



An
Bord
Pleanála

Inspector's Report 302686-18.

Development	Removal of single storey extension at rear of existing dwelling, the construction of an extension at the side of existing dwelling and erection of detached dwelling to rear.
Location	46 St. Brigid's Park, Blanchardstown, Dublin 15.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	FW18A/0104.
Applicant	Paul Casey.
Type of Application	Permission.
Planning Authority Decision	Refusal of permission.
Type of Appeal	First Party.
Appellant	Paul Casey
Observers	1 Frank and Edel Lavin. 2 Gerry and Elizabeth McMahon 3 Eric and Rhona Mullen 4 Jane and Eamon Nestor

5 Orlaith and Diarmuid Leane

Date of Site Inspection

7th December 2018.

Inspector

Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is in Blanchardstown area an outer suburban area northwest of Dublin city. The appeal site has a two storied semi-detached dwelling which has frontage onto the eastern side of St. Brigid's Park a residential road which has two storied dwellings.
- 1.2. The rear of the site adjoins a strip of land which appears to be part of an area of public open space associated with another residential estate Roselawn Close which is a residential cul de sac off Roselawn Road. There is also a turning area at the head of the cul de sac and part of the rear of the appeal site is also in close proximity to a corner of the turning area but does not directly adjoin it separated by an area of established trees and vegetation, a strip of grass and a footpath. The overall rear boundary and strip of land are defined by established vegetation. The remaining boundaries of the appeal site adjoin dwellings on St. Brigid's Park.
- 1.3. The site is rectangular in configuration and has a stated area of 0.0395 hectares.

2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 18th of July 2018 was for;
 - The removal of single storey extension at the rear of the existing dwelling and the erection of a single storied extension to the side of the existing dwelling. The extension extends from the front building line to the rear building line and has a flat roof with an overall stated height of 3840mm.
 - The erection of detached two storied 2 bedroomed dwelling to the rear of the existing property in the rear garden area with a stated area of 87m². The dwelling is of a modern design and construction with a pitched roof and an overall stated approximate height of 6300mm. The dwelling has a L-shaped footprint which has part of the front building line extending to approximately 2275mm of the existing rear boundary and the remainder of the front building line is approximately 5050mm from the rear boundary. The proposed dwelling

has no windows on the side elevations and no windows on the rear elevation at first floor level facing towards the existing dwelling.

- The proposal provides for the removal and relocation of existing trees and vegetation along the site's rear boundary and the removal of a shed in the rear garden.
- The provision of a vehicular access onto Roselawn Close.
- The provision of a boundary hedge providing rear garden depths of 7300mm for the existing dwelling and 7160mm for the proposed dwelling.
- All associated landscape and site works and connection to services.

2.2. Documentation submitted with the application included;

- A report with accompanying appendices.
- The report refers to the history of the site and that the application is to address a previous application on the site including the issue of the ownership of the strip of land to the rear of the site and access is to the road Roselawn Close and not crossing dedicated public open space; that sufficient private open space is provided, the dwelling will become part of Roselawn Close, there is precedence for dwellings in rear gardens but the proposal will not create a similar precedent in Roselawn Close.
- Appendices of the report include a privacy study; shadow study; precedents of similar development; zoning; legal ownership and boundaries and photographs.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to refuse grant planning permission. Three reasons were stated. The first reason refers to vehicular access over lands which are dedicated open space and the applicant has insufficient legal interest in these lands. The second reason refers to the limited separation between the two properties, overdevelopment of the site and poor quality of residential amenities. The

third reason refers to the development as piecemeal and haphazard and negative visual impact and would give rise to an undesirable precedent for similar backland development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 7th of September 2018 refers to

- The planning history.
- Submissions received.
- Zoning and policy context in relation to the Fingal county development plan.
- An assessment of the issues including issues of infill development, vehicular access which would necessitate crossing lands in public ownership and that the access arrangements submitted are not acceptable; issues in relation to the provision of private open space and separation distances between dwellings and impacts on residential properties.
- Refusal of permission was recommended.

3.2.2. Other Technical Reports:

The Transportation Planning Section Report refers to crossing third party lands in the ownership of Fingal County Council and no consent to cross the lands is submitted; there is an absence of design detail relating to the entrance. Further information was recommended.

Water services report dated the 27th of July 2018 indicates no objection to the proposed development.

Parks report dated the 14th of August 2018 refers to the development traversing a section of open space outside of the ownership and control of the applicant. The development would have a significant negative visual impact and the access is not feasible or viable.

3.2.3. Other submissions

Third party submissions were received from residents in Roselawn Close relating to concerns over the loss of residential amenities, precedence, loss of trees, the absence of consent from the owner of the strip of land which it is proposed to crossover and the haphazard nature of the development.

Irish Water in a submission dated the 27th of July 2018 indicates no objections to the proposed development.

4.0 Planning History

P.A. Ref. No. FW17A/0159

Permission was refused for a dwelling house on the current appeal site.

5.0 Policy Context

5.1. Development Plan

5.1.1. Fingal County Development Plan 2017-2023.

Chapter 3 refers to Placemaking and indicates that the plan aims to improve the quality of Fingal's urban and rural environments and encourage a high standard of design in all new developments. Adhering to the principles of placemaking will achieve accessible, safe and sustainable built and natural environments, which reflect the special character and heritage of the County and its varied townscapes and landscapes and to promoting sustainable design and standards.

Relevant objectives include:

- PM 44 which refers to promotion of the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.
- PM 64 which refers to preservation and management of trees.
- PM65 refers to private open space for dwellings and to "*Ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements*".

Chapter 9 refers to natural heritage and objective

NH 27 refers to protecting existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character and ensure that proper provision is made for their protection and management protection of trees and woodland.

Chapter 11 refers to land use zoning objectives.

The site is zoned RS with the objective *“to provide for residential development and protect and improve residential amenities”*. The vision associated with the zoning is *“to ensure that any development in existing areas will have a minimal impact on and enhance residential amenities”*. Residential development and open space are uses permitted in principle within this zoning.

Chapter 12 relates to development management standards.

There is reference in section 12.4 for residential development to qualitative standards and high quality living environment for residents. DMS 24 refers to compliance with standards outlined in tables 12.1, 12.2 and 12.3 which refer to floor area of dwelling units and areas of bedrooms.

Separation distances are referred to where it is indicated, *“a minimum standard of 22 metres separation between directly opposing rear first floor windows shall be observed, normally resulting in a minimum rear garden depth of 11 metres. However, where sufficient alternative private open space (e.g. to the side) is available, this may be reduced - subject to the maintenance of privacy and protection of adjoining residential amenities”*. This is restated in objective DMS 28.

DMS 29 which requires separation distances of 2.3 metres between the side walls of adjoining detached, semi-detached and terraced units.

In relation to residential development the plan refers to *“the development of underutilised infill and corner sites in existing residential areas is generally encouraged. However, it is recognised that a balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill. The use of contemporary and innovative design solutions will be encouraged for this type of development.”*

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing built up areas.

All new dwellings shall comply with Development Plan standards in relation to accommodation”

Objective DMS 39 refers to New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

There are policies in relation to trees which include;

- DMS 77 refers to protection, preservation and effective management of trees and group of trees.
- DMS 84 refers to removal of trees and their replacement where appropriate.

Private open space is referred to and objective DMS 87 refers to the provision of private open space as requiring 60m² for 3 bedroomed houses or less.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appellant in a submission dated the 28th of September 2018 refers to;

- The appellant refers to the previous refusal of permission.
- None of the arguments presented to the planning authority in response to the previous refusal it would appear were not considered by the planning authority.
- The strip of land is residential and not public open space.
- The land in question is owned by Fingal County Council and there is no requirement for any third party consent or permission.
- The design is fully compliant with privacy, plot ratio, and site coverage.
- It is proposed to replant trees at the council's preferred location.

- Many trees were removed by the county council to build apartments between Roselawn Close and St. Brigid's Park and to facilitate 17 Roselawn Close.
- There is precedence in relation to similar development.
- It is indicated that there is insufficient legal interest, but no further authorisation is required with any planning application to use a public access road or to cross a public footpath.
- The development is of a discreet nature with a very limited impact.
- Photographs are submitted in support of the appeal indicating the strip of land is not maintained and the turning area is used for parking.
- The cover report submitted with the application is also submitted which is referred to in section 2.2 of this report.

6.2. Planning Authority Response

The planning authority in a response dated the 31st of October 2018 refers to;

- The development requires traversing a strip of public open space.
- While the lands in question are not detailed on zoning maps as subject to the open space zoning, they nonetheless constitute lands that are dedicated as public open space and form part of a larger land bank of such of such amenity open space serving Roselawn Close.
- The tree line in question appears to date back to the line of historic field enclosures on O.S. maps dating back to 1842.
- The trees provide screening between the areas of St. Brigid's Park and Roselawn Close and the removal of trees will have a negative impact on the landscape and residents.
- Further detail would be required in relation to the design of the access.
- The precedent referred to on Roselawn Close did not necessitate similar arrangements and encroach on public lands.
- The development would be out of character, there is only 14.4 metres separation between dwellings and the amenity space of the proposed dwelling would be significantly overlooked.

7.0 Observer submissions

7.1. Frank and Edel Lavin with an address of 1 Roselawn Close in a submission dated the 23rd of October 2018 refers to

- Supporting the decision of the planning authority;
- That access is over dedicated open space;
- That the applicant has insufficient legal interest to access onto Roselawn Close.
- The site which had trees removed did not encroach on Roselawn Lawn and its environs.
- The precedent referred was in the side garden and not the rear garden.
- The issue of substandard development.
- Roselawn Close is a cul de sac and the turning area is of paramount importance for emergency vehicles and other vehicles.
- the proposed access requires to more clearly indicated.
- The removal of trees along the boundary will be injurious to the natural amenity.
- The development will impact on the harmony of the existing pattern of development.
- Photographs are submitted.

7.2. Gerry and Elizabeth McMahon with an address of 11 Roselawn Close in a submission dated the 26th of October 2018 refers to;

- Access would be across public land.
- Reference is made to the issue of insufficient legal interest presented.
- The area is out of character with other developments in the area.
- Reference is made to the breaching of a mature hedgerow.
- The development would give rise to an undesirable precedent.
- The observers support the planning authority's decision.

7.3. Eric and Rhona Mullen with an address of 4 Roselawn Close in a submission dated the 16th of August 2018 refers to;

- Roselawn Close is a quiet cul de sac.
- There is a plan to clean up the green area and residents have assisted this.
- The development will give rise to a precedent.
- The turning bay is for emergency vehicles to turn.

7.4. Jane and Eamon Nestor with an address of 12 Roselawn Close in a submission dated the 27th of October 2018 refers to;

- Reference is made to the cul de sac nature of Roselawn Close.
- The public open space is of importance and the development would impact greatly on the green area.
- The issue of overlooking is raised.
- The removal of the turning area is unacceptable.
- Photographs are submitted.

7.5. Orlaith and Diarmuid Leane with an address of 54 Old Fairgreen, Dunboyne in a submission dated the 30th of October 2018 refers to;

- The access traverses dedicated open space and the applicant has not submitted proof of title in relation to these lands.
- The applicant has no access onto Roselawn Close.
- Reference is made to precedents referred to in the appeal and that the current proposal differs from them as it involves public lands and the removal of trees on public lands.
- Distinction is also made in relation to a proposal in a side garden as distinct to a rear garden.
- There is an absence of clarity in relation to the design of the access.
- The development will result in a loss of visual amenity.

8.0 Assessment

8.1. In relation to this appeal the issues arising largely relate to the matters as stated in the reasons for refusal. These include land use/zoning, legal interest and issues specific to the site in relation to design and layout for the site and adjoining lands and issues of residential amenities, impact on natural amenities, access and the issue of precedent.

8.2. Land use/ zoning.

The site is zoned RS in the current Fingal County Development Plan with the objective "*to provide for residential development and protect and improve residential amenities*". The vision associated with the zoning is "*to ensure that any development in existing areas will have a minimal impact on and enhance residential amenities*".

The proposal which is for a dwelling in principle is acceptable within this zoning. Objective PM 44 in the plan refers to promotion of the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected. This permits consideration of development on lands defined as underutilised and in this regard, consideration can be given to appropriate development where suitable sites are available. Any development therefore requires to be considered on the merits of each individual site and the zoning, in itself, is not the sole criterion in assessing a proposal for development.

I would also note although residential development is the predominant use in the zoning other uses are considered which complement residential development and public open space is a complementary and ancillary use which enhances residential amenities and is a permitted use.

8.3. Legal interest

The issue of sufficient legal interest is stated in reason no. 1 of the planning authority's decision to refuse planning permission. It is not the function of the Board to resolve issues of title and civil matters but in this particular case, there is no dispute that for the applicant to gain and provide a vehicular access from the site to the public road he must cross over lands which are not in his ownership and which are in the ownership of Fingal County Council. There is therefore when required a

need to demonstrate sufficient legal interest. No evidence of any consent has been given for a vehicular access to cross these lands. There is I would note clear legal precedent back to the *Frascati* case in relation to demonstrating sufficient legal interest in relation to an applicant making a planning application.

The lands in question are viewed as part of dedicated public open space and this is indicated in the planning report and the Parks Department report.

The appellant refers to the practice that no further authorisation is required with any planning application to use a public access road or to cross a public footpath but this proposal is different as it does not have direct access to a public footpath or public road and requires to cross a strip of land to gain access to the footpath and or public road.

Based on the documentation submitted I am satisfied that documentation in relation to sufficient legal interest is not presented.

8.4. Design and layout.

The proposal as submitted provides for in effect the subdivision of the site with a new dwelling proposed at the rear of the existing dwelling. The proposed dwelling is two storied which is the predominant building form in the area.

In relation to its design to minimise potential overlooking the design avoid windows at first floor level on the proposed rear elevation looking towards the rear of the existing dwelling on St Brigid's Park and the adjoining dwellings on St Brigid's Park and no direct overlooking of these properties.

Any overlooking from the proposed property at first floor elevation is towards Roselawn Close and overlooks the front public areas of these properties and public areas. I do not consider that issues of adverse or significant overlooking arising from the proposed development. I note that a screen hedgerow is proposed as the boundary between the existing and proposed dwelling on the appeal site and pending the maturing of this hedgerow given the relative proximity of the dwellings in the absence of an interim screen overlooking will arise, but this could be addressed by condition.

The private amenity rear gardens of the proposed dwellings will be based on the details submitted will be 71.76m² for the existing dwelling and 70.38m² for the

proposed dwelling. Side passageway areas with a width of 1100mm is proposed for the proposed dwelling and there is limited open space to the front of the proposed dwelling and devoted to on site parking. The existing dwelling will retain its existing front garden.

In relation to the private amenity space provided objective DMS 87 refers to the provision of private open space and requires a minimum of 60m² for 3 bedroomed houses or less and the level of open space complies with the development plan. The development would also appear to comply with standards in relation to parking, site coverage and plot ratio.

8.5. Impact on adjoining lands and impact on residential amenities.

The primary issues which arise in relation to the design and layout on adjoining lands that as a backland development it represents a clear alteration from the established pattern of development and introduces a new building line and form which varies from the prevailing pattern and character. The development provides for a 14.5 metres separation between the rear building lines which is less than the desired 22 metres separation of two storied properties.

I do note that the CDP provides for a relaxation and reduction of separation distance where sufficient alternative private open space is available, subject to the maintenance of privacy and protection of adjoining residential amenities. As already indicated, there is a reasonable standard and level of private open space provided and design of directly opposing first floor windows is avoided. The concern however I consider relates to the issue of adverse impact on residential amenities for the occupants of the proposed dwelling which will be severely and directly overlooked by properties on St. Brigid's Park.

Although the development in many respects complies with development management standards a development of this nature which is a backland site must be assessed on the individual merits of the site and in overall terms the development presents an unsatisfactory and poor quality of amenity for future residents.

8.6. Impact on natural amenities.

The development by the opening of an entrance and the proximity of site development works will result in the loss of trees and other vegetation along the rear boundary of the site and in the adjoining open space area. It is indicated that

replacement of species will occur but the details in this regard are somewhat unclear and to provide an access a gap in what would appear to be a historical hedgerow line will be a permanent feature which I consider represents a loss of natural amenity.

8.7. Access

The vehicular access to the site will cross the open space to connect into the corner of the turning circle. At the scale of the drawings submitted it is not clear how this will be achieved and whether there is sufficient width available at the turning area to accommodate a satisfactory traffic arrangement with modifying the turning area and affecting the primary function of the turning area itself. These matters would require to be submitted to establish if a safe access can be provided.

8.8. Precedent.

In relation to precedent there are new dwellings permitted in subdivision of existing dwelling sites. As already indicated subdivision of sites must be considered on the merits of each individual site and the context of the site. The permitted subdivisions are mainly in side gardens and corner sites where existing building lines are maintained. The proposed development is a departure from this as it is a backland development and at variance with the established form of development.

It could given the depth of back gardens available give rise to potentially other rear gardens considering permission where use of the existing access as a shared access would be pursued.

The development I consider would represent in overall terms haphazard and piecemeal development and set an undesirable precedent which would impact negative on the existing visual amenities of the area.

8.9. Other matters

Proposed extension to dwelling.

The proposed development as submitted provides for a permission for the existing extension at the rear of the dwelling and the construction of an extension at the side of the proposed dwelling. These works arise largely to accommodate the new dwelling at the rear. I would have no objection to the extension as proposed.

Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, 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.

EIAR Screening Determination

Based on a preliminary examination of the nature, size or location of the development there is no real likelihood of significant effects on the environment and EIA is not required.

9.0 Recommendation

9.1. I recommend that the proposed development be refused.

10.0 Reasons and Considerations

- 1 The proposed means of vehicular access to the appeal site is over lands which are dedicated as public open space. The applicant based on the information, particulars and documentation submitted does not in the opinion of the Board possess sufficient legal interest or title in these lands upon which the development is totally dependent or submitted documentary consent from the owner of the lands in question to permit such access.
- 2 The proposed development which would involve traversing an area of public open space and the consequent permanent loss of such space and established trees and vegetation would adversely impact on the overall visual amenities of the area and would thus be contrary to the proper planning and sustainable development of the area.
- 3 Having regard to the nature of the established pattern of development in the immediate area the limited area for access arrangements associated with the site and its relationship and proximity to adjoining properties, it is considered that the proposed development represents inappropriate piecemeal haphazard backland development, would result in a substandard residential unit, would be out of scale with its surroundings and would seriously injure the

amenities of future occupants of the proposed residential property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Derek Daly
Planning Inspector

12th December 2018