



An
Bord
Pleanála

Inspector's Report ABP-301695-18

Development

7 terraced, 2 storey dwellings (4 end terrace and 3 mid terrace) with attic level and dormer window and 'Velux' to the front roof and 'Velux' to rear roof, each dwelling has new vehicular entrance to the Ballymount Road, 2 car parking spaces each in front garden, landscaping and boundary walls, new footpath and all associated works.

Location

Forest Lodge, Ballymount Road,
Kingswood, Dublin 24

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD17A/0419

Applicant(s)

George Haugh

Type of Application

Permission

Planning Authority Decision

Grant permission with conditions

Type of Appeal

Third Party

Appellant(s)

Ray and Theresa Kelly

Observer(s)

None

Date of Site Inspection

17th August 2018

Inspector

Ciara Kellett

1.0 Site Location and Description

- 1.1. The site is located in a residential area of Ballymount Road, Kingswood, Dublin 24. The general area is bounded by the M50 motorway to the east, the R838 road which includes the Kingswood Luas stop to the south, and the Belgard Road to the west.
- 1.2. The residential area includes the Sylvan, Dunmore and Kingswood housing developments. The dwellings in the area are generally two storey detached and semi-detached dwellings.
- 1.3. The subject site is at the end of a cul-de-sac which is part of Ballymount Road. This section of Ballymount Road became a cul-de-sac upon completion of the M50 motorway. The site is bounded by unkempt open space and the M50 to the east. To the north of the site lie the rear gardens of dwellings along Kingswood Castle where the appellants live. Detached dwellings lie to the west and south of the site.
- 1.4. The site is currently hard surfaced and in use for storage of wooden pallets, containers, structures, tanks and various other items. It is stated as being 0.18 hectares in area and is level.
- 1.5. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. It is proposed to develop 7 no. 3 storey (2 storey plus attic), 4 bedroom dwellings. The dwellings are laid out in two terraces of 4 and 3 dwellings respectively. Works include new footpaths, boundary walls and associated works. Each dwelling includes 2 no. off-street car parking spaces, and all floor and storage areas are above minimum standards for four bedroom dwellings. Each unit is 183sq.m in area and 9.96m in height.
- 2.2. The external finishes proposed comprise a mixture of brick and render with grey zinc cladded dormer windows. The houses are proposed to have a BER 'A' rating.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission for the development subject to 23 conditions.
- 3.1.2. Condition no.2 requires the developer to pay a financial contribution of €5000 per dwelling in lieu of public open space.
- 3.1.3. Condition no.3 requires that the most easterly dwelling design is revised to incorporate additional windows on the eastern façade, as well as relocating the front entrance door to the east to provide passive surveillance of the open space. Amendments to the boundary treatment along this section are also required.
- 3.1.4. Condition no.5 requires that no development shall commence until all metal containers, mobile home structure, shelter structures, pallets etc. are removed from the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. It includes:

- Zoning of area is 'RES – To protect and/or improve Residential Amenity'. Proposal is acceptable in principle.
- Density is 38.8 units per hectare which is considered to be acceptable.
- Proposal would relate satisfactorily to the adjoining permitted 25 no. houses and apartment development.
- Consider that the proposal would regenerate this section of the Ballymount Road and is welcomed by the Planning Authority.
- Notes Roads Section report states that an upgrade to the section of Ballymount Road between the front of the site and the junction of Kingswood Castle/Sylvan Avenue is required. This is considered too onerous on a site where regeneration is welcomed and actively encouraged. It is considered more appropriate for the upgrade and road widening works to be carried out

to that section which fronts the site only, as this road is a small cul-de-sac and no further development would be envisaged.

- No public open space is proposed. Site directly adjoins a considerable area of public open space to the east which in turn adjoins the M50. Considers the non-provision of open space is acceptable, but considers the applicant should be requested to submit proposals in lieu of the open space.
- Notes there is 31m between rear elevation of dwellings on Kingswood Castle (objectors' dwellings) and the front elevations of proposed development which is considered acceptable. Notes concerns with privacy have been raised and consider it appropriate to provide additional screening. Site inspection showed evidence of tree removal on site. Notes no landscape plan has been submitted.
- Notes Drainage Section states that no percolation tests were carried out for soakaways but considers that this matter can be dealt with by way of condition.
- Refers to waste management. Site Inspection showed various materials on the site. Considered appropriate that these materials be removed from site and that waste management conditions be attached.
- Requests additional information in respect of landscaping and open space.
- Following the applicants submission of a Landscaping Plan, and willingness to pay a development contribution of €5000 per dwelling in lieu of open space, the Planner recommends that permission should be granted subject to conditions.

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

3.2.2. Other Technical Reports

- **Surface Water Drainage:** Additional Information requested
- **HSE Environmental Health Officer:** No objection subject to conditions.
- **Parks and Landscaping Services Department:** Following response to Further Information, no objection subject to conditions.
- **Roads Section:** Additional Information requested.

3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions.
- **Department of Defence:** No report on file but it is noted that due to proximity to Casement Aerodrome, operation of cranes should be co-ordinated with Air Corps no later than 28 days before use.

3.4. Third Party Observations

There were two third party objections submitted. The objections are similar to the appeal and are dealt with in Section 6 below.

4.0 Planning History

4.1.1. There is planning history associated with the subject site, the most relevant being:

- **ABP Ref. 06S.121620; SDCC Reg. Ref. S00A/0483:** Following a grant of permission by the Council, the Board decided to refuse permission in May 2001 for development of a two storey block containing 12 apartments and two semi-detached bungalows. The reason for refusal referred to the zoning of the site which at the time was zoned for public open space.

4.1.2. To the west of the site, a recent permission duration has been extended:

- **SDCC Reg. Ref. SD07A/0931/EP:** Duration of permission was extended in January 2014 for development of 25 no. dwelling units: 10 no. 2 bed apartments and 15 no. 3 bed houses.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016 - 2022

5.1.1. Chapter 2 of the Plan refers to Housing, Chapter 3 refers to Community Infrastructure, and Chapter 11 refers to Implementation.

5.1.2. Chapter 2 refers to Housing. Housing **(H) Policy 6** Sustainable Communities states:

It is the policy of the Council to support the development of sustainable communities and to ensure that new housing development is carried out in

accordance with Government policy in relation to the development of housing and residential communities.

H8 Objective 6 states:

To apply the provisions contained in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009) relating to Outer Suburban locations, including a density range of 35-50 units per hectare, to greenfield sites that are zoned residential (RES or RES-N) and are not subject to a SDZ designation, a Local Area Plan and/or an approved plan, excluding lands within the M50 and lands on the edge or within the Small Towns/ Villages in the County.

Section 2.3.2 refers to Public Open Space. **Housing (H) Policy 12** Public Open Space states:

It is the policy of the Council to ensure that all residential development is served by a clear hierarchy and network of high quality public open spaces that provides for active and passive recreation and enhances the visual character, identity and amenity of the area.

H15 Objective 2 Privacy and Security states:

To ensure that all developments are designed to provide street frontage and to maximise surveillance of streets and spaces.

- 5.1.3. Section 2.4.0 refers to Residential Consolidation – Infill, Backland, Subdivision & Corner sites. The subject site is considered to be an infill site. Housing **Policy 17** states that “*It is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County*”.

H17 Objective 3 states:

To maintain and consolidate the County’s existing housing stock through the consideration of applications for housing subdivision, backland development and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation.

- 5.1.4. Section 3.13.0 of Chapter 3 refers to Open Space Management & Use. It states *'Open space and recreational facilities are central to the delivery of sustainable communities. The Council is committed to maximising the leisure and amenity resource offered to the communities of South Dublin through its parks and open spaces'*.
- 5.1.5. Section 11.3.1 of Chapter 11 refers to land uses. Section (v) specifically refers to privacy. It states that *'A separation distance of 22 metres should generally be provided between directly opposing above ground floor windows to maintain privacy. Reduced distances will be considered in respect of higher density schemes or compact infill sites where innovative design solutions are used to maintain a high standard of privacy'*.
- 5.1.6. Section 11.3.2(i) refers to Infill Sites. It states (inter alia) *'Subject to appropriate safeguards to protect residential amenity, reduced open space and car parking standards may be considered for infill development, dwelling sub-division, or where the development is intended for a specific group such as older people or students. Public open space provision will be examined in the context of the quality and quantum of private open space and the proximity of a public park'*.

5.2. **Natural Heritage Designations**

The Glenasmole Valley SAC (Site Code 001209) is located c. 6km to the south of the site. South Dublin Bay SAC (Site Code 000210) is located c. 13.5km to the north-east. Wicklow Mountain SAC (Site Code 002122) is located c. 7km south. Wicklow Mountains SPA (Site code 004040) is located c.8km south.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

One third party appeal has been received from residents in a dwelling on Kingswood Castle, to the north of the site. A copy of the original submission as well as photos of before and after the trees were felled on the site have been included. In summary it includes:

- Planner has failed to address any of the objections contained in their original submission.
- The proposal would conflict with the policies set out in the Development Plan.
- Measurement of 31m referred to by Planner is inaccurate and query how deciduous trees will provide year round privacy and screening (plans attached).
- Proposal is overbearing and will affect the privacy of their habitable rooms and most important area of their garden. This goes against the policy of the Council to promote a high standard of privacy and security.
- Lack of provision of any public space appears to go against the commitment of the Council to provide adequate facilities for children and the young.
- Planner refers to evidence of tree felling on the site which seems to accept that the applicant removed trees one day before lodging the application. This is contrary to the Development Plan policies and objectives.
- Interpret this proposal to mean that this will set a dangerous precedent.

6.2. Applicant Response

The applicant responded to the appeal. In summary it includes:

- Separation distance of 33m more than appropriate and in excess of standards.
- It is impractical to provide open space on this site given its size and the requirement to achieve minimum residential density for sites close to public transport.
- Site is located close to Ballymount Park and the existing open space to the north-east of the site. These areas are zoned for open space and there is a proposed cycle/pedestrian route shown that connects over the M50 to Ballymount Industrial Estate.
- Proposal has planning gains including the installation of a new public footpath and will provide a general improvement to the streetscape with tree planting,

lighting and landscaping. A levy shall be paid to improve open space in the area that will benefit the community.

- Request the Board to consider that landscaping proposals are acceptable and deal with the issues raised by the appellant. Note that there were no trees on the site at the time of the planning application.
- Conclude that proposed development would not seriously injure the amenities of the area and that it accords with the Development Plan.

6.3. Planning Authority Response

The Planning Authority responded to the appeal confirming its decision and stated that issues raised have been addressed in the Planner's Report.

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
- Public Open Space
- Landscaping
- Appropriate Assessment

7.1. Residential Amenities

- 7.1.1. The appellants consider that the proposed development would conflict with policies set out in the Development Plan. In particular it is considered that there will be loss of residential amenity, and the development will not protect and/or improve the amenity they have enjoyed for 25 years.

- 7.1.2. The appellants consider the distance of 31m between opposing facades is inaccurate. It is considered that the proposal will have an overbearing effect and will affect their privacy.
- 7.1.3. The drawing submitted with the Planning Application indicates that there is a distance of 33.225m between the first floor elevation of the proposal and the rear elevation of the appellants dwelling. Section 11.3.1(v) of Chapter 11 of the County Development Plan specifically refers to privacy. It states that '*A separation distance of 22 metres should generally be provided between directly opposing above ground floor windows to maintain privacy*'. Furthermore, this 22m distance is in accordance with the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities policy document. I am fully satisfied that the distance proposed is significantly in excess of the 22m requirement.
- 7.1.4. I am of the view that the proposal will not have an overbearing effect, nor will it cause overshadowing having regard to distances. Furthermore, I am satisfied that the development of dwellings along this part of Ballymount Road will help improve security and thereby residential amenities. Currently there are no dwellings that overlook this section of the cul-de-sac. The rear garden walls of the dwellings along Kingswood Castle form the boundary of the north side of the road, and the subject site and one other vacant dwelling, well set back from the road, form the southern boundary. There is limited passive surveillance along this section of the road and there is reference to anti-social behaviour in this area in the documentation on file. I am of the view that this proposal will provide passive surveillance and help regenerate this part of Ballymount Road, along with the permitted development to the west of the site (see Planning History in Section 4 above).
- 7.1.5. In conclusion, I am satisfied that with an appropriate condition to require the planting of additional trees in the grass verge, the proposal will not have a seriously negative impact on privacy, nor will it have an overbearing or overshadowing effect on dwellings in the vicinity, and therefore will not seriously injure the residential amenities of property in the vicinity.

7.2. Public Open Space

- 7.2.1. The appellants query why there is no public open space proposed when the Development Plan states that all new residential development shall be required to incorporate a minimum of 10% of the total site area. The Planner's Report notes that the site directly adjoins a considerable area of public open space to the east.
- 7.2.2. From my site visit I can confirm to the Board that this area is not particularly conducive to use by children or young people as it is not overlooked at this section. The land provides direct access to the larger Ballymount Park to the north.
- 7.2.3. I am of the view that this proposal could be considered an infill development. The Development Plan states that for infill development, reduced open space may be considered '*in the context of the quality and quantum of private open space and the proximity of a public park*'. As noted above Ballymount Park is located to the north and direct access to that park is provided via the open space to the east of the site. Furthermore, private amenity space is provided in excess of the requirements.
- 7.2.4. I note that the Planning Authority appended a condition that the last house on the terrace to the north-east is to be amended to provide that the front door and additional windows are inserted on the north-east façade. I fully agree with this amendment of the design to supplement the passive surveillance of this area.
- 7.2.5. Having regard to the proximity of the public park to the north, the linear park running immediately to the east as well as the quantity of private open space, I am satisfied that in this instance the omission of public open space within the site is acceptable and in accordance with Development Plan policy. The applicant has proposed to pay a contribution of €5000 per dwelling in lieu of open space.

7.3. Landscaping

- 7.3.1. There is reference in the documentation on file that trees on the site were recently felled. Photos of 'before' and 'after' have been submitted by the appellant. The loss of these trees is of much concern to the appellants because they provided screening to the rear of their property.

- 7.3.2. Map 5 of the Development Plan does not indicate that there are any Tree Protection Orders in the area. There is no information pertaining to what the condition of the trees was on the file.
- 7.3.3. A Landscaping Plan was submitted by the applicant in response to the request for Further Information. Trees are proposed along the boundary, but I agree with the appellant that they will not provide substantial screening and will be, by design, interspersed in the new front gardens of the proposed dwellings. However, having regard to the distances between dwellings in excess of 31m, I am satisfied that this is acceptable. Furthermore, I consider that additional planting can be provided in the grass verges along the roadside.

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 location of the site on residentially zoned lands in the current South Dublin County Development Plan 2016-2022, to the nature, scale and design of the proposed development, to the compliance with design of dwellings to provide passive surveillance of streets and spaces, and to the pattern of development in the area, 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 or of property in the vicinity. 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 18th day of April 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 easternmost dwelling shall be designed with additional windows and the front entrance door located on the eastern elevation overlooking the adjoining open space.
 - (b) The section of Boundary Type 3, which is a 2 metre high block wall shall be omitted along the eastern site boundary adjoining the public open space, forward of the front building line on the easternmost unit. It shall be replaced with a low wall and railings above, not exceeding 1.8 metres in height.

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 interests of visual and residential amenity.

3. No development shall commence until a revised and correct attic floor plan drawing is submitted to the Planning Authority for House Type A1 and C showing the proposed staircase windows on their side elevations.

Reason: In the interests of clarity.

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 section of Ballymount Road fronting the entire site serving the proposed development shall include turning bays, footpaths and kerbs, grass verges including a minimum of seven semi-mature trees which shall comply with the detailed standards of the planning authority for such road works.

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

7. 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.

8. 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.

9. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based

on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

10. 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. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

11. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened bin stores, which shall accommodate not less than three standard-sized wheeled bins within the curtilage of each house plot.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

12. 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, construction traffic management, noise management measures and off-site disposal of construction/demolition waste.

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

13. 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.

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.

Ciara Kellett
Inspectorate

20th August 2018