



An
Bord
Pleanála

Inspector's Report ABP-300423-17.

Development	Construction of 4 no. two-storey, split level, 3-bedroom semi-detached houses with off-street car parking and associated site works.
Location	The Mall, Rush, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F17A/0579.
Applicant(s)	John Doyle.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party.
Appellant(s)	David and Hillary Chapple.
Observer(s)	None.
Date of Site Inspection	27 th February 2018.
Inspector	Karen Kenny.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	5
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	7
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Applicant Response	8
6.3. Planning Authority Response	9
6.4. Observations	10
6.5. Further Responses.....	10
7.0 Assessment.....	11
8.0 RECOMMENDATION.....	14
9.0 Reasons and Considerations.....	14
10.0 Conditions	15

1.0 Site Location and Description

1.1. The site of the proposed development is located behind Lower Main Street in Rush, County Dublin. It has frontage onto a lane, 'The Mall', that is accessed from the Coopers Lane / Skerries Road (R128) to the west of the site. The site comprises an undeveloped rectangular plot of land of 0.089 hectares that is covered in tarmacadam in all but its northern end which is overgrown. It is bounded to the north by the rear gardens of houses in the Thornleigh housing estate, to the east and west by single storey dwellings, and to the south by the access lane. There is a pair of semi-detached dormer dwellings and the rear of commercial premises that front onto Main Street on the opposite side of the lane. Site levels fall by c. 1.5 metres in a northerly direction towards the Thornleigh estate and the dwellings to the north are set at a lower level.

2.0 Proposed Development

2.1.1. The proposal would provide for the construction of 4 no. two-storey, split level, three-bedroom semi-detached houses with off-street parking and associated site works. The external walls of the houses would be finished in plaster and brick and roofs would be finished in blue/black slate. Solar panels are proposed to the front of the roofs. A total of 8 no. off-street parking spaces are proposed to the front of the development. The development includes the retention of all existing boundaries with the exception of a low level boundary wall to the west which is proposed to be built up and capped.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 21 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's Report included the following considerations:

- The development was seen as acceptable in principle, having regard to the zoning provision and referenced considerations under previous planning history. The layout and design was considered acceptable.
- Reference was made to proposed boundary treatment and necessary revisions to include the inclusion of a footpath of 1.8 metres along the southern boundary in places of the 1.5 metre footpath proposed.
- Impacts on residential amenity were not considered significant.
- Private open space provision was also seen as meeting standards.
- The absence of public open space within the site was deemed acceptable given the infill nature of the site and a financial contribution was recommended in lieu of public open space provision.

3.2.2. Other Technical Reports

Water Services: No objection.

Transportation: No objection.

3.3. Prescribed Bodies

Irish Water: No objection.

3.4. Third Party Observations

A total of 2 no. third party submissions were received and considered by the Planning Authority. The issues raised that are additional to the issues raised in the grounds of appeal can be summarised as follows:

- Question distances shown on site layout plan between opposing first floor windows.

- Development represents an overdevelopment of The Mall and will negatively impact on amenities of adjacent property and is out of character with the area.
- Loss of car park would result in traffic and parking congestion in the area. Inadequate car parking to serve the proposed development.
- Emergency vehicles will have difficulty accessing the site.
- Alleged history of dumping on site.
- No information in relation to gradient relative to houses to the north.

4.0 Planning History

4.1.1. Planning history for the site includes:

An Bord Pleanála Ref. PL 06F.224596 / F14A/0351

Application for the construction of four terraced houses. Permission granted by the Planning Authority. This decision was subject to a third-party appeal to An Bord Pleanála. An Bord Pleanála refused planning permission for one reason relating to prematurity with regard to the public sewerage system.

P.A Ref. F12A/0356

Application for the construction of four terraced houses. Permission refused by the planning authority for three reasons relating to prematurity by reference to the deficiency in the provision of public sewerage facilities, insufficient information in relation to surface water and water supply and inadequacy of car parking.

An Bord Pleanála Ref. PL 06F.234130 / F09A/0201

Application for the construction of four terraced houses. Permission refused by the Planning Authority. This decision was subject to a first-party appeal to An Bord Pleanála. An Bord Pleanála refused planning permission for one reason relating to prematurity with regard to the public sewerage system.

An Bord Pleanála Ref. PL 06F.226033 / F07A/0974

Application for retention of 2.5m high hoarding along the front boundary. Permission refused by the Planning Authority. This decision was subject to a first-party appeal to An Bord Pleanála. An Bord Pleanála refused planning permission for one reason relating to the loss of car parking associated with a public house.

An Bord Pleanála Ref. PL 06F.215962 / F05A/1497

Application for construction of four terraced houses for one reason relating to the loss of car parking associated with a public house. Permission refused by the Planning Authority. This decision was subject to a first-party appeal to An Bord Pleanála. An Bord Pleanála refused planning permission for one reason relating to the loss of car parking associated with a public house.

P.A. Ref. F03A/1157

Application for 7 no. apartments in a 2 storey block with attic accommodation, containing 6 no. 2 bed apartments and 1 no. 1 bed apartment. Permission refused.

P.A. Reg. Ref. E520

An application for permission for extension to a public house at Lower Main Street is referenced in the Planners Report and on history files. Condition 2 of this permission would appear to relate to the provision of carparking on the appeal site to serve the extended public house.

4.1.2. Planning history for the adjoining lands to the west is as follows:

An Bord Pleanála Ref. PL 06F.233716 / F09A/0097

Application for demolition of 2 no. existing dwelling houses and the construction of 2 no. semi-detached dwellings. Permission granted by the Planning Authority. This decision was subject to a third-party appeal to An Bord Pleanála. An Bord Pleanála upheld the decision of the Planning Authority and granted planning permission. Extension of duration of the permission was granted to October 2019 under Ref. F09A/0097/E1.

Permission for the demolition of the existing houses and the construction of 2 no. dwellings had been previously refused by An Bord Pleanála under An Bord Pleanála References PL06F.225005 and PLF.216506. Reasons for refusal related to impact on the amenities an adjoining property due to overlooking and visual obtrusion and under Ref. PL06F.225005 a second reason for refusal relating to the provisions for foul drainage was included in the decision.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Fingal County Development Plan 2017-2023 is the relevant statutory plan. The site is zoned 'TC' Town and District Centre, with an objective to 'protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities'. Residential development is permitted in principle in this zone. The following sections of the Fingal County Development Plan 2017-2023 are considered to be relevant:

- Chapter 3 sets out Design Criteria for Residential Development including mix of dwellings, density and open space provision.
- Chapter 12 sets out Development Management Standards for residential development including design criteria and quantitative standards relating to dwelling size, separation standards, public and private open space provision, car parking, etc.
- Sheet No.6 Lusk and Rush: The site is within a Framework Plan Area.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal has been received from an adjacent landowner to the north of the site. The grounds of appeal, that are relevant to the subject appeal, can be summarised as follows:

- Development directly contravenes planning and licencing requirements for the Michael Collins public house and restaurant to provide a car park. Folio E520 for an extension to the rear of the public house, stipulated a requirement to provide a car park on the appeal site. There has been no material change

that would support the change of use of the car park. The public house is still in operation and the restaurant operates from the extension.

- Parking on 'The Mall' blocks fire escapes serving the public house and restaurant.
- Discrepancies on the submitted drawings in relation to the position of rainwater harvesting and attenuation tanks invalidate the application.
- Health and Safety risks associated with excavation of car park containing asbestos material and builder's rubble.
- Condition of permission setting back the boundary to 1.8 metres from the edge of the carriageway would allow further encroachment to Thornleigh residents and invalidate the window to window dimensions detailed on the site layout plan.

6.2. Applicant Response

6.2.1. Fitzsimons Doyle and Associates have submitted a response to the grounds of appeal on behalf of the applicant as follows:

- There is no evidence of asbestos or any other fill material being used to raise the site.
- The issue of use of the site has been previously considered by the Planning Authority and An Bord Pleanála. The site is not, nor has it been part of any planning unit of a licenced premises. When acquired by the applicant in 2003 the site was in use for storage purposes. There has been no access to the site since this date.
- Matters pertaining to previous uses as suggested by the appellants have been the subject of many reports and this matter has been decided upon. Hoarding to front of the site was removed in 2007 and there are no outstanding building control or enforcement issues with the site.
- Rainwater / harvesting tanks will be located to front of each dwelling as indicated on the drainage drawings and drainage report. Levels are clearly shown on the planning drawings.

- Window to window dimensions are accurate and provision of off street parking to front of the houses does not affect the distances.
- The Michael Collins Public House, Sapphires Restaurant and language school are accessed from Lower Main Street and not from The Mall.
- Traffic management and parking at the exit door from the public house is not a matter for the applicant.
- The development is in compliance with the zoning for the area. The development will improve the visual appearance of the area and not impact on amenity.
- Two car parking spaces are proposed within the curtilage of each house and a footpath of 1.5 metres.

6.3. Planning Authority Response

- The anomaly in relation to the stated location of the rainwater harvesting tanks and attenuation tanks in the particulars submitted was noted in the assessment. Reference to tanks at rear is considered to be a typographical error.
- A number of proposals for residential development have been submitted to date, all of which have been refused permission. In earlier decisions (Reg. Ref. F05A/1497 / PL06F.215962, F07A/0974 / PL.06F.226033) the issue of use of the site as a car park to serve a public house on Lower Main Street was cited as a reason for refusal, as a condition attached to planning permission Ref. E520 (1972) related to the use of the site as a car park to serve the public house. It was held that the loss of the site as a car park would negatively impact on the area as a result of overspill of car parking into the adjoining area. It was subsequently acknowledged by the Board (Reg. Ref. F09A/0201 / PI06F.234130) that changed circumstances in the intervening period, specifically concerning the pay parking system on Main Street, would balance the demands arising from the closure of the car park on site. Consequently, it was concluded that there is no longer any concern regarding the development of the site. Furthermore, the level of traffic

generated by the use of the site as a car park was raised by the Planning Authority in its submission to the Board who concurred and noted that the reason for refusal of the Board under ABP Ref. PL06F.215962 was no longer valid and that in principle there was no objection to development of the site for residential use.

- The setting back of the proposed footpath under Condition no. 8 (i) will not result in the repositioning of the houses on the site.
- The development is not considered to be overdevelopment of the site or out of character with the adjoining area and by virtue of its scale and design does not unduly impact on the amenity of the surrounding neighbouring property.
- In relation to open space calculations the development will have an overall occupancy of 14 no. bed spaces (3.5 bed spaces x 4 dwellings). The Board is advised that the total open space requirement is 350 square metres and not 400 square metres. The requirement is divided as Class 1 75% (262.5 square metres) and Class 1 25% (87.5 square metres) amending the financial contribution due to €20,543.
- In the event of a grant of permission request that condition no. 20 and 21 are included.

6.4. **Observations**

None.

6.5. **Further Responses**

6.5.1. A further response has been received from the appellants. The issues raised, that are relevant to the appeal, can be summarised as follows:

- Failure of Planning Authority to address discrepancy in drawings with regard to location of rainwater harvesting and attenuation tanks.
- Failure of Planning Authority to address health and safety issues relating to asbestos material on site.

- Increase in commercial activity on Main Street outweighs any benefit arising from the pay parking system on Main Street. The level of car parking has increased and the demands for parking has increased.
- It needs to be demonstrated that the setback of the southern boundary by 1.8 metres to accommodate a footpath will not result in a repositioning of the dwellings. Fail to see how the required set back will not adversely affect the car parking capacity of the driveways.

7.0 Assessment

7.1.1. I consider that the relevant issues in determining the current application and appeal before the Board are as follows:

- Principle of Development
- Impact on Residential Amenity and Character
- Foul Drainage

7.2. Principle of Development

7.2.1. The site is zoned 'TC' Town and District Centre, with an objective to 'protect and enhance the special physical and social character of town and district centres and provide and / or improve urban facilities'. Residential development is permitted in principle in this zone.

7.2.2. A question arises in relation to whether the use of the site for a use other than as a car park is acceptable. The appellants argue that the use of the site as a car park associated with a public house on Lower Main Street is required under condition no. 2 of the permission granted under P.A. Ref. E520 (dated 1972) to extend the public house. The Board previously determined under ABP Ref. PL06F.215962 and ABP Ref. PL06F.226033 that the use of the subject site is as a car park associated with the public house and that a change of use would result in on-street car parking and would tend to create serious traffic congestion on adjoining streets. However, the Board subsequently determined under ABP Ref. PL06F.234130 and ABP Ref. PL06F.244596 that the development of the site from its use as a car park is acceptable, on the basis that circumstances have changed since the previous

decisions. The implementation of a pay parking system on Rush Main Street is referenced in the Inspectors Report under ABP Ref. PL06F.234130. The Report also notes that the level of traffic generated by the use of the site as a car park may give rise to conflicting movements between pedestrians and vehicles along the cul de sac, which is primarily residential in nature, due to the substandard nature of the junction of 'The Mall' and Cooper's Lane and the poor alignment of cul de sac itself. The appellants contend that an increase in commercial activity along the Main Street has offset benefits arising from the pay parking system. However, I would concur with the view expressed in the Inspectors Report under ABP Ref. PL06F.234130 in relation to the changes circumstances since the previous decisions and the suitability of the lane for a car park due to access constraints along 'The Mall'. I consider a residential development of modest scale to represent a more suitable use for the subject site due to the access constraints. On the basis of the foregoing and in particular the previous determinations under PL06F.234130 and PL06F.244596, I am of the opinion that the previous reasons for refusal in respect of the car park are no longer valid and there is no objection in principle to the development of the site for residential use.

7.3. Impact on Residential Amenity and Character

- 7.3.1. In relation to the impact on residential amenities the separation distance normally required between directly opposing windows of 22 metres is achieved in this case. The concern relating to overlooking of houses to the rear arises in this case due to the difference in ground level. Despite the range of concerns raised by the third party in relation to impact on amenity, I consider that there has been no material change in circumstances from the previous applications such that further detailed consideration of issues relating to impact on residential amenity by way of overlooking or overshadowing would be warranted. The principle change under the subject application is the proposal to construct 4 no. semi-detached split-level dwellings in place of 4 no. terraced split level dwellings. The design is largely similar, save some changes to the front elevation. The profile, height, positioning and finished levels are generally as previously proposed. The Board and planning authority have previously examined the development of four split level two storey

houses on this site and concluded that the development is keeping with the proper planning and sustainable development of the area.

- 7.3.2. I am satisfied to conclude that the proposal is not out of character with the surrounding residential development, that it provides for adequate separation distance between the proposed development and established housing, accommodates sufficient off-street parking, and can be designed to ensure that runoff from the site would be appropriately channelled.

7.4. Foul Drainage

- 7.4.1. Previous refusals under ABP Ref. PL06F.234130, P.A. Ref. F12A/0356 and ABP Ref. PL06F.244596 related to deficiencies in the provision of public sewerage facilities in the area and the period within which these constraints may reasonable be expected to cease. The Planning Officer's Report in this instance notes that contracts for the Rush Foul Drainage Upgrade were signed in October 2016, that works have commenced and that the upgrade has a two-year construction period. The Report of Irish Water recommends that the development is not occupied prior to the completion of the Rush Foul Drainage Upgrade Scheme which is schedule for quarter 4 of 2018. I am satisfied that the previous reason for refusal has been overcome and that a grant of planning permission is not premature in this instance given the ongoing works on the Rush Foul Drainage Upgrade Scheme and the likely timeframe for completion of same. In the event that the Board is minded to grant permission, I recommend that a condition is applied stipulating that the development is no commenced until after the completion of the Rush Foul Drainage Upgrade Scheme.

7.5. Other

- 7.5.1. The grounds of appeal argue that there are discrepancies in the submitted information in relation to surface water drainage and in relation to information contained within the application form. I am of the opinion that the submitted drainage drawing no. P07 Rev A and the drainage report provide sufficient clarity in relation to the proposed arrangements for surface water drainage and that the

provisions are acceptable. I do not consider the other issues to be material considerations in the assessment of the application and appeal.

- 7.5.2. Concern raised in relation to health and safety impacts arising during excavation can be adequately addressed through the preparation of a construction management and waste management plan.
- 7.5.3. Issues raised in relation to enforcement proceedings pertaining to the site fall outside of the Boards remit and should be addressed to the planning authority.

7.6. **Appropriate Assessment**

- 7.6.1. The closest Natura 2000 sites that could be impacted on by the proposed development are Rogerstown Estuary SAC and SPA (Site Codes 000208 and 004015) which are located c. 0.4km to the south, and Rockabill to Dalkey Island SAC (Site Code 003000) which is located c. 1.5 km to the east. Other Natura sites within a 15km radius are Skerries Islands SPA, Rockabill SPA, Lambay Island SPA and SAC, Malahide Estuary SAC, Broadmeadows/Swords Estuary SPA, Baldoyle Bay SAC and SPA. Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity 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 others plans and projects on a European site.

8.0 **RECOMMENDATION**

- 8.1.1. I recommend that the decision of the planning authority to grant permission be upheld subject to the conditions set out below.

9.0 **Reasons and Considerations**

Having regard to the town and district centre zoning of the site, the infill nature of the development and the pattern of existing development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity and would not conflict with the objectives of the Development Plan. 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. The development hereby permitted shall not commence until such time as the Rush Foul Drainage Upgrade Scheme has been completed and commissioned.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

3. Details of all boundary treatment shall be submitted to and agreed with the planning authority prior to commencement of development. In this regard, the front boundary wall shall not exceed 0.9 metres in height and a footpath of 1.8 metres in width shall be provided along the southern boundary of the site.

Reason: In the interest of traffic safety.

4. Proposals for a house numbering scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of urban legibility.

5. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water and provision for foul sewer connections within the site, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The road network serving the proposed development including parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

8. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

9. 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. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

10. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, 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 property in the vicinity.

11. The construction of the development 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

12. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

13. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

14. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

15. The developer shall pay to the planning authority a financial contribution in lieu of the public open space shortfall that arises based on the standards set out in Objectives DMS57 and Objective DMS57B of the Development Plan and 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.

16. 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.

Karen Kenny

Senior Planning Inspector

21st March 2018