



An  
Bord  
Pleanála

## Inspector's Report 06F.248412

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<b>Development</b>	Five houses.
<b>Location</b>	Carrick Court Housing Estate/Church Lane/Suncroft, Carrick Court, Portmarnock, County Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F16A/0520
<b>Applicant(s)</b>	Hickey Family
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party v Grant
<b>Appellant(s)</b>	(1) Orlaith O'Brien for Concerned Residents (2) Michael Colreavy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	12 <sup>th</sup> July 2017
<b>Inspector</b>	Hugh Mannion

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## 1.0 Site Location and Description

1.1. The site of the proposed development has a stated area of 0.2275ha and is located on the southern end of Portmarnock village, County Dublin. The site is, generally, rectangular and is surrounded by housing development. It adjoins Portmarnock golf club lands on its north-western corner. The site is overgrown with scrub and bramble but there are no significant trees on it. The proposed vehicular access is over Carrick Court to the north of the site; Carrick Court in turn links via Carrickhill Road Lower to the R106/Strand Road which links Portmarnock to Sutton/Howth. The site has a gated access on its southern boundary to Suncroft Avenue. Suncroft Avenue in turn accesses the R106/Strand Road to the southeast of the site where the road frontage uses are commercial/retail.

## 2.0 Proposed Development

2.1. The proposed development comprises the erection of 5 houses on a site accessed through Carrick Court, Portmarnock, County Dublin.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority granted permission for the proposed development subject to conditions. Condition 4 omitted a pedestrian access to Suncroft Avenue to the south of the site. Condition 5(d) required details of the vehicular access to Carrick Court to be agreed with the planning authority prior to commencement of development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Initially the planning authority sought further information in relation to;

- Ownership of the boundary wall between the application site and Carrick Court.

- Boundary treatment.
- Landscaping.
- Public lighting.
- Access to Carrick Court and pedestrian access to Suncroft Avenue.
- Provision of SUDS on site.
- Water supply layouts on site.

### 3.2.2. Other Technical Reports

**Transport Planning** reported that there should be a pedestrian access to Suncroft and that details of the access to Carrick Court should be provided. The second transport planning section report dated 27<sup>th</sup> March 2017 recommended a grant of permission subject to conditions.

**Parks Planning Section** reported that landscape plan should be submitted. The second parks planning section report reviewed the further information and queried the location of a ESB cabinet (currently close to the boundary wall of the site and the front garden wall of 90 Carrick Court, the incorporation of proposed planted areas close to the new junction with Carrick Court, and the proximity of the proposed tree planting to underground services.

### 3.3. Prescribed Bodies

Irish Water reported no objections to the proposed development.

### 3.4. Third Party Observations

The third party observations submitted at application stage are, generally, reflected in the appeals.

## 4.0 Planning History

There is no relevant planning history.

## **5.0 Policy Context**

### **5.1. Development Plan**

The site is zoned for residential development in the Fingal County Development Plan 2017 to 2023.

### **5.2. Natural Heritage Designations**

See AA screening section below.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The provision of a new vehicular entrance through the Carrick Court cul de sac would seriously injure the residential amenity of the houses there and be contrary to the residential land use zoning for the area. There is an alternative access from Suncroft Avenue.
- The applicant does not have sufficient legal interest to remove a boundary wall at 89A and 90 Carrick Court.
- There is an element of the planned access route which was not taken in charge and therefore the applicant does not have sufficient legal interest to effect the development.
- The owner/occupier of 90 Carrick Court is concerned that condition 5(d) of the decision to grant which required agreement to the final access arrangements does not have proper regard to his property rights.

### **6.2. Applicant Response**

- The wall at the end of Carrick Court was built by Patrick Hickey the late owner of the site. The lands/common areas/footpaths/services and roads on Carrick Court have been taken in charge by the local authority. Ransom strips are not recognised by planning authorities as a reason to limit development.

Evidence has been submitted confirming the applicant's ownership of the lands.

- There is no objective in the County Development Plan to restrict access over this cul de sac. The Roads Department reviewed the application and are satisfied with it.
- The proposed development has access to public piped services and the planning authority is satisfied with this.

### 6.3. **Planning Authority Response**

6.4. The issue of landownership was addressed by a request for further information and the planning authority is satisfied that the applicant has sufficient legal interest in the site.

### 6.5. **Observations**

There are no observations.

### 6.6. **Further Responses**

There are no further responses.

## 7.0 **Assessment**

7.1. The appeals make the point that the proposed development contravenes the residential zoning for the area set out in the Fingal County Development Plan and will seriously injure the residential amenity of the houses on Carrick Court.

7.2. The site is zoned RS 'to provide for residential development and protect and improve residential amenity' in the Fingal County Development Plan 2017-2013. Residential development is permitted in principle in areas so zoned and the objective is to "ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity". The pattern of development on Carrick Court and adjoining roads is two storey houses with front and rear gardens. There is

a mix of detached and semi-detached houses and number 89A Carrick Court appears to be a fairly recent addition to the houses in the area and has replicated this pattern. The proposed development essentially replicates this pattern of residential development by proposing 5 new detached houses which reflects the design and residential uses prevalent in the area. While the provision of flat roofs will introduce a novel element in to the pattern of roof design in the area this novelty will not seriously injure the visual or residential amenity of adjoining property. I conclude on this basis that the proposed development does not does not contravene the zoning objective for the area.

- 7.3. There are no windows at first floor on the side elevations of the houses that address the site boundaries – the windows are in the front and back of the houses. Therefore, there will be no unreasonable overlooking of adjoining property. The orientation and separation off the boundaries (2m at a minimum) will ensure against overshadowing. The first floor rear windows are set back a minimum of 11m off the rear site boundaries; this is adequate to ensure against overlooking of adjoining development on these boundaries.
- 7.4. The provision of five houses will not give rise to material changes to traffic patterns in the area and on-site parking is provided at a rate of two spaces per houses which meets the Development Plan parking standards for new residential development. The planning authority's Transport Planning section has commented favourably on this aspect of the proposed envelopment. Having regard to the foregoing I conclude that the proposed development will not give rise to serious injury to adjoining property by reason of traffic impacts, over shadowing or overlooking.
- 7.5. The appeal makes the related points that the applicant does not have sufficient legal to remove a boundary wall at the end of Carrick Court between numbers 90 and 89A, there is an element of the planned access route which was not taken in charge and therefore the applicant does not have sufficient legal interest to effect the development.
- 7.6. The matter of the applicant's legal interest in the boundary wall along Carrick Court was raised in the objections lodged with the planning authority and in the planning authority's request for further information (point 1of the RFI). The applicant responded that the wall at the end of Carrick Court was constructed by a relative of

the applicants on his own land and with his own money. The applicant responded to the issue at appeal stage and submitted a Property Registration Authority document showing the site at 90 Carrick Court extending only to the inside of the footpath.

- 7.7. Carrick Court ends at a blank wall which runs between 90 Carrick Court and the more recently constructed 89A Carrick Court. There is a low boundary wall along the line of the front garden of 90 Carrick Court but there is no corresponding boundary wall along the frontage of 89A Carrick Court. There is a lamp standard about mid-way along the wall with the application site and a grass strip between the roadway in Carrick Court and the site boundary wall. Paragraph 5.13 of the Development Management Guidelines for Planning Authorities (DoEHLG June 2007) advises that where doubts arise as to the sufficiency of the applicant's legal interest in lands the subject of an application that the planning authority should seek further information in order to establish the applicant's legal interest. Only when it is clear from the response that the applicant does not have legal interest should permission be refused on the basis of legal interest. The planning authority sought further information in relation to the issue of landownership when considering the application and this point has been raised in the appeal and responded to by the applicant. I note in this context a further solicitor's letter addressed to the planning authority on behalf of a Margaret Martin which claims ownership of "property at Carrick Court/Suncroft Avenue, Portmarnock, County Dublin". This claim has not been notified separately to the Board. Furthermore, it may be noted that the appellant attaches a letter from Fingal County Council dated 7<sup>th</sup> March 2017 with a coloured map of Carrick Court attached which states and illustrates that Carrick Court up to the site application boundary has been taken in charge since 15<sup>th</sup> December 1985.
- 7.8. Having regard to the layout of road/housing/boundary wall in Carrick Court and the material submitted with the application and appeal I conclude that the applicant has sufficient legal interest in the site to make a planning application and I do not recommend refusal on this point.
- 7.9. The owner/occupier of 90 Carrick Court is concerned that condition 5(d) of the decision to grant which required agreement between the developer and the planning authority on the final access arrangements does not have proper regard to his



property rights. This point is somewhat related to the previous point in relation to landownership. Section 34(1) of the Planning and Development Act 2000, as amended, allows planning authorities to attach conditions to planning permission in relation to the carrying out of works required for the purposes of the proposed development. I consider it reasonable that the exact layout, levelling, materials, surface water disposal and other matters of detail may be properly agreed between the applicant and the planning authority in accordance with a condition under section 34.

7.10. Following a report by the planning authority's transport planning office the request for further information included a request that there be a pedestrian access via Suncroft Avenue to Strand Road/R106. Following submission of the additional information providing for this access a new public notice was published. Submissions were received by the planning authority subsequent to the publication of the new notice and one of the points raised in these submissions was the risk to pedestrian safety arising from a new pedestrian access from the site along Suncroft Avenue to Strand Road/R106.

7.11. I carried out a site inspection of the area including walking along Suncroft Avenue from the site boundary out to Strand Road. This is a shared carriageway without footpaths or median line which serves about 10 individual houses. There is an entrance to the application site at the northern end of Suncroft Avenue which is closed by a security fence and a parked car. I agree with the planning authority's transport planning section that a pedestrian link through the application site to the community facilities on Strand Road will add significantly to the amenity not just of the new houses but also of other houses by provision of a shorter pedestrian link to Strand Road. I do not accept that a shared access, that is one without a differentiated footpath and vehicular carriageway, is necessarily a danger to pedestrians. The vehicular speeds that can be anticipated on this access lane will necessarily be low and it already serves as a shared vehicular and pedestrian access. I note in this context that the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (DOEHLG 2009) advise that shared access areas ("home zones" in the Guidelines) are appropriate for up to 25 houses. The national guidance also makes the point that connectivity and permeability making for convenient access within and between areas and comprise one of the

key design principles which should inform good urban design. I recommend a condition providing for this pedestrian access.

7.12. There are two small areas of public open space provided for in the proposed development – see the ‘landscape plan’ submitted on 22 November 2016. The planning authority’s Parks Planning Section (report dated 6<sup>th</sup> March 2017) commented on the additional information submission that foul and storm water pipes may be impacted by the proposed tree planting, that there are no public lighting proposals, that an ESB cabinet should be located in a hard surfaced area, and that the small elements of public open space directly inside the application site at the Carrick Court end should be incorporated into private gardens as the planning authority will not take them in charge. I have addressed these issues in the draft conditions set out below.

7.13. **Appropriate Assessment**

7.14. The applicant submitted an appropriate assessment screening report which screened 20 European sites within 15kms of the application site. The screening report concluded that the proposed development would not give rise to a likelihood of significant effects on any of these sites either alone or in combination with other plans and projects. The planning authority reviewed the screening assessment and raised no further issues.

7.15. The application incorporates a scheme for sustainable urban drainage – see especially the revised foul and storm drainage layout submitted 10th February 2017 which will minimise the surface water runoff. Having regard to the form and limited scale of development proposed, to foreseeable emissions in terms of surface water drainage and the availability of public sewerage and water supply to serve the proposed development it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European site and therefore submission of an NIS is not required.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing I recommend a grant of permission subject to the conditions set out below.

## 9.0 Reasons and Considerations

- 9.1. The proposed development is located in an area zoned for residential development in the Fingal County Development Plan 2017 to 2023. The proposed development reflects the character and pattern of residential development in the area and, subject to compliance with the conditions set out below, will not seriously injure the amenity of residential property in the vicinity or give rise to traffic hazard, and will accord with the objectives of the current County Development Plan and 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 lodged with the planning authority on the 10<sup>th</sup> day of February 2017 and 6<sup>th</sup> day of March 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 Prior to commencement of development plans and particulars providing for the following matters shall be submitted to and agreed in writing with the planning authority;
  - (a) the incorporation into private gardens of the open space areas at the proposed access to Carrick Court.
  - (b) a revised tree planting scheme which shall ensure appropriate

separation distances between proposed trees and proposed underground services.

(c) location of the on-site electricity cabinet on a hard surface.

**Reason:** In the interests of residential amenity.

- 3 Details of the materials, colours and textures of all the external finishes within 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.

- 4 The developer shall provide a pedestrian only access from the proposed development to Suncroft Avenue. Prior to commencement of development plans and particulars providing for this access shall be submitted to and agreed in writing with the planning authority.

**Reason:** To improve permeability in the area in the interests of residential amenity.

- 5 Prior to commencement of development plans and particulars in relation to the proposed vehicular/pedestrian entrance from Carrick Court shall be submitted to and agreed in writing with the planning authority.

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

- 6 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 interests of visual and residential amenity.

- 7 Public lighting shall be provided in accordance with a scheme 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 house.

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

- 8 All rear gardens shall be bounded with 1.8 metre high concrete block walls, suitably capped and rendered, on both sides, or by 1.8 metre high timber fences with concrete posts.

**Reason:** In the interests of residential and visual amenity.

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

**Reason:** In the interests of amenity and of traffic and pedestrian safety.

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

**Reason:** In the interests of urban legibility.

- 11 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 interests of sustainable waste management.

- 12 Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

- 13 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 of roads, footpaths, watermains, drains, 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 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 of the development.

14 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. 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.

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Hugh Mannion  
Senior Planning Inspector

20<sup>th</sup> July 2017