



An
Bord
Pleanála

Inspector's Report PL06S.247687

Development	4 houses, drainage, landscaping and boundary treatment
Location	Rear of 665 Ballycullen Cottages, Ballycullen, Dublin 16
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD16A/0055
Applicant(s)	Colm Perry
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	1. Aidan Fitzgerald and others 2. Hunterswood Man. Co. Ltd.
Observer(s)	None
Date of Site Inspection	22 nd February 2017
Inspector	Joanna Kelly

1.0 Site Location and Description

- 1.1. The appeal site, with a stated site area of 0.12ha is located on lands within the existing urban area of Ballycullen. The said lands are located to the rear of an existing cottage 665, Ballycullen cottages. There is an existing workshop to the rear of this property and the appeal site is beyond this. There is currently a wall which defines the boundary of the appeal site with the workshop.
- 1.2. The proposed access to three of the units is via Hunters court which is currently a cul-de-sac. Parking was in high demand in this area at time of inspection. Access to unit A is from Hunters Avenue where there is currently hoarding to the site frontage at this section of the appeal site.
- 1.3. The appeal site is residual area landlocked between residential developments on all boundaries. There is existing shrubbery/trees to perimeter of the site. Levels across the site appear generally consistent.

2.0 Proposed Development

- 2.1. The proposal provides for the provision of four residential units. Two units are detached and two are semi-detached units.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission for the proposed development subject to 16 no. conditions. Of note are the following conditions:

Planning Authority Reports

3.1.1. Planning Reports

The first planning report noted a number of objections which raised concerns about inter alia, parking; safety; design and layout; devaluation; loss of light and security; density; fire tender access.

The planner noted that the density was acceptable and that the layout attempts to position new houses along building lines to mitigate any impacts of overlooking/overshadowing. This has been broadly achieved. The planner notes that the rear gardens are short and wide and sets out that a condition limiting future exempted development should be inserted.

It was recommended that further information be sought in respect of public lighting; parking; provision of footpath and relevant consent.

The subsequent planner's report recommended a grant of permission subject to conditions.

3.1.2. Other Technical Reports

Roads Department

Applicant is proposing road works which are likely to be taken in charge. Some of the works proposed are on lands not in the control of the applicant. Further information is required in respect of public lighting; parking; provision of footpath along Hunter's Court; access for fire tender and relevant consent.

The subsequent report has no objection to the response to the further information and recommended conditions.

Other

There is another report (email format) on file which refers to the insertion of a public lighting condition. It is unclear which department this report pertains to however it is from Grainne Mowlds.

3.2. Prescribed Bodies

Irish Water

Further information required in respect of the water main layout for the proposed development. Separation of foul and surface water required.

4.0 Planning History

File ref. No. SD15A/0302 Permission refused for a three 4 bedroom 2-storey pitched detached houses. Reason for refusal pertained to overbearing impact proposal would have on existing residential amenities in area.

File Ref. No. SD15A/0088 Permission refused for three 4 bed roomed 2-storey terraced houses on appeal site with new access to site/development from Hunters Avenue. Reason for refusal pertained to overbearing impact.

Site history on site approx. 28m north

File Ref. No. 15A/0174 Permission granted for infill residential development on a site to the rear of 662-663 Ballycullen Cottages taking access from Hunters Avenue consisting of three four-bedroom, 2.5 storey terraced houses in one block. These units have been constructed.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016-2022

Chapter 2 deals with Housing. Chapter 11 deals with Implementation and set out development standards and criteria that arise out of the policies and objectives of the CDP.

5.2. Ballycullen / Oldtown Local Area Plan

The appeal site is located outside the boundary identified in this LAP.

6.0 The Appeal

6.1. Grounds of Appeal

Third Party Grounds of Appeal

1. Alan Fitzgerald and Others

The main points are summarised as follows:

- Object to proximity of proposed development relative to house (27 Hunters Court)
- There appears to be a window overlooking gardens where on previous plans the gable walls were blank.
- The proposed property effectively raises the boundary wall from 2.5m to 9.34m.
- The proposal is inconsistent with the characteristics of the area, natural woodland sold as a descriptor in 2002.
- Proposal will visually dominate appellant's property and potentially affect property value.
- The validity of the solar study is questioned and does not demonstrate the true impact of the proposed development of appellant's dwelling.
- Reference is made to the opening up/altering of the cul-de-sac which makes mockery of planning laws.
- There is insufficient parking currently and the proposal will exacerbate the issue.
- Proposal will be hazard to growing number of children living in Hunters Court, the cul-de-sac is the only safe place for children to play.
- Lack of communication between developer and residents.
- Access rights would need to be secured from the Management Company in order to develop the lands which would not be forthcoming.

2. Hunterswood Management Company Ltd.

- The site has no direct access to public roads or services and is totally enclosed and surrounded on all four sides by private third party lands/properties.
- The validity for the proposal is contingent upon the applicant being in a position to provide appropriate and satisfactory pedestrian, vehicular and services access to and/or from the site via Hunters Court and Hunters Avenue at Hunterswood.
- The proposal requires the removal of three existing car parking spaces together with a significant area of landscaped open space and shrubbery at the northern end of the cul-de-sac.
- The proposal also requires access across a narrow strip of grass margin adjacent to the eastern kerb of the Hunters Avenue roadway. It is not clear if this narrow strip is within the applicant's ownership
- It is acknowledged that the roads, footpaths and service have been taken in charge by the Council however the additional plots of land required for access to the proposed development at both locations are not in public ownership and are included within the "common" parts of the Management Company.
- Reference is made to the further information stage requiring a letter from the land owner showing permission for the proposed works and the condition of the notification of permission which also re-iterates that such permission should be sought. It is set out that such permission will not be forthcoming from the management company at the present time.
- It is set out that the applicant will not now be in a position to acquire title to the lands necessary to facilitate the development.
- The proposal should be refused for the specific development indicated on the basis that it is not deliverable in the manner and/or configuration shown.

First Party response to Appeal

The pertinent planning issues of the response are summarised as follows:

- The council indicated during pre-planning that the land be fully utilised so as to maximise desired density for housing.
- The council approved a single dwelling at Hunters Avenue, a location adjacent to where numerous new and larger dwellings have been built in the past two years without appeal and accessed by the same route.
- No fence or wall was ever constructed as Ellier development (original developer of Hunterswood) was involved in on-going discussions regarding this family land with Colm Perry snr. and agreed to leave the possibility of future access.
- Proposal seeks to provide much needed family housing.
- Any attempt to landlock the site would be unjust.
- Access to the site via Hunters Avenue in previous applications was not deemed an issue and the management company failed to question the ownership at this location.
- Discussions have been had with the management company.
- No car parking will be lost.
- With regard to height there are already 3 storey housing along Hunters Avenue. The house is designed that there are no bedrooms at first or second floor at the rear so as to ensure there will be no overlooking of adjoining properties.
- All safe mature trees on site have been maintained.

Planning Authority Response

- The applicant worked closely with the planning authority to produce what is considered to be a well-designed and well laid out development of a modest nature.

- The proposal helps create two strong streetscapes in an area subject to renewed development.
- The proposal will contribute in a positive way to the area.
- The layout and design will substantially mitigate any overlooking /overshadowing of adjacent properties.
- The addition of three dwellings at the end of a cul-de-sac will not have a negative impact on the integrity of the existing residential amenity.
- The original decision to grant permission with conditions should be upheld.

7.0 **Assessment**

Having regard to national, regional and local policies, inspected the site and immediate environs, and following examination and consideration of all the submissions and documentation on the file, I consider that the substantive planning issues pertaining to this *de novo* assessment can be encapsulated under the following headings:

- Design and Layout
- Access
- Appropriate Assessment

7.1. **Design and Layout**

- 7.1.1. The applicant is proposing to extend an existing cul-de-sac within an established residential area, Hunters Court to accommodate three additional residential units on residentially zoned lands. A fourth unit is also being proposed which is to be accessed within Hunters Avenue.
- 7.1.2. Unit type A and B are detached units. Unit A is a three storey four bed unit with a floor area of 138sq.m. Unit B is a two storey four bed unit with a floor area of approx. 141sq.m. Units C and D are semi-detached two storey three bed units. In general the proposed units are considered of adequate floor area with sufficient internal storage space and would offer adequate residential amenity to future residents.

- 7.1.3. With regard to design, the proposal is generally considered acceptable. It is considered that the proposed external finishes are critical and any substitution of other finishes particular roofing material would compromise the architectural design proposed.
- 7.1.4. Concerns have been raised regarding, *inter alia*, overlooking, over shadowing and design. Shadow impacts assessments have been submitted which I consider accurately reflect the extend of shadow impact. The greatest impact will be during the winter when the sun is at its lowest point in the sky giving rise to greater impact. The proposal however is such that would not compromise the residential amenity of adjoining properties. Further the proposal would not give rise to undue overlooking. The applicant is proposing panels to the side of the first floor windows of units C and D which will mitigate overlooking to the rear gardens of units located at perpendicular angles. This solution is considered adequate.

7.2. **Access and parking**

- 7.2.1. Pursuant to site inspection, I can understand the appellants' concerns regarding access and parking. The proposal is to extend the existing cul-de-sac within Hunters Court to facilitate access to three of the units. In principle such is considered acceptable. However, in this instance, there would appear to be an issue regarding land ownership/consent from adjoining landowner so as to implement such proposal. The Hunterswood development (generic name assigned to the overall residential development by this Inspector) appears to have been taken in charge although this is not confirmed. Therefore, the Council may be in a position to consent to providing access and consent for other works to be carried out on such lands that they have taken in charge to facilitate the proposal. However, it does appear that there may be other areas such as 'green strips' that are within the remit of a management company. The appeal documents set out that consent will not be forthcoming and which third parties have set out justifies a refusal. I consider that sufficient legal interest exists for the applicant to have made the application in the first instance. It is accepted that it is unclear whether the applicant has adequate entitlement to carry out the extent of works proposed so as to accommodate the proposal e.g. removal of existing green strips/verges, provision of additional parking within an established residential area. However, I also consider that a refusal in this instance for such is unreasonable given that sufficient legal interest exists to make the application in the

first instance. Section 34 (13) of the Planning and Development Act, as amended, provides *“a person shall not be entitled solely by reason of a permission under this section to carry out any development.”*

7.3. With regard to parking, two spaces have been provided within the curtilage of each unit. The three car parking spaces to Hunters Court, which is required to be removed to facilitate access through this area of the site, will be replaced with the provision of spaces along the front of existing residential units. In general, such is acceptable subject to relevant consent. It was noted at time of inspection that parking spaces are in high demand however the proposal will not exacerbate such demand.

7.4. **Appropriate Assessment**

7.4.1. Having regard to nature and scale of the proposed development on serviced lands, the nature of the receiving environment and proximity to the nearest European site it is reasonable to conclude that no Appropriate Assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site in view of the sites' conservation objectives.

8.0 **Recommendation**

8.1. I recommend that the proposed development should be **GRANTED** subject to the reasons and considerations hereunder.

9.0 **Reasons and Considerations**

Having regard to the zoning objective of the appeal site; to the established pattern of development in the area; and the layout and proposed design of the residential units, it is considered that, subject to compliance with the conditions set below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would result in an acceptable standard of residential accommodation. The proposed development would, therefore, be in accordance with the proper planning and sustainable development 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. Water supply and drainage arrangements, including the attenuation and 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

3. 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 interest of visual amenity.

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

Reason: In the interest of residential and visual amenity.

5. 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.

6. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will 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.

7. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of on-site car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Provision of parking for existing properties at [specify locations] during the construction period;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

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 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.

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, 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.

Joanna Kelly

Senior Planning Inspector

20th March 2017