



An  
Bord  
Pleanála

## Inspector's Report PL06F.247752

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<b>Development</b>	Demolition of existing house at 'Wyngate' and construction of a replacement house. Construction of 2 houses to the rear of 'Rahona' with access through 'Wyngate' and all associated works.
<b>Location</b>	'Wyngate' and 'Rahona', Church Road, Malahide, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F16A/0092
<b>Applicant(s)</b>	James, Jeffrey and Jonathan Wright
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Chris and Michelle Kennedy David and Rachel Butler
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28 <sup>th</sup> March 2017
<b>Inspector</b>	Patricia Calleary

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
4.0 Planning Authority Reports .....	4
4.1. Planning Reports.....	4
4.2. Other Technical Reports .....	5
4.3. Prescribed Bodies.....	5
4.4. Third Party Submissions .....	5
5.0 Planning History.....	6
6.0 Policy Context.....	6
6.1. Urban Design Manual – A best practice Guide (2009).....	6
6.2. Fingal Development Plan, 2017-2023.....	6
7.0 Appeal .....	7
8.0 Assessment.....	9
8.1. Introduction .....	9
8.2. Compliance with Development Plan Policy .....	10
8.3. Trees and Landscaping.....	10
8.4. Residential Amenity .....	11
8.5. Visual Amenity .....	12
8.6. Appropriate Assessment .....	13
9.0 Decision.....	13
10.0 Reasons and Considerations .....	13
11.0 Conditions .....	14

## 1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 0.34 ha comprises an unoccupied existing single storey detached house 'Wyngate' and part of a large rear garden of the adjoining detached house, 'Rahona', which is positioned to the north west of 'Wyngate'. The site is accessed off the western side of Church Road in Malahide. The area is characterised by residential development, including Ashleigh Lawn to the south, the rear garden and tennis court of the associated neighbouring dwelling to the north and the rear gardens of properties on St. Margaret's road to the west. The site slopes from the road side at Wyngate to the rear site boundary by c.5.5 m. It is screened by large mature trees consisting of naturalised species which mark the boundaries of the rear garden of 'Rahona'. The southern boundary and part of the western boundary also consists of a Leyland cypress hedgerow.
- 1.2. The site is c. 160m south of Malahide Architectural Conservation Area (ACA) and within walking distance of Malahide Demesne and Castle which is located to the west.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise the demolition of an existing single storey house at 'Wyngate' and the construction of a replacement house. In addition, the construction of two new houses to the rear of 'Rahona' and all associated works are proposed. The houses would all be one and a half storey in scale.
- 2.2. The existing access to 'Wyngate' would be upgraded and would be extended past the replacement dwelling to serve the two new dwellings to the rear of 'Rahona'.
- 2.3. The house which would be demolished has a stated floor area of 101 sq.m. As amended at further information stage, the replacement house on Site No.1 would have a total floor area of 277 sq.m. the new house on Site No.2 would measure 294 sq.m and the new house on Site No.3 would measure 320 sq.m. The houses would have a maximum ridge of 7.4m. As the site slopes to the rear, House No.3 is shown lying an average of c.5 m below the public road.

- 2.4. The houses would connect to the public foul sewer. Two No. 50mm diameter foul sewage pumping stations and rising mains are proposed to facilitate connections to houses No.s 2 and 3. Surface water disposal would be via soakaway trenches on site.
- 2.5. In addition to the drawings, the application was accompanied by a cover letter and design statement, an engineering cover letter, soakaway design report, foul sewer pumping station technical details (houses No.s 2 and 3), a Flood Risk Assessment and a Planning Support statement.
- 2.6. The response to the further information included a Landscape masterplan, an Arboricultural Report (Tree Survey, Arboricultural Impact Assessment & Method Statement) as well as revised drawings (infrastructure and access), Tree survey, removal and protection plans and revised house drawings and site sections.

### 3.0 Planning Authority Decision

- 3.1. The Planning Authority issued a decision to **grant permission** subject to 17 conditions, the majority which are standard in nature. Condition No.13 sets out requirements of the Parks and Green Infrastructure Division in relation to tree retention, tree protection measures, arboricultural techniques and the lodgement of a tree bond of €15,000. Condition No.17 requires a bond of €40,000 or cash deposit of €25,000 in respect of roads, open spaces, car parking and drainage.

### 4.0 Planning Authority Reports

#### 4.1. Planning Reports

- 4.1.1. Following receipt of additional information, the final planning officer's report can be summarised as follows:

- Site is in an area zoned 'RS' (residential) and is therefore acceptable in principle subject to compliance with relevant policy and objectives;
- Amendments to dwelling at Site 1 considered acceptable;
- Amendments to dwelling at Sites 2 and 3 noted and considers these houses would not give rise to an adverse impact on adjoining residential amenity;

- Screening proposals noted, Site 2 would not be visually prominent from the street given the extent to which it would be set back into the site;
- Report from Parks and Green Infrastructure Division notes the arboricultural report as acceptable and raises no objection subject to conditions;
- Proposals for improved sightlines noted, Transportation Planning section have raised no objection;
- Engineering infrastructure proposals require amendments in order to facilitate maximum protection of trees. Applicant has taken measures to address this and Council's water services section have no objections.

4.1.2. The Planning officer concluded that the further information is acceptable and put forward a recommendation to **grant permission**.

#### 4.2. **Other Technical Reports**

- **Water Services** – No objection subject to conditions;
- **Transportation** – No objection subject to conditions;
- **Parks Planning Section** – Requires all works on trees should follow proper arboricultural techniques conditions and a tree bond;
- The Planners report notes that the **Conservation Officer** made verbal comments requiring alterations to the design of houses on Site 1 and Site 2.

#### 4.3. **Prescribed Bodies**

- **Irish Water** – No objection subject to conditions.

#### 4.4. **Third Party Submissions**

4.4.1. Six third party submissions were received by the Planning Authority initially and following receipt of further information, five parties submitted further submissions. These have been considered in the Planning Authority's assessment of the application. I have also considered the contents of these submissions and I note the concerns raised are also included in the appellants' appeal submission to the Board.

## 5.0 Planning History

### 5.1. Appeal site

- No recent planning history.

### 5.2. Vicinity

- Langara, The Hill (F15A/0110) – Permission **granted** for alterations and extensions to house.
- Mont Marie, The Hill (F16A/0036) – Permission **refused** for construction of a new two storey house.

## 6.0 Policy Context

### 6.1. Urban Design Manual – A best practice Guide (2009)

### 6.2. Fingal Development Plan, 2017-2023

The site is zoned '**RS**' and the zoning objective for such land is to 'provide for residential development and protect and improve residential amenity'. The vision is to ensure that any new development in existing areas will have a minimal impact on and enhance existing residential amenity. Section 12.4 of the Development Plan specifically relates to design criteria for residential development. The following objectives are relevant.

- **OBJ DMS24** - Require that new residential units comply with or exceed the minimum standards. (Tables 12.1 refers to dwelling houses and Table 12.3 refers to room sizes);
- **OBJ DMS28** - 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;
- **OBJ DMS42** - Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected;
- **OBJ PM64** - Protect, preserve and ensure the effective management of trees and groups of trees;

- **OBJ PM65-** Ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements;
- **OBJ DMS87** – For 4 bedroom house or more, a minimum of 75 sq.m of open space is required.

### 6.3. Natural Heritage Designations

6.3.1. Malahide Estuary Special Area of Conservation (Site Code: 000205) and Malahide Estuary Special Protection Area (Site Code: 004025) located c.600m north of the appeal site.

## 7.0 Appeal

### 7.1. Grounds of Third Party Appeal

7.1.1. Two appeals were received from **Chris and Michelle Kennedy** who reside at 23 Ashleigh Lawn and **David and Rachel Butler** who reside at 24 Ashleigh Lawn. The following points are set out in the appeal.

- The Council did not have regard to previous precedents including planning permission which was refused for a second floor extension under F04B/0678 and Planning permission which was refused for a similar development at 'Mont Marie', The Hill, Malahide under F16/0036;
- Overall height and size of the development would be out of proportion to other properties on Ashleigh Lawn.
- Amendments to designs at further information stage contained little or no material change and did not address the Council's stated 'serious concerns' raised in their request for further information;
- Contrary to green objectives, habitats and light pollution (Objectives GI08, BD06 and LP01).
- Concerned with the resultant loss of tree cover and Leyland Cypress hedgerow to facilitate a road access as it would result in impacts to privacy, light pollution and loss of habitats;

- Existing entrance to Rahoma is of architectural importance and its alteration / removal is not in accordance with stated planning policy around architectural heritage;
- Loss of green space would result in destroying amenity space enjoyed by the residents of Ashleigh Lawn.

## 7.2. **First Party's response to third party appeal**

A response to the appeals was received from J.G. Consulting on behalf of the applicants, the main points which are summarised under.

- Design of houses were revised to reduce the overall height and design of the houses and the revisions were considered to satisfactorily address concerns of the planning authority;
- All works on trees will follow proper arboriculture techniques conforming to BS3998:2010 Tree works- Recommendations and a tree bond will be lodged with the Council.
- Fingal County Council's Tree strategy 'Forest of Fingal' has a policy to remove Leyland Cypress hedgerows. New landscaping of greater diversity of plant material which is proposed is more favourable;
- Proposal is within planning parameters in relation to zoning, drainage, open space, house design heights, separation distance and room sizes (RD07);
- Would not cause undue impacts in relation to residential amenity.

## 7.3. **Planning Authority Response to Third Party Appeals**

The Planning Authority noted the houses on Sites 2 and 3 were amended and reduced in scale which it considers is acceptable. It also noted that a significant number of trees would be retained and the amendments to the entrance of 'Rahoma' would not result in significant adverse impacts. The PA restated their view that the proposed development is acceptable.



#### 7.4. **Planning Authority Response to First Party Response to Appeals**

The Planning Authority acknowledged the correspondence from the Board which contained the first party's response to the third party appeals and stated that they had no further comments.

#### 7.5. **Further Responses from appellants**

Further responses were received from **David & Rachel Butler and Chris & Michelle Kennedy**, the contents which are summarised below:

- Fail to see how minor changes made to house designs at further information stage could address stated 'serious concerns' of the PA as the scale is only slightly reduced;
- Portugal Laurel Hedge will not provide the buffer currently offered by the Leyland trees;
- Applicants response does little to address the concerns of the neighbours whose residential amenity will be unduly affected;
- Any development should have access through Rahona and not Wyngate to ensure security of residents of Ashleigh Lawn is protected.

#### 7.6. **Observations**

None

### 8.0 **Assessment**

#### 8.1. **Introduction**

8.1.1. I have read and considered the contents of the planning application, grounds of appeal, responses and relevant planning policy. I have also attended the site and environs. I consider the key issues in determining the application and appeal before the Board are as follows:

- Compliance with Development Plan Policy
- Trees and Landscaping

- Residential Amenity
- Visual Amenity
- Appropriate Assessment

8.1.2. I set out my considerations of each of the above issues in the following sections of my assessment. At the outset, I refer the Board to the fact that since the planning decision issued, Fingal County Council have adopted a new development plan, Fingal Development Plan 2017-2023, which forms the basis of my assessment.

8.1.3. It is stated that the sites on which the development is proposed are for family members of their parents who reside in the neighbouring family home, 'Rahoma'.

## 8.2. Compliance with Development Plan Policy

8.2.1. The site is located within an area which is zoned as '**RS**' - provide for residential development and protect and improve residential amenity'. Based on a review of the Development Plan, the proposed dwellings appear to meet the requirements of Objective DMS24 (compliance with minimum standards), Tables 12.1 and 12.3 (room sizes) and OBJ DMS87 (private open space) of the current Fingal Development Plan 2017-2023. The proposal for development of the houses is also supported by OBJ DMS42 (Encourage underutilised infill on backland sites in residential areas).

8.2.2. I am satisfied that the development is in compliance with the applicable planning policy and development management standards and is acceptable in principle. However, my assessment also considers other planning matters including trees and landscaping, residential amenities and visual impacts which are the main issues of concern raised in the grounds of the appeal.

## 8.3. Trees and Landscaping

8.3.1. The amenity value of the existing mature trees on site is noted and their retention is supported by Objective OBJ PM64. As part of the response to the further information request, the applicant submitted an Arboricultural Report. This identified a number of trees, shrubs and hedgerows which would require removal in accordance with BS5837:2012 (category and reason for removal). It is submitted that the majority of

vegetation to be removed is low and poor quality and would be insignificant in the wider surrounding landscape due to their internal location within the site and their limited visibility from local public areas. It is also proposed to retain and protect all significant trees. A landscape masterplan was also submitted to the Planning Authority at further information stage. The Parks and Green Infrastructure Division were satisfied with the efforts made to retain as much of the tree canopy as possible and recommended conditions including the lodgement of a tree bond. The landscape plan was also considered acceptable.

8.3.2. The appellants express concerns with the loss of the Leyland Cypress hedgerows to facilitate access to site No.s 2 and 3. The first party response states that they are not diversity rich in any way and through its tree strategy 'Forest of Fingal', there is a policy around removing this species across their own land because of maintenance issues. The first party notes that at 40 years of age, the species are entering the end of their life cycle and that replanting with greater diverse plant material would be more favourable. Noting the proposal to provide a new screening buffer between the rear garden of 'Rahona' and Site No. 2 and the planting of a Portugal laurel hedgerow, I am satisfied that the loss of the evergreen Leyland Cypress hedgerow is acceptable.

8.3.3. Overall, having regard to the above, while noting there would be some loss of trees to facilitate the development, I am satisfied that best practice has been followed and when taken in conjunction with the replacement planting and landscape proposal, the loss of trees would have a negligible impact on the surrounding area.

#### **8.4. Residential Amenity**

8.4.1. The main points raised in the appeal relate to impact on adjoining residential amenity as a result of the scale of the houses proposed at the rear of 'Rahona' and the resultant impact on properties on Ashleigh Lawn which lie to the south of the appeal site. In response to the PAs request for further information, the scale of the houses were reduced, however the appellants consider the alterations were not sufficient to address their concerns.

- 8.4.2. In relation to design, I would consider the house on Site No.1, which is a replacement house and given its separation distance from adjoining houses, would not give rise to overlooking, overbearing or overshadowing.
- 8.4.3. The houses proposed on Sites No.2 and 3 need careful consideration given their context adjoining established houses in Ashleigh Lawn. As amended, the two storey element of House No.2 would be sited c.13m – 15m away from the boundary with properties at Ashleigh Lawn and between 22m and 31m from the rear elevations of these houses which is sufficiently separated to ensure issues of overlooking from bedrooms or overbearing onto these houses does not arise. Given the orientation north of the houses, neither would overshadowing be an issue. The house proposed for Site No.3 would be c.13m from the boundary with properties at Ashleigh Lawn and a minimum of 20m from the rear elevation of the properties. Similarly, to house no.2, issues of overlooking or overbearing could not conceivably arise and again because of the orientation north of Ashleigh Lawn, overshadowing would not be an issue.
- 8.4.4. I have taken into account the available screening from mature trees proposed to be retained along the boundary together with additional landscaping proposed. Additional screening is also proposed between the rear garden of 'Rahona' and Site No.2 which would reduce its prominence onto the streetscape.
- 8.4.5. Having regard to the foregoing and based on information gathered during my site inspection together with the attachment of appropriate conditions including requiring landscape and replanting proposals, I am satisfied that the development would not cause adverse impact on residential amenities currently enjoyed by property in the vicinity and I recommend that permission should not be refused on this basis.

## 8.5. **Visual Amenity**

- 8.5.1. The general area is residential in nature characterised by a variety of house types. The House on Site No.1 would replace an existing single storey house. Sites No.s 2 and 3 fall away from the road by c.3.5m (House No.2) and c.5m (House No.3) which would minimise their visual impact from the public streetscape. The houses are each one and a half storey in scale and while they occupy a large footprint, do not appear overly excessive in scale as they would be limited in height to 7.4m designed around

a relatively narrow plan building form. Visual impact would be further reduced by virtue of the presence of mature trees on site, the majority which would be retained and supplemented. In relation to external finishes and materials, I recommend that a condition attach to agree these matters with the Planning Authority as a pre-commencement requirement.

8.5.2. Overall, I considered that the development would not adversely impact upon the visual amenity or the established residential character of the area.

#### 8.6. **Appropriate Assessment**

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

### 9.0 **Decision**

9.1. I recommend that **permission** should be **granted** based on the reasons and considerations set out below.

### 10.0 **Reasons and Considerations**

10.1. Having regard to the residential zoning objective 'RS - to 'provide for residential development and protect and improve residential amenity' and to the pattern of residential development in the area, it is considered that, subject to compliance with conditions set out below, the proposed development would be in accordance with the relevant provisions of the Fingal County Development Plan 2017-2023, would not seriously injure the amenities of the area, or of the property in the vicinity, would not detract significantly from the visual amenity of the surrounding environment 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.

## 11.0 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 26<sup>th</sup> day of October 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. All planting/landscaping required to comply with the specification of the landscaping masterplan submitted to the planning authority on 26<sup>th</sup> October 2016 shall be maintained, and if any tree or plant dies or is otherwise lost within a period of five years, it shall be replaced by a plant of the same species, variety and size within the planting season following such loss.

**Reason:** In the interest of the protection of visual, residential and environmental amenities.

3. 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 and to ensure a proper standard of development.

4. Details of the materials, colours and textures (including samples) of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

5. Site development and building works shall be carried out only between 0800 hours and 1800 hours Mondays to Fridays excluding bank holidays and between 0800 hours and 1300 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of protecting the residential amenities of adjoining properties.

6. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

7. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwellinghouse, without a prior grant of planning permission.

**Reason :** In the interest of residential and visual amenity, and in order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwelling.

8. 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. Any existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interest of visual and residential 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 protection of specified trees on site, 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 / if 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.

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Patricia Calleary

Senior Planning Inspector

3<sup>rd</sup> April 2017