



An  
Bord  
Pleanála

## Inspector's Report PL06F.248448

---

<b>Development</b>	Construction of extension to house with new garage to side and new room at first floor level and alterations to front and rear elevations.
<b>Location</b>	Kinard, Kinsealy Lane, Malahide, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F16B/0314
<b>Applicant</b>	Patrick and Louise Goodman
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Mark Keane and Ruth Byrne
<b>Observer(s)</b>	daa
<b>Date of Site Inspection</b>	27 <sup>th</sup> July 2017
<b>Inspector</b>	Niall Haverty

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.12 ha, is located on the eastern side of Kinsealy Lane, a road which runs in a north/south direction to the south of Malahide, Co. Dublin. The site is opposite the junction with Connolly Avenue, a residential cul-de-sac. The appeal site is occupied by a single storey detached house, which has its front elevation to the west, facing Kinsealy Lane. A number of detached houses of various sizes and designs are located along this part of Kinsealy Lane, with more recent higher density development further to the north and to the rear (east) of the appeal site.
- 1.2. The existing house on the appeal site is single storey with a render finish, concrete roof tiles and arches to the front elevation. The house to the south, which is owned by the appellants, is a dormer style red brick structure with a detached garage to the north. The boundary between the two properties is comprised of mature hedging and trees, while the appeal site has a rendered boundary wall along Kinsealy Lane.

## 2.0 Proposed Development

- 2.1. The proposed development consists of alterations and extension of an existing house to include new garage to the side with new rooms at ground and first floor level, alterations to the front and rear elevations and miscellaneous works.
- 2.2. The existing house has a stated gross floor space of 238 sq m, and the proposed extension would result in an additional 95 sq m of gross floor space.
- 2.3. The extension, which is located on the southern side of the existing house, includes a garage store and home office at ground floor, with a multi-purpose games room at first floor level. The extension has extensive floor-to-ceiling glazing to the front and rear elevations at first floor level, with horizontal bands of grey flashing that wrap around the extension and extend across the front elevation of the existing house. The existing arches will be removed.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Fingal County Council decided to grant planning permission subject to 8 conditions, including the following summarised conditions:

- **C2:** Ground floor southern elevation shall not be less than 1.819m and first floor southern elevation shall not be less than 1.626m from the boundary of the property to the south.
- **C5:** Garage shall be used solely for use incidental to the enjoyment of the dwelling house and shall not be sold, rented or leased or used for the carrying out of any trade or business.

### 3.2. Planning Authority Reports

3.2.1. The Planning Officer's reports can be summarised as follows:

- Proposed development is acceptable in principle within the zoning objective for the area.
- Proposed extension will project above the ridge line of the existing property, but as it will be set below the ridge line of adjoining properties it will not be unduly prominent in the streetscape.
- Given the varied character of development along Kinsealy Lane, the proposed development is considered acceptable and will not give rise to a significant adverse impact upon the visual amenities of the area.
- Due to orientation, the proposed development will not have any adverse impacts in terms of loss of light or overshadowing.
- No windows are proposed at first floor level in the southern side elevation such that no overlooking impacts will arise.
- It is appropriate to apply a condition requiring noise insulation, having regard to the location of the site within the Outer Airport Noise Zone.
- There is a discrepancy between the dimensions on the submitted drawings regarding the distance to the southern site boundary.

- A condition should be attached requiring the extension to be set back from the property boundary by a stated amount.
- Development Management Guidelines for Planning Authorities 2007 note that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land, and section 34(13) of the PDA states that a person is not entitled solely by reason of a permission to carry out any development.

### 3.3. Other Technical Reports

3.3.1. None.

### 3.4. Prescribed Bodies

3.4.1. **daa:** Site is within Outer Airport Noise Zone. Further information or conditions requested regarding noise insulation/mitigation measures.

### 3.5. Third Party Observations

3.5.1. The appellants made observations at both planning application stage and following the receipt of further information. The issues raised in the observations are generally as per the appeal.

## 4.0 Planning History

### 4.1. Appeal Site

4.1.1. **Reg. Ref. F14A/0040:** Permission granted in 2014 for a dormer bungalow and new vehicular entrance to the north of the appeal site. This site was formerly part of the appeal site, and the property which is now known as Kinard was then referred to as San Antoine. The existing entrance to San Antoine was to serve the new house, and the new entrance was to serve San Antoine.

4.1.2. The drawings associated with the application indicate that the planting along the boundary with the appellants is located within the appellants' site, and a note on the drawing states 'defined boundary existing post wire & fence with hedge in adjoining

property'. The Planning Officer's report states that 'the applicant states in a report (received 7<sup>th</sup> May 2014) that the existing hedge along the southern boundary is located entirely within the adjoining property to the south and that there is no intention to encroach on this boundary or to interfere with the hedgerow'.

#### **4.2. Surrounding Area**

4.2.1. I am not aware of any relevant recent planning history in the surrounding area.

### **5.0 Policy Context**

#### **5.1. Fingal Development Plan 2017-2023**

5.1.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023. The site is zoned 'RS', to provide for residential development and protect and improve residential amenity. The site is also located within the Outer Airport Noise Zone.

5.1.2. Section 12.4 sets out design criteria for residential development and notes in respect of extensions to dwellings that they will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area. With regard to side extensions, the CDP states that they will be evaluated against proximity to boundaries, size and visual harmony with existing (especially front elevation), and impacts on residential amenity. First floor side extensions built over existing structures and matching existing dwelling design and height will generally be acceptable.

5.1.3. With regard to roof alterations, the CDP states that these will be assessed against a number of criteria including:

- Consideration and regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures.
- Existing roof variations on the streetscape.
- Distance/contrast/visibility of proposed roof end.
- Harmony with the rest of the structure, adjacent structures and prominence.

#### 5.1.4. Relevant Objectives include:

- **PM46:** Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.
- **DMS42:** Encourage more innovative design approaches for domestic extensions.
- **DA07:** Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A third party appeal was made by Professors Mark Keane and Ruth Byrne, the residents of the property immediately to the south of the appeal site. The grounds of appeal can be summarised as follows:

- Planning Authority has granted permission to the applicants to build their extension on the appellants' property, as they did not properly establish the boundaries.
- Drawings submitted with the application show the boundary 1.62m further south than it actually is.
- Oversailing second storey will extend even further onto appellants' property.
- Condition 2 does not verify the accuracy of the boundary and grants permission for a development that leaves the appellants exposed to the costs of a legal challenge when applicants seeks to implement the permission.

- Note 2 of decision states that owner must get permission to oversail or encroach on appellants' property, but does not comment on whether this will occur based on the plans submitted. This is inappropriate.
- Planning Authority has granted permission acknowledging that there is a problem with the boundary but not resolving that issue.
- When implementing planning permission Reg. Ref. F14A/0040, the previous owner of Kinard (previously San Antoine) demolished the appellants front wall and was required by FCC to reinstate it as it was, properly marking the division.
- Appellants do not understand how FCC chose to verify the boundary in that case, but is choosing not to verify the boundary in the current case.
- Visual impact of proposed development is considerable and serious. A 55 – 66 sq m block will be facing appellants when they exit their house and it will result in overshadowing and loss of light in the entranceway.
- Negative impact on value of appellants' property.
- Mature hedgerow is located entirely within appellants' property as previous owner of Kinard cut it back to site boundary. Hedgerow provided sanctuary to wildlife and appellants are concerned that it will be damaged or removed.
- Appellants do not give consent to any damage, removal or encroachment into hedgerow.
- Proposed development is out of proportion with other houses along Kinsealy Lane, which are set back from site boundaries, and will invade appellants' privacy.
- Kinard and houses to the south of it are all bungalows or dormer bungalows. Proposed development will convert Kinard into a two storey building which will be visually obtrusive and impact on residential amenities of appellants.
- Site notice was placed behind a shrub and erected later than the stated date.

6.1.2. The appellants also submitted copies of their earlier observations to the Planning Authority with their appeal.

## 6.2. Observations

6.2.1. **daa:** No objection subject to condition regarding noise insulation.

## 6.3. Applicants' Response to Appeal

6.3.1. The applicants' response to the appeal can be summarised as follows:

- Distance to site boundary was measured accurately on site.
- Condition 2, which states required separation distances to the boundary, will protect the appellants.
- If there is a dispute over the legal boundary line, this is not an issue that the Planning Authority or the Board can adjudicate on.
- Proposed development is to the north of the appellants' property and sunlight will be unaffected. There are no windows on the southern elevation, providing no overlooking.
- Hedge and landscaping along boundary will be retained and provides a soft barrier.
- Proposed development is of a high architectural quality and will have a positive impact on the value of the appellants' property.
- To refuse permission would set a dangerous precedent and adversely restrict property owners' rights to improve their homes.
- Proposed development will not damage the hedgerow along the boundary, as a foundation trench will not be required any closer than 1.5m. Applicants have no wish to damage or remove the hedgerow and would welcome any condition in this regard.
- Appellants have constructed garage right up against boundary. If permission is refused by the Board, the applicants would be free to construct a garage at the boundary as exempted development.
- While appellants house has a single storey wall, it has a 2 storey gable wall facing the road. The majority of recent developments in the area are 2 storey in nature.



- The proposed development seeks to address the poor bungalow bliss nature of the existing house with a variation of scale. There will be no negative impact on the appellants' property and the approach adds positively to the streetscape.
- Condition 2 addresses any ambiguity regarding the boundary and sets out required dimensions that any structure should be from the boundary, which will have to be agreed between the parties prior to construction to avoid unwanted future legal action.

#### **6.4. Planning Authority Response**

6.4.1. The Planning Authority's response to the appeal can be summarised as follows:

- Issues regarding distances to the boundaries have been addressed within the Planning Officer's reports.
- Development Management Guidelines state that the planning system is not designed as a mechanism for resolving disputes about title to land.
- Proposed development is in accordance with the proper planning and sustainable development of the area.
- If the Planning Authority's decision is upheld, the Board is asked to attach condition 8.

#### **7.0 Assessment**

7.1. I consider that the key issues in determining the appeals are as follows:

- Boundary issues.
- Residential and visual amenity.
- Other issues.
- Appropriate Assessment.

## 7.2. **Boundary Issues**

- 7.2.1. The appellants contend that the drawings submitted with the planning application are inaccurate, and that the boundary between the appeal site and their property is incorrectly represented. They contend that the hedgerow is entirely within their property, and that the proposed development would oversail the property boundary. The applicants dispute this and contend that Condition 2 of the Planning Authority's decision, which specifies a separation distance from the boundary is adequate to protect the appellants' interests.
- 7.2.2. Section 5.13 of the Development Management Guidelines for Planning Authorities 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. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act. In other words, the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.
- 7.2.3. Having inspected the site, I am satisfied that the proposed development can be constructed without impinging upon or oversailing the hedgerow, the position of which relative to the boundary forms the basis of the dispute between the two parties. I therefore consider that the applicants have sufficient legal interest in the site for the purposes of making a planning application and I do not recommend refusal on this point. In any event, I note that, as per section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission under section 34 to carry out any development.
- 7.2.4. With regard to Condition 2 as attached by the Planning Authority, I note that the Development Management Guidelines for Planning Authorities state that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land and that these are ultimately matters for resolution in the Courts. The obligation therefore falls on the applicants to secure all necessary consents or agreements prior to carrying out the proposed development.

7.2.5. Since the resolution of title or boundary disputes falls outside of the remit of the planning system, I consider that Condition 2 is an appropriate condition in this instance, since it specifies a minimum separation distance to the site boundary, and therefore provides clarity regarding the issue of oversailing.

### **7.3. Residential and Visual Amenity**

7.3.1. The existing house on the appeal site, and the proposed extension are directly north of the appellants' property. Having regard to this orientation, the presence of a dense hedgerow between the sites and the separation distance between the two houses, I concur with the Planning Authority that there is no potential for significant loss of sunlight/daylight or overshadowing of the appellants' property to occur as a result of the proposed development.

7.3.2. With regard to overlooking of the appellants' property, I note that no windows are proposed on the southern side elevation of the proposed extension, and there is therefore no potential for overlooking to occur or for any loss of privacy. The proposed extension also has significant separation distances to properties to the east and west, which are in excess of 22m, and I do not consider that any other properties would be overlooked by the two storey extension.

7.3.3. In terms of potential overbearing impacts, the southern side elevation of the extension will face the front entrance of the appellants' property which is on the northern elevation. While this will present as a c. 11m x 6m blank elevation, it will be set back from the boundary and will be seen behind the dense existing hedgerow, which generally has a height of c. 3-4m, with some higher elements. I consider that the combination of the setback and the existing screening is adequate to mitigate the potential overbearing impact.

7.3.4. Having regard to the proximity of the proposed development to the hedgerow which separates the appellants' property from the appeal site, and the screening effect associated with the hedgerow, I recommend that a condition should be included to ensure that the hedgerow is suitably protected during construction works in the interests of preserving residential and visual amenity.

- 7.3.5. Subject to the abovementioned mitigation measure, I am satisfied that the proposed development will not seriously injure the residential amenities of properties in the area.
- 7.3.6. With regard to visual amenities, the appellants contend that the proposed development will result in Kinard being out of character with neighbouring properties, which are bungalows or dormer bungalows, and that the house will be visually obtrusive. I note that there is a wide variety of house types and sizes along Kinsealy Lane, dating from various periods. These include the dormer bungalows to north and south, as well as terraced cottages on the western side of Kinsealy Lane and more recent two storey housing to the east of the appeal site.
- 7.3.7. While the proposed development will result in the addition of a two storey element to the existing single storey house, the height of the two storey element will be lower than the ridge height of the dormer dwellings to north and south, and Kinard will generally retain its low-lying horizontal character when seen from Kinsealy Lane. The design of the proposed extension and alterations is contemporary, and of reasonably high quality, and I consider that it is consistent with Objectives PM46 and DMS42 of the Development Plan.

#### 7.4. **Other Issues**

- 7.4.1. I note the observation made by the daa and having regard to the location of the site within the Outer Airport Noise Zone and Objective DA07 of the Fingal Development Plan 2017-2023, I consider it reasonable and appropriate to include a condition requiring appropriate noise insulation for the proposed development, should the Board be minded to grant permission.

#### 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, which relates to the alteration and extension of an existing house in a serviced and established residential area outside of any Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions as set out below.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity, would be acceptable in terms of traffic impact and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 22<sup>nd</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. The ground floor southern elevation of the proposed extension shall not be less than 1.819 metres and the first floor southern elevation of the proposed extension shall not be less than 1.626 metres from the boundary of the property to the south. These measurements shall be taken as horizontal not diagonal measurements.

**Reason:** To ensure that the development shall be in accordance with the permission and that effective control be maintained.

3. The proposed development shall be provided with noise insulation to an appropriate standard having regard to the location of the site within the outer airport noise zone.

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

4. Details of the materials, colours and textures of all the external finishes to the proposed extension 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. 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.

6. All trees and hedgerows within and on the boundaries of the site shall be retained and maintained, with the exception of the following:

- (a) Specific trees, the removal of which is authorised in writing by the planning authority to facilitate the development.

- (b) Trees which are agreed in writing by the planning authority to be dead, dying or dangerous through disease or storm damage, following submission of a qualified tree surgeon's report, and which shall be replaced with agreed specimens.

Retained trees and hedgerows shall be protected from damage during construction works. Within a period of six months following the substantial completion of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species, together with replacement planting required under paragraph (b) of this condition.

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

7. The garage shall be used solely for uses ancillary to the dwellinghouse and shall not be used for the carrying out of any trade or business.

**Reason:** In the interest of clarity and of residential amenity.

8. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed save as part of the dwelling.

**Reason:** To restrict the use of the extension in the interest of residential amenity.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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.

---

Niall Haverty  
Planning Inspector

31<sup>st</sup> July 2017