



An
Bord
Pleanála

Inspector's Report PL06F.249378

Development	Demolition of house construction of a house and garage and all associated site works.
Location	38 St. Margaret's Road, Malahide, County Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F16A/0597.
Applicant(s)	Dennis and Pamela Barnedt.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party.
Appellants	<ol style="list-style-type: none">1. Saint Margaret's Residents Association Committee.2. Pauline Leheny
Observer(s)	None.
Date of Site Inspection	19 th December 2017.
Inspector	Patricia Calleary.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
6.0 The Appeal	6
7.0 Assessment.....	10
7.1. Introduction	10
7.2. Principle of the development and Architectural Heritage.....	10
7.3. Impact on Residential Amenity.....	12
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	14
10.0 Conditions	14

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.054 ha is located along No.38 Saint Margaret's Road, Malahide in north County Dublin. It is located south of Malahide village centre and train/DART station. It is bounded to the north by a two storey dwelling, to the east by a two storey dwelling, to the south by a semi-detached dwelling and to the west by St. Margaret's Road, from which the site is directly accessed.
- 1.2. The site is currently occupied by a two storey detached dwelling with attic accommodation, which presents as a tall narrow structure with a half hip roof design. It is set back 9.2m from the edge of the road and has a substantial garden to the rear. Parking is available for two cars within the confines of the site.
- 1.3. St. Margaret's Road is an established residential area with varying dwelling styles on substantial sites, but predominately comprising houses built in the 1920s and 1930s, many of which have been extended and modified.

2.0 Proposed Development

- 2.1. The proposed development would comprise the demolition of the existing two storey detached house on site, lowering of site levels to the rear and side by c.0.4m and the construction of a new two storey dwelling house with habitable attic space, attached garage, widening of existing vehicular entrance garage and all associated site works.
- 2.2. The dwelling would be c.9.8m wide, c.13m (two storey element) to c.19.1m deep (single storey element), and would be c.9m high with a mix of roof designs. It would be set back c.9.2m from the road and c.1m from each of the northern and southern side boundaries. Rooflights are proposed to the rear and side. The dwelling would contain four bedrooms including one at attic level and would have an overall stated gross floor area of 338 sq.m.
- 2.3. In addition to the normal planning drawings, the application was accompanied by a short architectural report. Further information was accompanied by a detailed planning report and shadow analysis drawings.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a decision to grant permission subject to 16 conditions, including the following in summary form:

- **C3:** The northern elevation of the proposed house shall not be less than 1.3m from the northern side boundary;
- **C6:** Windows on the southern and northern side elevations at first floor level and all bathroom windows are to be fitted with permanently obscured glazing;
- **C7:** Rooflights along the southern roof slope are to be positioned 1.6 metres above floor level;
- **C8:** Specific design elements required.

3.2. Planning Authority Reports

3.2.1. Following initial assessment, the Planning Officer recommended seeking further information, requesting a sensitive redesign approach which would include retention of the house on site and ensure that there would be no adverse impact on adjoining residential amenity. The applicant was also requested to address concerns of the Water Services section to include surface water drainage design and details.

3.2.2. Following receipt of further information from the applicant, the Planning Officer considered that while the existing dwelling on site has a distinctive character, it is not recorded as a protected structure, nor does it form part of any ACA. It was considered that notwithstanding Objective CH37, its replacement with a new dwelling would not adversely impact on the character of the area. A recommendation to grant permission was put forward.

3.2.3. Other Technical Reports

- Water Services: No objection subject to conditions;
- Transportation: No objection subject to conditions;
- Conservation Officer: Initially requested that the original house on site be retained as part of any redevelopment. Following receipt of further information, states the preference would be for the retention of the house

which could accommodate alterations and extensions subject to a sensitive design.

3.3. **Prescribed Bodies**

- Irish Water: No objection subject to conditions.

3.4. **Third Party Observations**

- 3.4.1. Two submissions were received by the Planning Authority from neighbouring third parties, both stating their objection to the development. One of the third parties submitted additional comments on the further information received. Concerns raised include that the design should conserve the 20th century streetscape, impacts on private views, residential amenity, boundary proposals, impacts on structural integrity of a boundary wall, bin storage proposals and the scale of the proposed house.

4.0 **Planning History**

4.1. **Appeal Site:**

- 4.1.1. There is no planning history recorded on the appeal site.

4.2. **In the vicinity**

- F11A/0119 – Outline permission was granted for the demolition of the existing house and construction of a two storey house at No.40 St. Margaret's Road (2011);
- F11A/0052 – Permission was granted for the construction of a two storey detached house at No.47 St. Margaret's Road (2011);
- F12B/0018 – Permission was granted for the construction of a development comprising the demolition of an existing single storey structure, conversion of existing garage to living space and addition of a first-floor extension above, construction of a new two storey extension to side and rear of existing house (2012);
- F13A/0367 – Permission was granted for the construction of a two storey dwelling house at No.48 St. Margaret's Road (2013).

5.0 Policy Context

5.1. Development Plan

5.1.1. The Fingal Development Plan 2017-2023 is the applicable development plan for the area. The site is located in an area zoned 'RS', the objective for which is to 'provide for residential development and protect and improve residential amenity'. The vision for the zoning is to 'ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity'. Of particular note is objective CH37 which requires 'seeks the retention, appreciation and appropriate revitalisation of the historic building stock and vernacular heritage of Fingal in both the towns and rural areas of the County by deterring the replacement of good quality older buildings with modern structures and by protecting (through the use of Architectural Conservation Areas and the Record of Public Structures and in the normal course of Development Management) these buildings where they contribute to the character of an area or town and/or where they are rare examples of a structure type'.

5.1.2. Other objectives which are considered relevant include: DMS24 (Minimum residential standards), DMS28 (Minimum separation distance between houses between directly opposing rear first floor windows of 22m shall generally be observed), DMS29 (Separation distance of at least 2.3 metres between side walls of houses), DMS87 (Open space requirements) and DM36 (Bin storage requirements).

5.2. Natural Heritage Designations

5.2.1. Two European sites lie c.300m to the north of the appeal site, as follows:

- Broadmeadow/Swords Estuary SPA (Site Code: 004025)
- Malahide Estuary SAC (Site Code: 000205)

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Two appeals were received, one from St. Margaret's Residents Association Committee and one from Pauline Leheny of No.36 St. Margaret's Road, which is the

adjoining property to the north. The principal concerns raised in each appeal are summarised separately, as follows:

6.1.2. St. Margaret's Residents Association Committee

- No.38 was designed by Frederick Hicks, a renowned architect, and St. Margaret's Residents Association Committee have received documentary evidence from the previous owner, in the form of correspondence between Frederick Hicks, the original owner Mr. J.J. Kearns and the local builder, Bissetts, who built the house to support this claim;
- References other buildings designed by Mr. Hicks, including Martello tower in Malahide, which he remodelled and used as his private home until his death in 1965;
- St. Margaret's Road has an eclectic mix of houses, including 20th century homes and contemporary homes. A small number of houses of no significant architectural value have been demolished and those of significant architectural value have been retained and extended sympathetically;
- While acknowledging the efforts of the applicant to replicate some of the features of the house proposed to be demolished, its removal would mean that a building of significant architectural significance would be forever absent on St. Margaret's Road.

6.1.3. The appeal is accompanied by a letter from the reputed previous owner of the house stating that the house was designed by Frederick Hicks together with a letter from Frederick Hicks to Mr. J.J Kearns referring to an estimate from a builder (P. Bissett & Sons). A copy of the estimate breakdown from the builder and other correspondence between Mr. Hicks and Mr. Kearns is also attached.

6.1.4. Pauline Leheny (No.36 St. Margaret's Road)

- There is clear evidence that the house which is proposed to be demolished was designed by the renowned architect, FG Hicks, FRIAI, FRIBA. Evidence was provided by Mr. J.J. Kearns son, Dermot Kearns, who was born and resided in the house until 2015;
- Mr. Hicks was the architect for the Talbot Estate and many other houses on St. Margaret's Road, and the existing house at No.38 should not be

demolished because of its architectural significance and features of the arts and crafts movement that merit retention;

- The space that presently between Nos.36 and 38 would be detrimentally affected by the proposed new house;
- Southeast view from the back bedroom of No.36 would be virtually eliminated and the extended building lines would cause overshadowing impacts on the patio area;
- The base of the garden wall between No.36 and No.38 would be exposed and possibly undermined resulting in safety concerns;
- Obscure glazing not requested on the proposed mud room and garage windows at ground floor level and other windows at attic level are a concern as is the proposal for bin storage opposite a window of the appellant's house;
- In the event of a grant of permission, requests that concerns raised during the planning application and appeal stage are fully considered and taken into account;

6.2. Applicants' Response

6.2.1. A response was received from Tom Phillips and Associates representing the applicant. The principal points set out in the response are summarised as follows:

- The correspondence submitted by the appellants does not specifically reference No. 38 St. Margaret's Road, nor are any house drawings provided and therefore Frederick Hick's involvement is not clear;
- Except for the very recent entry to the Dictionary of Irish Architects, neither the National Inventory of Architectural Heritage, the Irish Georgians Society's website, Ordnance Survey Ireland or Buildings of Ireland (Casey, 2005) refer to the dwelling on the appeal site;
- Noting Objective CH37 of the Fingal Development Plan, even if Frederick Hicks did design the existing house on site, it cannot be considered a rare example of the late architect's work;

- Existing dwelling does not meet modern day living requirements, due to a number of factors, including restricted room sizes. Asbestos is present in the roof.
- The existing dwelling has no special architectural features and it does not uniquely contribute to the streetscape;
- A number of design features have been taken from the existing house in the proposed design, while meeting modern day living requirements;
- A shadow path analysis demonstrates that there would be no shadowing effects generated from the proposed development, apart from a slight increase along the southern boundary of No.36 at midday on 21st day of March;
- Noting the Ground Investigation carried out, there will be no risk to adjoining properties as a result of the proposed works;
- Development would not result in issues of overlooking;
- Proposal would accord with the 'RS' landuse zoning provisions of the Fingal Development Plan, the site is not in an ACA, the dwelling is not a protected structure and the proposals comply with Objective DMS24 (minimum standards). No Appropriate Assessment issues arise;
- Bin storage complies with objective DMS36.

6.3. Planning Authority Response

6.3.1. The Planning Authority acknowledge the evidence from Frederick Hicks that they believe relates to the subject property and state the following:

- Notwithstanding these letters and Objective CH37, the application property is not a protected structure or located within an ACA;
- Contends that the replacement of a dwelling on site is acceptable in the context of the 'RS' zoning objective and would not materially contravene the development plan;
- Considers the proposed dwelling would be acceptable and would not detract from the character of the area or impact on the residential amenities of the adjacent properties;

- In the event of a grant of permission, request that Condition No.16 (development contribution) is attached.

6.4. **Observations**

- None

7.0 **Assessment**

7.1. **Introduction**

7.1.1. The appeals on file are made against a decision by Fingal County Council to grant permission for the demolition of a house on site and to construct a new house and integrated garage. From examination of the submissions made and based on my inspection of the site and environs, I consider the main issues which arise in this appeal, centre around whether or not the principle of the demolition of the house on site is acceptable in the context of planning policy relating to preservation of architectural heritage and character of the area and whether impacts that would arise on neighbouring residential amenities would be acceptable. I set out my considerations on these matters in my assessment below and I also consider the matter of appropriate assessment.

7.2. **Principle of the development and Architectural Heritage.**

7.2.1. The site is zoned 'RS' with a stated objective 'to provide for residential development and protect and improve residential amenity'. The proposal would be consistent with this zoning objective and would also comply with requirements regarding residential standards, separation distances and private open space.

7.2.2. The principal issue that arises however is the question as to whether or not it would be appropriate to permit the demolition of the existing house. Both appellants claim that there is clear evidence that the house was designed by the renowned architect, Frederick G Hicks. I am satisfied that the evidence presented by the appellants which included correspondence between Mr. Hicks and his then client Mr. J.J. Kearns and the builder of the house, P. Bissett and Sons support this claim. The applicant while not convinced that the evidence clearly points to the house having

been designed by Mr. Hicks, also argue that even if it was designed by him, it is not an exemplary design which is necessary to retain. It is stated that apart from a mention in the Dictionary of Irish Architects since the lodgement of the planning application, neither the National Inventory of Architectural Heritage, The Irish Georgians Society's website, Ordnance Survey Ireland or Buildings of Ireland (Casey, 2005) mention the dwelling. For other reasons around restricted layout and room sizes, it is submitted that the house is not suitable for conversion to a modern-day home.

- 7.2.3. Based on the information on file, including the correspondence around the time of building the house, I am satisfied that Frederick Hicks was in all probability the architect who designed the dwelling and having regard to Objective CH37, the principle of its removal must be considered. The conservation officer's initial report references other examples of his work which include the Iveagh Markets on Francis Street and St. Thomas' Church of Ireland Church on Cathal Brugha Street, as well as the Carnegie Library in Rathmines and the Arts and Crafts house at Eskeragh in Sutton. The applicant contends that if Mr. Hicks did design the subject dwelling, it is not a rare example of the late architect's work and is not comparable to the aforementioned or to Martello Tower, which Hicks remodelled and used as his home, and which is referenced by St. Margaret's Road Area Residents Association.
- 7.2.4. The conservation officer's second report which was prepared following an internal inspection of the house, noted the house interior is relatively plain with small rooms and few features of any particular note. Nonetheless, the conservation officer further noted that the house has a charm and character that positively contributes to the streetscape and indeed stated that its preference would be for the house to be retained, but that it could be altered and extended sensitively.
- 7.2.5. The house is not a protected structure and is not listed on the NIAH record. There are four ACAs in Malahide, however the house is not located in any of these. While recognising the view of the conservation officer that the house has a level of charm, it has not been identified through the development plan as a building that is required to be retained. Given the mix of varying house styles in the area including some traditional and other more contemporary styles, I do not consider that it is necessary to retain the existing house to maintain the visual integrity of the streetscape. I also

consider that the demolition of the house, as part of the proposed development, would not have a significant impact on the architectural heritage of the area.

- 7.2.6. On a practical note, its narrow form renders it more complex to extend where removal or significant intervention of the external structural walls would be inevitable. In relation to the proposed replacement house, I am satisfied that it would be of a design and scale which would be in keeping with the variety of house designs in the area. It would be 600mm lower than the existing house, but of similar height to the other houses in the area. It would result in a building with a much improved energy efficiency. The new house design also proposes to mirror some features of the existing house, including small flat clay tiles and arris hip tiles, which follow the coursing of the tiles and which is a distinctive feature of the existing house.
- 7.2.7. On balance, I am satisfied that the proposal to replace the house can be achieved without giving rise to an unacceptable impact on the streetscape or the character of the area or result in any significant and unacceptable loss of architectural heritage in this instance. It would also be paramount to respect neighbouring residential amenity and I have considered this under Section 7.3 of my assessment directly below.

7.3. Impact on Residential Amenity

- 7.3.1. Residential amenity concerns have been raised in the appeal received from the occupant of the neighbouring property at No.36 St. Margaret's Road. Specifically it is contended that the space which presently exists between No.s 36 and 38 would be detrimentally affected by the proposed new house and that the house would cause overshadowing impacts on the patio area of this dwelling, which would also lose views as a result of the development. Concerns are also raised about impacts on the structural integrity of the dividing garden wall between both properties. In terms of overlooking, the appellants have also raised concerns that obscure glazing was not requested on windows serving the proposed mud room and garage windows at ground floor level or other windows at attic level.
- 7.3.2. My considered view is that no issues of overlooking arise at ground floor level and any overlooking issues which might arise at first floor level can be adequately dealt with by requiring permanent obscure glazing which can be controlled by the attachment of a condition, similar to Condition No.6 attached to Fingal's Planning

decision. I am equally satisfied that subject to the attachment of an appropriate condition similar to Condition No.7 which was attached to the planning decision requiring rooflights along the southern and northern roof slopes to be positioned a minimum of 1.6 metres above floor level, that issues of overlooking from roof windows can also be adequately controlled. The proposed house would be separated by c.34 from the house to the rear (No.9 St. Andrew's Grove) and excessive direct overlooking cannot conceivably occur onto this property.

- 7.3.3. In relation to separation distances from the side of houses, I note that, as proposed, it would be c.2.0m from the house to the north (No. 36). While it would not achieve the 2.3m separation distance required under Objective DMS29, I note that it would be a similar distance (or slightly greater) to the centreline of the boundary than the house to the north of this boundary. I believe there is scope to slightly reposition the proposed house to ensure that the distance of 2.3m is achieved which I recommend can be controlled by way of a planning condition.
- 7.3.4. In considering overshadowing impacts, I have reviewed the applicants' submitted shadow path analysis and having regard to the position and orientation of the properties, I am satisfied that while the proposed development might give rise to a slight increase of shadow cast along the southern boundary to House No.36 in March, this would be for a limited period only at mid-day. This would be acceptable in an urban situation and would not give rise to any unacceptable adverse impact on neighbouring residential amenity.
- 7.3.5. I am satisfied that the available and any additional required ground investigation results can inform an engineering solution to protect the dividing garden wall. As such, no serious safety risk would result on the adjoining property no.36. I also note the provisions of Section 34(13) of the Planning & Development Act 2000, as amended, which provides that a person is not entitled solely by reason of a permission to carry out any development.
- 7.3.6. Overall, having regard to the above, the development would not unduly impact on residential amenities of neighbouring properties and should not be refused permission for such reasons.

7.4. **Appropriate Assessment**

- 7.4.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, the existing house on site, the location of the site in an urban serviced area and the separation distance to the nearest European sites, 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. Further to the above assessment of matters pertaining to this appeal, including the consideration of the submissions made in connection with the appeal and information gathered during my site inspection, I recommend that permission should be **granted** for the reasons and considerations outlined below.

9.0 **Reasons and Considerations**

- 9.1. Having regard to the provisions of the Fingal County Development Plan 2017-2023, including the 'RS' zoning objective, to the nature, scale, extent and design of the development proposed including the proposal to demolish the existing dwelling on site, to the pattern of development in the area and to the general character of the streetscape, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be seriously injurious to the architectural character of the area or visual integrity of the streetscape, would not result in any significant loss of architectural heritage and would be acceptable in terms of residential amenity. The proposed development would, therefore, 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 21st day of August 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. Windows on the southern side elevation and northern side elevation at first floor level in addition to all bathroom and en-suite windows shall be fitted with permanent obscure glazing. Use of film shall not be acceptable.

Reason: In the interest of residential amenity.

3. The rooflights on the southern and northern roof slopes shall be positioned a minimum of 1.6 metres above floor level.

Reason: In the interest of residential amenity.

4. The external finishes of the proposed house, including details of all colours, materials and textures shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of development.

Reason: In the interest of visual amenity.

5. The site layout shall be amended such that the northern elevation of the proposed house will not be less than 1.3m from the centreline of the northern site boundary.

Reason: In order to comply with Objective DMS29 of the current development plan for the area and to protect existing residential amenity.

6. 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.

7. The demolition of the existing house and construction of the new house shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide

details of intended construction practice for the development, including noise management measures, traffic management measures and off-site disposal of construction and demolition waste.

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

8. Site development and building works shall be carried out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of residential amenity during the construction phase.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Patricia Calleary
Senior Planning Inspector

20th December 2017