



An
Bord
Pleanála

Inspector's Report ABP-301280-18

Development	2 No. two-storey semi-detached 2 bedroom houses and connections to existing foul sewer and all associated siteworks
Location	70 Loughminane Green, Kildare, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/878
Applicant(s)	Joseph Doran
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Third Party
Appellant(s)	Randall Hill & Martine O'Connor
Observer(s)	None
Date of Site Inspection	19 th June 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in Kildare town in a residential development called Loughminane Green. Loughminane Green is c.900m to the north-west of the town centre and c.1km north of the M4 motorway. It is c.800m west of the Kildare railway train station.
- 1.2. The site of the proposed development is currently a vacant site in the centre of the housing estate. A bungalow lies immediately to the north of the vacant site and a pair of semi-detached dwellings lie to the south. The bungalow to the north is the home of the appellant. The overall estate is a mix of dwelling types comprising bungalows, semi-detached, detached and terrace dwellings.
- 1.3. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. It is proposed to construct 2 no. two storey semi-detached 2 bedroom dwellings on the site in line with the dwellings to the south. The dwelling height originally proposed was 8.17m.
- 2.2. Following the request for Further Information and clarification of the Further Information, the dwelling design was amended to a dormer type, one and a half storey dwelling. The overall height was reduced to 7.38m.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 10 standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. In summary it includes:

- Notes dwellings have a stated floor area of 103sq.m and a height of 8.1m.
- Notes serious concerns with the proximity of the proposed dwellings to the existing single storey dwelling with respect to the residential and visual amenity impact.
- Acknowledges the site is suitable for a dwelling and appears as a vacant site but does not consider two storey dwellings are appropriate at this location.
- Recommends Further Information is sought to request the applicant to submit revised proposals for a single storey dwelling/dwellings and to request the applicant to comment on the history of the site vis-à-vis the provision of a creche/childcare facility at this location.
- The applicant responds stating that there are examples of two storey dwellings adjacent to single storey dwellings throughout the scheme and the width of the site does not allow for 2 no. single storey dwellings. Considers there is no overlooking of the adjoining houses and visual amenity is not affected. Considers proposal represents good economic use of the available space. With respect to childcare, considers there is no demand for a childcare facility and considers the site is not suitable for one.
- Planner considers childcare response acceptable however considers dormer units would be preferable, having regard to the fact that a dormer dwelling (albeit for a different use) was already permitted on the site, and requests the applicant to address this by way of Clarification of Further Information.
- Following the amended design to dormer style dwellings and the lowering of the ridgeline, the Planner considers the revised design acceptable and recommends permission is granted.

The decision was in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Area Engineer:** No objection subject to conditions
- **Environment:** No objection subject to conditions
- **Water Services:** No objection subject to conditions
- **Transportation:** No objection subject to conditions

- **CFO:** No objection

3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions

3.4. Third Party Observations

There were 2 no. third party submissions objecting to the development. In summary:

- Concerns with privacy and overlooking
- Boundary wall concerns
- House no. 70A obstructs light to 71
- Lapsed permission for a bungalow incorporating a childcare facility respected the core design principle.
- Objector spends time in garden due to injury and has serious concerns with 2 storey houses built behind as well as the visual impact.

4.0 Planning History

There is planning history associated with the subject site as well as the overall residential development. In summary:

- **Reg. Ref. 09/78:** Permission was granted in September 2009 for a dormer dwelling house incorporating a sessional childcare facility, in compliance with Condition No. 4 of planning permission 02/1447 which required reservation of this site for a childcare facility. The site previously had permission for a bungalow from planning permissions 99/1763 and 01/1657. No development took place on foot of this permission.
- **Reg. Ref. 08/323:** Permission was refused in April 2008 for a single storey detached 4-bedroom bungalow. The decision stated that to permit a dwelling would contravene Condition no.4 of Reg. Ref. 02/1447 which states that Plot no.70 shall be reserved for development of childcare facilities.

- **Reg. Ref. 02/1447:** Permission was granted in February 2003 for 70 no. dwellings comprising a mix of dwelling types to replace 47 of the 116 no. dwellings permitted under Reg. Ref. 99/1763. Condition no.4 of this permission required that plot no.70 would be reserved for the development of childcare facility.
- **Reg. Ref. 01/1657:** Permission was granted in December 2001 for 23 No. dwellings comprising a mix of dwelling types to replace 17 No. 2-storey 4 bedroom dwellings.
- **Reg. Ref. 99/1763:** Permission was granted in August 2000 for 110 dwellings.

5.0 Policy Context

5.1. Kildare Town Local Area Plan 2012 – 2018

- 5.1.1. Loughminane Green is within the boundary of the Kildare Town LAP. It is zoned 'B – Existing Residential'.
- 5.1.2. Table 14 of the LAP is the Land Use Zoning Objectives Table. For 'B – Existing Residential' it states that the objective is '*To protect and improve existing residential amenity: to provide for appropriate infill residential development; to provide for new and improved ancillary services*'.

5.2. Natural Heritage Designations

- Pollardstown Fen SAC (Site Code 000396) is c.6km to the north-east.
- Mouds Bog SAC (Site Code 002331) is c.9km to the north-east.

6.0 The Appeal

6.1. Grounds of Appeal

One third party appeal has been received from the owners of the adjacent property to the north. The appeal sets out six grounds as well as enclosing a photograph of their south facing windows. In summary it states:

- Reference boundary walls and notes that no concrete wall has been built at the boundary with no.71 or no.69. The site is not wide enough to permit two townhouses if what is referred to as existing boundary walls are to be built. There is no room to build a concrete wall on their side as their living room windows are less than 2m inside the existing fence. Request that a 2m high capped concrete wall be erected on the land of the applicant. However, cannot see that it is possible for two townhouses to be built on the site if boundary walls are erected on site.
- Landing window of no.70A overlooks all the living rooms of number 71. Grossly less than 22m and gross invasion of privacy.
- Number 70A blocks light to 71.
- Distance of 1.1m off the gable wall to boundary is too close.
- First floor windows unacceptable at this proximity to no.71 living room windows – overlooking of living room gross violation of privacy.
- Site was designed for a bungalow not a two storey development. At a loss to understand why the Planner who originally requested a single storey development accepted a reduction in height of 780mm at additional information stage.

6.2. Applicant Response

No response from the applicant was received within the appropriate time period.

6.3. Planning Authority Response

The Planning Authority responded stating they have no further comment.

7.0 Assessment

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

- Residential Amenities
- Design of dwellings
- Boundary wall
- Appropriate Assessment

7.1. Residential Amenities

- 7.1.1. The appellants live in the single storey detached bungalow to the north of the vacant site. A pair of semi-detached dwellings bound the site to the south. Beyond the semi-detached dwellings lie two rows of terraced dwellings and semi-detached and detached dwellings lie on the opposite side of the road. The overall development is a mix of dwelling types and this is the case near the subject site.
- 7.1.2. The appellants have concerns with overlooking, lack of light as well as overshadowing if a two storey design is permitted. The appellants state that their living room area is parallel to the existing boundary fence and they will have reduced amenities if a two storey dwelling is built. From my site visit as well as the photo submitted by the appellant as part of the appeal, it appears that the appellant's living area is c.2m away from the fence.
- 7.1.3. With respect to potential overlooking and loss of privacy, I am satisfied that the proposed elongated landing window in the gable wall will not provide for substantial opportunities to overlook the living area of the bungalow, having regard to the limited distance between both dwellings. However, to limit potential, I consider it would be appropriate to reduce the scale of the window. There are no dimensions on the drawings but it would be appropriate to append a condition to amend the window dimensions to a similar scale as the downstairs bathroom window on the gable wall, should the Board consider granting permission. I do not consider opaque glazing would be required.
- 7.1.4. With respect to overlooking from the first floor rear of the dwelling into the living area of the appellant's dwelling, I note that the smaller of the two windows is for a room marked as 'storage'. I consider that a condition requiring opaque glazing on this window would be appropriate and can be required by way of condition. I am satisfied that the bedroom window is at a sufficient distance to limit potential for overlooking.

- 7.1.5. The applicant refers to a requirement for a distance of 22m between windows. This is a general requirement outlined in the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities and it refers to upper floor windows. It states: *'While a 22 metre separation distance between opposing above ground floor windows is normally recommended for privacy reasons, this may be impractical and incompatible with infill development.'*
- 7.1.6. With respect to overshadowing and loss of daylight, having regard to the orientation of the appellant's dwelling to the north of the vacant site, I accept that there could be a loss of light to the windows towards the front of the bungalow on the south face. However, the proposed new dwellings are 10.55m deep; the depth does not extend the full length of the bungalow and the existing fence would already impact on the available light to the bungalow windows. There will be minimal impact on the afternoon and evening light of the bungalow as sunlight moves to a south-west and west direction.
- 7.1.7. In conclusion, I accept that there will be a minor impact on overshadowing and loss of daylight and sunlight for a short duration during the day. However I do not consider that this will be such a seriously negative impact to warrant a refusal of permission. With a reduction in the scale of the landing window and the requirement for opaque glazing on the window of the store room by way of condition, I do not consider that there will be a serious impact on privacy.

7.2. Design of Dwellings

- 7.2.1. The appellants query a number of design features of the dwellings. The appellants consider that the distance of 1.1m from the gable wall to the boundary is too close. I consider 1.1m an acceptable dimension for a side passageway. I do not agree that the design is unacceptable in this respect.
- 7.2.2. I have addressed loss of light above and do not consider that a hip roof on dwelling no.70A would necessarily result in a significant change in terms of loss of light.
- 7.2.3. The appellant considers that the site was designed to accommodate a bungalow. From a review of the Planning History (see section 4 above), there appears to have been a number of planning applications for development on the site which comprised a bungalow and dormer type buildings at various stages.

- 7.2.4. While it would appear that a bungalow would complete a quartet in this section of the housing development, there is no reason to prohibit a dormer style of dwellings. The overall estate is a mix of dwelling types, from single storey detached bungalows, to terraced 2 storey dwellings. Therefore, there is no particular style or design that is prominent in the area. The pattern of development is mixed and there will not be a seriously injurious negative visual impact arising from the construction of dormer dwellings on this vacant site rather than a bungalow.
- 7.2.5. I am satisfied that the design of the dwellings is in accordance with the mixed pattern of development of the area and will not create an adverse negative visual impact.

7.3. **Boundary wall**

- 7.3.1. The appellant refers to the boundary walls illustrated on the drawings. It is highlighted that there appears to be errors with respect to the existence of 2m high capped concrete boundary walls. The appellant is concerned that Condition no.1 which requires the development to be built in accordance with the plans is ambiguous and unenforceable due to the fact that the walls don't exist. I can confirm to the Board that no such concrete walls exist. The vacant site is surrounded by timber panels on all sides.
- 7.3.2. The appellant requests that a capped concrete wall 2 metres high is erected on the applicant's land. The drawings indicate that this wall exists as Boundary C – on drawings entitled 'Site Works Layout + Drainage Layout' and 'Screen Boundary Walls' received by the Planning Authority on 3rd August 2017. For the avoidance of doubt, I am of the view that should the Board consider granting permission, a condition should be appended that these boundary walls indicated as 'existing' as well as the new elements should be built inside the applicant's land boundary.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission should be granted for the proposed development subject to conditions.

9.0 Reasons and Considerations

Having regard to the residential zoning of the site under the Kildare Town Local Area Plan 2012 – 2018, and compliance with the development standards as set out in the Kildare County Development Plan 2017 – 2023, it is considered that the proposed development, subject to compliance with the conditions below, would not detract from the character of the area or the mixed pattern of development in the vicinity, and 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, as amended by the further plans and particulars submitted on the 13th day of October 2017 and the 8th day of February 2018, 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 proposed development shall be amended as follows:
 - (a) The landing window shall be reduced in length to match the downstairs bathroom window.
 - (b) The store room window on the first floor shall be fixed with permanent opaque glazing.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest residential amenity.

3. (a) Rear boundary walls shall be provided along the side boundary between existing house numbers 69 and 70. Such walls shall be capped concrete walls two metres in height above ground level as indicated on the drawing titled 'Screen Boundary Walls'. The other boundary walls shall be constructed as indicated on the same drawing.

(b) Details of the layout, the materials, and external finishes of the screen walls shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of construction of the dwellings.

Reason: In the interest of residential and visual amenity.

4. 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.

5. 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.

6. 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, parking for contractors and off-site disposal of construction/demolition waste.

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

7. 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.

8. 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.

Ciara Kellett
Senior Planning Inspector

19th June 2018