes. The proposed development would result in some very limited new shadowing of the rear garden of St. Judes. The dwelling itself would not experience any additional overshadowing. Accordingly, having regard to the submitted shadow analysis I am satisfied that the proposed development would not result in any undue overshadowing of the third party appellant's property or the other neighbouring properties.

- 7.2.5. The third party appellant has raise concern in relation to the loss of tree planting and the proposed boundary treatment. The applicant proposes to repair and render the existing boundary wall and construct a new block wall on the southern and western site boundaries. This will provide privacy with the adjoining properties. It is also proposed to provide a replacement timber fence around the site boundary with St. Jude's. In order ensure that the boundary treatment is carried out as set out by the applicant, I would recommend that the Board attach a condition in requiring details of the boundary treatment to be agreed with the Planning Authority prior to commencement of development.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I have read the submissions on file, visited the site, and had due regard to the provisions of the Development Plan and all other matters arising. In the light of this and the assessment above, I recommend that permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, to the planning history on the site specifically the extant permission under Ref. D09A/0800, the design, nature and extent of the proposed development and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be would not seriously injure the visual or residential amenities of the area, would respect the existing character of the area and would be acceptable in terms of surface water and drainage considerations. It is, therefore, considered that the proposed development would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans particulars submitted on the 1st day of July, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed finished floor level of the dwelling shall be 10.82m OD in accordance with design Option A submitted by way of further information to the Planning Authority on the 1st day of July, 2016.

Reason: In the interest of clarity.

3. Water supply and drainage arrangements, including the disposal of surface water and attenuation, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. Details of the materials, colours and textures of all the external finishes to the proposed dwelling and the boundary treatment shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Prior to commencement of development, proposals for a name and numbering scheme and associated signage shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

7. Site development and building works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. 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.

Siobhan Carroll
Planning Inspector

19th of December 2016