



An
Bord
Pleanála

Inspector's Report PL06D. 248949.

Development	Construct house and all associated works.
Location	Site to rear of 42 Sandycove Road, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D17A/0429
Applicant	Michael and Veronica Clarke
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	3 rd v Grant
Appellant	1. Ken and Aileen Regan 2. Daniel and Rita Proctor and others 3. Walter Odium
Observers	None
Date of Site Inspection	23 rd of October 2017
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1.1. The site is located to the rear of Sandycove Road, which runs parallel to the coast and to the centre of the village of Dun Laoghaire at George's Street. Parallel to Sandycove Road is a laneway, which is in private ownership and is known as Rock's Yard Lane. The laneway provides access to residential properties and it connects with Sandycove Avenue West at a location between number 28 and 29 Sandycove Avenue West. It is approximately 6 m width and in very poor condition in terms of the surface. The laneway provides access to a variety of residential properties. Across the road from the site is 'Tao House' which is a two-storey house on a relatively large plot. Further to the west are other detached houses of different designs.
- 1.1.2. At the time of my inspection in mid-afternoon on a weekday there was ample parking available along the lane. However use of most of these spaces would have impeded access to houses. Some use of the on-street spaces by residents would be possible. However, it is also likely that the pattern of development gives rise to conflict between residents and people parking cars. A sign at the entrance to the lane indicates that it is private.
- 1.1.3. The subject site is located to the rear of 42 Sandycove Rd and comprises part of the rear garden. The rear boundary is currently defined by timber vehicular entrance gates. The stated site area is 0.011 hectares. It is a relatively narrow site, which is defined on both sides by the stone / block boundary walls. The granite wall at the eastern side of the site marks the edge of a pedestrian lane which provides access to the rear of 43 Sandycove Rd and to 30 Sandycove Ave West. No. 30 and no. 29 Sandycove Ave West are the closest residential properties to the site apart from Tao House, which is separated by the laneway and is partly recessed.
- 1.1.4. 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 develop a two-storey dwellinghouse. The stated floor area of the proposed house 74 m² and of the garage at ground floor level is 12.6 m².

- 2.2. The application submission includes a detailed architect's report, which refers to the planning history of the site and to development plan policies. Regarding the previous planning application D10A/0341 permission was refused for a single storey building for reason that the proposal was poorly considered, inadequately designed and not respectful of the design criteria in the then current development plan.
- 2.3. The report provides a specific response to each of the criteria set down in the development plan in relation to infill housing.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to conditions including:
- Provision of minimum of 3m internal width to garage , recessed door and any step to be within the site
 - No future conversion of the garage to residential use
 - Restriction on exempted development
 - Attic level window on side elevation to be of opaque glazing.

3.2. Planning Authority Reports

3.2.1. Planning Report

The main comments are

- Based on policy 8.2.3.4 this is an infill site – apart from the subject site and the two sites adjacent to the west most of the remaining rear gardens with access to this lane have been developed with mews -type housing
- while the surfacing of the private laneway is the need of upgrading it is not considered that the development of the site would compromise the future upgrading of the laneway and Transportation Planning indicates no objections in this regard

- the development is considered acceptable in terms of its modest size, the separation distances (18 m and 24 m separation distance to the main rear façade the front building line) and materials and finishes
- an off-street car port is indicated in fulfilment of the development plan requirement for one off-street parking space
- exempted development within the mews rear garden should not be allowed
- it is not considered that the development would result in significant overshadowing or undue impacts on the amenities of nearby properties in particular reference is made to number 29 Sandycove Avenue West
- a neutral impact on the ACA is indicated in the report of the Conservation Officer – details of all materials and finishes including rear garden boundaries shall be submitted for prior agreement
- the reasons for refusal previously under D10A/0341 are considered in detail and are now overcome
- the mews dwelling as proposed would afford an acceptable standard of amenity for future residents, the design proposed now provides for adequate separation to the main house and the condition of the laneway and future resurfacing is not compromised by the proposed development
- comment is made in response to the provision of parking for the main house which it is considered can be accommodated on the street
- permission should be granted.

3.2.2. **Other Technical Reports**

3.2.3. Municipal Services Department – no objection subject to condition relating to surface water drainage.

3.2.4. Transportation Planning – recommends the permission be granted in accordance with modifications suggested and also refers to parking at the main house.

3.2.5. Conservation officer – considers that the development, which is located on a site abutting the Sandycove ACA would have a neutral impact on the ACA.

3.2.6. Prescribed Bodies

None.

3.2.7. Third Party Observations

3.2.8. Issues raised are largely reiterated in the appeal submissions. Concerns identified include the impact on the laneway and residential amenities and traffic safety. The location of the rear wall of the ground floor kitchen/living room of number 29 Sandycove Avenue West is inaccurate and is in fact a lot closer to the application site than represented. The impact on number 29 needs to be considered in line with the current application for a two-storey extension to the rear of number 30 – D 17 A/0398 refers. The proposed parking is too tight and will not be used. The description of the development should refer to an attic level. The gross floor area should be described as 101.5 m². Other sites on the road have accommodated some development but the sites are all significantly wider. The elevation works to the rear of number 42 which the architects application letter refers to are not included in the statutory notices.

3.2.9. Relating to the planning history the planner's report previously stated that future infill developments should be accompanied by details pertaining to upgrading of the lane, maintenance agreements etc. The applicant in response makes a suggestion which significantly falls short of a former legal agreement between relevant parties and instead offers to making a pro rata contribution as may be advised by DLR. The site is too small and constrained to accommodate two-storey plus attic structure.

3.2.10. Letters of objection submitted by the owner/occupiers of 43 and 44 Sandycove Rd – these are the two remaining undeveloped plots to the west of the subject site. These state that it is unclear as to who actually owns the lane and that residents are not in agreement or in cooperation in relation to its repair and maintenance. Secondly the infrastructure in the lane including the sewer is described as being in danger of collapse. The proposed parking space is described as inadequate in width and therefore it will not be used and it will impact and impede access to the rear of number 43 and 44.

3.2.11. Another resident notes the deterioration of the lane of the last 40 years and describes it as unsafe for pedestrian access, children and for use by elderly people. Continuous building works and associated heavy traffic is the source of the damage.

4.0 Planning History

Under Reg. Ref. 10A/0341 an application for a single storey dwelling house at the site was refused permission for 3 reasons which may be summarised as follows:

- restricted dimensions and configuration of the site and resultant inadequate standards in terms of private open space provision of approximately 25 m² together with a significantly reduced residential unit size of 39 m² would not provide an acceptable level of residential amenity for future occupants and would therefore result in overdevelopment of this restricted site and contravene the development plan
- shortfall in the recommended separation distance between the opposing rear elevations notwithstanding the two-storey rear return to 42 Sandycove Rd
- no details supplied regarding upgrading of adjoining laneway or any details pertaining to a formal legal agreement between interested parties regarding surfacing of the lane to adequate standards – further infill development would result in further deterioration of the laneway and would endanger public safety by reason of the traffic hazard.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located in an area zoned 'A'. This zoning objective applies also to the adjoining buildings on Sandycove Road. There are no conservation objectives relating to the site. The immediate area at Sandycove Road is an ACA.
- 5.1.2. There is an objective to prepare a local area plan for Dun Laoghaire and Environs.
- 5.1.3. A range of policies refer to increasing urban densities and to required standards.
- 5.1.4. Policy RES4 includes the objective to 'densify' existing built up areas, retain and improve residential amenities in established residential communities.

5.1.5. Section 8.2.3.4 refers to 'Additional Accommodation in Existing Built Up Areas' and sets out policies relating to infill development. The development parameters set out under section (v) for corner/garden sites shall apply also to infill development. In this regard the planning authority will have regard to:

- the relationship with the existing and immediately adjacent properties
- the impact on the amenities of neighbouring residents
- the accommodation standards for occupiers
- car parking for existing and proposed dwellings.

5.1.6. The requirements for mews lane ways under section 8.2.3.4(x) is that they will generally be acceptable subject to a number of criteria including a legally acceptable agreement between owners or interested parties – the onus would be on the applicant to demonstrate they have a consensus of owners or interested parties.

5.2. **Natural Heritage Designations**

The South Dublin Bay and River Tolka Estuary SPA is to the north-west and Dalkey Island SPA to the south-east. The Rockabill to Dalkey Island SAC is to the east. All of these European sites are within 2km of the site of the proposed development.

6.0 **The Appeals**

6.1. **Walter Odlum**

The main points of the third party appeal include:

- there is no alternative parking for 42 Sandycove Rd and the development would result in loss of an existing off-street parking space in an already congested parking area
- failure to step the building back by 3 m to allow for parking to the front
- the previous reason for refusal regarding upgrading of the lane or agreements in that regard and the further deterioration which would result from further infill development is not addressed.

6.2. Daniel and Rita Proctor and others

6.2.1. The main points of the third party appeal include:

- the laneway is in very poor repair due to continuous heavy traffic from previous developments with no maintenance or no financial support input from the building contractors or the council
- laneway is totally overdeveloped, very rough and uneven and in dangerous condition to vehicles, pedestrians and children playing,
- no health and safety on the laneway which has no footpaths no public liability insurance and no street lighting
- major problems with illegal parking by non-residents and beachgoers
- there is a history of granting permission for car parking spaces which were unusable
- inadequate parking during operation and continuous problems in the construction period involving confrontations with building contractors
- boundary wall between 43 and 42 is on the property of 43 and the wall requires constant repairs and upgrades which will be impossible from one side
- privacy and sunlight of number 43 would be affected and refusal is warranted
- responsibility for replacement and repairs of laneway not addressed.

6.3. Ken and Aileen Regan

The main points of the third party appeal include:

- we reside 30 Sandycove Ave West
- mews lane criteria apply and the surface of the laneway sub-standard and no legal agreement has been reached between the parties and for this reason alone the development fails to meet the criteria of the development plan
- proposed house is not of modest size but is as large as many contemporary family homes

- the previous proposal comprised a single story dwelling on the basis that two-storey would not be countenanced
- impacts on residential amenities and visual amenities
- site width is less than 6 m and it is the narrowest plot on the road
- a plan led approach to development involving amalgamation of sites and legal agreement for the laneway might be considered
- the site is severely restricted as previously indicated and overdevelopment is proposed
- the physical condition of the laneway remains poor and the development plan policy requiring legal agreement still pertains
- the proposed contribution is short of formal legal agreement
- we have serious concerns regarding the suitability of the proposed garage and how a car will manoeuvre into the space and what conflicts there will be with other vehicles and pedestrians
- it is not clear why further information was not requested on foot of the Transportation Department report
- we have serious concerns regarding overlooking from the first floor rear bedroom to our garden at a distance of 5 m
- the granite wall is incorrectly represented
- in summary the site is too small and constrained this would be a visually intrusive form of development, which contravenes the development plan policies and is unsuitable in terms of access and parking.

6.4. Responses

- 6.4.1. The **planning authority** in response to the appeal refers to the existing laneway. It is acknowledged that the surface is poor. It is not considered that the development would compromise implementation of a laneway improvement scheme, which might be considered by relevant owners. It is unclear how refusal of permission would haste in such improvement works. It is considered unfair to put the onus for such

works onto one resident when the majority of sites of the lane have already been developed. The 6 m width is very adequate and there are no issues with access onto the public road.

- 6.4.2. A strong precedent has been set regarding parking for the main houses which relies on Sandycove Road. The scale of the development is modest and in keeping with the character of the lane would not detract from visual or residential amenities.
- 6.4.3. The **response on behalf of the first party** considers that the planning authority decision is based on a clear and focused assessment of the issues. The attic will provide for useful storage space. The building line is an appropriate response to the competing issues within the site.
- 6.4.4. Regarding the provision of the development plan and the requirement for legal agreements, this is an equitable as it is implicitly recognised in the decision of the case officer. The Transportation Department has clearly identified no issue with the traffic on the lane. The level of emphasis on the condition of the lane by the appellants is unreasonable and disproportionate.
- 6.4.5. Regarding boundary walls and assurances provided that there will be no encroachment on to the rear passage access from no. 32 or the lane we have no wish to compromise or encroach upon the neighbours access.
- 6.4.6. There is ample room on the site to provide the house as identified without unduly affecting third parties interests. Reference is made to measures which may be incorporated to protect the old wall defining the boundary at no. 43.
- 6.4.7. It is acknowledged that there would be limited morning shadow on the rear garden of number 43 for a short time period the proposed building will have limited minor impact regarding sunlight on buildings to the north or east.
- 6.4.8. Regarding the appellant at number 29, the building is in fact located directly behind number 30 where it is substantially screened by extensions and the building attendant to the rear of number 30. The building is at such a remove and at such an angle of incident to make its presence negligible at nearly all times to the occupiers of number 30.

6.5. Observations

None.

7.0 Assessment

7.1. Overview

7.1.1. In principle I have no objection to the development of an additional house at this site subject to compliance with the criteria set down in the development plan.

7.1.2. I recommend that the Board particularly consider the following criteria set down in the development plan which are relevant to infill sites under section 8.2.3.4(vii) which relies on section 8.2.3.4 (v) and to the policy for mews development including in relation to laneway condition and legal agreements. In this regard I consider that the relevant headings for this assessment relate to:

- the relationship with the existing and immediately adjacent properties
- the impact on the amenities of neighbouring residents
- the accommodation standards for occupiers
- condition of the laneway and car parking for existing and proposed dwellings.

7.1.3. I refer the Board to a number of recent appeals at the opposite side of the laneway. I submit that the nature of those sites in terms of their width and the relationship with immediately adjacent properties is materially different to the subject site. In addition I note that the surface condition of that laneway is good.

7.2. Relationship with adjacent properties and impact on residential amenities

7.2.1. I note that the planner's report refers primarily to the houses at Sandycove Road and also references the house at number 29 Sandycove Ave West.

7.2.2. I am in agreement with the planning authority in relation to its assessment of the impact on the house on site and indeed on the immediately adjacent houses at Sandycove Road. I consider that the separation distance to the main façade is adequate to ensure that the privacy of existing and future occupants at the subject site and at 41, 42 and 43 Sandycove Rd would be protected. I consider that the

applicant has demonstrated that there is sufficient private amenity open space for the existing and proposed house. I consider that on-street parking for the existing house at 42 Sandycove Road is an acceptable proposal.

- 7.2.3. I conclude therefore that the proposed development is acceptable in terms of private open space provision and that it would not impact on the amenities of the houses at Sandycove Road by reason of overlooking or overshadowing.
- 7.2.4. I note that the owner/occupiers of 43 and 44 Sandycove Rd have both made submissions in relation to access to their parking spaces at the rear of their gardens. I address this matter later. These two plots are the two other remaining undeveloped rear gardens at this lane.
- 7.2.5. The planning authority report does refer to the impact on the amenities of number 29 Sandycove Rd W. The owner/occupier of that house disputes the accuracy of the drawings submitted. I did not gain access to that house at the time of my inspection. The proposed development appears most likely to impact on the outlook of the site as viewed from first floor and garden level. In relation to the view from the garden/ground floor these would be partly mitigated by existing development within the dwelling house. No overlooking would arise subject to requirements regarding the attic level. There is a window shown at this location which is stated to provide access from non-habitable space. I recommend that it be omitted as I consider it unnecessary in the event that permission is granted. The occupiers of number 29 would have a view then to the gable wall of a high two-storey house at a distance of about 10 m from the rear of their house. I do consider that the proposed development would diminish the amenities of that house, but not to a degree that would warrant a refusal of permission.
- 7.2.6. The planning report does not address in detail the impact of the proposed development on the house at number 30 Sandycove Ave W. At the time of inspection I did gain access to that house. It has a long and narrow L-shaped garden. Perhaps the most usable part of the garden is the south-western corner. At the time of inspection a removable washing line was in situ at that location. I agree with the appellant that this part of the garden would be significantly overlooked at a distance of about 5 m by the first floor windows at the rear of the proposed house. I consider that this would constitute a substantial intrusion on the amenities of that

house by reason of overlooking. In my opinion this relationship fails the test set down in the development plan in relation to protection of residential amenities and the criteria set down for corner/site garden sites, which are relevant to infill sites. I recommend that permission be refused for this reason, notwithstanding the proposed planting of a tree within the rear garden to screen views.

7.3. Accommodation standards for future occupants

- 7.4. The applicant refers to compliance with the building regulations in terms of room sizes and third parties have made various comments relating to the size of the proposed dwellinghouse.
- 7.5. I submit that it is appropriate to comment in this case on the width of the site and the demolition of part of the wall at the southern end of the site. There is a general requirement in the development plan policy in relation to infill development to ‘retain the physical character of the area including features such as boundary walls’. The text of the development plan refers to these requirements being relevant to areas that exemplify the Victorian era and other areas. The applicant’s submission is that the proposal does not fall within this definition. I consider that this interpretation is based on the text which refers to early – mid 20th-century Suburban Garden City planned settings and estates that do not otherwise benefit from ACA status or similar. However I consider that the first half of the sentence, which refers to areas that exemplify Victorian era is relevant to the current proposal and I consider that the requirement applies. In this regard the proposal to remove part of the shared granite wall is considered to constitute a loss of character.
- 7.6. My main concern in this respect relates mainly to matters other than architectural heritage. In particular I have reservations regarding the area which is available for development. One of the third party references the inaccuracy in relation to the line of the wall as represented on the site layout. I agree that it is not properly drawn and as a consequence concern arises in relation to the width of the site.
- 7.7. I took measurements on site, with the use of a 15 m tape. I cannot completely stand over the accuracy of the measurements. However, I submit that in all likelihood the measurements would exaggerate the width of the site as any sag in the tape would give rise to higher dimension.

- 7.8. The measurements, which I recorded gave an internal width of the site of 5.5 m at its northern end and 5.3 m at the narrower point of the site where the rear wall of the house would be located. These dimensions are between the walls. The site available for development is wider as the applicant indicates control over one of the stone boundary walls and in this regard the inclusion of an additional area of 0.4 m maximum might be appropriate. I was unable to measure the width of the wall. However, my inspection leads me to conclude that the northern end of the site is not likely to exceed 5.9m maximum. The drawings show a width of 5.990. At the very least it is clear that the definition of the southern end of the site as a straight line is not accurate. I consider that the application submission would have benefited from a full topographical survey.
- 7.9. I next refer to the requirement of the Transportation Section that the internal dimension of the garage be 3m and that the entire development including any front door step be recessed and located within the site. I consider that both requirements are reasonable. It is appropriate that parking for the proposed development be accommodated within the site and in this regard it is essential that the space and the entrance will be sufficient to ensure that the garage functions adequately and is used. This condition would address concerns cited in a number of observations. However the resulting increase in width of the garage together with the likely inaccuracy in overall site width calls into question the internal dimensions of the development including particularly the hallway width.
- 7.10. My conclusion in relation to the garage width and the width of the site is that the proposed development would constitute a cramped form of development. This is particularly evident at ground floor level. I note for example that the combined area of the kitchen, dining and living room, which in my opinion is likely to be less than the stated 21 m², does not compare favourably with for example the minimum aggregate floor areas for living, dining and kitchens set out in the appendix to *Design Standards for New Apartments*. The requirement in that case for a two-bed unit is 30 m².
- 7.11. I consider that the development proposed would constitute a substandard form of development in terms of the amenity afforded to future occupants. I recommend that permission be refused for that reason.

7.12. Laneway

- 7.12.1. The applicants proposals for the laneway referred to the making of a contribution and indicates an involvement by the local authority. I submit that the local authority has no role in the upgrading of this laneway, which is in private ownership. I that the Council's Planner refers to it not being equitable if the burden of works were to fall to the applicant. A third party observation refers to the deterioration of the lane as being related to construction of dwelling houses. Other residents refer to there being no agreement between the owners regarding upgrade proposals.
- 7.12.2. I note that the condition of the lane is unsuitable for access by elderly persons or anybody using a wheelchair. The surface is rutted and broken and of mixed materials. Construction of an additional dwelling house at the site would be likely to give rise to further deterioration of the condition of the lane. In the absence of a definite proposal from the applicant at the very least in relation to the resurfacing of the laneway as far as and including the site frontage, I consider that the development would not be in accordance with proper planning and sustainable development of this area. I do not consider that it would be appropriate to grant permission for an additional house prior to resolution of the condition of the lane.
- 7.12.3. Furthermore I note that there is a specific requirement in the development plan which requires legal agreements. I am unable to find justification in the planner's report for not adhering to this policy in this case. I recommend that permission be refused for this reason.

7.13. Other issues

- 7.14. The application details include part of an application for certificate of exemption in relation to which a request for further information was issued. It is not clear that this has been complied with. In the event that the Board has concerns in this regard the standard part V condition could be attached.
- 7.15. I note that third parties referred to the deterioration of services which are located within the laneway including that the sewers are in danger of collapse. In the absence of any supporting comment from the relevant Council departments, and in view of the substantive nature of the recommended reasons for refusal below, I do not consider that permission should be refused for this reason.

8.0 Recommendation

- 8.1. I recommend that decision of the planning authority to grant permission be overturned for the reasons and considerations below.

9.0 Reasons and Considerations

1. It is considered that the proposed development, by reason of its detailed design would give rise to overlooking of the rear garden of 30 Sandycove Avenue West and would constitute a substandard form of development for future occupants. The proposed development would, therefore, constitute overdevelopment of the site and would seriously injure the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located along a private mews laneway. Under the terms of section 8.2.3.4 (x) of the Dun Laoghaire Rathdown County Development Plan 2016 – 2022 development of additional mews housing will be considered where the road is adequately surfaced with a suitable underlying base and where there is a legally acceptable agreement between owners or interested parties to bring the laneway to standards and conditions suitable to be taken in charge. It is considered that the proposed development contravenes this condition and that a grant of permission would give rise to a deterioration in road surface and resulting inconvenience for existing residents. The proposed development is considered therefore to be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Planning Inspector

27th October 2017