



An
Bord
Pleanála

Inspector's Report

PL06S.247642

Development	Realignment of Site Boundary, Construction of 2No. Houses and 2No. entrances and Associated Site works at 26 Cois Na Habhann, Old Bawn, Tallaght, Dublin 24
Planning Authority	South Dublin Co. Co.
Planning Authority Reg. Ref.	SD16A/0303
Applicant(s)	Liam and Marian Kelly
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Appellant(s)	Liam and Marian Kelly
Observer(s)	None
Date of Site Inspection	28 th of February 2017
Inspector	Caryn Coogan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 Cois Na Habhann is a short cul-de-sac containing semi-detached dwellings, located within a large suburban area south of Tallaght town Centre. The Shamrock Rovers stadium is visible along Old Bawn Road is visible from the site to the north-west.
- 1.2 The site boundaries include a semi-detached detached dwelling²⁶ Cois Na Habhan, which is the applicant's family home. No. 26 is an end of cul-de sac dwelling which adjoins an undeveloped open space area to the west. There is a large palisade fence at the end of the cul de sac road into the subject site alongside No. 26 Cois Na Habhann.
- 1.3 The site is an irregular shape, 0.137 acres, it is overgrown and currently not accessible from the cul de sac. I viewed the site from within the dwelling and along the communal site boundary. It is overgrown with trees, and there appears to be a faint path (informal) going from south to north from the wider estate area. It did appear to me the subject site is not used, and completely overgrown to the east.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development includes the following:
 - Remove existing garden all and palisade fencing along western boundary
 - 2No. Semi-detached three bedroomed dwellings (126sq.m. per dwelling, 8.32m ridge heights)
 - Access via the end of cul de sac
 - Two carparking spaces per dwelling
 - Private open space areas to the rear of each dwelling

3.0 PLANNING AUTHORITY DECISION

On the 28th of October 2016 South Dublin Co. Co. refused planning permission for the proposed development for three reasons:

1. The proposed development of two houses on an existing area of Open Space zoned as OS in the current county development plan would materially contravene a development objective in the plan for the site
2. Having regard to the location of the dwellings in close proximity to a watercourse in an area prone to flooding during high rainfall events,

the proposal would contravene a stated policy to preserve riparian strips free from development to permit access for maintenance.

3. The subject land is under the control of South Dublin Co. Co. for 25 years and is integral to Sean Walsh Park adjoining the site. The proposal would invite anti-social behaviour due to houses backing onto public open space.

3.2 TECHNICAL REPORTS

Water Services- The application be refused because ne of the proposed dwellings west of the development is too close to Kiltipper Stream at 4.6metres form the stream bank. Section 8.2 of the county development Plan requires a minimum distance

Roads – No objections

Irish Water No objection

Park and Landscape – The subject lands are an integral part of Sean Walsh Park. The lands are under the control of SDCC for 25years. The site is zoned Open Space and Recreational Amenities. The area close to the adjoining tributary is prone to flooding during times of high rainfall. Anti-social activities could occur.

Planning Report -

- Residential development is Open to Consideration under OS zoning with specific reference to Section 11.3.2
- The dwellings are similar to the existing dwelling
- Having regard to the concerns regarding proximity to the stream and one dwelling may be considered on the subject site, but not two.
- The site is located within Flood Zone C
- Inconsistencies in the drawings.
- Refusal recommended.

3.3 THIRD PARTY SUBMISSIONS

Inland Fisheries – A minimum of 10metres development free from the riparian zone.

There were no objections to the proposal.

4.0 PLANNING HISTORY

4.1 SD16A/0015

Permission refused for a broadly similar development to the current proposal for similar reasons to the current proposal.

5.0 POLICY CONTEXT

5.1 Government Policy

Quality housing for Sustainable Communities – Best Practice Guidelines

Sustainable Residential Development In Urban Areas – guidelines for Planning Authorities

Urban Design Manuel : A Best practice Guide

Regional Planning Guidelines for the Greater Dublin Area

5.2 South Dublin County Development Plan 2016-2022

The undeveloped portion of the subject site is zoned **OS** *To preserve and provide for open space and recreational amenities.*

The portion of the site where the dwelling is positioned is zoned **RES** *To protect and/or improve residential amenity.*

5.3 H14 Objective 2:

To support adaptable housing layouts that can accommodate the changing needs of occupants, through extension or remodelling.

2.4.0 Residential Consolidation – Infill, Backland, Subdivision & Corner Sites

In established residential areas sustainable intensification can be achieved through infill development, the subdivision of larger houses, backland development and the development of large corner sites. Sensitive intensification will be important to revitalise areas that have stagnant or falling populations, to secure the ongoing viability of facilities, services and amenities and to meet the future housing needs of the County.

The sensitive intensification of housing development in established areas is supported by the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009), which recognises that the provision of additional dwellings in the suburban areas of towns and cities can revitalise such areas.

Standards in relation to residential consolidation are set out under

Section 11.3.2 of this Plan and have been framed by the policies and objectives set out below.

HOUSING (H) Policy 17 Residential Consolidation

It is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County.

H17 Objective 1:

To support residential consolidation and sustainable intensification at appropriate locations and to encourage consultation with existing communities and other stakeholders.

H17 Objective 2:

To maintain and consolidate the County's existing housing stock through the consideration of applications for housing subdivision, backland development and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation.

H17 Objective 3:

To favourably consider proposals for the development of corner or wide garden sites within the curtilage of existing houses in established residential areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation.

5.4 11.3.5

(ii) Corner/Side Garden Sites

Development on corner and/or side garden sites should meet the criteria for infill development in addition to the following criteria:

The site should be of sufficient size to accommodate an additional dwelling(s) and an appropriate set back should be maintained from adjacent dwellings,

The dwelling(s) should generally be designed and sited to match the building line and respond to the roof profile of adjoining dwellings,

The architectural language of the development (including boundary treatments) should respond to the character of adjacent dwellings and create a sense of harmony. Contemporary and innovative proposals that respond to the local context are encouraged, particularly on larger sites which can accommodate multiple dwellings,

Where proposed buildings project forward of the prevailing building line or height, transitional elements should be incorporated into the design to promote a sense of integration with adjoining buildings, and

Corner development should provide a dual frontage in order to avoid blank facades and maximise surveillance of the public domain.

5.5 G3 Objective 2

To maintain a biodiversity protection zone of not less than 10metres from the top of the bank of all watercourses in the County, with the full extent of the protection zone to be determined on a case by case basis by the Planning Authority, based on site specific characteristics and sensitivities.

G3 Objective 5

To restrict the encroachment of development on watercourses, and provide protection measures to watercourses and their banks, including but not limited to the prevention of pollution of the watercourses and their banks, the protection of the river bank from erosion, the retention and or the provision of wildlife corridors, etc

6.0 THE APPEAL

6.1 Niall Jones and Associates have taken the appeal on behalf of the applicants, and a summary of the appeal submission is as follows:

6.2 Reason for Application

The applicants purchased the dwelling 26 Cois Na Habhann in 1988. The strip to the west is in private ownership. In 2009 the applicants purchased a portion of the land along the western side of the property in order to help their family get onto the property ladder. They applicants have two grown sons and each of the dwellings is for them.

6.3 Existing Property

The existing dwelling sits on 0.127acres or 514sq.m.and it is 125sq.m. with a porch added to the original design.

6.4 Previously Proposed works

Under Sd16A/0015 a similar development for two semi-detached dwellings was proposed on the subject site.

6.5 Pre-planning Consultations

Included revisions to the new application following on from previous refusal:

- Move boundary in along western side of site to maintain the required 10m riparian strip
- Realign houses to site 1m back from existing building line
- Revise private open space area
- Reduction in floor area of each dwelling by 17.86sq.m.
- The ridge heights were reduced to 8.3m to match existing dwellings

- New road layout was agreed with Roads Department
- Revised foul and surface water layout
- Revised waterman layout.

6.6 **Reasons to Refuse Planning permission SDA/0015**

6.7 *Reason 1: Proximity to watercourse*

There appears to be confusion over the exact location of the watercourse that runs parallel to the western side of the site. The O.S.I. maps mark out a watercourse along the edge of Sean Walsh Park. These lines however are indicating an unused dry ditch that is treeline on each side. The watercourse runs the far side of the trees.

The perimeter boundaries were remarked out on site and the resulting distances from the existing gable wall of No. 26 Cois Na Habhann to the edge of the watercourse were re-measured at 30.29metres. The requirements of maintaining the proposed perimeter wall along the western boundary is now proposed to be moved back into the site from between 1.95m to 2.73m to maintain the 10m clearance

6.8 *Reason No. 2 – Open Space Zoning*

Cois Na Habhann was never fully completed by the developer. The end of the cul-de-sac is finished with an open palisade fence that runs across its full width. Trees grow up through the fence and it leaves the end of the cul de sac unkempt. The new proposal includes for the removal of the fence, and extending the roadway by 6.15m and finishing the streetscape with a blockwork wall. The works will increase the value of properties in the cul de sac.

6.9 *Reason No. 3 F Zoning objective*

The applicant purchased the most north-western strip of land that lies along the perimeter of the estate, that was previously in the ownership of the original developer. The site is screened away from Sean Walsh Park by trees running alongside the watercourse. The small strip of land does not form an integral part of the park and is not maintained by the council. Access to the park could be made available from the new extended road which would be in keeping with the zoning objective.

6.10 *Reason No. 4 – Land under maintenance of County Council.*

South Dublin Co. Co. states that the land forms part of a signed Deed of Dedication signed by the original developer, Thomas McInerney in 1991. If this is the case the Deed expires after 25years which is 2016. The applicants purchased the site and their Title Deeds are free any burdens. Land Folio No. is attached.

6.11 *Reason No. 5 – Anti-social behaviour*

The site is very narrow to the north and fully closed off from any through traffic due to the dense trees. There will be views from the windows of the new dwellings which would prevent any potential for anti-social behaviour.

6.12 *Reason 6 – Flooding*

AWN Consulting carried out a full Flood Risk Assessment in November 2015 which confirmed that within CFRAM flood maps and SDCC development plan the site resides in Flood Zone C and is susceptible from both fluvial and pluvial flooding. The 2No. houses proposed within the site are suitable for the development of the area and will not increase the risk of flooding elsewhere in the catchment.

6.13 **Reasons for Refusal under Revised Application SD16A/0303**

6.14 *Reason No. 1*

The site is made up of a semi-detached dwelling that is positioned at the end of a cul de sac within an existing tapered side garden, together with an additional strip of land that adjoins the western boundary. Under the development plan policy, housing is Open For Consideration on both pieces of land and is actively encouraged under section 1.2.30.i Policy H17: Corner Site Development.

By incorporating the removal of the palisade fencing for the width of the road and to allow an extended roadway into the two new driveways, the development will enhance the overall streetscape and increase the value of houses along the road.

6.15 *Reason No. 2*

Following from a pre-planning meeting, the suggestion that the site was prone to flooding came of great concern to the applicant. AWN Consulting were immediately commissioned to carry out a full Flood Risk Assessment for the site, and the results indicated the site had never flooded in the past and was not at risk of flooding in the future. Therefore, it is frustrating that the planning authority has still refused the development as a flood risk concern.

With regard to the minimum 10m riparian strip to allow access for river maintenance, the site boundaries have been re-measured to the top of the river bank and the western boundary has been repositioned. The watercourse is not as per OSI maps it has been diverted to the park side of the bank of trees. It is the redundant line of the riverbank that must be kept 10metres clear of.

It is strongly refuted the drainage Section report as there is nowhere in the development plan or any guidelines that a redundant watercourse has been a treatment in this regard.

The site was purchased on the basis that the western boundary was 10 metres from the edge of the river, and the western boundary can be

further pulled in from 1.95m to 2.73m to maintain the 10m distance from the top of the bank.

6.16 *Reason No. 3*

There was an extensive search of the property before it was purchased by the applicants back in 2009. Through legal searches it was confirmed that the site is free from all burdens, and there was no mention of any registered Deed of Dedication placed on the site or the adjoining lands.

The Council has suggested the proposal could result in creation of spaces that would invite and facilitate anti-social behaviour. The proposed dwellings will overlook open space at first floor level along the western elevation. The applicant is at a loss how this form of passive surveillance was not considered a positive issue and that the proposal was still refused on anti-social grounds.

5.17 There are similar developments to the current proposal throughout the area such as

- 93 Cill Cais where a two storey extension was added to the side of the dwelling and two semi-detached within the remaining side garden.
- No. 91 Cill Cais there was a detached dwelling built in their side garden
- 1A Gleann Na Smol includes a two storey house within a side garden
- 1A Inis Fail another two storey dwelling in a side garden area.

6.18 RESPONSES

5.19 The planning authority confirms its decision.

7.0 ASSESSMENT

7.1 The following are the relevant issues relating to this appeal which will be assed in detail below:

- Compliance with Development Plan
- Planning History
- Neighbourhood Character
- Proximity to River
- Open Space/ Antisocial behaviour
- Other Matters

7.2 Compliance with Development Plan

- 7.3 The subject site is governed by two zoning objectives. The portion where the house is positioned is zoned **RES** *To protect and/or improve residential amenity* and the western portion of undeveloped land is zoned, **OS** *To preserve and provide for open space and recreational amenities*.

Dwelling house is Open to Consideration Under the Open Space zoning. I will discuss the issue of the open space in greater detail in the report. However the portion of the subject site which is zoned Open Space is inaccessible from the adjoining dwellings, it is not maintained and serves no obvious function. It is my opinion, that dwellings on the portion of land would not negatively impact on the wider open space area and purpose built park further to the west of the site, and the dwellings would be in keeping with the adjoining residential land use. As the immediate lands to the west of 26 Cois Na Habhann are not used for recreational purposes or activities, I consider the principle of the development for two dwellings would not contravene the zoning objective for the area.

- 7.5 The planning authority refused the development as it considered it to be a material contravention of the OS zoning objective. There is no assessment in the Planning Report as to how the proposal materially contravenes the zoning objective for the area. The same reason for refusal states the development would seriously injure the amenities and depreciate the value of property in the area. I do not agree with this reason for refusal, and consider it has been stated flippantly without stating how the proposal would materially contravene the zoning. The piece of land is overgrown, not maintained, not used nor is it accessible. Therefore I do not regard it as a functional or recreational piece of land benefitting the wider area. As stated a house is Open to Consideration under the zoning objective, and I believe the development complies with other relevant policies in the development plan in terms of urban consolidation. It is stated in Reason No. 3 of the refusal that the subject open space area is an integral part of Sean Walsh Park to the west on the otherside of the large overgrown coppice associated with the adjoining watercourse. There is no physical link between the park and the subject site. The Sean Walsh Park is maintained by the local authority and used by the local residents for amenity purposes unlike the subject site which is an unmaintained wasteland.

The only basis for the reason for refusal would appear to be the Parks and Landscape Report of 21st of October 2016, which states the lands are 'Dedicated Open space' which means there cannot be housing placed onto it. This is a legal term and is discussed later in the report, as the legal findings were that the 'Dedication Order had expired and there is no burden on the land. Therefore, I believe the Board should dismiss the first reason for refusal.

- 7.6 It is the development plan's policy to encourage urban consolidation and economic use of serviced lands within the development plan policies through higher densities, infill development and development of corner

sites. There are detailed criteria which must be followed for corner sites outlined in Chapter 11 of the development plan, detailed below.

11.3.5

(ii) Corner/Side Garden Sites

Development on corner and/or side garden sites should meet the criteria for infill development in addition to the following criteria:

The site should be of sufficient size to accommodate an additional dwelling(s) and an appropriate set back should be maintained from adjacent dwellings,

The dwelling(s) should generally be designed and sited to match the building line and respond to the roof profile of adjoining dwellings,

The architectural language of the development (including boundary treatments) should respond to the character of adjacent dwellings and create a sense of harmony. Contemporary and innovative proposals that respond to the local context are encouraged, particularly on larger sites which can accommodate multiple dwellings,

Where proposed buildings project forward of the prevailing building line or height, transitional elements should be incorporated into the design to promote a sense of integration with adjoining buildings, and

Corner development should provide a dual frontage in order to avoid blank facades and maximise surveillance of the public domain.

Having regard to the proposed elevations, in the context of the existing houses, I consider the subject site is sufficient in size to accommodate the proposed dwellings without appearing unduly oppressive or out of character with the existing estate. The dwellings are similar in design and finish to the existing dwellings along the streetscape, and similar to other corner site developments throughout the area. The units are smaller in scale and proportion to the existing dwellings, however this is to reflect the smaller site size relative to the existing plots constructed back in the late 1980s.

7.7 Planning History

Under **SD16A/0015** South Dublin Co. Co. Refused the removal of the existing garden wall and palisade fence along the western site boundary, and the construction of two new dwellings west of No. 26 Cois Na Habhann for three reasons similar to the current refusal. The applicant on appeal has indicated that the applicant met with planning officials to address the reasons for refusal prior to making a new planning application. However, the current application was refused for broadly the same reasons.

7.8 Neighbourhood Character

As stated above, the existing estate consists of two storey detached dwellings within a uniform layout. The first element of Cois Na Habhann is via an estate road to the north of the cul de sac, which mainly consists of a large open space area. The subject site is positioned at the end of a short cul-de sac hosting only 10No. semi-detached dwellings. The cul de

sac is unfinished looking due to a palisade fence at the end of it which has formed the western boundary of the cul de sac. The subject site is positioned on the western side of the palisade fence. The area is not visible or accessible from the cul de sac. The fencing has existed since the dwellings were constructed in the late 1980s, and in my opinion, it is industrial and temporary in appearance. The removal of the fence and the opening of the cul de sac would greatly enhance the visual and residential amenities of the existing dwellings which is in line with the RES zoning objective.

- 7.9 The proposed dwellings are compact three bedroom semi-detached dwellings. The roof style is pitched and at a similar ridge height to the existing roofs along the cul de sac. I consider the proposed dwellings are conducive their neighbour setting, and the building lines are in keeping with existing building lines.
- 7.10 There are similar corner site developments of 1 and 2 dwellings on end of cul de sac dwellings throughout the wider large residential estate off Old Bawn Road in Tallaght. Immediately to the south of the site at the rear of 26 Cois Na Habhann, the dwelling house at 93 Gleann Na Smol inserted 2 semi-detached dwellings into it's side garden area.
- 7.11 It is my opinion, the two dwellings as per the proposed layout will enhance the overall neighbourhood character of the area. The existing ground where the two new dwellings are positioned is currently an overgrown wasteland and is inaccessible from Cois Na Habhann.

7.12 Proximity to River and Potential for Flooding

It is stated policy in the current development plan under **G3 Objective 2:**

To maintain a biodiversity protection zone of not less than 10metres from the top of the bank of all watercourses in the County with the full extent of the protection zone to be determined on a case by case basis.

The Parks and Landscape Report on the planning file dated the 21st of October 2016 forms the basis for the refusal of this proposal. There would appear to be no assessment of the accompanying Flood Risk Assessment Report accompanying the planning application. Essentially, the Parks and Landscape Department make the following comments

- The subject site is under the control and maintenance of the Council for the past 25years, and it is integral to Sean Walsh Park. The land comprises 'Dedicated Open Space' therefore one cannot have housing on it.
- The site is in close proximity to Whitestown Stream in an area that is prone to flooding during times of high rainfall. The distance from the top of the old stream to the proposed boundary wall is only 4.6metres, and it should be a minimum 10metres

- Housing at angles to open space areas results in anti-social activities.

7.13 The accompanying report, a Flood Risk Assessment, was prepared by AWN Consulting in November 2015. In my opinion, a more up to date report addressing the specific concerns in the Parks and Landscape Report would have been preferable in this instance. The reports states:

- No historic flooding of the site has been identified from the OPW floodpaths, or local planning applications, or alluvium maps
- The Dodder CFRAM flood maps indicate that the site is located within Flood Zone C and is not at risk of flooding from 0.1% AEP event or less.

The site is located within the Eastern River Basin District in Hydrometric Area No. 9 of Irish River Networks. The Kiltipper River is the main risk to the site as it runs to the west of the subject site. However there is no pluvial flooding reported in the area or substantiated by the local authority in their report.

7.14 I am concerned about the proximity of the development to the river, and given the stated policy in the current South Dublin County Development Plan 2016-2022, I do believe proximity is a cause for concern. Furthermore, I examined the precedent stated by the applicants to the rear of the subject site, whereby a number of dwellings were constructed in side or rear garden areas. In none of the cited instances, was the existing western estate boundary line broken by new developments. The proposed development implies a projection into the green area between the estate and the River Kiltipper. As the estate is constructed over 30 years it is difficult to determine what formed the basis of the western boundary however I believe the course of the river running north to south was a determining factor, and the gable buildings lines along the western axis of the estate would appear to be uniform. The proposed development will break this uniformity, and create an ad hoc pattern infringing into the buffer area between the estate building line and the River Kiltipper.

7.15 The applicant claims the river has been realigned and that the OSI maps are incorrect in the general vicinity of the site. It is indicated on the submitted drawings that the site boundary is 10metres form the top of the bank of the river. I could see no evidence to suggest this is a fact. In any event, the encroachment of the proposal in close proximity to the river is unacceptable, and will set a highly undesirable precedent for cul de sacs along the western axis of the entire estate, and be contrary to stated development plan policy. I recommend the reason for refusal be upheld by the Board.

6.7 Anti-social behaviour

The third reason for refusal is concerned that the proposal would result in the creation of spaces that would invite and facilitate anti-social activity

due to the houses siding and backing onto to public open space. In my opinion, this reason for refusal makes no sense, as the entire estate sides or backs onto a large open space area to the west. Therefore, this issue should be dismissed by the Board. There appears to be no stated antisocial activity associated with the existing open area, river area and Sean Walsh Park, therefore I am at a loss as to how this became a reason for refusal, as the proposed dwellings would improve incidental supervision of the open areas.

6.8 Other Matters

The third reason for refusal also states the subject site is under the control and maintenance of South Dublin Co. Co. for the past 25 years and it is an integral park of Sean Walsh Park the adjoining site. On appeal The Land Registry Folio has been submitted indicating the land is owned by the applicant Liam Kelly since 2nd of February 2010. There is evidence of a Deed of Dedication associated with the site. I do believe the planning authority has not substantiated its standing legally on the 'control and maintenance' of the subject site as stated. Therefore, I believe the Board should dismiss this issue as the applicants have submitted sufficient evidence to demonstrate they are the owners of the site, and the local authority does not appear to have control over the subject lands from the legal documents presented.

7.0 RECOMMENDATION

I recommend the planning authority's decision to refuse planning permission be upheld.

REASONS AND CONSIDERATIONS

Having regard to the location of the proposed development in close proximity to a watercourse to the west of the subject site, the proposed development would contravene stated policy in the current South Dublin County Development Plan 2016-2022 to maintain a protection zone free from developments of not less than 10metres form the top of the bank of all watercourses, and the proposed development has failed to comply with the stated policy and is therefore contrary to the proper planning and sustainable development of the area.

Caryn Coogan

Planning Inspector

27/03/2017