



An
Bord
Pleanála

Inspector's Report PL06D.248319.

Development	Construct house and all associated works.
Location	Site at 30 Fairyhill, Newtown Park Avenue, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council .
Planning Authority Reg. Ref.	D17A/0036
Applicant	Stephen McLaughlin and Fionnuala Doyle
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant	Elmar Langbroek.
Observers	None
Date of Site Inspection	27th June 2017
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is positioned in the rear garden of a house a residential cul de sac 'Fairyhill'. The subject site is no. 30 and it is a substantial corner site. The house on site has been extended by way of a first floor extension which is lit by a rear dormer window. The subject site defined for the purpose of the application is at a slightly lower level than the existing house and rear patio area.
- 1.2. The site is separated from the adjacent house to the south, no. 29 Fairyhill by a 2m high block wall. There are no views from the site to that house. The boundary at the northern side of the site is shared with 4 no. semi-detached houses 29, 31, 33 and 35 Newtown Park. This boundary is marked with a mix of structures of different heights and materials. There are a number of mature coniferous trees along this part of the site and these screen views from the site to the aforementioned houses. There is a view from the applicant's house to the rear of no. 27 Newtown Park.
- 1.3. The western end of the site is defined by a 2m high block wall beyond which is a laneway from which the access to the site would be gained. That laneway runs to the rear of 2-11 Newtown Park and provides access to 9 no. houses at that address as well as to an additional 10 no. properties. There is one residential house, a large detached property and the dominant land use at the laneway is domestic garages. The laneway connects with the public road at a location on 'Rose Hill', close to a set of traffic lights.
- 1.4. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. Permission is sought to construct a detached two-storey dwellinghouse, which is described as a mews house. The house is of contemporary design detailing and includes features such as a curved zinc clad roof and extensive use of timber panels and render.
- 2.2. The stated floor area of the proposed house is 124.7 square metres. It is served by a large gravel finished car parking area to the front, which is accessed by a 3.5m wide access gate. A rear private amenity open space of 4.8m is shown.

Fenestration includes high level windows and opaque glazing facing to the south-east (rear) and more extensive glazing at the front elevation which faces north-west to the laneway. Part of the glazing at the first floor front lights a void.

2.3. The application submissions include a report relating to compliance with SuDS.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to conditions including:

- Circular window servicing bedroom one to be omitted or of obscure glazing
- Revised arrangements for vehicular entrance / boundary treatment
- SUDS requirements.

3.2. Planning Authority Reports

3.3. Planning Report

The main comments are

- The proposal is very similar to the application made under D06A/0975 as amended by An Bord Pleanála under PL06D.222758 as extended by D06A/0975/E1 – it would contain an enlarged area which is largely at the ground floor and the design and height are very similar to the previously permitted and is of appropriate scale and design
- In terms of the requirements of the current development plan the development is acceptable (section 8.2.3.4 (vii) and (x))
- The proposed dwelling house is sufficiently set back from the site boundaries to prevent significant overlooking or overshadowing
- A timber screen prevents overlooking of no. 29 Fairyhill
- Subject to the use of obscure glazing in one circular window there would be no significant overlooking and the development would be in accordance with the zoning objective

- The Transportation section has noted that the development is taken in charge
- In relation to other third party comments it is noted that most trees are to be retained and that the design is considered to be in keeping with the character of the area
- Subject to condition there are no drainage issues.

3.4. Other Technical Reports

Municipal Services Department / Drainage Planning – no objection subject to conditions.

Transportation Planning – no objection subject to revised entrance and boundary details and other matters.

Irish Water – no objection subject to specified requirements.

3.5. **Prescribed Bodies**

None.

3.6. **Third Party Observations**

The laneway is described as a private lane, which is overcrowded and is too narrow to accommodate two vehicles passing each other. Responsibility for construction related damage to the lane is queried. The laneway is used by 40 cars and is used by children at play. Due to lack of parking and terraced housing the lanes need to be available for existing residents. Laneway is inadequately lit. Would add to congestion in the area.

The development will give rise to an unacceptable security risk, which should be addressed by a condition requiring an eight foot boundary wall. The development is described as being visually obtrusive due to its design and height. Will give rise to overlooking of nearby houses.

Under the conditions of PL06D.222758 the trees along the northern site boundary were required to be retained. Noise and disturbance will impact on residential amenities.

Foul and surface water disposal issues arise.

Precedent issue and the potential impacts arising from a cumulative effect.

4.0 Planning History

Under PL06D.222758 the Board upheld the decision of the planning authority under reg. ref. D06A/0975 to grant permission for construction of a new two-storey mews house and associated site development works at this site. The Board's decision references the particular location of the site relative to the laneway.

5.0 Policy Context

5.1. Development Plan

Under the Dun Laoghaire Rathdown Development Plan 2016-2022 the site is located in an area zoned 'A'.

A range of policies refer to increasing urban densities and to required standards.

Policy RES4 includes the objective to 'densify' existing built up areas, retain and improve residential amenities in established residential communities.

Section 8.2.3.4 refers to 'Additional Accommodation in Existing Built Up Areas' and sets out policies relating to backland development, infill development and to mews lane development.

In relation to mews lane development in particular such development will generally be acceptable when located on a lane such that criteria in section 8.2.3.4(x) are fulfilled. These include the availability of services and a suitable surface to the lane. All parking provision to be in off-street garages or forecourts. Two parking spaces will normally be required as well as 48 square metres of private open space.

5.2. Natural Heritage Designations

The South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC are the nearest designated sites. Both of these European sites are within 2km of the site of the proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the third party appeal are:

- Notwithstanding that the lane has been taken in charge the ownership is contested
- The development will set a precedent for further development – it is already effectively a driveway of up to 20 houses who use the laneway on a daily basis and for some of these houses it is the only possible parking area
- The laneway is not being maintained by the Council and is potholed and not adequately surfaced
- A clear outline of construction phase measures should be provided to ensure that there are no conflicts with pedestrians and the surface is clean and not damaged – funds should be lodged with the Council in this regard
- A risk assessment of the construction phase and afterwards is required
- Blind spots on the lane and its narrow width will require that vehicles will have to reverse in the construction phase
- The development is in material contravention of the development plan
- There is a real risk of non-compliance with any permission
- There may be parking along the laneway
- Photographs enclosed.

6.2. Planning Authority Response

The planning authority request that the conditions be reiterated in the event of a grant of permission.

6.3. First Party Response

The main points of the response are :

- The Council has confirmed that the laneway has been taken in charge
- The separation distance is 90m and the proposal is largely the same as the previously permitted scheme in terms of overlooking impacts
- PL06D.222758 sets a precedent for this application on this site
- There is no right to park on the lane and all parking will be within the site
- As the road is taken in charge responsibility for maintenance lies with the Council
- Appropriate construction phase measures will be put in place
- No evidence is provided in relation to safety concerns and the relevant Department of DLRCC had no objections
- Maintenance of hedgerows is a matter for the Council
- The proposal is for relatively minor modifications of the original design for which permission was previously granted – it does not significantly differ from the original design especially as viewed from the adjacent properties.

7.0 **Assessment**

7.1. I will address the two main issues in this appeal, which relate to the principle of the development of this site in terms of its location along a laneway and to the impact of the proposed development on the residential amenities of the area.

7.2. **Principle of development**

7.3. I consider that the principle of development of this site for a residential house is established by the previous decision of the Board. That decision dates to 2007. I have reviewed the pattern of development in the area and the provisions of the current development plan. I consider that the site in view of its relatively spacious nature and its location relative to other houses in the vicinity is generally suitable to accommodate a dwellinghouse.

7.4. The Board in its decision under the previous permission noted the particular location of the site on the laneway. I consider the location of the site at the end of the laneway remains a material factor insofar as this is essentially a unique site and

would not set a precedent for the future development of other sites along the laneway. As such I consider that the additional traffic which would be generated by a single house is not a material consideration in this case.

7.5. I note the various submissions by the first and third parties in relation to rights of way. The planning authority is satisfied that the lane is taken in charge. As such the applicant references the Council's responsibility for maintenance. The Board in its previous decision to grant permission did not set any specific requirements in relation to the access arrangements.

7.6. In relation to the potential effect of the construction phase on the structure of the road I consider that there is no role for the Board in this matter.

7.7. Provision is made within the site forecourt for ample parking as is required under the development plan provisions.

7.8. I conclude that the development is acceptable in principle and in particular in terms of the access and parking arrangements.

7.9. Impact on amenities of area

7.10. In terms of the impact on the amenities of nearby houses I consider that the main concern relates to the houses at Newtown Park, four of which adjoin the site boundary and two of which would look directly to the north-east elevation. The design of the development when viewed from that direction would be of two different modules, one set back from the other and finished in timber and render. I do not consider that the development would be visually obtrusive. The fenestration avoids any possible overlooking – only one small first floor window is proposed in that elevation and it would be of obscure glazing. At the other side which faces to no. 29 Fairyhill the large first floor glazing is covered with a timber screen and the planning authority condition to omit the circular window or to retain it in obscure glazing is appropriate and should be re-stated.

7.11. I have some reservations about the impact of the development on the evergreen trees along the northern boundary which are to be retained. The Board may wish to consider a condition requiring relocation of the house so that it is 3m from the northern site boundary. On balance however I consider that it may be appropriate in the long-term to require construction of a more permanent fence along this

boundary. A timber panel structure might be appropriate in view of the requirement to protect the trees. However, I consider that this matter is best agreed with the planning authority. There is a low boundary wall in places, which might be suitable to be increased in height, subject to agreement if necessary of third parties. The application submission includes a proposal to retain trees and this is also recommended to be addressed by condition in line with the previous decision of the Board.

7.12. Subject to the above conditions the development would not adversely impact on the residential amenities of the area.

7.13. **Other matters**

7.14. I note that there is a reference in letters of objection to previous refusals for new development along the laneway for reasons related to lack of capacity of sewers and related matters. The application details include a submission on the provision of foul and surface water infrastructure. A gravity connection to the foul sewer cannot be made but suitable pumps including backup pumps are proposed. There is no stated objection from Irish Water who set out various requirements on this matter. The applicant has given due consideration to the matter of sustainable surface water disposal options and concludes that all suitable measures will be put in place. The relevant section of the local authority has indicated no objection. I concur with the position taken in the various technical reports and consider that the matter of surface water and foul drainage can be addressed by the Board's standard planning condition.

7.15. I note the concerns set out in relation to security and consider that these matters are addressed by the recommended planning conditions.

7.16. A Part V certificate was secured.

7.17. The conditions of the planning authority addressed matters during the construction phase including the maintenance of clean roads and the avoidance of conflict between construction activities and pedestrian / vehicular movements on the laneway. Some of these matters are likely to fall under separate codes. However, this is a tight urban area with particular access arrangements and with a number of residential properties in the immediate area. For these reasons I consider that it is

appropriate to require agreement on a construction management plan, which would include a restriction on hours of construction.

- 7.18. I do not consider that the nature and scale of the development warrants a risk assessment or safety assessment as recommended by the appellant. Any issues which arise during the construction phase would be addressed by the recommend construction management plan. No additional traffic related risks would arise in the operational phase.
- 7.19. I consider that it is appropriate in this case to set aside any exempted development provisions.

8.0 Recommendation

- 8.1. I recommend that permission be granted for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the pattern of development in the vicinity and to the scale, layout and design of the proposed dwelling, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of neighbouring properties, would comply with the provisions of the current Development Plan for the area, particularly in terms of the encouragement of increased residential density and in relation to infill housing, and would be acceptable in terms of pedestrian and traffic safety. 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 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. The circular window at first floor level on the south-west elevation shall be omitted or shall be fitted with obscure glazing which shall be permanently retained.

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

3. 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 dwelling without a prior grant of planning permission.

Reason: To protect the residential amenities of adjoining properties.

4. Water supply and drainage arrangements including the attenuation and disposal of surface water shall be in accordance with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. 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 waste.

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

6. Details of the external finishes of 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.

7. The existing trees on the northern site boundary shall be retained. All trees, shrubs and groups of trees specified for retention shall be enclosed within a stout fence, details of which shall be agreed with the planning authority. The fences shall enclose at least the area covered by the spread of the branches, shall be erected before any site works begin and shall be maintained during the construction period.

Reason: To ensure the survival of such trees and shrubs during the construction period, in the interest of visual amenity.

8. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority detailed plans and drawings for the following:
 - (a) a revised vehicular entrance
 - (b) a 2m high screen fence or wall along the northern site boundary.

Reason: To protect the amenities of the area.

9. 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.

Mairead Kenny
Senior Planning Inspector

5th July 2017