



An
Bord
Pleanála

Inspector's Report PL 06D.248079

Development	House and associated site works
Location	"Rosscahill", Military Road, Killiney, County Dublin.
Planning Authority	Dún Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D16A/0732
Applicant(s)	Gail & Frank Dempsey
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Moira Slattery Kieran O'Driscoll Elizabeth Pierce & Others Ian Bowring
Date of Site Inspection	23 rd May, 2017
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1 The site of the proposed development, with a stated area of 0.7 hectares, comprises a narrow plot forming part of the rear garden of “Rosscahill”, a detached house with a long narrow rear garden and access onto Marino Avenue West in Killiney, County Dublin. The site is irregular in shape, with the ground falling steeply from north to south. The south-eastern part of the site comprises a narrow east/west strip linking to Marino Avenue East. Much of the site’s boundaries consist of mature trees and hedgerow.
- 1.2 Five protected structures bound the site - “Abbeylands” (a terrace of three houses) to the west, “Kildoon” (a detached two-storey house) to the north-east, “Winterslow” (a detached two-storey dwelling) to the east, and “Eversley” and “Lothlorian” (terraced houses) to the south.

2.0 Proposed Development

- 2.1. The proposed development would consist of the construction of a contemporary partial two-storey, flat roof, detached, three-bedroom, split level dwelling. The house would have a stated floor area of 187 square metres. It would have access to the public road via a private lane off Military Road. This lane serves four existing dwellings, each of which are protected structures.
- 2.2. Details submitted with the application included an architectural conservation report.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 11 no. conditions on 1st February 2017.

3.2. Planning Authority Reports

Planning Reports

The Planner noted the observations made, the site's planning history, the reports received, and development plan provisions. Main changes made when compared to a previously refused proposal were scheduled. With regard to the site's O/O zoning, it was considered the site meets the criteria in terms of proximity to Killiney Dart Station. Further information was considered necessary in relation to the right of way providing access to the development, photomontages to demonstrate context, a revised east elevation to break up its bulk and mass, and boundary treatment. It was considered the proposal would not seriously injure the residential amenities of the area and that it would provide a good standard of residential amenity for occupants. A request for further information was recommended.

Other Technical Reports

The Conservation Officer noted the site is within the Killiney Architectural Conservation Area and considered the contemporaneous design approach to be in accordance with good conservation practice. It was recommended that contextual photomontages be submitted to allow full consideration of the proposal.

The Transportation Planning Engineer had no objection to the proposal subject to conditions.

The Drainage Engineer had no objection subject to conditions.

Irish Water had no objection to the proposal.

A request for further information was issued in accordance with the Planner's recommendation on 29th November 2016 and a response to this request was received by the planning authority on 6th January 2017.

In response to this submission, the Planner considered the proposal would contribute positively to the visual enhancement and vibrancy of the area and was of the view that the applicant had responded satisfactorily to the planning authority's request. A grant of permission was recommended subject to conditions.

3.3. **Third Party Observations**

Seven submissions were made to the planning authority from Ian Bowring, Elizabeth Pierce, Moira Slattery, Kieran O'Driscoll, Hans and Annika Weber, Rosemary Kevany, and Orlagh Hunt. The third party appeals address the concerns raised.

Following the receipt of further information, additional third party submissions were received by the planning authority from Kieran O'Driscoll, Moira Slattery, and Ian Bowring.

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4.0 **Planning History**

ABP Ref. PL 06D.243641

Permission was refused by the Board for the construction of a split level house for one reason relating to injury to amenities of property in the area.

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5.0 **Policy Context**

5.1. **Dún Laoghaire-Rathdown County Development Plan 2016-2022**

Zoning

The site is zoned 'A' with the objective "To protect and/or improve residential amenity."

It is also located in an area with a 0/0 zone where no increase in the number of dwellings is normally permitted.

Architectural Heritage

The site is located within the Killiney Architectural Conservation Area (ACA).

6.0 The Appeals

6.1. Appeal by Moira Slattery

The appellant resides at “Abbeylands East”. The grounds of the appeal may be summarised as follows:

- The site is subject to o/o zoning where no increase in the number of buildings is permissible.
- Details submitted with the application were false and inaccurate, including site area, measurements, dimensions, overlooking and parking.
- The relationship between the protected structures at this location within the Killiney ACA would be upturned by the proposed development. The proposal would be visible from these properties and it would cause damage if it is to proceed.

6.2 Appeal by Kieran O’Driscoll

The appellant resides at “Lothlorien”. The grounds of the appeal may be summarised as follows:

- The proposal constitutes an inappropriate and congested form of development within a O/O Zone. Reference is made to the heritage sensitivity of the site, negative visual impact, traffic impacts, proximity to boundaries, drainage arrangements, the constrained nature of the site, and to excavation impacts.
- The proposal would have a negative impact on residential amenity due to overlooking. Reference is made to proposed finished levels on the site, the consequences for “Lothlorien” to the south, and the Board’s previous refusal of permission relating to overlooking of properties to the south.
- The proposal would have a negative visual impact on the area. Reference is made to the incongruity of the development with the Killiney ACA Character Appraisal and Recommendations, to considerations by a Board Inspector on

the previous proposal, and to the lack of contextual representation of the development.

6.3 Appeal by Elizabeth Pierce and Others

The appeal is made by residents in the vicinity of the site – Elizabeth Pierce of “Winterslow”, Rosemary Kevany of “Rosneath”, and Hans and Annika Weber of “Kildoon”. The grounds of the third party appeal may be synthesised as follows:

- The proposal will have unacceptable impacts on the residential amenities of “Winterslow” (including overlooking and overbearing impact) and its future development potential due to proximity and the difference in levels.
- The oversized dwelling on a restricted site would be out of character with the low density area.
- The proposal will detract from adjoining protected structures.
- It will contravene the residential zoning for the site, the O/O zoning, Policy AR8 relating to Architectural Conservation Areas, and parameters relating to backland development.
- The proposal will drain into a private drain with capacity issues and the applicants have no permission to use the drain.
- The access is via a narrow lane and the proposal will create a traffic hazard.

The appeal includes further submissions by Rosemary Kevany and Hans and Annika Weber.

6.4 Appeal by Ian Bowring

The appellant resides at “Rose Cottage”, Marino Avenue East. The grounds of the appeal may be synthesised as follows:

- The planning authority did not give appropriate recognition to the fact that the applicant does not have the right to discharge sewage as outlined in the application. The foul water pipe on Marino Avenue East is a private pipe and no permission has been sought by the applicant to use the drain.
- The condition of the existing drain makes it unsuitable for any additional load.

- The development is inappropriate in terms of the zoning for the area, the Killiney ACA context, and proximity to protected structures.

6.5 Planning Authority Response

The planning authority considered the grounds of appeal do not raise any matter which would justify a change of attitude to the proposed development.

6.6 Applicant's Response to Appeals

The response to the appeals may be synthesised as follows:

O/O Zoning

- The site is in close proximity to Killiney Dart station. The o/o zoning allows for suitable infill at specific locations, such as close to a Dart station.
- The proposal is sensitively designed and does not detract from the character of the area. It does not have major impacts in terms of drainage, landscaping, existing patterns of development or excavation works.

Impact on Protected Structures and Architectural Character Area

- The appellants are claiming that simply by the presence of the proposed dwelling it will detract from the surrounding protected structures, despite significant mature planting on the boundaries providing a buffer.
- Minimal windows on the dwelling to the south mean the level of impact of views into and out of the site would be minimal. With mature landscaping to the east, the provision of a further setback along the eastern elevation as suggested by the planning authority, and the presence of only one window facing east, the instances of overlooking will be effectively minimised in the context of "Winterslow".
- The report of the Council's Conservation Officer is noted.
- Boundary treatments were considered to be acceptable by the planning authority in the context of the surrounding area.

Visual Intrusion and Overlooking

- There is a separation distance of over 15m from the front building line of the proposed house and the boundary with the property to the south. The separation from the property boundary to “Lothlorien” to the south is also over 15m. This results in a separation distance in excess of the recommended 22m. Furthermore, there is mature landscaping present on the site boundaries to provide a buffer.

Development Plan Requirements

- The proposal is in accordance with development plan policy (details of how the proposal complies with a range of plan provisions are set out) and the local authority Planner supported this assertion.

Private Drain

- A complete pipework system put in place in 2010 to which the applicants paid the full cost.
- The matter of the use of the drain is a private permission process outside the remit of the planning system. The connection to the drain is a private matter.

6.7 Further Responses

In response to the applicant's response to the third party appeals, the planning authority submitted that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

Third party responses to the applicant's response to their appeals were received from Elizabeth and others, Ian Bowring and Kieran O'Driscoll. The applicant's submission is refuted and the appellants' concerns are reiterated.

7.0 Assessment

7.1 Introduction

7.1.1 The Board previously refused permission for the development of a house on this site in November 2014 under Appeal Ref. PL 06D.243641. The reason for refusal related

to the injury the proposed house would cause to the amenities of property in the vicinity, having regard to its height, scale and design. The Board considered that the previous proposal would be visually obtrusive, would be overbearing when viewed from adjoining properties, and would give rise to overlooking of properties to the south and north-east.

7.1.2 The Board did not determine that the site was unsuited to the development of a house in principle. The Board did not determine that there were particular concerns relating to zoning provisions applying to the site, that there would be traffic safety implications, cut and fill difficulties, adverse impacts on public sanitary services or other such matters. The Board did not determine that a house was unacceptable on this site due to it contravening the O/O zoning provision or because a house on the site, due to the limited site size or configuration relative to adjoining protected structures on larger sites, was unacceptable.

7.1.3 Since the making of the Board's previous decision there have been no material changes to the site and its context. The one change that has occurred since that previous decision was the making of the new Dún Laoghaire-Rathdown Development Plan 2016-2022. However, it is important to note that the provisions of the current Plan that are relevant to the site are similar to those that were in place previously under the 2010-2016 Plan.

7.1.4 In light of that previous recent decision and the unchanged context, I do not intend to address or revisit the complete range of issues raised by third parties that the Board would have been required to consider previously. I intend to focus solely on the impact of the proposed development on the amenities of properties in the vicinity.

7.2 Impact on the Amenities of Properties in the Vicinity

7.2.1 In considering this issue, it is appropriate that a comparison is made between the current and previous proposals as follows:

- The proposed site area for each of the proposed dwellings was/is the same.

- In design terms, the proposed development presents itself as a contemporaneous split level house. The previous proposal effectively presented itself as a modern two-storey house.
- The front building line of the current proposal has been moved marginally further south (15.964m from its southern boundary compared to 16.13m in the previous proposal).
- In terms of footprint, the current proposal would have a building depth of 17.015m and a width varying between approximately 6m and 7.5m. The previous proposal had a depth of approximately 16.5m and a width varying between approximately 5.7m and 8.4m.
- The floor area of the current proposal as originally submitted is stated to be 187 square metres. The floor area of the previous proposal was stated to be 153.5 square metres.
- The height of the current proposed dwelling on the sloping site when viewed from the south is shown to be 5.55m over finished ground level, compared to 8.285m in the previous proposal.
- The current proposal, at the upper ground level, has a window serving the stairs and a door to the utility on the east elevation and a living room window on the southern elevation. The previous proposal, at first floor level, had one bedroom window and one living room window on the east elevation and two living room windows on the southern elevation.

7.2.2 From the above, it can be seen that the proposed dwelling would be similarly located on a similar site to the proposed development previously determined by the Board. There would be marginal differences in building footprint, a notable increase in floor area, but significant changes in design, whereby the proposed development would be distinctively split level in form, compared to a previous two-storey structure. There would be a considerable reduction in height when compared to the previous proposed structure and distinctive changes to fenestration on the southern and eastern elevations.

7.2.3 These changes, in the context of the retention of established landscaped boundaries, clearly introduce a development that is not reasonably comparable with the previously refused proposal in terms of its potential impacts. It is my submission that the changes in design, height and scale of the proposed development are such that the proposal could not be viewed as an overbearing structure when viewed from neighbouring properties, due to the substantial reduction in building height, the established boundary vegetation and the limited visibility from neighbouring properties that would result. The reduction in building height, retention of flank boundary vegetation and the function of proposed fenestration and openings on the east elevation of the proposed development would result in no significant overlooking of the established residential properties to the east and north-east. The low scale of the development, lower height of the proposal (notably its southern elevation), retention and any augmentation of vegetation along the southern boundary, and separation distance between the proposed dwelling and the established residential property to the south would not result in the proposal causing any significant degree of overlooking of the neighbouring properties to the south.

7.2.4 Overall, it may be concluded that the proposed development could reasonably be viewed as being a sensitive infill development when compared to the previously refused proposal. It is an appropriate contemporaneous design in accordance with current best conservation practice, not seeking to replicate the form or character of the range of protected structures in the vicinity. In the context of the Board's previous refusal of permission, which was not opposed to a dwelling in principle on this site, the current proposed development significantly and materially addresses the concerns about the impacts on adjoining residential properties. The outcome of the

proposed design is that it could not reasonably be seen to compromise the setting and integrity of the protected structures adjoining the site and to adversely affect the Killiney Architectural Conservation Area due to its limited visibility, while the design provides for a satisfactory standard of amenity for future occupants of the structure.

8.0 Recommendation

8.1. I recommend that permission is granted in accordance with the following reasons and considerations and subject to the conditions set out.

9.0 Reasons and Considerations

Having regard to the zoning provisions for the site as set out in the current Dún Laoghaire-Rathdown County Development Plan and to the design, character and layout of the development proposed, it is considered that the proposed dwelling would not adversely affect the character and setting of the protected structures in the vicinity of the site or adversely impact on the Killiney Architectural Conservation Area, would not adversely impact on the residential amenities of adjoining properties, would be acceptable in terms of visual impact, and would otherwise be in accordance with the provisions of the current Dún Laoghaire-Rathdown County Development Plan. 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 drawings and details submitted to the planning authority on the 6th January, 2017, 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. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development and shall include the retention and augmentation of established boundary vegetation within the site.

Reason: In the interest of residential and visual amenity.

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

Reason: In the interest of public health.

5. 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.

Kevin Moore
Senior Planning Inspector

24th May 2017