



An
Bord
Pleanála

Inspector's Report PL06F.247727

Development	Construction of 3 no. houses and all associated works.
Location	Site to rear of Chapel Road, Lusk, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F16A/03356
Applicant(s)	Shane McGuinness
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third
Appellant(s)	Leo McKittrick
Observer(s)	None
Date of Site Inspection	27 March 2017
Inspector	Una Crosse

1.0 Site Location and Description

- 1.1. The site comprises an area of 0.17 hectares to the rear of an existing dormer residential property which addresses Chapel Road in the centre of Lusk. Chapel Road is a narrow one-way street. The site previously accommodated a glasshouse but this has been removed with a shed remaining within the site. There is a wide strip of land to the east of the existing house which provides access to the rear of the site. The site is relatively flat falling gently by c.1m from the public road to the rear of the site. The site is divided by a timber fence with part of the site set out as a lawn and the remaining area to the west of the fence without any existing boundary with a car business currently being undertaken from the adjoining site area.
- 1.2. The site is adjoined by residential properties to the south which address Post Office Road to the west which adjoin St Joseph's Avenue and to the east which adjoin Main Street. There is a property directly to the east of the applicant's property and an area of open ground to the northwest of the site. There are a number of properties to the west of the site which address St Joseph's Avenue including the appellants property which is a dormer dwellinghouse.

2.0 Proposed Development

- 2.1. The proposal as submitted proposed the construction of 3 detached 1.5 storey dwelling houses accessed via an existing driveway which it is proposed to upgrade and widen to 5m and to provide a 1.2m footpath from the entrance into the site. It is also proposed to create an entrance to the applicant's property from the new entrance road into the rear of the existing dwelling. It is proposed to upgrade an existing foul sewer on the public road adjacent to the site which is currently redundant. It was proposed to demolish an existing glasshouse on the property but this had been removed by time of my site visit. There remain a number of small sheds which it is proposed to demolish.
- 2.2. Each of the proposed units has 4 bedrooms with an area to the front of each unit to facilitate the parking of two cars. Rear garden areas in excess of 75 sq.m are proposed. An area of communal open space is proposed to the front of the proposed units.

2.3. Following the request for further information revisions to the scheme were proposed including the provision of a 6m shared entrance road with a 1.8m paved footpath with use of a flat kerb and new asphalt surface road. Revisions were made to the car parking to the rear of the existing house and a boundary wall of 2m is proposed. Dormer windows on the front elevation of the units have been omitted with inset windows proposed within the roof plane with floor plans revised accordingly.

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission was granted subject to 19 conditions which included:

C3. Management Scheme for maintenance of the site and open space;

C4 – Revised plan showing relocation of proposed vehicular entrance to the existing house on the site and details regarding visibility splays for same;

C7. Pre-development archaeological testing;

C16. Construction Management Plan;

C17. Hours of construction;

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report can be summarised as follows:

- Houses are visually acceptable with issues noted regarding heights on cross sections and absence of details on rain water goods with suggestion of omission of dormer windows and proposal of full pitched windows;
- Adequate level of private amenity space proposed with issues addressed in terms of overlooking to be addressed by revisions to design;
- Reference to Conservation Officers concern at inclusion of dormer windows in an ACA;
- Details regarding amenity space and boundary treatment for the existing house is absent;

- Shortfall in public open space of 60 sq.m is considered minor;

3.2.2. Further Information;

The further information sought can be summarised as follows:

- Design of footpath and access road;
- Height of boundary walls to provide adequate inter-visibility of pedestrians and access;
- Accurate site layout plan showing adjoining development;
- Revised floor plans and elevations addressed potential for overlooking/loss of amenity;
- Location of rainwater goods with revised cross sections and elevations indicating location/scale of dormer;
- Storage provision within each unit;
- Site plan for existing house showing parking and boundary treatment;
- Management of site and open space;

3.2.3. Planning Report following Further Information

The report prepared in response to the further information received is summarised as follows:

Response to Item 1 and 6 regarding shared surface and the existing house outlined and noted that parking area and boundary wall to rear of existing house require further alterations which can be conditioned. Proposal to replace dormer windows with windows inset into the roof plane is considered acceptable and addressed overlooking. Other revisions to storage areas, rainwater goods etc are considered acceptable. In terms of the management of the site and open space the response proposed is not considered to provide sufficient clarity with a condition proposed.

3.2.4. Other Technical Reports

Water Services – no objection subject to conditions;

Transportation Planning Section – Further information required in relation to details of the access road and height/location of boundary walls; The FI response was noted and conditions proposed relating to the entrance proposed into the existing house on the site.

Irish Water – no objection subject to conditions;

Conservation – Planners report refers to concern expressed in relation to design of the dormer windows which it is stated require simplification.

3.3. Prescribed Bodies

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs – site within zone of archaeological potential with pre-development testing condition proposed;

3.4. Third Party Observations

As per grounds of appeal below.

4.0 Planning History

4.1. Appellants Site adjoining Appeal Site

F04A/0492 – permission granted to Leo McKittrick for a dormer dwelling and wastewater treatment system at St. Josephs Avenue, Off Post Office Road, Lusk.

5.0 Policy Context

5.1. Development Plan - Fingal County Development Plan 2017-2023

- 5.1.1. The site is located within an area zoned objective TC – Town and District Centre which seeks to ‘protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities’.
- 5.1.2. The site is located with the Lusk Architectural Conservation Area (ACA) and within the zone of Archaeological Notification.
- 5.1.3. Objective DMS28 states - A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless

alternative provision has been designed to ensure privacy. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs. A separation distance of at least 2.3 metres should be provided between the side walls of each house, pair of semi-detached houses or each terrace of houses in order to allow for adequate maintenance and access.

- 5.1.4. Objective DMS39 states - New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

5.2. The Lusk Local Area Plan 2009 has expired.

6.0 The Appeal

6.1. Grounds of Appeal

The third party grounds of appeal are summarised as follows:

- Failure to eliminate overlooking of property by proposed development and impact on privacy with failure to meet Objective RD19 and request boundary screening is proposed on site by large evergreen trees and no windows can overlook the property;
- Unable to obtain the Conservation Officers Report referred to in Planners Report;
- Open space must be provided in line with Development Plan standards with proposal having a shortfall of 20% with reduction of number of units to 2 facilitating provision of adequate open space and that the units could be further from the appellant's property;
- Concern expressed as to the management agreement and arrangement of same proposed;
- Proposal does not comply with Objective RD19 which requires a separation distance of 2.3m between side walls of units and indicates an excessive density of development;

- Demolition of the existing glasshouse has commenced which is contrary to requirements of the permission sought;
- Maps submitted with original submission did not indicate location of appellant's property and its proximity to the appeal site;
- Request any permission is amended to allow for two houses with increased separation distance between the houses and site boundaries, provide adequate open space and ensure privacy of appellants property is maintained;

6.2. **Planning Authority Response**

The PA response is summarised as follows:

- Proposal appropriate form of infill development on lands zoned Town Centre having regard to surrounding form of development;
- Full consideration given to the objections submitted to the PA;
- Change of house types to 1.5 storey and revision in floor plans will address concerns about overlooking;
- Density of development appropriate in town centre;
- Views from upper floor will be oblique and windows are recessed with separation distances acceptable;
- Limited scale of development and location provide that the shortfall in open space is acceptable;
- Condition requiring management condition for the site was included;
- Removal of glasshouses would not impact on archaeological features;
- Construction management plan required which will address hours of construction;
- Request conditions 18 & 19 are included;

6.3. **First Party Response**

The first party response can be summarised as follows:

- Windows recessed and angled away from adjoining properties to avoid overlooking;
- Applicant would consider provision of boundary screening to proposed 2m boundary wall;
- Private open space well in excess of required provided for each unit with development of scale proposed not usually providing communal space with density low (17 units per/ha) when compared with other developments;
- Site currently dilapidated with proposal an improvement on current conditions;
- Separation distances in Objective RD19 guidelines and not mandatory with proposed separation distances more than adequate to protect privacy;
- No work requiring permission has commenced on site with any work to glasshouses to prevent flying glass;
- Issue regarding ordnance survey maps was addressed at further information stage with proximity of appellant's property to boundary not a reasonable objection given applicant has taken all measures necessary to maintain appellant's privacy;
- Request appeal dismissed;

7.0 **Assessment**

7.1. The following are considered to be the key issues in this case:

- Compliance with Planning Policy
- Impact on Residential Amenity
- Other Matters
- Appropriate Assessment

7.2. Principle of Proposal

The proposed development comprises the development of 3 dwellinghouses on a site within the town centre of Lusk. The site forms part of a large rear garden/yard of an existing residential property. While the zoning is discussed in the next section, the principle of providing residential development within the town centre is acceptable subject to other considerations which are outlined below.

7.3. Compliance with Planning Policy

- 7.3.1. The Fingal County Development Plan 2017-2023 has recently come into effect. The Plan provides that the site is zoned for TC – Town and District Centre – uses. The objective of the zoning is to ‘protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities. The provision of housing within the town centre where such housing can be serviced and where services exist is acceptable in principle in this zone. I would note that the site is located within the Lusk Architectural Conservation Area, however, the location of the site within an existing area of residential dwellings and the mix of designs, which creates the context of this area, provides that the proposal is acceptable in visual terms. I would consider that the proposal to replace the dormer windows at additional information improves the visual appearance of the units proposed. In addition, the site is located within the zone of archaeological notification and I would suggest to the Board that if they are minded to grant permission for the proposal that a condition requiring pre-development testing should be attached.
- 7.3.2. In respect of other policies and objectives in the Plan of relevance, I would note the appellants reference to Objective RD19 which requires a separation distance of 2.3m between side walls of properties. Objective DMS28 of the current Plan requires that a separation distance of at least 2.3 metres should be provided between the side walls of each house, pair of semi-detached houses or each terrace of houses in order to allow for adequate maintenance and access. I note that the distance between the houses is 2m and while it is 0.3m less than the requirement I would consider that 2m is sufficient to facilitate the maintenance and access requirements which is the intention of the objective. I would not agree with the appellant that the failure to provide 2.3m indicates an excessive density, the density proposed at 17 units/ha is quite low and given the location of the site within the town centre could be argued to be too low however given the context within which the site is situate I would consider that it is an appropriate response to the site.
- 7.3.3. I would also note that Objective DMS28 provides that a separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. This relates to overlooking or the prevention of same and this matter is addressed separately in the next section.

7.3.4. In relation to open space, it is stated that the proposed development provides 240sq.m of open space for communal use within the development. This is 60m short of the required 300 sq.m. The appellant suggests that a reduction of the number of units to 2 would facilitate the provision of adequate open space and that the units could be further from the appellant's property. While the matter of residential amenity is addressed below, I would suggest that given the sites location within the town centre that the shortfall of open space is not detrimental to the amenity of the scheme. The space proposed is usable and is overlooked by the proposed dwellings and therefore while there is a quantitative shortfall the qualitative attributes are noted.

7.4. Impact on Residential Amenity

7.4.1. The appellant contends that the proposal as approved fails to eliminate overlooking of his property by the proposed development with a resultant impact on privacy. Reference is made to the failure to meet Objective RD19 which I have outlined above. I would consider that the context of RD19 (now DMS28) as it refers to the requirement for 2.3m separation relates to the amenity of the proposed properties rather than providing a measure to protect adjoining properties. As I have outlined above, Objective DMS28 provides that a separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. It is the 22m separation at first floor that is the key consideration when it comes to addressing overlooking and privacy of adjoining properties. The appellants property is located in close proximity to the party boundary with the first floor dormer windows less than 11m from the boundary between properties. This provides that there is overlooking of the appeal site from the appellants property.

7.4.2. However, the layout proposed provides that there is no directly opposing windows and the first floor windows in the proposed units face north angled away from the appellants property. The most proximate first floor window of the proposed dwelling closest to the appellants boundary is approximately 20 metres from the back wall of the appellants property. The velux windows on the roof of the appellants dormer property are c.1m further removed from the building line. In addition, the windows are recessed by c.1m into the roofspace which provides additional separation and limits any potential for direct overlooking of the appellants property. Therefore, the

22m standard for opposing first floor windows has been met and in this instance the windows are not directly opposing. While a perception of overlooking may remain, the separation distance has been provided and additional recessing of the windows and therefore the proposal would not create adverse overlooking nor would it impact on the residential amenity of the appellants property which itself has a shallow rear garden which is less than the 11m requirement of the Development Plan.

7.4.3. The appellants request boundary screening is proposed on site by large evergreen trees and no windows can overlook the property. I have addressed the matter of overlooking above, and while evergreen screening is not considered an appropriate vegetation the Board may consider that some suitable native planting may be included as a screening measure by condition. I note the applicants have stated they are amenable to such screening.

7.4.4. I note the concern expressed by the appellant to the management agreement and arrangement of same proposed. Further information was requested in respect of the proposed nature of the management of the development including the open space. In response the applicant's agent provided little clarity on same which was noted by the PA report. A condition was attached requiring a Management Scheme for maintenance of the site and open space (Condition 3) and I would suggest that if the Board are minded to permit the proposal that a similar condition is included.

7.5. Other Matters

7.5.1. I note the appellants reference to the demolition of the existing glasshouse on site which has been completed. The Board is not an enforcing authority and therefore this matter should be addressed to the Council. Reference is also made to the maps submitted with the original submission which did not indicate the location of appellant's property and its proximity to the appeal site. I note same and the further information request which emanated from the PA and the response from the applicant which included an outline of the appellant's property. I would note that the drawings submitted by the applicants agent are poorly annotated with details such as distances. I have visited the appeal site and the appellants property and therefore am aware of the location of both and proximity of one to the other.

7.5.2. I would also note the comments of the transportation Department of the Local Authority in respect of the response to further information and in particular to the

location of the proposed entrance into the applicants existing house. A condition requiring amendments to same was included by the PA following the Transportation Section Response and I would suggest that if the Board are minded to grant permission that a similar condition is attached.

7.6. Appropriate Assessment

Having regard to the nature and scale of the proposed development, nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that permission for the development is granted subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the zoning of the site and the planning history in the vicinity of the site, it is considered that the proposed development would not seriously injure the architectural character of the area or the residential amenities of property in 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. 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 and particulars submitted on the 10th day of November 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. Prior to the commencement of development, the developer shall submit, for the written agreement of the Planning Authority, a revised site layout plan which relocates the proposed vehicular entrance to a location to be agreed with the Planning Authority and which shall provide for the requirements of the Planning Authority in respect of visibility splays.

Reason: In the interest of orderly development and traffic safety.

3. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

4. 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. Roof colour shall be blue-black, black, dark brown or dark grey in colour only.

Reason: In the interest of visual amenity.

5. (a) A scheme indicating boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This boundary treatment scheme shall provide a screen along the western boundary, consisting predominantly of trees, shrubs and hedging of indigenous species. The planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the substantial completion of external construction works.

(b) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development, in the interest of visual and residential amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water and provision for existing foul sewer connections within the site, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the underground car park shall be in accordance with the detailed standards of the planning authority for such works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

8. Public Lighting shall be provided in accordance with a scheme, (which shall include lighting along pedestrian routes through open spaces), details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interest of amenity and public safety.

9. 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 interest of visual and residential amenity.

10. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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.

11. 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 noise management measures and offsite disposal of construction/demolition waste including any excess soil arising from the proposed excavation of the site.

Reason: In the interest of public safety and residential amenity.

12. A plan containing details of the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of

development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

14. 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.

15. 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 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.

Una Crosse
Senior Planning Inspector

March 2017