



An
Bord
Pleanála

Inspector's Report PL.06D.247289.

Development	Change of house type on plots 16 to 34 inclusive, approved under An Bord Pleanala reference number PL.06D.242557
Location:	Site formerly known as 54 Nutgrove Avenue, Rathfarnham, Dublin 14.
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D16A/0482.
Applicants	M&N O'Grady Developments Limited
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellants	1. Nutgrove and Loreto Community Association.
Observers	None.
Date of Site Inspection	23 rd November 2016.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

- 1.1 The appeal site is accessed off but not visible from Nutgrove Avenue. Access to this backland site is through the former site of No. 54 Nutgrove Avenue (now demolished). The area is characterised by a mixture of house types and densities. Houses along Nutgrove Avenue form the northern boundary of the development, houses along Loreto Avenue form the eastern boundary, the Educate Together School the southern boundary and to the west there is a two metre high wall and an area of open space associated with Stone Park Abbey housing estate. There is a QBC along Nutgrove Avenue.
- 1.2 Permission was granted under Planning Authority Reference D13A/0370 and An Bord Pleanála Reference PL.06D.242557 for a residential scheme of 47 units, construction has commenced and the site was an active construction site at the time of inspection.
- 1.3 The administrative boundary between Dún Laoghaire Rathdown County Council and South Dublin County Council runs along part of the southern boundary of the overall scheme.
- 1.4 Maps, photographs and aerial images are in the file pouch

2.0 Proposed Development

Permission is being sought for modification to an existing permitted development, these consist of:

- Change of house type on plots 16 to 34 as follows:
 - 12 no. House Type L on plots 16, 18, 19, 21, 22, 25, 26, 28, 29, 31, 32 and 34.
 - 3 bed option 123.69 sq.m
 - 4 bed option (with attic habitable space) 159.49 sq.m

7 no. House Type M on plots 17, 20, 23, 24, 27, 30 and 33:

- 3 bed option 116.02 sq.m
- 4 bed option (with attic habitable space) 151.82 sq.m

3.0 Planning Authority Decision

3.1 Decision

Grant Permission subject to 5 conditions.

- Condition No. 1 Plans & Particulars.
- Condition No. 2: Permission to expire on the expiry date of PL.06D.242557.
- Condition No. 3: Comply with all conditions of PL.06D.242557 unless otherwise stated in the Schedule of conditions.
- Condition No. 4: refers to development outlined in the public notices only.
- Condition No. 5: Part V
- Condition No. 6: Development Contributions.

3.2 Planning Authority Reports (24th August 2016)

This forms the basis of the Planning Authority's decision and the main issues raised relate to housing design, residential amenity and phasing. The Planning Authority noted that the application is for minor changes to house types and the phasing of the proposed development.

The Planning Authority have referenced Planning Application Reference D13A/0370 (An Bord Pleanála Reference PL.06D.242557) as the parent permission for the current development before the Board.

3.2.1 Other Technical Reports

Drainage Planning (5th August 2016): No objection subject to compliance with all conditions attached to the parent permission.

Transportation Planning (18th August 2016): No Objection.

Housing Section (11th July 2016) need to be examined in the context of Part V.

3.2.2 Third Party Observations

The main issues raised in the appellant's (Nutgrove and Loreto Community Association) initial submission are largely in line with the grounds of the appeal and shall be dealt with further in the relevant section of this Report.

4.0 Planning History

There is an extensive Planning History associated with the overall housing scheme.

Planning Authority Reference D13A/0370 (An Bord Pleanála Reference PL.06D.242557) Permission granted in February 2014 for 47 houses with associated roads, drainage, public lighting, landscaping and site works.

Applications relating to modification to D13A/0370 (PL.06D.242557):

Planning Authority Reference D16A/0464 Permission granted in August 2016 for changes to house types on plot 35 and 36 to 43. Phasing also permitted. Subject of a current appeal under PL.06D.247250

Planning Authority Reference D16A/0481 Permission refused in July 2016 for changes to house type on plots 14 and 15 for the following reason:

The two dwellings permitted at this location under An Bord Pleanála planning application reference number PL.06D.242557 was considered an appropriate design response to this corner location. The proposed amendment to the permitted development would adversely affect the residential amenity of future occupants, would result in a visually incongruous orientation of the dwellings that would be out of character with the permitted development, would be contrary to the zoning objective of the site and would be contrary to the proper planning and sustainable development of the area.

Planning Authority Reference D16A/0480 Permission refused in July 2016 for modification to site boundaries and boundary treatment on sites no. 1 to 47 inclusive for the following reason:

The development would contravene materially Condition 12 of An Bord Pleanála planning application reference PL.06D.242557, which required all rear gardens to be bounded by block walls, 1.8 metres in height, suitably capped and rendered on both sides. The development would also result in a lower standard of development which would detract from the visual and residential amenity of future occupants and would contravene the zoning objective for the area which is 'to protect and/or improve residential amenity' under the County Development Plan 2016-2022. Therefore, to permit the development would contravene materially a condition attached to an existing permission for development, would be contrary to the zoning objective of the site as set out in the Dun Laoghaire-Rathdown County Development Plan, 2016-2022, would adversely affect the visual and residential amenity of future occupants and would be contrary to the proper planning and sustainable development of the area.

Planning Authority Reference D15A/0463 Permission granted in September 2015 for changes to house types for Plots 1 to 13 previously approved under D13A/0370. The expiry of this permission was linked to the expiry date for D13A/0370 (PL.06D.242557).

Historical Applications:

Planning Authority Reference D12A/0292 Permission granted in September 2012 for 47 units, previously approved under D11A/0248

Planning Authority Reference D11A/0258 Permission granted in July 2011 for modification to the 47 units, which resulted in a reduction of 2 units from that permitted under D09A/0168.

Planning Authority Reference D09A/0168 Permission granted in November 2009 for development of 49 residential units and the demolition of no. 54 Nutgrove Avenue.

Planning Authority Reference D06A/0564 and **D07A/1155** refer to applications that were refused.

5.0 Policy Context

5.1 Dun Laoghaire-Rathdown County Development Plan 2016-2022

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

RES7: *It is the Council policy to encourage the establishment of sustainable communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the interim Housing Strategy.*

Chapter 8. Principles of Development:

Section 8.2.3 Residential development.

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 [...] 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).

(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 (e.g. 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.

5.2 Sustainable Residential Development in Urban Areas (DoEHLG 2009)

(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 third party appeal has been received from the Nutgrove and Loreto Community Association. The grounds of appeal can be summarised as follows:

- The site straddles South Dublin County Council and Dún Laoghaire Rathdown County Council jurisdictions.
- Permission was granted in 2010 for 49 residential units, all the subsequent permissions have been an attempt to prolong the life of the permission.
- Reference to D13A/0370 (PL.06D.242557) as the parent permission is incorrect.
- PL.06D.242557 included a condition that restricted the duration of the permission in line with that of D13A/0370.
- Non-compliance with condition no. 6 of PL.06D.242557 and Enforcement action under ENF107/16.
- Four applications submitted for modifications to the development
 - D16A/0464 permission granted and currently under appeal PL.06D.247250 (case is due to be decided by 25th January 2017).
 - D16A/0480 permission refused.
 - D16A/0481 permission refused.
 - D16A/0482 permission granted by the Council (refers to the current application).

- Application lodged during holiday period when schools were closed.
- Issue with previous permissions on site, namely D15A/0463.
- Concerns of overshadowing and request that a study be conditioned to be carried out.

6.2 Planning Authority Response

The Planning Authority refer the Board to the original Planner's Report on file.

6.3 Applicant's Response to the Appeal

A detailed response was received to the third party appeal and the main issues can be summarised as follows:

- The validity of the appeal was questioned.
- Current application is for minor modifications to a permitted development.
- The majority of issues raised in the appeal refer to enforcement issues and therefore beyond the remit of the current application before the Board.
- Appeal is factually incorrect and a number of ultra vires issues raised.
- Overshadowing is not an issue, ample separation distances are maintained between the proposed houses and the existing houses along Loreto Avenue.
- Delays in completing the scheme has been due to the economic downturn and the applicant is seeking to address the issue of funding through the proposed phasing arrangements under D16A/0464 (PL.06D.247250).

- Letter of support from residents of No. 56 Nutgrove Avenue supporting the development and that they have has no communication from the Residents Association on this matter.

6.4 Observations

None

7.0 Assessment

7.1 Introduction

7.1.1 Many of the issues raised in this appeal relate to compliance with previous permissions and timeframe associated with same. These are matters for the Planning Authority and shall not be dealt with in this Report.

7.1.2. The Board is requested to note that there is a concurrent appeal before the Board (PL.06D.247250) for changes to house types on plots 35 to 43 of the same residential scheme. There are interconnected issues to do with residential amenities. However, I have assessed each case on its own merits.

7.1.3 The relevant issues fall under the following headings:

- Residential Amenity.
- Duration of Permission.
- Appropriate Assessment.

7.2 Residential Amenity

7.2.1. There is a variety of house types permitted within the scheme to date, the current proposal is for alternative house types to this originally permitted which

would result in the availability of 3 bed or 4 bed options to meet market demands.

7.2.1 Plots 16 to 34 have a permitted mix of house types under PL.06D.242557 as follows:

- House Type A/A1 (3 Bed option) permitted gfa 122.68 sq.m/124.45 sq.m.
- House Type A/A1 (4 Bed option) permitted gfa 157. 22sq.m /158.99sq.m.
- House Type B (3 Bed option) permitted gfa107.98sq.m.
- House Type B (4 bed option) Permitted: gfa 142.27 sq.m.
- House Type C (3 Bed option) permitted gfa127.75 sq.m.
- House Type C (4 bed option) Permitted: gfa 163.27 sq.m.
- House Type D (3 Bed option) permitted gfa109.96 sq.m.
- House Type D (4 bed option) Permitted: gfa 144.50 sq.m.

The current proposal is to replace these with 12 no. house type L (plots 16, 18, 19, 21, 22, 25, 26 and 28) and 7 no. house type M (plots 17, 20, 23, 24, 27, 30 and 33).

- House Type L proposed gfa (3 bed option) 123.69 sq.m.
- House Type L proposed gfa (4 bed option) 159.49 sq.m.
- House Type M proposed gfa (3 bed option) 116.02 sq.m.
- House Type M proposed gfa (4 bed option) 151.82 sq.m.

- 7.2.3 The permitted mix under PL.06D.242557 was 2 no. house type A, 7 no. house type A1, 7 no. house type B, 1 no. house type C and 2 no. house type D, the proposal is for 12 no. house type L and 7 no. house type M in their place.
- 7.2.6 The prevailing character of the permitted scheme is predominantly 2 storey with the option of developing the attic area, the proposal is therefore acceptable in terms of design and residential mix.
- 7.2.7 It is my considered opinion revised house types proposed will not significantly reduce the amenities of each unit, compliance with the minimum standards as set out in the current County Development Plan is achieved.
- 7.2.8 The proposed changes to plots no. 16 to 34 inclusive will not result in overlooking or overshadowing of existing residential developments. The proposal would not have a negative impact on the amenities of adjoining properties.
- 7.2.9 Two areas of public open space were proposed under the original permission for the scheme, no material changes are proposed that would increase the amount of public open space required, change the overall site layout or services.
- 7.2.10 Proposals to address the issue of completion and phasing was included as part of the 16A/0464 (PL.06D.247250) currently before the Board.

7.3 Duration of Permission

- 7.3.1 The appellant has raised issues regarding the validity of the permission and what in their opinion is the applicant's attempts at prolonging the life of the permission. It should be noted that issues regarding the duration of the permission and the extension of the duration of same are a matter for the local planning authority and the application before the board is for proposed modifications to a scheme permitted under PL.06D.242557 which was granted permission in February 2014. The relevant timeframes are clearly set out

within the Planning Legislation and any extension to same would be a matter for assessment by the relevant planning body at that time.

7.4 Appropriate Assessment:

7.4.1 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 Recommendation

8.1 I recommend that planning permission should be granted, subject to conditions as set out below.

9.0 Reasons and Considerations/ Reasons

Having regard to the provisions of the Dún Laoghaire Rathdown Development Plan 2016-2022 and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or depreciate the value of property or the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 08/02/2014 under appeal reference number PL.06D.242557, planning register reference number 13A/0370 and Planning Refer and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

2. 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

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

Reason: In the interest of public health and to ensure a proper standard of development.

4. 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.

Reason: In the interest of visual and residential amenity.

5. Each entire dwelling shall be used as a single residential unit only.

Reason: In the interest of clarity.

6. Details of the materials, colours and textures of all the external finishes

to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual amenity.

7. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority.

Reason: In order to ensure the satisfactory development of the public open space areas and their continued use for this purpose.

8. All rear gardens shall be bounded by block walls, 1.8 metres in height, suitably capped, and rendered, on both sides, to the written satisfaction of the planning authority.

Reason: In the interest of residential and visual amenity

9. 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 of roads, footpaths, watermains, drains, 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 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 of the development.

10. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Dáire McDevitt

Planning Inspector

20th December 2016