



An
Bord
Pleanála

Inspector's Report

ABP-300019-17

Development	Erection of 4 bed detached two storey dwelling house with single storey rear annex in side garden. New vehicular access to proposed house and repositioned vehicular access to existing house, new internal subdividing party boundary wall and all ancillary site works.
Location	33 The Avenue, Newtown Manor, Kill, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/882
Applicant(s)	Rory Mc Kiernan
Type of Application	Permission
Planning Authority Decision	To Grant Permission subject to conditions
Type of Appeal	Third Party
Appellant(s)	Patrick E. Feighan
Observer(s)	No observers
Date of Site Inspection	16 th January 2018
Inspector	Erika Casey

1.0 Site Location and Description

- 1.1. The subject site is located within the Newtown Manor residential estate located to the south of Kill Village. The site of the proposed dwelling has an area of 252 sq. metres and is located at the end of an existing cul de sac known as 'The Avenue'. It comprises the side garden of an existing two storey end of terrace dwelling. The site is grassed and is bound to the north and east by a 1.8 metre concrete block wall.
- 1.2. To the north of the site, are single storey bungalows in the Hartwell Green development. To the east, is a detached dwelling. Development to the west and south comprises similar semi-detached dwellings. The overall character of the area is low density and suburban.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a detached 4 bedroom two storey dwelling with a single storey extension to the rear in the side garden of no. 33. The development will have an independent vehicular access from the Avenue and car parking provision for 2 no. cars. The development includes all ancillary works, including the construction of a new boundary wall between the existing and proposed dwelling and the repositioning of the existing vehicular access serving no. 33.
- 2.2. The dwelling will have a floor area of 141 sq. metres. A rear garden of c. 80 sq. metres will be provided. The design, materials and finishes (comprising red brick and render) are designed to assimilate with the existing dwellings on the Avenue. The proposed ridge height is 7290mm, slightly lower than the dwellings to the south and west.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 To Grant Permission subject to conditions. Conditions of note include:

Condition 2: Revised floor plans indicating the provision of storage facilities to be submitted.

Condition 5: Attic storage space shall be used for storage purposes and not for human habitation.

3.2. Planning Authority Reports

3.2.1. Planning Report (27.09.2017)

- It is not considered the proposed dwelling would be out of character with existing development. A precedent has been set for a similar development on a site directly west of the site.
- It is not considered that no. 33 will be impacted upon in terms of overlooking, private open space and car parking.
- 1st floor windows on the northern elevation do not serve habitable space and shall have obscure glass. A shadow study indicates that overshadowing, particularly during the summer months, will not significantly impact same.

3.2.2. Other Technical Reports

Roads, Transportation and Public Safety Department (21.09.2017): No objection subject to condition.

Water Services (12.09.2017): No objection subject to condition.

3.3. Prescribed Bodies

Irish Water (13.09.2017): No objection

3.4. Third Party Observations

3.4.1 3 no. third party observations made by Patrick and Mary Feighan, Joe Callaghan and the Residents of Newtown Manor. Issues raised can be summarised as follows:

- The development will result in overlooking and overshadowing and thus impact on the residential amenities of adjoining properties.
- The development will result in excessive density.
- Concern that the proposed access from the existing turning area serving the cul de sac will create additional turning movements and create a traffic hazard at this location and limit access for emergency vehicles. It will also reduce on street parking as the turning area is currently used for overflow parking.
- The development will result in increased traffic volumes and congestion.

4.0 Planning History

4.1 No. 33 was constructed as part of a larger residential scheme permitted under application reference 04/1143.

Planning Authority Reference 16/194

4.2 Permission granted on a site directly opposite the subject site at no. 32 Newtown Manor Avenue comprising a part two storey, part single storey detached 4 bedroom dwelling with all associated site works, including alterations to the curtilage and entrance of the existing property.

5.0 Policy Context

5.1. Development Plan

5.1.1 The operative Development Plan is the Kildare County Development Plan 2017-2023. Volume 2 of the plan contains the small town and environs plans. Under the Kill Small Town Plan, the subject site is zoned objective B – Existing Residential/Infill.

5.1.2 Table 4.1 of the plan sets out guidance on locations appropriate for new residential development. With regard to inner suburban/infill development it states:

“Sub-division of sites can be achieved where large houses on relatively extensive sites can accommodate new residential development without a dramatic alteration in the character of the area or a negative impact on existing residential amenities. Sub-division shall be considered subject to safeguards regarding residential amenity, internal space standards, private and public open space, car parking and maintenance of the public character of the area.”

5.1.3 **Policy SR05** is to facilitate the sub division of larger dwellings on extensive sites in urban areas. **Section 17.4.5** of the Plan sets out quantitative standards in terms of minimum floor areas, storage, private open space etc. for residential development. **Table 17.9** in respect of parking standards states that a house should be served by 2 spaces per unit.

5.2 Other Policy

Quality Housing for Sustainable Communities Best Practice Guidelines (2007): Sets out qualitative and quantitative standards for residential dwellings.

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009): Promotes increased density in urban areas.

5.3 Natural Heritage Designations

- None applicable.

6.0 The Appeal

6.1. Grounds of Appeal

Patrick E. Feighan, 38 Hatwell Green, Kill, Co. Kildare

- Formal agreement in place with the developer of the Newtown Manor Estate that the northern elevation of no. 33 would have no windows at first floor level to prevent potential overlooking.
- Reliance has been placed on the precedent of the dwelling permitted under Planning Authority Reference 16/194 on the opposite side of the cul de sac. There are a number of differences however, between this permitted development and the proposed development. There are no windows on the northern elevation of this permitted dwelling facing Hartwell Green and the orthogonal projection of site no. 59 is offset from the dwelling, thus reducing its impact.
- Concern that the height and proximity of the dwelling to the single storey bungalow to the north will have an overbearing impact.
- Consider that the development would significantly reduce both the amenity and value of their property due to overlooking, loss of privacy, overshadowing and the overbearing size and proximity of the two storey dwelling.
- Refers to correspondence from the applicant seeking the withdrawal of the appeal.

6.2. Applicant Response

- The proposed development has been designed to be compatible with the surrounding area and is similar to the approved development located at the opposite side of the road permitted under Planning Authority Reference 16/0194. It is an infill development and as such makes the best use of land.

The scale, siting and layout of the proposed development takes into account the local context.

- The development is separated from the northern boundary by a minimum of 900 mm and will not impact on the existing houses to the north at Hartwell Green due to existing mature screening. The proposal does not represent overdevelopment of the infill site and accords with the character and pattern of development in the area.
- The appellant's reference to a former agreement with the developer of the estate refers to the now constructed no. 33 The Avenue and not the subject site. The developer has no control over the subject property as the ownership has now passed to the applicant. The agreement does not extend to the proposed new house.
- The proposed dwelling indicates the provision of narrow windows at first floor level to serve the stairs/landing and a bathroom. The windows will have obscure glazing at first floor level to prevent overlooking and to maintain privacy to the existing rear ground floor windows of the dwelling to the north.
- It is considered that the dwelling permitted under Planning Authority Reference 16/0194 is a relevant precedent. Both this and the current application represent appropriate infill development for the area and would not seriously injure the residential amenities of existing property in the area.
- The proposed dwelling permitted to the west is not significantly offset from nos 32 and 59 Hartwell Green as contended by the appellant.
- The proposed dwelling will have a separation distance of 11.92 metres from the rear wall of no. 38 Hartwell Green which is sufficient distance to avoid any overbearing effect. Varied building heights are acceptable in urban areas.
- The shadow studies undertaken for different times of the year take into account shadowing caused by the existing boundary wall and the proposed house only and not shadowing caused by any existing planting. The greatest shadow effect is in December and this indicates that the shadow effect does not extend to the rear wall of the existing house nor cross any window to a habitable room in the house.

- Refers to the legal dispute regarding a strip of land along the northern boundary of the site. It is stated that this is a civil matter and does not affect the subject site.

6.3. **Planning Authority Response**

- The proposed development was assessed in accordance with Development Management Standards as described in Chapter 17 of the County Development Plan.
- There are no opposing windows to the north and the 1st floor windows on the northern elevation are not habitable rooms, thus there is no overlooking.
- A detailed shadow analysis was submitted which indicated overshadowing is not an issue.
- A mirror of the site directly west was granted permission under 16/194 and therefore a precedent has been set for similar infill development on appropriate sites in Kill.
- In relation to the letter regarding land ownership, this is a civil issue and the Planning Authority cannot therefore comment.

6.4. **Observations**

- No observations.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal submitted. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of Development.
- Impact on Residential Amenity.
- Legal Issues.
- Appropriate Assessment.

7.2 Principle of Development

- 7.2.1 The proposed development comprises the construction of an infill residential dwelling in the side garden of an existing end of terrace house. The subject site is zoned objective B – Existing Residential/Infill under the current Kill Small Town Plan contained in the County Development Plan 2017-2023, and such a use is in accordance with this zoning objective.
- 7.2.2 The house has been designed to assimilate with the existing context and character of the dwellings to the south and west. The proposed materials, finishes and design accord with the prevailing character of development. As indicated on the contextual elevations submitted (drawing ref. 17 10 08), the height is generally consistent with the existing dwellings located to the south. It is considered that the height and scale of the dwelling is generally appropriate and consistent with the existing pattern of development in the vicinity.
- 7.2.3 The subject dwelling complies with the relevant qualitative and quantitative standards for residential development set out in the current County Development Plan. The internal room sizes and extent of private open space are in accordance with the standards. It is noted that the Planning Authority had some concerns regarding the extent of storage space. However, it is clarified in the appeal submissions that storage will be provided at attic level, under the stairs and in the utility room. This is considered adequate.
- 7.2.4 It is noted that a similar dwelling has been permitted on the opposite side of the road in the side garden of no. 32. Notwithstanding the submission of the appellant, it is considered that this provides a relevant precedent. This permitted dwelling is set back a similar distance from the dwellings to the north as the subject proposal. The proposed development is thus very similar to this previously permitted development in terms of design and context.
- 7.2.4 Guidance such as “Sustainable Residential Development in Urban Areas” encourages greater intensification on such sites subject to the residential amenities of existing properties being safeguarded. As will be set out below, it is not considered that the dwelling will have any adverse impact on the residential amenities of properties in the vicinity. In this context, having regard to the location of

the site and the need to promote greater intensification in low density areas such as this, it is considered that the principle of the development is acceptable and in accordance with the proper planning and sustainable development of the area.

7.3 Impact on Residential Amenity

7.3.1 The appellant's principal concerns relate to the impact of the development on the residential amenities of their property in terms of overlooking, overshadowing and overbearing impacts.

7.3.2 In terms of overlooking, as noted by the applicant, this normally arises as an issue in planning terms where there are opposing windows that are less than 22 metres apart. In this case, as the dwelling to the north is a single storey bungalow there are no first floor opposing windows. It is noted that at first floor level, the proposed dwelling has two windows to be treated with obscure glazing. These two windows serve the stairs/landing and the first floor bathroom which are not habitable accommodation. It is considered, therefore, having regard to the design of the dwelling and the limited fenestration at first floor level which will be treated with obscure glass that no adverse overlooking will occur.

7.3.3 In terms of overbearing and overshadowing impact, it is noted that the proposed dwelling is set back c. 12 metres from the rear boundary wall of no. 38 to the north. I am satisfied having regard to the character of the area and the design and height of the proposed dwelling that this is a sufficient distance to prevent any potential overbearing impacts.

7.3.4 In relation to overshadowing, the applicant has submitted a series of sunlight and daylight diagrams. During the summer months the impact of the proposed development is negligible. During the winter months, the proposed dwelling will overshadow the rear garden of the dwelling to the north. It is noted however, this is at a time of year when the garden is unlikely to be utilised. Furthermore, the overshadowing has no impact on the dwelling nor any of the habitable rooms therein. Having regard to the information presented, I am satisfied that the development will not give rise to material or adverse overshadowing impacts.

7.2.5 In conclusion, the proposed dwelling has been sited to ensure adequate separation distances from adjoining residential boundaries. In this context, it is considered that

the scale of the development is appropriate and it does not constitute over development of the site. It is not considered that the development will have any significant adverse impact on the residential amenities of the area nor cause any adverse impacts to the amenities of no. 38 Hartwell Green to the north.

7.4 Legal Issues

7.4.1 A number of legal issues are raised by the appellant. It is contended that an agreement was in place regarding fenestration on the northern elevation of no. 33. As outlined by the applicant, number 33 has now been constructed and the subject application relates to a separate site in its side garden. Notwithstanding this, as detailed above, it is not considered that there will be significant overlooking from the windows on the northern elevation of the proposed dwelling as they will be treated with obscured glass.

7.4.2 A dispute has also arisen over the ownership of a strip of land located along the northern boundary of the property. Having reviewed the information submitted by both parties, I consider that these matters lie within the realm of civil law for adjudication and are therefore outside the scope of this assessment.

7.5 Appropriate Assessment

7.5.1 Having regard to the nature and scale of the proposed development, a two storey dwelling house within an established urban area, located on zoned serviced lands, and the distance to the nearest 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. It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1 Having regard to the provisions of the current Kildare County Development Plan 2017-2023, to the pattern of development and planning history in the area and to the nature, form, scale and design of the proposed development, it is considered that,

subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area. 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 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. Water supply and drainage arrangements, including the 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.

3. The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays and Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

4. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

5. The windows on the northern elevation at first floor level shall be glazed with obscure glass.

Reason: To prevent overlooking of adjoining residential property.

6. The footpath in front of the proposed vehicular entrance shall be dished at the road junction in accordance with the requirements of the planning authority and at the Applicant's own expense.

Reason: In the interest of pedestrian safety.

7. 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 the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to 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.

Erika Casey
Senior Planning Inspector

17th January 2018