



An  
Bord  
Pleanála

## Inspector's Report ABP-301854-18

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<b>Development</b>	Retention permission of existing detached bungalow as dwelling house, with existing attic roof conversion used as storage space.
<b>Location</b>	'Carina', 5 Bissets Strand, Malahide, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F18A/0149
<b>Applicant(s)</b>	Giuseppina Morelli.
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	To grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Lia Morelli
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> August 2018
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 0.069ha appeal site is situated in Malahide, Co. Dublin, within a short walking distance of the town centre. It lies in a residential area to the west of the railway line and comprises a detached single storey property, 'Carina', with separate detached garage, to the rear of no. 5 Bissets Strand. The property has a small front and rear garden. Front door access to the property is from the elevation facing west.
- 1.2. Access is provided by a private driveway to the west of no. 5 Bissets Strand, which also provides access to a bungalow 'Silina', to the rear of the appeal site (the appellant's property). The pattern of development along Bissets Strand, near the appeal site, is one of development to the rear of properties facing Bissets Strand.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the retention of an existing detached bungalow which is used as a dwelling house. The property has a floor area of c.138sqm and a ridge height of c.6.25m. At ground floor, two no. bedrooms are shown, together with an open plan kitchen/dining/living room and conservatory to the south. At first floor that attic area is indicated to be used as a store.
- 2.2. Accompanying the application is:
  - An affidavit, by the applicant stating that she is the legal owner of the property, after its conveyance to her by her father in 2011, and stating that the property has the same layout now as when it was constructed in 1993, under PA ref. 92/A/1726. The property was used between 1993 and 2011 by her father as his principle residence and it has been used since 2011 by the applicant as her principle residence. Since construction, and all times since construction, it has been used as a detached dwelling and not as a granny flat.
  - Land registry maps showing ownership, from 2011, of the property and access road to it. A wayleave is shown over the driveway to 'Silina'.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 17<sup>th</sup> March 2018, the planning authority decided to grant permission for retention of the proposed development subject to 7 no. conditions. Condition no. 2 authorises one house, condition no. 3 requires the entire premises to be used as a single dwelling unit, condition no. 4 requires that the attic level be used for storage purposes only, condition no. 5 precludes use of exempted development provisions set out in Classes 1 and 3 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (development within the curtilage of a dwelling house).

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- 17<sup>th</sup> May 2018 – The report refers to the history of the appeal site and properties near it, the zoning of the site, pre-application consultation with the applicant, objections made and technical reports. It assesses the development under a number of headings, including compliance with zoning objective, visual integration, residential impact, appropriate assessment and procedural issues. The report makes the following comments:
  - The development is consistent with the zoning objective for the site. The bungalow proposed for retention was originally permitted as a family flat. It is currently being used as an independent house. Having regard to the location of the site proximate to Malahide town centre it is considered that reasonable intensification is permissible subject to compliance with standards ensuring protection of amenity.
  - Development would integrate with the established character of the area.
  - Development is in compliance with DSM24 (internal residential amenity for a two-bedroom house) and provides sufficient private open space to the rear.
  - Development would not give rise to undue impact on the residential amenity of nearby properties.

- There is no source-pathway-link from the site to Malahide Estuary SAC and Broadmeadow/ Swords Estuary SPA. Development relates to an existing structure which uses an existing foul and surface water drainage system.
- Description of the development is adequate to assess the application and adequately informs the public.
- The report recommends granting permission for the development subject to condition.

### 3.2.2. Other Technical Reports

- Transportation Planning – No objections.

### 3.3. Prescribed Bodies

- Irish Water – No objections

### 3.4. Third Party Observations

3.4.1. There is one observation on file by Lia Morelli, owner of 'Silina'. It sets out the history of development on the appeal site and the wider landholding (i.e. including 'Silina' to the rear of the appeal site) and the pattern of developing sites to the rear of the original cottages facing Bisset's Strand. It makes the following comments on the proposed development:

- The permission granted for 'Carina' under PA ref. 92A/1726 was for a detached 'granny unit.'
- The wording of the public notices, and application form, is unclear as there is no reference to the proposed change of use from granny flat to private dwelling. The application should be invalidated.
- The two-bedroom unit comprises a sub-standard development.
- Minor issues with the information provided in the application form (date of submission of application PA ref. F17B/0249, calculation of fee).
- The applicant's statutory declarations refer to two different dates when she began using the property as her principle residence (2009 and 2011). If the later date is correct, the development does not exceed the time limit for

enforcement action. Notwithstanding this, the observer asserts that both are incorrect as the applicant has lived principally at 'Carina' since 2015.

- The applicant's statutory declaration volunteers that unauthorised development has taken place at 'Carina' for 25 years (i.e. the property has not been used for its stated purpose). It also fails to state that the conservatory extension to the rear was not included in the original layout of the property.
- The application drawings have a number of inaccuracies/differ from previously submitted drawings (ladder not stairs to access to attic, gates at entrance to 'Silina' omitted from some elevations).
- The successive applications on the appeal site in recent years highlights that there is a concerted effort to develop the property 'Carina', in a manner that is not in accordance with the permission currently in force.
- The development conflicts with policy DMS43, which seeks to ensure that unauthorised residential development does not take place by stealth i.e. whereby planning permission for a family flat is secured and the flat is subsequently used as an independent unit.
- The attic space at 'Carina' has been used to provide sleeping accommodation.

3.4.2. The observation also refers to the use of the detached garage at 'Carina' for commercial purposes (storage of wine), the obstruction of right of way to 'Silina' (from vehicles associated with the use of the garage) and it comments on the erection of gates to 'Silina' by the observer. These matters are associated with existing land uses and are not the subject of the appeal before the Board.

## 4.0 Planning History

- PA ref. F92A/1726 – Permission granted to erect a detached granny unit on the appeal site.
- PA ref. F93B/0031 – Permission granted for a detached garage on the appeal site.
- PA ref. F16B/0227/PL06F.247578 – In 2017, the board refused permission for an extension to 'Carina', to include habitable first floor accommodation as

ancillary granny flat/family flat, on the grounds that, having regard to the planning history of the site (granted as a granny flat), its restricted site area and proximity to other residential property, the development would constitute overdevelopment of the site, impact on the residential amenity of property to the east and contravene the zoning objective for the site.

- PA ref. F17B/0248 – An application for an extension to ‘Carina’ (which excluded any reference to a granny flat/family flat) was withdrawn.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The appeal site is zoned ‘RS’, the objective of which is to ‘*Provide for residential development and protect and improve residential amenity*’. Chapter 12 of the Plan sets out development standards for residential development. The following policies are also relevant to the appeal:

- Section 12.4 deals with family flats (granny flats). It states that these are a way of providing additional accommodation, with a level of independence, for an undefined temporary period, which allow for semi-independent accommodation for an immediate family member (dependent on the main occupants of the dwelling). Applicants for family flats will be considered favourably subject to criteria set out in Policy DM S43 i.e. re for a member of the family with a demonstrated need, are linked to the existing dwelling via an internal access door, when no longer required are incorporated as part of the main unit on site, do not exceed 60sqm and comply with the design criteria for extensions.
- Policy DMS24, and Table 12.1, sets out a minimum quantitative standard of 64 to 80sqm gross floor area for a two-bedroom house.
- Policy DMS28 - Sets out a minimum separation distance of 22m between directly opposing first floor windows.
- Policy DMS29 – Requires a separation distance of at least 2.3m between side walls of detached properties.

- Policy DMS39 – Requires new infill development to respect to the height and massing of existing residential units and to retain the physical character of the area, including features such as boundary walls, pillars, gates/gateways, trees, landscaping and fencing or railings.
- Policy DMS87 – Requires, for 3-bedroom houses or less, a minimum of 60sqm of private open space behind the front building line of the house.

## 5.2. Natural Heritage Designations

- 5.2.1. Malahide Estuary, c.30m to the north of the appeal site is designated as a proposed Natural Heritage Area and SAC (Malahide Estuary, site code 000205) and as an SPA (Broadmeadow/Swords Estuary, site code 004025).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The appeal is made by Lia Morelli, owner of ‘Silina’ to the south of the appeal site. Grounds are similar to those made in observations on the planning application:
- The current application represents the ‘thin edge of the wedge’ in terms of the applicants longer term plans for the use and development of the property.
  - The subject property has the benefit of planning permission as a granny flat only.
  - Permission was previously refused by the Board for extension of ‘Carina’ and provision of new family flat, under PL06F.247578, having regard to the planning history of the site, which was permitted solely as a granny flat.
  - The use to which Carina has been put (stand-alone dwelling) has not and does not comply with this planning permission, and as such represents unauthorised development. The original permission should be respected and upheld by all subsequent assessments.
  - Any unauthorised use to which the property has been put should not be rewarded by granting permission.



- Planning permission for the change of use from family flat to a stand-alone dwelling would contravene the intention of the Development Plan and Planning and Development Regulations and would be seen as a back door to subsequently and eventually securing permission for a standalone residential unit when the rationale for family flats is clearly to avoid this exact scenario from arising. The development would directly contravene policy objective DMS43 (family flats).
- The planning authority's view contradicts their previous submission to the Board, under PA ref. 06F. 247578, where they supported the extension of the property, on condition that the entire premises be used as a single granny flat.

## 6.2. Applicant Response

6.2.1. The applicant makes the following additional comments in her response to the appeal:

- 'Carina' was built in 1993 to allow the family to maintain their own independence. Over the past 20 years it has been used as a fully independent dwelling house and it is not functionally or physically linked to 'Selina'.
- 'Carina' was transferred by her father to the applicant in 2011 and she has been living in the property since 2009.
- PA ref. F17B/0248 was withdrawn on the advice of the planning department and to allow the applicant to apply for retention. Her intention is to create a simple domestic extension to add comfort and to update and improve the quality of her home (BER rating).
- The appellant has failed to demonstrate how the development fails to comply with Development Plan regulations.

6.2.2. The applicant also comments on issues regarding works to the pier walls at the entrance to 'Selina' and to the location of the western wall of 'Carina' relative to the right of way over the property. This work does not form part of the application for permission and falls outside the scope of this appeal.

### 6.3. **Planning Authority Response**

6.3.1. The planning authority comment as follows:

- The matters raised in the appeal have been addressed within the assessment of the planning application.
- The applicant is seeking retention permission for the existing detached bungalow being used as a dwelling house. DMS43 dealing with proposals for a granny/family flat, is therefore not relevant.
- The planning report demonstrates that the retention of the structure as an existing dwelling, rather than as the originally approved granny flat, complies with relevant Development Plan standards.
- Request the Board to include condition no. 7 in any grant of permission.

### 6.4. **Observations/Further Responses**

6.4.1. None.

## 7.0 **Assessment**

7.1. Having regard to the appeal and my inspection of the site, I consider that the key issues for this appeal relate to the following:

- Planning history/principle of the development.
- Sub-standard nature of development.

7.2. The appellant also raises a number of other matters which I comment on below:

- Unauthorised developments (use of garage, conservatory, use of attic space)
  - These are matters for the planning authority under their enforcement powers and fall outside the scope of the appeal system.
- Future developments – Reference is made by the appellant and the applicant to the future development of ‘Carina’. Any future development of the dwelling on the site would be adjudicated upon at the time an application for permission is made. This appeal only examines the merits of the development before the Board.

- Public notices – The planning authority has validated the planning application made and the description of the development set out in the public notices. I would accept that these do not refer to a change of use. However, they do clearly refer to the retention of the existing detached bungalow as a dwelling house and I consider that they are adequate to alert the public to the essential nature of the development. I consider, therefore, that the purpose of the public notices has been served.
- Application details – The appellant refers to minor inconsistencies in the planning application form and to minor discrepancies in drawings, compared to the details previously submitted with other planning applications. I have reviewed the inconsistencies referred to in the application documentation and do not consider that these are significant. With regard to discrepancies in drawings, compared to previous applications, the Board is required to adjudicate on the details submitted in the application before it.

### 7.3. Planning History/Principle of Development

- 7.3.1. Under PA ref. 92A/1726, permission for the dwelling was granted to the applicant's (and appellant's) father, Antonio Morelli, for the erection of a detached granny unit. It was occupied by Mr. Morelli until 2016. There are different accounts given by the parties to the appeal regarding the length of time the applicant has resided in the property. However, it is clear that it has been occupied by the applicant for a number of years, with no direct relationship to 'Silina' and the application before the Board now is in effect, extinguishing the property's formal connection to the principle residence, 'Silina'.
- 7.3.2. In February 2017, under PL06F.247578, the Board refused permission for the extension of the property, which included provision of a granny flat/family flat at first floor. The decision by the Board had regard, amongst other things, to the planning history of the property, which was permitted '*solely as a granny flat*', and within this context, they refused permission for the development, which they considered would comprise overdevelopment of the restricted site. The issue of whether or not the change of use of the property, from granny/family flat, to dwelling house, was not expressly examined.

- 7.3.3. Further, given the longstanding nature of the development and the inevitable changes which have taken place in the area of the site, given its location close to the town centre of Malahide, I consider that it is in principle reasonable to consider the merits of the retention permission for the development.
- 7.3.4. In considering this issue, I would refer the Board to policies in the Fingal County Development Plan for the RS zoned lands, family flats and for new residential development.
- 7.3.5. RS Zoned Lands. The appeal site is zoned RS Residential in the current Fingal County Development Plan. The objective is to provide for residential development and to protect and improve residential amenity. In principle, the proposed is consistent with the residential use of the land use zone.
- 7.3.6. Family Flats. The proposed development pre-dates the current policy for family flats set out in Objective DMS43 of the Plan. This policy objective includes a requirement that a family flat is linked directly, by internal door, to the main dwelling, when no longer required is incorporated as part of the main unit on site and does not exceed 60sqm. The existing granny flat, 'Carina', does not satisfy two of the current Development Plan's requirements for family flats i.e. direct link to the main accommodation and maximum floor area (proposed floor area is 138sqm). Further, given that it is physically removed from the 'Silina' it would be difficult to incorporate into the main residential unit. It would also appear from the information on file that the use of the property has been used, from the outset, with a high level of independence from the 'main house' associated with it, 'Silina'.
- 7.3.7. Residential Development. Policies in respect of new residential development, require a minimum size for a two-bedroom house (64 to 80sqm), minimum separation distance between opposing first floor windows (22m) and between side walls (2.3m), development that does not give rise to overshadowing and infill development which respects the height and massing of existing residential units and character of existing area. The proposed development satisfies the minimum floorspace and separation distances. Further, no modifications to the structure are proposed and the single storey property sits within the established pattern of infill residential development to the rear of Bisset's Strand, with no significant effects on nearby property. The effect of the development, if it was to become a standalone

residential unit, would therefore be little more than an increase in residential density in the vicinity of the site. Given the pattern of infill development in the area of the site, and having regard to the location of the development in close walking distance of Malahide Town Centre, this modest increase in density would not be inappropriate or unreasonable.

- 7.3.8. In summary, I consider that retention of the proposed development as an independent dwelling unit would be acceptable, having regard to the scale and form of the dwelling, which has provided a high level of independence between the original family flat and the main property 'Silina', the pattern of infill development in the area and the location of the development in close proximity to Malahide Town Centre. Further, given its modest scale and the pattern of development in the area, I do not consider that it would detract from the residential amenity of properties in the vicinity of the site or the character of the area.

#### **7.4. Sub-standard Nature of Development.**

- 7.4.1. As stated above, the proposed development (with attic spaces used as proposed as a store) provides a satisfactory level of accommodation for a two-bedroom dwelling, as per the requirements of Policy DMS24, and Table 12.1, of the current Fingal County Development Plan. Open space standards are also complied with.

### **8.0 Environmental Impact Assessment: Screening**

- 8.1. Having regard to the modest nature the proposed development (retention of an existing property which benefits from existing connections to water services), within an established urban area, there is no real likelihood of significant effects on the environment arising from the proposed development, despite its proximity to sensitive receptors. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **9.0 Appropriate Assessment**

- 9.1. Having regard to nature of the proposed development, which comprises retention of an existing residential property on a serviced site within an established urban area,

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.

## 10.0 Recommendation

10.1. Having regard to the above, I recommend that retention be granted for the proposed development.

## 11.0 Reasons and Considerations

Having regard to the scale and form of the property to be retained, its location in proximity to Malahide town centre and the pattern and character of development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not detract from the character of the area or the amenity of property in the vicinity of the site and would be consistent with the zoning of the site for residential development, as set out the Fingal County Development Plan 2017 to 2023. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 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. This permission authorises one house on the site and the entire premises shall be used as a single dwelling unit. The attic space shall be used for storage purposes only.

**Reason:** In the interest of clarity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

**Reason:** In the interest of the amenities of the area.

4. 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.

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Deirdre MacGabhann  
Senior Planning Inspector

11<sup>th</sup> September 2018