



An
Bord
Pleanála

Inspector's Report ABP-300212-17.

Development	Permission to construct a new two storey detached dwelling house, connection to main sewer and all associated site works.
Location	13 Ballynamy Park, Newbridge, Co. Kildare
Planning Authority	Kildare Co. Council.
Planning Authority Reg. Ref.	17/982.
Applicant(s)	Angela Leeson.
Type of Application	Permission.
Planning Authority Decision	Refuse for 2 reasons.
Type of Appeal	First party appeal
Appellant(s)	Angela Leeson
Observer(s)	Bernard & Ann Stevenson John & Gay Hughes Ballymany Park Residents
Date of Site Inspection	23 rd February, 2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located in a residential suburb south west of Newbridge, County Kildare, within the existing residential estate of Ballymany. Access to the site will be over the existing estate road network and the site forms part of an existing rear garden connected to no. 13 Ballymany Park. It is noted that no. 13 Ballymany Park, a semi-detached house, originally comprised a large corner site within the original estate development and has been already subdivided to provide for a detached two storey house to the north east of the site.
- 1.2. No. 13, as well as the other properties within the Ballymany Park estate were constructed with very generous gardens. The subject site comprises the rear section of the original garden and will be accessed via the estate road to the north-north east.

2.0 Proposed Development

- 2.1. Permission is sought to construct a new two storey detached dwelling house, connection to main sewer and all associated site works, all at 13 Ballymany Park, Newbridge, Co. Kildare.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development, for the following two reasons:

1. The proposed development, due to its scale, bulk and form would be incongruent and out of character with the established pattern and character of residential development in the area. The proposed development would therefore seriously injure the amenities of and depreciate the value of property in the vicinity, would set an undesirable precedent for further such overdevelopment and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located within an area zoned B, Existing Residential / Infill where it is a zoning objective of the Newbridge Local Area Plan 2013-2018 'to protect and improve existing residential amenity; to provide for appropriate infill residential development'. The proposed development, by reason of its siting and location, overlooking of the rear private open space of existing properties in the vicinity, would be contrary to the stated zoning objective for the area and would seriously injure the residential amenity of adjoining properties. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner Officers Report is summarised as follows:

- No storage is provided in accordance with the requirements of guidelines.
- While the development complies with the minimum provisions of the development management guidelines, there are concerns in relation to overlooking of existing properties.
- The development will compromise the residential and visual amenities of adjacent properties.
- The scale, bulk and orientation of the development will appear incongruent and out of context with the established character and patter of development in the area
- The development would have a negative impact on the residential amenity of the area and represents overdevelopment of a site which has already been subdivided.

Appropriate Assessment screening concluded that there would be no impacts to any Natura 2000 sites.

3.2.2. Other Technical Reports:

Internal:

Environment: No objection subject to conditions

Water Services: No objection subject to conditions

Area Engineer: No objection

Prescribed Bodies:

Irish Water: No objection subject to conditions

3.2.3. Third Party Submissions:

There are 6 third parties noted on the planning authority file having made submissions in the course of the overall assessment. These parties are as follows:

- 1) Mr. Laurence Carr
- 2) Cllr. Morgan McCabe
- 3) Bernard & Ann Stevenson
- 4) Gael Brassil
- 5) Residents of Ballymany Park
- 6) John & Gay Hughes
- 7) Cllr. Morgan McCabe

The issues raised in the above third party submissions are summarised collectively as follows:

- Precedent of refusal for similar development to the rear of no 12 and 12a Ballymany Park for three reasons. The development, if permitted, will set an undesirable precedent for similar developments in Ballymany Park.
- There are outstanding enforcement issues in relation to the site, 16/161 and ud6809 refer.
- Impacts on residential and visual amenity, including depreciation of property.
- Impacts on drainage and storm drains, as well as flooding issues raised.
- Issues with sewer.
- The description of the development is misleading and incorrect and includes the demolition of a semi-detached garage, which forms part of the common boundary.

- Roads and traffic issues, including inadequate parking.
- Overdevelopment of the site, substandard development and will overlook existing properties.
- The development does not comply with the zoning objective for the site which is to protect and improve existing residential amenities, to provide for appropriate infill residential development and to provide for new an improved ancillary services.
- The development will impact on the landscape character of Ballymany Park.
- There is no open space for the residents of Ballymany Park which is mitigated by the large houses and large rear gardens.
- The previous decision, to sub-divide the site, as permitted on the basis that the current site was retained by the original house for the purposes of parking a work van and 2 cars. There is a pending transaction for the subdivision of the original plot into three separate folios and is a serious breach of previous conditions of permission.
- The applicant is a director of the company Sonlee Properties Ltd, the previous applicant and there are questions in relation to the applicant.
- Flood issues raised.

4.0 Planning History

Site:

PA ref 16/161: Permission granted to Sonlee for a new two storey, 3 bedroom dwelling house and the subdivision of existing site, new boundary wall, new dual access site entrance and all associated site development works.

UD6809: Unauthorised development file opened in relation to non-compliance with conditions.

In the vicinity:

PA ref 05/2153: Permission refused for outline planning permission for the construction of a house to the rear of no 12 and 12a Ballymany Park for three

reasons relating to overdevelopment of the site and precedent, inadequate parking and impacts on traffic, and impact on the amenities and depreciate the value of property in the area by reason of loss of privacy and additional traffic movements.

The Board will note that the current proposed development site lies across the road from this site and is very similar in terms of the development of the original site.

5.0 Policy Context

5.1. Development Plan

The operational development plan for the area is the Kildare County Development Plan 2017-2023. The following sections are considered relevant:

- Chapter 4 deals with Housing and Infill Housing is described as: housing which fills gaps in otherwise continuous built-up frontage and is appropriate to the character of the street and/or village.

➤ Table 4.1 of the CDP provides guidance on appropriate locations for new residential development stating as follows:

Inner Suburban / Infill: The existing built fabric of large towns often contains residential areas where additional dwellings can be accommodated without compromising the existing residential amenity or residential character of the area. The provision of additional dwellings within inner suburban areas of towns can be provided either by infill or by sub-division. Infill residential development may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. 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.

- Objective SRO 1 provides that it is the stated objective of the Council to:
Encourage the consolidation of existing settlements through well designed infill developments in existing residential areas, located where there are good connections to public transport and services and which comply with the policies and objectives of this Plan.
- Objective SRO 5 seeks to facilitate sub division of larger dwellings on extensive sites in urban areas that are well served by public transport and subject to adherence to the relevant standards set out in Chapter 17 of this Plan.
- Chapter 17 of the Plan deals with Development Management Standards where section 17.4 deals with Residential Development.
 - Table 17.4 Minimum Floor Area and Storage Requirements for Dwelling Houses
 - Table 17.5 Minimum Private Open Space Requirements for Dwelling Houses

5.2. Newbridge Local Area Plan 2013-2019

The appeal site is located within an area zoned Existing Residential/Infill, it is the objective of the LAP to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for a new and improved ancillary services. A dwelling is permitted in principle in land use zoning 'Existing Residential/Infill'.

Housing **Objective HPO 2** strives to encourage the appropriate intensification of residential development in existing residential areas and the town centre, subject to compliance with relevant development management criteria and the protection of the residential amenity and adjoining properties.

5.3. Natural Heritage Designations

The site is not located within any designated site. Pollardstown Fen SAC (site code 000396) is located 1.2 kilometres to the north west of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal against the decision of the planning authority to refuse permission for the proposed development. The grounds of appeal are summarised as follows:

- The proposed house is a simple two storey detached dwelling with a floor area of 115m² and a height of 8.1m.
- The proposed rear gardens will measure 106m² and 120m² for the existing and proposed house at 13 Ballymany Park.
- There is an existing entrance to the site which has a road frontage of 13.8m,
- Two car parking spaces are proposed and the Roads Engineer has raised no objections.
- The building line is in keeping with the recently constructed house 13A and the house will be set back 2.2m.
- The rear garden measures 10m from the first floor bedroom 3 and all first floor windows will have obscure glazing. The bedroom and bathroom can be switched to omit bedrooms at first floor level which can overlook adjoining properties to the rear.

It is requested that the Board consider the proposed house on the infill site.

6.2. Planning Authority Response

The Planning Authority responded requesting that the Board refer to existing reports on the file.

6.3. Observations

There were four observation submitted to the Board in relation to the subject appeal, one of which has been withdrawn. The observations are summarised as follows:

6.3.1. Derek Whyte, Consultant on behalf of Bernard & Ann Stevenson:

- Timing of the site notice.
- Description of the development misleading. It requires the demolition of a semi-detached garage which forms the common boundary, Article 18(1)(d) of the Regulations cited.
- The description fails to describe the sub-division of the site, and the issues of non compliance with the previous grant of permission at the site.
- Inadequate space for turning cars which will result in cars reversing out of the site onto the public road.
- Development is sub-standard due to its orientation and location.
- The development does not accord with the zoning of the site which seeks to preserve and improve existing residential amenity.
- The development does not accord with the character of Ballymany Park, which consists of large semi-detached houses on large plots. There is no communal open space and it is submitted that the larger gardens mitigate this.
- The development will set an undesirable precedent for similar type developments in the estate.
- Kildare County Council previously resisted setting planning precedent having refused permission for similar type developments within the estate.
- Developments at the site has caused visual dis-amenity already.
- The applicant, under previous application 16/161 indicated that the site the subject of the current appeal, was to be retained as part of the rear garden of the original house, and to provide access to the garage.
- The proposed development is developer driven and will be detrimental to the long-time residents of Ballymany Park, will create traffic hazards and devalue existing property.

6.3.2. John & Gay Hughes:

- The development contravenes conditions attached to 16/161.

- Development will result in overlooking of adjacent properties.
- The development will result in a dis-amenity for existing residents.
- Flooding issues.
- Overdevelopment of the site.
- Reference to the construction of a 2m high wall to be agreed with adjoining landowner is a concern. There has been no approach by the applicant and observer does not wish to see boundary altered in appearance or height.

6.3.3. Design & Consultancy Services on behalf of Ballymany Park Residents

- The reasons for refusal are consistent with the stated policies.
- The applicant, in the grounds of appeal failed to set out clear grounds for the appeal and relies on a description of the development.
- Issues in relation to non-compliance with previous grant of permission and commitments given by the applicant in 16/161.
- The previous grant of permission has given rise to parking and traffic issues. The proposed site will not accommodate the parking for two cars.
- Ownership of the overall lands raised as a concern. The proposed development, if permitted, will result in a three-way sub-division of the site, in contravention of planning permission granted under 16/161.
- Deficiencies in the storm and foul sewer.
- Precedent for refusal for a similar development on the site across the road, no. 12 and 12A.

7.0 Assessment

This is a first party appeal against the decision of Kildare County Council to refuse permission for the construction of a two storey dwelling house in Newbridge. I am satisfied, that the issues arising in relation to the proposed development can be dealt with under the following headings:

- Compliance with Policy & Planning History
- Residential & Visual Amenity
- Other Issues
- Appropriate Assessment

7.1. Compliance with Policy and Planning History

7.1.1. The reasons for refusal issued by the planning authority considers that the proposed development does not accord with the zoning objective afforded to the site, and would, if permitted, seriously injure the residential amenities of existing properties in the vicinity. The Board will note that the appellant has sought that the subject site be considered as an infill site. The Kildare County Development Plan 2017-2023 defines 'Infill Housing' as 'housing which fills gaps in otherwise continuous built-up frontage and is appropriate to the character of the street and/or village.'

7.1.2. In addition to this definition, Table 4.1 of the Plan is relevant in that it provides guidance on the appropriate location for new residential developments. In terms of inner suburban / infill sites, the Plan states that '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.'

7.1.3. Section 4.11 of the County Development Plan deals with Residential Development in Established Urban Areas – Infill, Backland, Subdivision of sites and

corner sites. With regard to Urban Infill and Backland Development, the plan states: 'The development of underutilised infill and backland sites in existing residential areas is generally encouraged. A balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill.' Objective SRO 1 supports this view.

7.1.4. In terms of the Newbridge Local Area Plan, 2013-2019, the subject site is located on lands zoned Existing Residential/Infill and a dwelling house is permitted in principle on such zoned lands. Objective HPO 2 seeks 'to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services.' This zoning principally covers existing residential areas. The zoning provides for infill development within these residential areas. The primary aim of this zoning objective is to preserve and improve residential amenity and to provide for further infill residential development at a density that is considered appropriate to the area.

7.1.5. In terms of compliance with the Kildare County Development Plan 2017-2023, the Board will note that the site does not accord with the definition of 'Infill' in that it does not, in my opinion, comprise a gap in an otherwise 'continuous built up frontage'. No existing houses in the Ballymany Park estate front onto this access road and therefore there is no continuous built up frontage. I would also have concerns that the development, if permitted, would not be appropriate to the character of the existing street or wider residential estate.

7.1.6. Table 4.1 of the Plan advises that sub-division of sites can be accommodated where new residential development does not dramatically alter the character of the area or have a negative impact on existing residential amenities. The subject site fronts onto the access road into the Ballymany Park estate and to date, no house has been permitted to front onto the street. I also acknowledge the precedent set by the refusal of permission for a similar type development across the road from the current site, PA ref 05/2153 refers. In this regard, I would consider that a grant of permission, would significantly and dramatically alter the character of the area. I will discuss impacts on residential amenity further below.

7.1.7. In terms of the planning history of the wider original residential site, the Board will note that permission to sub-divide the site has already been permitted and a

detached house has been constructed, identified as no. 13A Ballymany Park, PA ref 16/161 refers. As part of that application, it was advised that the current appeal site was to be retained as part of No. 13 in order to ensure rear access to the garage and to provide parking for a work van and two cars. Parking at the front of no. 13 was to be retained for visitors. Third parties have advised that since the construction of the house at 13A, parking on the footpaths around the property has been a common occurrence. It is also noted that the Planning Authority raised concerns with regard to the area of the current appeal site area under 16/161, as part of their further information request. The PA accepted the submission of the then applicant in relation to the current site as described above. Planning permission was granted on the basis that the current site was to be retained as part of no.13 and I am satisfied that if the current proposed development is permitted, it would contravene conditions attached to the grant of permission under PA ref 16/161.

7.2. Residential & Visual Amenity

7.2.1. The site is located within the well-established residential estate of Ballymany Park. The houses in this estate are primarily semi-detached with generous garden spaces. There is no public open space provided for within the estate which is laid out with houses fronting onto the R445 Regional Road and to the rear of these houses. The access road from the R445 does not currently have houses fronting onto it and permission has been refused in the past for such a development across from the current proposed site. Rear access to four houses is provided for off this road.

7.2.2. The proposed site layout will provide for a 2m set back from the existing boundary with the footpath. The applicant has advised that parking will be provided within the site for two cars. The proposed house design provides for a three bay two storey house which will rise to 8.1m in height. Accommodation will include a kitchen / diner, separate sitting room and WC provided at ground floor level and three bedrooms, one en-suite, and a family bathroom at first floor level. The layout of the site provides for a rear garden of between 8.2m and 10m in depth and with a stated area of 120m².

7.2.3. The proposed three-bedroom house has a stated floor area of 114sq.m. Chapter 17 of the Kildare County Development Plan deals with Development Management Standards where section 17.4 deals with Residential Development.

Table 17.4 deals with Minimum Floor Area and Storage Requirements for Dwelling Houses and the development as proposed generally accords with the stated minimum requirements except for storage. The CDP requires that 9m² of storage is provided and none is provided for within the submitted design. Table 17.5 deals with Minimum Private Open Space Requirements for Dwelling Houses. A three bedroom house requires 60m² and therefore, the proposed development adequately complies with this requirement.

7.2.4. In terms of the visual impacts associated with the proposed development, and while I have no objections in principle to the proposed house design, the Board will note the existing design features and character of existing houses within the Ballymany Park estate. The proposed development, if permitted, will represent an incongruent visual inclusion and would be out of character with the existing and established pattern of development in the area. Given the location on the access road, I consider that the visual impact will be heightened and a grant of permission would set an undesirable precedent for similar type development within the estate. I would further consider that the development would, if permitted, represent a significant overdevelopment of the site, contrary to the proper planning and sustainable development of the area.

7.2.5. In terms of the potential impacts on existing residential amenities, I would have concerns given the character of the existing estate. The house as proposed will be developed on a small site in the context of the wider Ballymany Park and due to its proximity to existing residential boundaries, would result in overlooking of existing private open spaces associated with the existing houses. In addition, I am not satisfied that the layout as proposed can adequately accommodate the parking of two cars as indicated. I have noted the submissions of third parties and would accept that the introduction of further cars into the estate without adequate car parking would seriously injure the existing residential amenities of the area and would further impact on the safety of pedestrians using the footpaths.

7.3. Other Issues

Enforcement issues:

7.3.1. Third parties have submitted that there are outstanding enforcement issues in relation to the site, 16/161 and ud6809 refers. I would note that issues of enforcement are not a matter for the Board.

Water Services:

7.3.2. There are no objections raised from either the Water Services section of Kildare County Council or Irish Water with regard to the proposed connection to services. I am satisfied that no issues arise in this regard. I would also note the submission by third parties in relation to flooding. I note a flood event approximately 400m to the north east of the site in 2005 and a report from the Kildare Area Engineer described the event as ‘Moorfield, Newbridge – Ballymanagh Cottages are liable to flood after significant heavy rain due to runoff from Hotel Carpark.’ I have considered this issue very carefully and would conclude that there is no evidence to suggest that the development would a grant of permission would affect flooding in the area.

Public notices:

7.3.3. Third parties have raised issues in relation to the erection of public notices on the site as well as the description of the development which does not refer to the demolition of a semi-detached garage, the wall of which comprises part of the common boundary. Article 17 of the Planning & Development Regulations 2001, as amended, requires that an applicant shall within the period of 2 weeks before the making of an application, (a) give notice in a newspaper and (b) give notice by erecting a site notice. Third parties suggest that the site notice was erected a week after the application was lodged which did not allow for the statutory time to object. I note that the Planning Authority noted this issue but did not comment in the report.

7.3.4. The third party has also referenced Class 50 of Part 1 Schedule 2 of the Regulations which deal with Exempted Development and states as follows:

<p>CLASS 50</p> <p>(a) The demolition of a building, or buildings, within the curtilage of—</p> <p>(i) a house,</p>	<p>1. No such building or buildings shall abut on another building in separate ownership.</p> <p>2. The cumulative floor area of any such building, or buildings, shall not exceed:</p>
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<p>(ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex.</p> <p>(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</p>	<p>(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres.</p> <p>3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</p>
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It is submitted that as the description of the development did not include reference to the demolition of a semi-detached garage, which is de-exempted by Class 50 conditions and limitations, the application should be deemed invalid.

7.3.5. I would note that Article 18 details what is required in the public notices, and 18(1)(d) requires that a brief description of the nature and extent of the development is stated. I am generally satisfied that the brief description provided is acceptable and that the plans and particulars submitted in support of the application clearly detail the extent of the works to be undertaken. Having regard to the fact that the third party submitted a valid objection, I am satisfied that there is no need to invalidate the application.

7.4. Appropriate Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving urban environment, 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 the proposed development be refused for the following stated reasons.

9.0 Reasons and Considerations

1. Having regard to the Zone B, Existing Residential/Infill zoning of the site, the objective of which is 'to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services', and the requirement provided for in Table 4.1 of the Kildare County Development Plan, 2017-2023, that proposals to sub-divide sites do not result in a 'dramatic alteration in the character of the area or a negative impact on existing residential amenities', the Board is not satisfied that the development is acceptable.

It is considered that the proposed development, by reason of the design, location and form would constitute overdevelopment of the site, would dramatically alter and be out of character with development in the vicinity, and would seriously injure the existing residential amenities of the area. The development would therefore, contravene materially the said zoning objective, would set an undesirable precedent for similar type developments in the vicinity and would be contrary to the proper planning and sustainable development of the area.

2. The development, if permitted would contravene conditions of previously permitted development on the site, Planning Authority reference 16/161 refers. The development would result in the loss of private open space identified for the provision of parking for no. 13 Ballymany Park, and the loss of this parking would result in a significant dis-amenity for existing residents of Ballymany Park by reason of on-street parking and traffic hazard. The development would therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine
Inspectorate

03rd March, 2018