



An
Bord
Pleanála

Inspector's Report PL06F.249118

Development	Single storey, one-bedroom family unit to the side and rear of existing house.
Location	26 Offington Park, Sutton, Dublin 13.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0198
Applicant	Bob Fagan
Type of Application	Permission
Planning Authority Decision	Granted
Type of Appeal	Third Party
Appellant	Muriel O'Sullivan
Observer	None
Date of Site Inspection	16 th December 2017 & 03 rd January 2018
Inspector	L. W. Howard

1.0 Site Location and Description

- 1.1. The stated 0.123ha application site is located at No.26 Offington Park, Sutton. Co. Dublin.
- 1.2. No.26 is located approximately midway along Offington Park between its northern junction with the Howth Road, and its southern junction with Carrickbrack Road. The site is approximately 1km east of Sutton Cross.
- 1.3. Located along the western frontage of Offington Park, the rectangular shaped application site has an east facing orientation.
- 1.4. At present, the site is developed with a large detached dormer dwellinghouse (c.207m²), which has been extended over two levels to the rear. There is a single storey garage / shed located along the sites northern, lateral boundary also with an east facing orientation.
- 1.5. The northern wall of the garage / shed sits on and forms the property boundary between it (No.26), and the adjacent property to the north (No.24 – 3rd party appellant), for its c.5m length. The mutual boundary wall is c.1.8m high to the rear of the garage / shed, distinguishing the rear domestic gardens of the application site (No.26) and No.24, the 3rd party appellant property.
- 1.6. Contextually, Offington Park is a well-established, low density residential neighbourhood, comprising large detached dwellinghouses of a mix of type, on large properties.
- 1.7. The neighbourhood character is defined by varying building lines and angled dwellings on the larger properties along both sides of Offington Park. Many of the properties along Offington Park have been significantly modified over the years, including the application site (No.26).
- 1.8. An 'open feel' to the front of the dwellinghouses along Offington Park, has been enabled by the lack of front boundary walls to the road, and similarly by the absence of walls / fencing between corresponding front domestic gardens.
- 1.9. Ample on-site car parking space is available on the application site, with generous on-street spaces available along both sides of Offington Park. Good sightline visibility is available to both the northern and southern approach, along Offington Park.

2.0 Proposed Development

- 2.1. Construction of a single storey one bedroom 'family flat' to the side and rear of the existing house, and all associated site works.
- 2.2. Plans and drawings submitted, indicate the proposed 'family flat' to consist of :
 - One bedroom – c.21.8m²
 - Bathroom – c.5.9m²
 - Utility room – c.7.5m² Kitchen / dining / livingroom – c.19.4m²
- 2.3. To the front elevation, the converted garage to have a gable profile. Along the southern side, the roof profile is indicated to be hipped, with velux rooflights.
- 2.4. The 'family flat' is proposed to be connected to the main dwelling via the utility room into the kitchen in the main dwellinghouse.
- 2.5. The dimensions of the proposed 'family flat' are indicated as :
 - a principal length along the north elevation of c.14m
 - a principal width across the east (front) elevation of c.3m
 - a principal width across the west (rear) elevation of c.5.7m
 - an overall principal height of c.3.995m
- 2.6. A new parapet wall is proposed along the northern, lateral site boundary, which would extend the height of the walls along the boundary to c.3.388m.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Decision to grant planning permission, subject to 11no. Conditions
- 3.1.2. Having regard to the 3rd party grounds of appeal, the following Conditions are considered noteworthy :
 - C2a new parapet wall not to exceed 3m in height from ground level.
 - C2b ridge height of the family flat not to exceed 3.5m from ground level.
 - C7 the part of house indicated for use as a 'family flat' :
 - shall not be separated from the main house.
 - shall not be sold or let independently of the main house, and
 - when no longer required for use as a 'family flat', use of that part shall revert to use as part of the main house.

C8 Entire premises to be used as a single dwelling unit, apart from such use as may be exempted development for the purposes of the Planning and Development Regulations.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key planning issues considered as follows -

Compliance with Zoning Objective

- the site is designated with the RS Zoning Objective - “provide for residential development and protect and improve residential amenity”.
- the proposed extension development is acceptable in principle, subject to compliance with relevant Development Plan policies and objectives.

Relevant Development Plan Policies and Objectives

Objective DMS43 :

- Note that applicant has submitted very limited information in respect of who the intended occupant of the family unit is proposed to be.
- Application documentation indicates the need for the flat so the applicant can provide additional ground floor accommodation for an immediate family member.
- The flat would allow for semi-independent accommodation for the family member, for the foreseeable future.
- Should planning permission be granted, consider it necessary that a Condition be attached restricting the use of the family flat to that of a family member.
- Note the floor area of the family flat shown as 58.5m². This is in compliance with Objective DMS43

Residential Amenity Impact

- Sufficient private open space would be retained, to accommodate the proposed ‘family flat’, without infringing on the occupants of the dwellinghouse.

- Concern that the proposed new parapet wall extending over such a distance (ie. a height of c.3.388m over c.14m along the N-boundary) and the height of the proposed 'family flat' (ie. 3.995m), would have the potential to be overbearing.
- Therefore, a revised site layout requested indicating :
 - the levels of the application site, relative to the adjacent property to the north
 - a reduction in height of the parapet wall to no more than 3m, and
 - a reduction in height of the roof of the 'family flat' to no more than c.3.5m

By implication, these revisions may require a revised design to the roof profile.

- Further, having regard to the proximity of the proposed development to the adjacent dwellinghouse to the north, the submission of a 'shadow analysis of the proposed development', was considered necessary, in order to determine potential loss of light to the adjacent property.
Should the 'shadow analysis' demonstrate negative impact to the adjacent property, the applicant was requested to explore a redesign of the proposed 'family flat', which would be set off the shared northern boundary.
- Having regard to the proposed design of the 'family flat', no threat to privacy consequent of overlooking of the adjacent rear gardens will result.
- Response to F.I. Submission :
 - Planning Officer noted a reduced parapet height of 3m and a reduced ridge height of no more than 3.5m measured above the proposed finished floor level
 - Further, the wall plate level along the northern boundary has been reduced to 2.2m, and the pitch of the proposed roof has been lowered from 30 to 25 degrees in order to keep within the limits proposed.
 - However, the Planning Officer distinguished that whereas the initial drawing submitted detailed the heights from the ground level, the revised drawings submitted in response to the F.I. request, detailed the revised principal heights measured from the finished floor level.
 - In response, the Planning Officer considered it necessary to attach a Condition requiring the height of the parapet wall to be no more than

3m above ground level, and that the ridge height of the 'family flat' shall be no more than 3.5m above ground level.

- Note applicant's submission of a 'Shadow Analysis' based on the Spring Equinox. Planning Officer consequently satisfied that the proposed development would not give rise to significant undue impact on the residential amenities of adjacent property.
- Note 3rd party concerns regarding encroachment by proposed extension of adjoining properties. However, given the provision of parapet walls, this is not likely.
- Clarify the issue of encroachment or over-sailing as a civil matter. Notwithstanding, applicant to be advised that in the event of such, the consent of the adjoining property owner is required.

Visual Amenity Impact

- Considered satisfaction as to the acceptability of the proposed design of the 'family flat'.
- When viewed from the east along Offington Park, the 'family flat' would read as a subservient extension to the existing dwellinghouse on No.26, which is further assisted by its set back behind the main building-line set by the dwellinghouse.
- However, reiterate concerns regarding potential negative visual impact, consequent of the height of the proposed 'family flat', together the height of the parapet wall along the shared northern boundary.
- Notwithstanding the presence of the shed, the Planning Officer considered that the extent of the works proposed along the northern boundary, to the height proposed, would be visually obtrusive and may result in loss of outlook
- The revisions requested as Further Information (F.I.), considered as potentially alleviating negative visual impact.

Land / Legal Issues :

- Having regard to the proposed parapet walls to a height of c.3.388m, 3rd party objectors expressed concern regarding issues of consent to build on the boundary wall

- Whilst the Planning Officer considered the issue of works to the boundary wall as a civil issue, and that the proposed parapet wall would alleviate potential for oversailing, it was unclear at the time, from plans submitted, if oversailing was in fact an issue.
- Therefore, considered necessary for the submission of a revised elevation clearly demonstrating that the proposed works would not oversail onto 3rd party lands.
- Response to F.I. Submission :
 - Notwithstanding the applicant's F.I. indication that no oversailing of the boundary wall will come about as a result of the proposed works, and to the issues raised in this regard by the 3rd party objectors, the Planning Officer referenced Section 5.13 of the Development Management Guidelines for Planning Authorities – June 2007, which provides that :
 - the planning system is not a mechanism for resolving disputes about title to land, premises, or rights over land,
 - such disputes are matters for resolution in the Courts,
 - Section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.

Transportation

- Whilst note the lack of an assessment report from the Transportation Section, as requested, consider such a report as not required, based on the built form design use proposed.

Appropriate Assessment

- Having regard to the nature of the proposed development, and to the location of the application site and proximity to the nearest European site, no appropriate assessment issues arise.
- 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.

Conclusion

- The proposed 'family flat' is considered acceptable in principle.
- Consequent of assessment of the Further Information received from the applicant, recommend permission be granted, subject to Conditions

3.2.2. **Other Technical Reports**

Water Services Section No Objection, subject to Conditions
Transportation Planning Section No Objection (as per initial request).

3.3. **Prescribed Bodies**

Irish Water No Objection, subject to Conditions

3.4. **Third Party Observations**

3.4.1. Two letters of objection received. Further submissions were lodged in response to the circulation of the applicants 'Further Information' response documentation.

3.4.2. The issues argued include -

- impact on residential amenity consequent of the proposed development
- overshadowing and overbearing impacts of parapet wall
- the levels of overshadowing consequent of the significant shadow across the garden, would be contrary to the 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice'.
- objectors property facing onto the application site, was designed to maximise solar gain.
- the proposed development, due to its design and height, would be seriously injurious to the amenities of the objectors.
- proposed development would set an undesirable precedent.
- no justification of the need for a family flat.
- no legal right to undertake works on the joint boundary.
- loss of privacy
- the proposed design would have a damaging impact on the character of the neighbourhood.

- impact on the aging foul system.
- increased threat of flooding to rear gardens of adjacent properties, consequent of increased surface water runoff.

4.0 Planning History

F06A/1156 Permission for works to an existing dormer bungalow as follows :

- (1) New single storey bedroom extension and entrance hall to front
- (2) 2-storey extension to rear, including sun room at ground floor and master bedroom at 1st floor
- (3) Relocation of existing vehicular entrance to side, all at No.26 Offington Park

5.0 Policy Context

5.1. Development Plan

Fingal Co. Development Plan (2017-2023):

Relevant provisions incl. –

Ch. 11 Land Use Zoning Objectives

Zoning Objective “RS” Residential

Objective: Provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Residential’

(see Map – Fingal Co. Dev. Plan 2017 Land Use Zoning Objectives).

Local Objective No.118 relates to Offington as follows,

“Ensure that development is in keeping with the layout, scale, design and character of existing development”.

Ch.12 Development Management Standards

12.4 Design Criteria for Residential Development

Separation Distances

Objective DMS29 Ensure a separation distance of at least 2.3m is provided between the side walls of detached units.

Daylight, Sunlight and Overshadowing

Objective DMS30 Ensure all new residential units comply with the recommendations of *Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice* (B.R.E. 1991) and *B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting* or other updated relevant documents.

Other Residential Development

Family Flats

- ‘Family Flats’ (often known as granny flats) are a way of providing additional accommodation with a level of independence for an undefined temporary period of time.
- ‘Family Flats’ allow for semi-independent accommodation for an immediate family member (dependent on the main occupants of the dwelling).
- Applications for ‘Family Flats’ will be considered favourably subject to criteria set out in **Objective DMS43** below.

Objective DMS43

Ensure family flats :

- Are for a member of the family with a demonstrated need.

- Are linked directly to the existing dwelling via an internal access door and do not have a separate front door.
- When no longer required for the identified family member, are incorporated as part of the main unit on site.
- Do not exceed 60m² in floor area.
- Comply with the design criteria for extensions, as above.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Clarify 3rd party appellant is not opposed in principle to the applicants proposed home extension.

Rather, as proposed considers this as inappropriate development at this location, with consequent loss of her existing residential amenity for the following reasons –

6.1.2. Zoning – Residential Amenity

Proposed extension does not comply with the “RS” Zoning Objective, as the appellant would lose existing residential amenity, consequent of the negative impacts set out below.

6.1.3. Family Flat is not justified, and is therefore contrary to Objective DMS43 of the County Development Plan

- Contrary to Objective DMS43 of County Development Plan 2017-2023, no justification of need for a family flat has been submitted.
- Objective DMS43 clearly requires that family flats are for a member of the family, with a demonstrated need.
- The reasons for substantive motivation under Objective DMS43 are so as to avoid the sub-letting of granny flats, as separate dwelling units.
- Argue that this requirement cannot be controlled solely by way of Condition, where there is no evidence.

- Rather, decisions relating to the need for ‘family flats’, must be evidence led. In the current case, no evidence has been submitted.
- Point out that this was recognised by the Planning Authority, in the original planners report.
- The only inclination of need by the applicant, is the statement of need for additional ground floor accommodation “for an immediate family member”. This stated “need” is not substantiated in terms of – who the family member is ? their age ? why the need to live within the flat ?
Consider this as “unacceptable”, and contrary to Objective DMS43.
- 3rd party appellants question the ability to subsume the flat unit back into the main dwelling unit, given its separation and link.
- 3rd party appellants question the nature of the connection to the main house. Point out that the “semi-independent flat” has potential to be used or sublet in the future, by the introduction of a front door. In this regard, reference the large double door proposed to the front of the flat, enabling use for this purpose.
- Point out that the proposed flat is at the maximum scale allowable under the Development Plan.
- 3rd party appellant understands that the house at No.26 Offington Park, “has been sub-let until recently, and therefore has not formed what can reasonably be interpreted as a family home”.
- This leads to further questioning of the validity of the need for this flat.
- The only reasonable conclusion, is that the proposed development is not fully justified, is therefore contrary to Objective DMS43 and should be ‘refused’.

6.1.4. Proposal will result in overshadowing and be overbearing

- In the design of the ‘family flat’, the applicants have had no regard to the residential amenity of the adjacent 3rd party appellants.
- By way of comparison, the current situation between the two adjacent properties, is contextually as follows :
 - a normal 1.8m high rear garden fence along the boundary, apart from the garage to the front side of No.26 Offington Park, that has its eaves at 2.6m above ground level.

- the position of the garage, relative to the 3rd party appellants property is a key consideration. The corner of their house, sits approximately midway along the length of the applicant's garage
- Therefore, the impact of the garage on their amenity "is marginal and is somewhat mitigated by its design" (see drawing page 5 of the appeal submission).
- the proposed development will result in a new 'family flat' with a parapet wall at the boundary.
- Distinguish that whereas the applicant states the parapet wall to be 3m above finished floor level, it is in fact 3.2m above ground level.
- Council have Conditioned the wall to be reduced to 3m above ground level.
- Consider that there is no design requirement for the parapet wall, if the 'flat' is set back from the boundary by 0.5m, and a normal gutter provided.
- No design rationale exists for the parapet wall. An alternative design, set back from the wall, could be easily achieved, irrespective of the nature of the proposed development being in contravention of Objective DMS43.

6.1.5. No Legal Right to undertake works on the boundary

- Assert applicant has no legal right to build on joint property boundary.
- Confirm the applicant has not sought consent from the 3rd party objector / appellant, to do so.
- Distinguish to the Board, that irrespective of the decision of the Planning Authority, "this does not under law provide the applicant with the ability to carry out the development, even if it were granted".
- Distinguish further that 'Planning and Development' Law clarifies that a grant of planning permission does not entitle an applicant to construct a development that would be on land not in their control, without the permission of the adjoining property owner (ie. the 3rd party objector / appellant).

6.1.6. Conclusion

Request the Board overturn the decision of the Planning Authority, and refuse planning permission, for the following reasons :

- Contrary to Objective DMS43 of County Development Plan 2017-2023, no justification of need for a family flat has been submitted.

- The overbearing and overshadowing impact of the 3m high and 14m long parapet boundary wall on the residential amenity of the 3rd party appellant, whose husband suffers from advanced Alzheimer's disease.
- Having regard to all the above, request that the Board decide to refuse planning permission, as the proposed development fails to meet the requirements for reasonable family flats, that protect adjoining residential amenity.
- However, should the Board consider all other elements as acceptable, and that adequate justification has been provided by the applicant, request that the Board attach Conditions as follows :
 - retain the boundary wall at a height no greater than 2m,
 - set back family flat by at least 0.5m from the boundary,
 - request redesign of the family flat ensuring the height to be no greater than 3.2m in height, above ground level.,
- If development were to proceed, inclusive of the Conditions suggested by the 3rd party appellant, these would mitigate the disturbance to the amenity of the 3rd party appellant.

6.2. Applicants Response

Respond to the primary issues argued by the 3rd party appellant as follows :

6.2.1. Family flat is not justified, and is therefore contrary to Objective DMS43 of the County Development Plan 2017-2023

- Affirm need for compliance with Objective DMS43, which seeks to ensure that family flats are for a member of the family with a demonstrated need.
- Confirm that in the application documentation, the applicant stated the flat :
 - is required to provide additional ground floor accommodation for an immediate family member
 - will allow for semi-independent accommodation for the family member for the foreseeable future.
- Clarify that this was as much information as the applicant wanted to share on a public file.

- Reference the Council ‘planners’ view acknowledging in discussion, understood prior to the lodgement of the application, that information of a personal or sensitive nature would not necessarily be required.
- Reference further that at the assessment phase, the ‘case officer’ pointed out that the applicant had provided very limited information regarding who the intended occupant of the family flat is proposed to be.
In this regard, the ‘case officer’ recommended that should planning permission be granted, a Condition be attached to the grant of planning permission “restricting the use of the family flat to that of a family member”.
- Accordingly, consider the proposed use as a permitted use under Objective DMS43, subject to that Condition being attached to the grant of planning permission.

6.2.2. Proposed development will result in Overshadowing and be Overbearing

- At the time of initial assessment of the original drawings submitted, the potential for overshadowing and the potential for perception of the new building as being overbearing, was identified.
- In response, Council concluded the view that a reduced parapet height, and a reduced ridge height would alleviate these threats.
- To this end, under F.I. consultation, the proposed development was amended to show a reduced parapet height of 3.0m and a reduced ridge height of 3.5m above the proposed FFL of the building.
- A ‘Shadow Analysis’ demonstrated the proposed development will have no material adverse effects on the amenities of adjacent properties, by way of excessive overshadowing.
- Having regard to the applicants F.I. documentation, the Planning Authority concluded the proposed development would not give rise to significant undue impact on the residential amenities of the adjacent property.

6.2.3. No legal right to undertake works on the boundary

- It is premature, in the absence of planning permission, to request agreement to build on a shared boundary.
- Affirm understanding that a person is not entitled solely by reason of a permission, to carry out any development.

- If agreement is not possible between parties, the applicant will simply construct the building entirely within the boundary of the application site.

6.2.4. Conclusion

- As amended by way of F.I. submitted, the proposed development
 - is consistent with the zoning objective for the area.
 - in terms of its location, design and layout, is compatible with Council's policies and objectives for residential development.
 - addresses all the relevant objections raised.
- Request that the Board grant permission for the proposed development, subject to appropriate Conditions.

6.3. **Planning Authority Response**

6.3.1. Non-compliance with Objective DMS43

- The Planning Officer considers that the applicant stated that the family flat –
 - is for additional ground floor accommodation for an immediate family member
 - would allow for semi-independent accommodation for the family member for the foreseeable future.
- Planning Authority considers satisfactory compliance with Objective DMS43 has been demonstrated.

6.3.2. Design

- Consequent of the applicants F.I. response in this regard, the design of the proposed 'family flat' was considered to be acceptable, subject to Condition.
- Reference the specific Condition attached, prescribing restriction on the overall height.
- Therefore, should the Board uphold the decision of the Planning Authority, request that Condition No. 2 be attached.

6.3.3. Legal Interest

- Regard was given in the Planners Report with respect to the legal rights by the applicant, to undertake works on the boundary wall.

- The report noted that
 - such works would be a civil issue, and
 - the proposed parapet wall would alleviate potential for oversailing.
- Reference that applicant was requested as F.I. to demonstrate that the development would not oversailing lands outside the ownership of the applicant.
- Confirm the applicants F.I. response demonstrated that no oversailing would occur.
- Reference made to Section 5.13 of the 'Development Management Guidelines for Planning Authorities – June 2007 as follows :

“The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as Section 43(13) of the Planning Act states, “a person is not entitled solely by reason of a permission to carry out any development””.

6.3.4. Conclusion

- Request that the Board uphold the decision by the Planning Authority to grant planning permission.
- Should the Board so decide, recommend that Conditions No.2 and No.11 be included.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of

the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Principle and Location of the proposed development
- Objective DMS43 – ‘Family Flats’
- Visual and Residential Amenity Impact
- Land / Legal Issues – No Legal Right to undertake works on the boundary
- Appropriate Assessment.

7.2. Principle and Location of the proposed development

- 7.2.1. The site is zoned “RS – Residential”, with the objective to provide for residential development and protect and improve residential amenity. The applicable zoning matrix designates residential land use as being permitted in principle within the zone. The “RS – Residential” zoning objective seeks to ensure that any new development in existing areas would have a minimal impact on, and enhance existing residential amenity.
- 7.2.2. The challenge to the applicant, having regard to the proposed architectural and planning design, and the relevant requirements of the Fingal County Development Plan 2017-2023, is to ensure their proposed ‘family flat’ development, has no disproportionate adverse impact on the scale & character and associated amenity of particularly existing adjacent residential development at Offington Park itself (ie. including that owned and occupied by the 3rd party appellant – No.24), and no unacceptable impact on the amenities generally enjoyed by the surrounding neighbours.

7.3. ‘Family Flat’ – Compliance with Objective DMS43

- 7.3.1. The Fingal County Development Plan 2017-2023 provides that applications for ‘Family Flats’ will be considered favourably, subject to the criteria set out in Objective DMS43. Objective DMS43 seeks to ensure amongst other criteria, that ‘family flats’ are for a member of the applicant family, and that a proven need be demonstrated. I understand this as a reasonable Objective of the County Development Plan.

- 7.3.2. The Planning Officer in the assessment of compliance with Objective DMS43 noted that the applicant has submitted very limited and generally stated information in respect of who the intended occupant of the 'family flat' is proposed to be. Reference is made to the application for planning permission documentation, wherein the applicant indicates the need for the 'family flat' so that additional ground floor accommodation can be provided, for an immediate family member. The applicant states further, that the 'family flat' would allow for semi-independent accommodation for the family member, for the foreseeable future.
- 7.3.3. I affirm consideration of Objective DMS43 as reasonable. Equally, I consider application of Objective DMS43, as written, as reasonable. In the current instance, the applicant has not, in my view, satisfactorily demonstrated that the proposed 'family flat' is for a member of the family, nor has the need for the 'family flat' been satisfactorily demonstrated. Accordingly, on the limited information available, I consider the proposed development to be contrary to Objective DMS43 and to the proper planning and sustainable development of the area.
- 7.3.4. In my view, the absence of substantive demonstration of need for the proposed 'family flat', by the applicant, does not reasonably or satisfactorily accord with the criteria set out under Objective DMS43. Nor are any clearly stated exemptions or qualifications attached to Objective DMS43, in my understanding, which would enable both the applicant's stated unwillingness to provide more substantive, detailed information in motivation of the proposed 'family flat', or the Planning Authority's discretion towards deciding in favour of applicants under such circumstances.
- 7.3.5. Whilst expressing concern regarding the limited substantiation of need by the applicant, for a 'family flat' under Objective DMS43, I note the Planning Officers stated preparedness, in the event of any decision to grant planning permission, to resolve the deficiency in demonstrated compliance with Objective DMS43, by way of attachment of a Condition restricting the use of the 'family flat' to that of a family member.
- 7.3.6. If in the view of the Planning Officer, compliance with Objective DMS43 is dependent on the attachment of such a Condition, I note that no such restrictive Condition was subsequently attached by the Planning Authority, to its decision to grant planning permission. Having detailed regard to the 11no. Conditions attached by the Planning Authority, and to Conditions No. 7 and 8 specifically, no such Condition is apparent.

Accordingly therefore in my view, the decision by the Planning Authority to grant planning permission, is deficient with respect demonstrated compliance with Objective DMS43.

- 7.3.7. I distinguish further that whereas the Planning Officers concerns regarding visual and residential amenity impact, land-legal issues and threat of overshadowing were addressed by the applicant by way of F.I. submissions, no further opportunity was given to the applicant to substantively demonstrate compliance with DMS43, by way of F.I. documentation. Therefore whereas on the information available, the Planning Authority sustains its stated concern regarding the very limited and generally stated information submitted by the applicant in motivation of compliance with Objective DMS43, I believe there to have been a lost opportunity by the Planning Authority in not requesting such by way of F.I., and not withstanding its stated intention to address this issue via attachment of a Condition to any decision to grant planning permission.
- 7.3.8. Therefore, having regard to all of the above, I conclude the view that the applicant has not satisfactorily demonstrated that the proposed 'family flat' is for a member of the family, nor has the need for the 'family flat' been satisfactorily demonstrated. Accordingly, I believe the proposed development to be contrary to Objective DMS43 of the Fingal County Development Plan 2017-2023, and to the proper planning and sustainable development of the area.

7.4. Visual and Residential Amenity Impact

- 7.4.1. I have had regard to the "RS – Residential" zoning objective applicable to the application site, and to the surrounding Offington Park neighbourhood. The "RS – Residential" zoning objective seeks to ensure that any new development in existing areas would have a minimal impact on, and enhance existing residential amenity.
- 7.4.2. In as much as I understand residential amenity values as referring to those natural or physical qualities and characteristics of the established neighbourhood that contribute to the residents appreciation of its pleasantness, liveability and its functional and aesthetic coherence, I believe that in terms of specific disproportionate negative impacts consequent of visual overbearing and overshadowing, on the adjacent 3rd party appellants to the north, and which in my view outweigh the potential positive contributions to be had, the proposed 'family flat'

development will have a serious negative impact on this prevailing residential amenity currently enjoyed by the 3rd party appellants.

- 7.4.3. In respect of visual intrusion, I concur with the viewpoint of the Planning Authority that by virtue of its physical proximity to the existing established property and home of the 3rd party appellants, the proposed 'family flat' building and associated parapet boundary wall would be visually overbearing by reason of its height, length, massing and bulk, directly onto the mutual boundary wall and immediately proximate to the 3rd party appellants primary private domestic amenity / leisure space, thereby compromising their existing residential amenity enjoyed, contrary to the "RS-Residential" Zoning Objective. Further, I believe that such potential loss of residential amenity by the 3rd party appellants, would threaten to undermine the value of their property.
- 7.4.4. I have had regard to the F.I. consultations and submissions made by the parties regarding the proposed heights of the new parapet wall, and the 'family flat' roof ridge. No consensus resolution regarding the heights of these elements of the proposed development is apparent, consequent of these F.I. consultations, and I note the prescription of Maximum heights for each of these elements by the Planning Authority at Conditions No. 2a and 2b attached to the decision to grant planning permission. Having regard to all of the information available, and to my own observations at the time of site visit, I remain of the view that notwithstanding Conditions 2a and 2b, the residential amenity currently enjoyed by the 3rd party appellants remains seriously compromised due to the visually overbearing presence of the proposed new buildings immediately proximate to their primary domestic private amenity space.
- 7.4.5. I believe there to be a further serious threat of overshadowing and consequent diminution of residential amenity for the 3rd party appellants, consequent of the proposed height and length, and associated bulk, massing and volume of the proposed 'family flat' building directly onto the mutual property boundary wall, and in close proximity to the 3rd party appellants primary private domestic amenity space, which they motivate, has been deliberately designed so as to maximise solar gain (see attached photographs)
- 7.4.6. I note and have considered the Planning Authority's initial concern regarding threat of overshadowing and loss of sunlight amenity by the 3rd party appellants. The Planning Authority considered it necessary therefore, for the applicant to submit a

'shadow analysis' of the proposed development, in order to determine potential loss of light to the 3rd party appellants property, adjacent and to the north.

- 7.4.7. In response to the Planning Authority's F.I. request, the applicant submitted a 'shadow analysis' based on the Spring Equinox (ie. 21st March), in accordance with Subsection 3.3.4 of BRE 209 Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice. Whereas I note the Planning Authority's subsequent satisfaction that the proposed development would not give rise to serious loss of residential amenity due to overshadowing, I am not certain that this indeed would be the desirable outcome.
- 7.4.8. Whereas the applicant can indeed state that the 'Shadow Analysis' submitted as F.I. complies with the requirements set by the Planning Authority, I am rather of the view that these narrow parameters do not disclose the full year-round impacts, and in particular that which would occur during the winter months (ie. Winter Solstice – 21st December). In my view, Drawing No.17.02-P103 "Shadow Study", indicates that the 3rd party appellants primary private domestic amenity space will be impacted through the Spring Equinox (ie. 21st March) due to overshadowing and loss of direct sunlight. I believe it reasonable to anticipate that this space will be similarly, negatively impacted through the Autumn Equinox (ie. c.23rd Sept). However, whereas during the Summertime (ie. Summer Solstice – 21st June) the loss of direct sunlight would not be anticipated to be serious, I believe that this would indeed be the case through the winter months (ie. Winter Solstice – 21st December), during which time the extent of overshadowing and loss of direct sunlight, consequent of the proposed development, would be expected to be at its greatest. In the absence of drawings illustrating the extent of reasonably anticipated impacts during this time, I believe that such threat of overshadowing could in fact extend to cover the nearest south facing windows in the 3rd party appellants house. In my view, it is during this time that serious threats to and impacts on existing solar gain and direct sunlight should be prevented. I believe these negative impacts on the 3rd party residential amenity consequent of overshadowing and loss of direct sunlight to be serious, unnecessary and disproportionate. In my view, these direct negative impacts leading to the loss of residential amenity by the 3rd party appellants would be in conflict with the "RS – Residential" zoning objective, and with the proper planning and sustainable development of the area.

- 7.4.9. Whilst acknowledging the merits of and planning gain potentially brought by the applicant's proposed 'family flat' development, I do not believe that such should be achieved whilst having disregard of the threat of negative impact on the adjacent 3rd party appellants to the north (see photographs taken at the time of physical inspection).
- 7.4.10. Accordingly, on review of the perceived negative visual and residential amenity impacts possible, the general amenity currently enjoyed by surrounding Offington Park residents will not be any worse than that currently enjoyed. In addition, I consider that generally satisfactory on-site amenity for the anticipated occupier of the proposed 'family flat', will be provided.
- 7.4.11. However, I consider both the negative impacts on the amenity currently enjoyed by the 3rd party appellants, consequent of visual overbearing and overshadowing, to be serious, disproportionate and in my view, outweigh the potential for planning gain to be had. In this regard therefore, I conclude the proposed development as being contrary to the "RS -Residential" zoning objective, and to the proper planning and sustainable development of the area.

7.5. Land / Legal Issues – No Legal Right to undertake works on the boundary

- 7.5.1. I have taken careful note of the arguments made by the 3rd party appellant, in respect of land / legal matters relating to the applicant's intended development on and over their mutual boundary, without consent. I have also had regard to the response by the applicant concluding that should agreement not be possible between the parties, the applicant will simply construct the 'family flat' building entirely within the boundary of the application site.
- 7.5.2. However, having regard to the arguments raised against the proposed development by the 3rd party appellant, I have had regard to the application for planning permission on its planning merits alone, as set out in the above discussions. Further, I believe that any decision on the planning application does not purport to determine the legal interests and obligations held by the applicant, or any other interested party, in relation to the mutual boundary between No.26 and No.24. On the information available, it would appear that all parties in fact share this view.
- 7.5.3. I also reference Section 34(13) of the Planning and Development Act, 2000 as amended, which relates as follows: "A person shall not be entitled solely by reason

of a permission or approval under this section to carry out a development”. In this regard, I make reference to the explanatory notes which read as follows – “This subsection ... makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate”. Consequently, I understand that any legal obligations on the applicant, to ensure that the legality of landownership and user privileges enjoyed by the 3rd party appellant in particular are not compromised, are covered.

7.5.4. Having regard to the above, I believe it proper that the current application for planning permission be deemed effectively as an application to be assessed de novo and on its specific merits, and having regard to the proper planning and sustainable development of the area as provided for by the Fingal County Council Development Plan 2017-2023.

7.5.5. Accordingly, I do not believe these arguments by the 3rd party appellant against the proposed development to be reasonable and substantive grounds for refusal.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any European site, 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 be Refused for the Reasons and Considerations set out below.

9.0 **Reasons and Considerations**

1. The Fingal County Development Plan 2017-2023 provides that applications for ‘Family Flats’ will be considered favourably, subject to criteria set out in Objective DMS43. Objective DMS43 seeks to ensure that ‘family flats’ are for

a member of the applicant family, with a demonstrated need. This Objective is considered as reasonable. In the current instance, the applicant has not satisfactorily demonstrated that the proposed 'family flat' is for a member of the family, nor has the need for the 'family flat' been satisfactorily demonstrated. Accordingly, the proposed development is considered to be contrary to Objective DMS43 and to the proper planning and sustainable development of the area.

2. Having regard to the pattern of development in the area, and to the provisions of the current Development Plan for the area, it is considered that the proposed development, by reason of its height, length and bulk to the northern side of the existing house, and its proximity to the mutual boundary with the adjoining property to the north, would seriously injure the residential amenities and depreciate the value of adjoining properties by reason of visual obtrusion and overshadowing, contrary to the "RS – Residential" zoning objective, which seeks to ensure that any new development in existing areas would have a minimal impact on, and enhance existing residential amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

L. W. Howard
Planning Inspector

08th January 2018