



An
Bord
Pleanála

inspector's Report ABP-303043-18

Development	Construction of a two storey house
Location	Site at Aspen, Violet Hill, Church Road, Killiney, Co. Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/0838
Applicant(s)	Hugh Brady & Yvonne O'Meara
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Hugh Brady & Yvonne O'Meara
Observer(s)	Ciaran and Mary Brady Andrew O'Daly
Date of Site Inspection	02/02/19
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site refers to the former side and rear garden of a detached dwelling 'Aspen' on Violet Hill. The former overall site of 'Aspen' now comprises three sites: the original dwelling Aspen with access on to Violet Hill, a site under construction to the rear (north-east) with access from the lane to the north-east, and finally the subject site, currently comprising the tennis court formerly associated with Aspen. The subject site is proposed to be accessed via a new access to be created adjoining the entrance to Orchard House.
- 1.2. Violet Hill is a narrow unsurfaced laneway serving a number of (in excess of 20. no.) detached dwellings. The character of the area is rural, in contrast to the markedly suburban nature of Church Road and residential development of The Watsons to the west. Violet Hill is densifying, with a number of the larger plots accommodating houses on former side garden plots or the demolition of larger houses making way for the construction of multiple units. Violet Hill slopes from the north-east down to the junction with Church Road. The sylvan nature of the lane means none of the houses are visible from the main road.
- 1.3. Church Road is a busy, heavily trafficked road from the Graduate Roundabout to the north to the Wyatville road to the south. The Wyatville Road provides access to the N11 and the M50.

2.0 Proposed Development

- 2.1. On the 31st August 2018 permission was sought for the construction of a two-storey dwelling (273sq.m) with new vehicular access from Violet Hill on a site of 0.125ha.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 25th October 2018 the Council issued a notification of their intention to REFUSE permission for the following two reasons:

- 1 Having regard to an objective set out within Policy ST12 'Quality Bus Network' and identified on map 7 of the Dun Laoghaire Rathdown County Development Plan, 2016-2022, to provide a Bus Priority Scheme along Church Road (part of the route from Cherrywood to Blackrock), it is

considered that the provision of the said scheme would entail a significant alteration of the existing road layout for the area. It is therefore considered that the proposed development would be premature pending the determination of the road layout of the area and the detailed design for the proposed Bus Priority Scheme. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

- 2 It is considered that the additional traffic turning movements generated by the proposed development onto the heavily trafficked Church Road, which provides an important part of the link road between Dun Laoghaire town centre and the M50/ N11, and for which there is a six-year road objective as part of the Cherrywood to Dun Laoghaire Strategic Route (R118 Wyatville Road to Glenageary roundabout) as identified on Map 7 and Policy ST25: 'Roads' in the Dun Laoghaire Rathdown County Development Plan, 2016-2022, would endanger public safety by reason of traffic hazard. It is considered that the proposed development would have a seriously adverse impact on the carrying capacity of this link road and if granted, would set an undesirable precedent for further residential development accessing onto Church Road with consequent implications for public safety and the carrying of the road. The proposed development, would therefore be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

- 3.2.1. **Transportation Department:** Refusal recommended on the grounds of the adverse impact on the major road and prematurity having regard to the Bus Priority scheme on Church Road.
- 3.2.2. **Drainage Report:** No objection subject to standard conditions.
- 3.2.3. **Irish Water:** No objection.
- 3.2.4. **Planning Report:** Pattern of development in the area is large dwellings on extensive plots within some infill / side garden development. Proposed dwelling will not impact on the residential amenity of the existing dwelling 'Aspen'. Having regard to the site levels the proposed dwelling will not negatively impact on the dwelling permitted to

the north east (reg. ref. D16A/0619 as modified by D18A/0801). High boundary wall and change in site levels between the proposed dwelling and Orchard House will prevent injury to the residential amenity of Orchard House. Proposed dwelling is an attractive design and is acceptable in principle. No rear garden is proposed but a front garden in excess of 75sq.m. is – similar to that permitted on the adjoining site. Report of the transportation department recommending refusal is noted and refusal is recommended.

3.3. **Third Party Observations**

- 3.3.1. Four number observations submitted to the Planning Authority. Grounds are as raised in the observations to the Board and are discussed below.

4.0 **Planning History**

- 4.1.1. The former grounds of Aspen now comprise three plots: Aspen and two plots to the rear.
- 4.1.2. To the north-east of Aspen permission was granted for the construction of a dormer detached dwelling under **D08A/1195**. This was revised to a two-storey dwelling of 220sq.m. under **D16A/0619**. This permission was modified under **D18A/0801** to increase floor area to 261sq.m. and a change in house design.

5.0 **Policy Context**

5.1. **Dun Laoghaire Rathdown County Development Plan 2016-2022.**

- 5.1.1. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned objective A – to protect and/or improve residential amenity.

Relevant policies and objectives include:

- 5.1.2. **Section 8.2.3.4 (vii) Infill:** “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.”
- 5.1.3. **Section 2.1.3.4 Existing Housing Stock Densification:** “Encourage densification of the existing suburbs in order to help retain population levels - by ‘infill housing.

Infill housing in existing suburbs should respect or complement the established dwelling type in terms of materials used, roof type, etc. In older residential suburbs, infill will be encouraged while still protecting the character of these areas.”

- 5.1.4. **Policy RES 3:** It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development.
- 5.1.5. **Section 8.2.3.2** of the Plan sets out quantitative standards for residential development.
- 5.1.6. **Section 8.2.8.4** sets out standards for **Private Open Space**. For 4 bed units a minimum of 75 sq. metres is required. It is noted that in instances where an innovative design response is provided on site, a relaxation in the quantum of private open space may be considered on a case-by case basis.
- 5.1.7. **Section 8.2.8.6** addresses **Trees and Hedgerows** and states that Arboricultural Assessments carried out by an independent, qualified arborist shall be submitted as part of planning applications for sites that contain trees or other significant vegetation. The assessment shall contain a tree survey, implications assessment and method statement.
- 5.1.8. **Policy ST12: Quality Bus Network*** It is Council policy to co-operate with the NTA and other relevant agencies to facilitate the implementation of the Bus Network measures as set out in the NTA’s ‘Greater Dublin Area Draft Transport 2016-2035’ and to extend the bus network to other areas where appropriate subject to design, public consultation, approval, finance and resources.
- 5.1.9. **Policy ST25: Roads** It is Council policy, in conjunction and co-operation with other transport bodies and authorities such as the TII and the NTA, to secure improvements to the County road network – including improved pedestrian and cycle facilities.

5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura 2000 sites are the Dalkey Islands SPA and the Rockabill to Dalkey Island SAC, located c. 2.5 km to the east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An agent for the first party has submitted an appeal of the decision of the Planning Authority to refuse permission. The appeal document provides details of the proposed dwelling, history of the Violet Hill area and development plan provisions pertaining to the area. The Board is asked to note the following:

- The proposed dwelling has been designed to sit into the sloping site with excavation and construction of a retaining wall. The report of the Council planning officer found no fault in the proposed dwelling. The two reasons for refusal relate to the Transportation department report.
- The development plan provides for two lists of road projects – six-year road objectives and longer-term projects. The development plan provides that projects may transfer from one list to the other subject to the availability of resources.
- The six-year project for Church Road was the subject of a scoping report and an EIS in 2011, with no progress since notwithstanding that the six-year timeframe is half-way through.
- The pre-planning consultation with the Council did not refer to traffic concerns.

6.1.2. The grounds of the appeal can be summarised as follows:

- There is no development policy prohibiting development along the bus priority routes. The decision of the Planning Authority to ban development on all lands along these routes would effectively sterilise vast areas of land.
- The NTA is concentrating in the Bus Direct programme and it is not clear what priority the R118 route will have.
- The development of only one house will not make any material difference to the bus priority route. This represents a disproportionate response.
- The bus priority route will depend on the six-year road objective. The road scheme will accommodate existing access points and therefore the proposed development represents no risk.
- It is not been the policy of the Council to refuse for small-scale in-fill development.

- The issue of prematurity or impact on the road scheme were not a concern when permission was granted for the following dwellings on Violet Hill:
 - PL06D.244922 Fairways,
 - D12A/0459 Cruachan,
 - D08A/1195 as modified, to the rear of Aspen,
 - PL06D.220622 Foxfield,
 - And in the wider area: D16A/0151 Balure
- Prematurity was referenced as a reason for refusal for the development of 14 no. units at Harrow House (PL06D.247005) and subsequently for three houses (PL06D.301074). It is submitted that the proximity of the proposed entrance to the Wyatville dual carriageway and that there was no right turn into the site were the fundamental concerns.
- It is submitted that there is uncertainty regarding the realisation of the road scheme within the six-year objective. It is submitted that in this context it is unreasonable to impose a blanket ban on development served by this road.
- The development of a single house, with approx. four vehicular movements per day, 200m from Church Road will not have any impact on any future rearrangement of Church Road. The declaration of “seriously adverse impact” is not accepted.
- The potential for further development on Violet Hill is limited therefore no precedent will occur.
- The existing entrance from Violet Hill onto Church Road exceeds all requirements for sight lines, there are no restrictions on turning onto Church Road and therefore no traffic hazard will arise.
- The Board is asked to grant permission for the proposed development.

6.2. Planning Authority Response

- 6.2.1. There is an objective to protect and preserve trees and woodland, a 6-year road proposal and a ‘Proposed Quality Bus / Bus Priority Route’ along Church Road as per Map 7 of the development plan. Permission was refused for two reasons. The planners report considered the fundamental issue to be the increased vehicular movements on a road adjoining a road identified for improvements and a priority bus scheme. The proposed development is therefore premature. The comments of the

Transportation Department are noted. The decision of the Board to refuse permission for a development at Harrow House on Church Road is noted (ABP-301074-18)

6.2.2. The Board is referred to the previous planning report. All items / issues raised were noted and assessed during the Planning Application assessment. The grounds of the appeal do not raise any new matter which in the opinion of the Planning Authority would justify a change of attitude to the proposed development.

6.3. **Observations**

6.3.1. **Ciaran and Mary Brady:**

- Owners of Orchard House, Violet Hill, Church Road – immediately adjoins the proposed development.
- The stone walls around Orchard House date from 1888-1913 and could not withstand the stress from the proposed development.
- The proposed driveway will be 2-3.75m higher than the Observers driveway.
- A structural engineering report states that a high barrier should be provided along the proposed entrance and that the retaining structure requirements for the proposed new driveway should be reviewed.
- The Board is asked to consider the negative impacts of the proposed development on Orchard House and refuse permission.

6.3.2. **Andrew O'Daly:**

- Owner of the development adjoining the subject site.
- No objection to a house on the site but the proposed development contravenes the Councils standards for new dwellings.
- Proposed dwelling would seriously injure the residential amenity of the Observers property.
- The Planning Authority's conclusion that the proposed development would cause overshadowing or overlooking of the adjoining properties is not evidence based.
- Planning Authority did not take their concerns regarding garden depth into account. The rear of the dwelling faces the Observers house and as no rear

garden has been proposed, this contravenes section 8.2.8.4 of the development plan. The Planning Authority accepted that no rear garden would be provided based on the design of the proposed dwelling. 75sq.m. of private open space is required to the rear of the dwelling.

- The proposed two storey dwelling 1m from the boundary wall is unacceptable.
- The planning authority erred in their measurement of separation distances and site levels.
- Proposed dwelling will read as a two-story house and will overlook the Observers dwelling. It appears to encroach into the Observers property. The proposed dwelling will be 4.2m higher for a length of 30m
- The Planning Authority's comparison between the proposed and the Observers dwelling is not accepted.
- No details of the boundary wall have been presented.
- The proposed dwelling cannot be constructed without the Observers consent due to the level of excavation required and the rock type close to the surface.
- The Board is requested to refuse permission.

6.4. **Responses to First Party Submission**

6.4.1. **Planning Authority:** No further comments

6.4.2. **Andrew O'Daly:** The Applicant's photograph does not correctly indicate the O'Daly house but shows a different house as being a new house when in fact it was constructed four years ago.

6.4.3. **Ciarán & Mary Brady, Orchard House:** Their concern relates to the safety of the driveway elevations. Notwithstanding the submission of the first party, it remains the Observers submission that the driveway should be setback from their property. The opinions of the First Party's agent should be subject to review by a structural engineer. The Board is requested to attach such a condition

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have

assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Traffic

7.2. Principle of Development

- 7.2.1. The subject site is located in an area zoned to protect and / or improve residential amenity.
- 7.2.2. I concur with the findings of the Planning Authority that the topography of the subject site and the wider area and the separation distances from the proposed to the surrounding dwellings is such that no overlooking or overshadowing will occur. It is considered that the proposed design responds well to the constraints of the subject site and the wider area and is acceptable in terms of protection of residential amenity – both for the proposed and adjoining dwellings.
- 7.2.3. With regard to the provision of open space, I note section 8.2.8.4 of the development plan that allows the provision of private open space to the side of a dwelling where it is “useable, good quality space.” Further, this section of the development plan allows for a relaxation in the quantum of private open space where the subject proposal is considered an innovative design response. I am satisfied that the proposed dwelling satisfies these criteria and that the proposed open space will provide satisfactory recreational amenity area for the future residents of the proposed dwelling whilst protecting the privacy and residential amenity of the adjoining dwellings.
- 7.2.4. I note that the proposed development does not impact on the boundary walls of Orchard House.
- 7.2.5. The proposed development is in accordance with development plan policy providing for the densification of existing residential areas, infill development and standards of residential development. I am satisfied that the substantive issue to be addressed is that of traffic and compliance with development plan policy.

7.3. Traffic

- 7.3.1. The report of the Transportation Department of Dun Laoghaire Rathdown County Council recommended that permission be refused on the grounds that additional

traffic movements would have a negative impact on the capacity of the busy strategic road. The report recommended the refusal reason be based on precedent and the “significant alteration of the existing road layout for the area” and the impact that would have on the bus priority scheme.

- 7.3.2. I note that permission has recently granted by the Board for a development of 102 no. residential units (ABP-301334-18) and 42 no. units (ABP-301148-18) onto Watson Road. The traffic generated by both developments will ultimately end up on Church Road. The impact of such additional traffic generation was not considered by the Board to compromise the bus or road objectives on Church Road. Nor were the developments considered to endanger public safety or create an undesirable precedent that would affect the carrying capacity of Church Road. In this context, I fail to see how a single house would seriously adversely affect the carrying capacity of Church Road.
- 7.3.3. I note that the proposed development does not propose a significant alteration of the existing road layout as referred to in the Councils first reason for refusal. The proposed development whilst creating a new entrance on Violet Hill, will have no discernible impact on the road layout of Church Road, utilising as it will an existing access point that has wide visibility in both directions.
- 7.3.4. I am satisfied that the construction of a single in-fill dwelling on a residential cul-de-sac that is close to reaching its development potential will not seriously or adversely affect the stated development objectives of Dun Laoghaire Rathdown County Council for the future development of Church Road in terms of bus priority or road improvements.

7.4. Appropriate Assessment

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

7.5. Environmental Impact Assessment Screening

- 7.5.1. Having regard to nature of the development comprising extension to and alteration of an existing dwelling and the urban location of the site there is no real likelihood of

significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

8.0 Recommendation

- 8.1.1. It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1 Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which permission is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

- 2 Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

- 3 Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

- 4 All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

- 5 The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interests of orderly development

- 6 Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Classes 1, 3 and 5 of Schedule 2, Part 1 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: In the interest of orderly development, and to allow the planning authority to assess the impact of any such development on the amenities of the area through the statutory planning process

7. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Gillian Kane
Senior Planning Inspector

14 March 2019