



An
Bord
Pleanála

Inspector's Report ABP 303229-18.

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| Development | Construction of one house. |
| Location | Site adjoining No. 1 The Willows, Commons East, Swords, Co. Dublin. |
| Planning Authority | Fingal County Council. |
| Planning Authority Reg. Ref. | F18A/0547. |
| Applicant(s) | Sean O'Malley. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party |
| Appellant(s) | Sean O'Malley. |
| Observer(s) | None. |
| Date of Site Inspection | 10 th of February 2019. |
| Inspector | Karen Hamilton. |

1.0 Site Location and Description

- 1.1. The subject site is a small area of open space located at the end of a cul-de-sac which consists of 3 no. detached dwellings, The Willows, at the south east of Swords. The site is accessed by a laneway which radiates south from Dryam Road, through Barry's Park which provides access for c. 11 dwellings.
- 1.2. The lands to the north of the site are predominantly detached residential and those to the south is an undeveloped Greenfield site.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - One two storey detached dwelling (154m²) and all associated works.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for 3 no. reasons as summarised below:

1. The proposed development is located in an area designated as public open space under Planning Ref No F06A/1270 and F07A/0251, to serve existing dwellings. The proposed development, if permitted, would therefore contravene materially a condition attached to an existing permission for development. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential developments of the area.
2. The proposed development would result in the loss of public open space in an area where there is a deficiency of useable public open space. Additionally the poorly proportioned scale and design of the proposed open space is at variance with objective DMS67 of the Fingal Development Plan 2017-2023. The proposed development would therefore seriously injure the amenities of, and depreciate the value of property in the vicinity.

3. Having regard to the lack of adequate information submitted with respect to the proposed foul sewer, surface water drainage and water supply for the proposed development, the applicant has failed to comply with the Sanitary Services Acts and the proposed development would therefore be prejudicial to public health.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and refers to the following:

- The unacceptable nature of development on an area designated as open space.
- The residential development complies with the ME- Metro Economic Corridor zoning.
- Comments received from the other sections of the council including Parks and Green Infrastructure and Water.
- Irish Water request for additional information

3.2.2. Other Technical Reports

Water Services Department- Request for further information on a proposed soakaway.

Transport Section- Request for further information on the proposed amended turning head.

Parks Division- Recommend a refusal.

3.3. **Prescribed Bodies**

Irish Water- Request for further information on water supply and foul drainage.

3.4. **Third Party Observations**

None received.

4.0 Planning History

Reg Ref F18A/0075

Permission refused for 2 no. semi-detached dwellings and ancillary works for reasons relating to contravention of condition No 1 of Reg Ref F06A/1270 which indicates the lands are open space, the lack of separation distance to the boundary to the west/south, the lack of information of the foul sewer, surface water drainage and water supply and the impact on the residential amenities.

Reg Ref F07A/0251

Permission consequent to the grant of Outline Permission (Register Reference F06A/1270) sought for 3 no. detached two story dormer dwellings. The open space requirement was 262.5m² and with only 136m² provided, the remaining 126m² was levied.

Condition No 1 required compliance with those plans and particulars submitted.

Condition No 7, Y roads conditions, included the minimum size of the turning area.

Condition No 10 required the payment of a levy in lieu of the open space not provided.

Reg Ref F06A/1270

Outline permission granted for 3 no. dwellings subject to 13 no conditions. The lands, subject to the appeal are detailed as public open space on the permitted plans.

Condition No 7 required that the area shown as open space was landscaped and to be available for use by residents on completion of their dwellings.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

The lands are located on lands zoned as ME – Metro Economic Corridor where it is an objective to *“Facilitate opportunities for high density mixed use employment generating activity and commercial development, and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor”*

- Residential Development is permitted in principle

Objective ED99

Protect the integrity of the Metro Economic corridor from inappropriate forms of development and optimise development potential in a sustainable and phased manner

Open Space

Chapter 3 Quantity - It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area.

Objective PM53 - Require an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable.

Objective DMS67- Ensure open space provision is suitably proportioned and inappropriate narrow tracts are not provided.

5.2. Natural Heritage Designations

The site is located c. 1.6km south of Malahide Estuary SPA and c. 1.6km south of Malahide Estuary SAC.

5.3. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development 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.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal is submitted by the applicant in relation to the refusal and the issues raised are summarised below:

Planning History

- There is a previous refusal on the site (F18A/0075) based on the designation of lands as open space.
- The lands have not been taken in charge.

Open space

- The proposed development is for a single dwelling with a reduced area of public open space as a compromise.
- The residents of the Willows would prefer there was no open space.
- The proposed dwelling includes low walls and in conjunction with the open space to the left of the dwelling will give an open look to the hammerhead.

Surface Water

- The open space includes a soakaway for the existing road which was one of the reasons raised in the first application.
- Further drainage details could be submitted as compliance to a condition.

Other

- There were no objections received on the proposal.
- The applicant resides in the dwelling beside the open space with his parents and should be given the opportunity for a dwelling.

6.2. Applicant Response

The applicant is the appellant.

6.3. Planning Authority Response

A response from planning authority was received as summarised below:

- The three reasons for refusal were detailed.
- It is accepted the lands are not taken in charge although the lands are designated open space for the Willows residential development.

- There is a deficiency of public open space in the immediate vicinity and within walking distance and a further loss or reduction would have a negative impact on the residential amenity.
- If successful, a Section 48 contribution should be applied.

6.4. **Observations**

None received.

7.0 **Assessment**

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Water
- Access
- Appropriate Assessment

Principle of Development

7.2. The subject site is on an area of open space located at the end of a row of 3 no. detached dwellings which is currently well maintained with allotments and semi-mature planting throughout. The proposed development is for the construction of one detached dwelling located along the south of the site.

7.3. The site is located on lands zoned in the Fingal County Development Plan 2017-2023 as “ME” Metro Economic Corridor, where it is an objective to facilitate high density mixed use development and support the provision of an appropriate quantum of residential development. Residential development is a permissible use within this zone.

7.4. The first reason for refusal relates to the designation of the site as open space provision for these existing 3 no dwellings adjacent to the site as per Reg Ref F06A/1270 (outline permission for the 3 dwellings) and F07A/0251 (permission consequent). The Report of the Parks and Recreation Department noted the designation as open space and referred to Condition No 10 of F07A/0251 which

required the provision of a financial contribution in lieu of a short-fall of 126m² of open space and I consider this condition reasonable.

- 7.5. Having regard to the designation of the lands for the provision of open space for the 3 no dwellings in The Willows and the plans and particulars in permitted under Reg Ref F06A/1270 and F07A/0251, I consider the proposed development would materially contravene the conditions of an existing permission and therefore the principle of development at this location is not acceptable.

Impact on the Residential Amenity.

- 7.6. A previous proposal for 2 dwellings was refused (F18A/0075) based on the removal of lands as open space provision as permitted under F06A/1270 and FO7A/0251, discussed above. Chapter 3 of the Fingal County Development Plan 2017-2023 requires the minimum provision of 10% of public open space and Objective PM53 permits an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable. The report of the area planner integrated comments from the parks department of the local authority who referenced the inadequate provision of amenity space in the overall vicinity of the site and consider it necessary to retain the existing open space.
- 7.7. The submitted drawings have indicated a linear area along the east (c. 120m²) of the subject site retained as open space which is inadequate to comply with the minimum requirement for 10% provision or a suitably proportioned design required in Objective DMS67 as per the development plan. The applicant states that there is no objection from any of the other residents along The Willows. The proposed open space lands are not within the control or ownership of the applicant. This aside, having regard to the location of and high quality of the existing open space and the size and scale of the proposed open space, I consider the proposed development would have a significant negative impact on the residential amenity for those existing residents in the vicinity of the site.

Water

- 7.8. The proposal connects into the existing foul sewer and public water supply. No specific details were included with the application and Irish Water requested additional information on the water connection and foul drainage layout and details.

The grounds of appeal did not include any further information for proposed connections.

- 7.9. The proposed development also includes the relocation of a soakaway from the west of the site to an area allocated as open space along the east of the site to facilitate the surface runoff from the road. The report of the Roads Department noted the open space was not within the control of the applicant and requested additional information on the site conditions and design of the soakaway, which I consider reasonable. The grounds of appeal did not address any of these issues raised.
- 7.10. Therefore, having regard to the failure of the applicant to provide adequate information of the foul and water connections and the removal of the soakaway to treat the surface water run-off and inadequate design of any replacement, I consider the proposed development would have a negative impact on the surrounding area. In addition, inadequate information has been submitted to indicate that the applicant has control or ownership over adjoining lands to undertake any works and therefore the proposal is premature pending the provision of sufficient infrastructure to serve the site.

Access

- 7.11. The proposed development includes alterations to the existing hammerhead provided as part of the residential development permitted under F06A/1270 and F07A/0251. Condition No 7 of F07A/0251 required a minimum of 14m by 11m to accommodate a turning area for public service vehicles. The report of the Roads Department of the local authority noted the proposed development altered this required turning area and requested the submission of a proposed amended turning head including a sweep path analysis. The grounds of appeal did not include any compliance with the further information request. In addition, the applicant has not indicated they have control or ownership over any lands to carry out the necessary infrastructure works.
- 7.12. Therefore, having regard to failure of the applicant to submit information on works required to comply with Condition No 7 of FO7A/0251, sufficient turning area for public health vehicles, or control over lands to undertake these works, I consider the proposed development materially contravenes a condition of a previous permission

and the proposal would endanger public safety by reason of traffic hazard and obstruction of road users.

Appropriate Assessment

- 7.13. Having regard to the nature and scale of the proposed development within a serviced area and separation distance 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 the conservation objectives of any European site.

8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. The proposed development would, by reason of removal of open space provision for a residential development, would contravene materially a condition attached to an existing permission for development namely, condition number 7 attached to the permission granted by Fingal County Council on the 25th day of October, 2006, under planning register reference number F06A/1270 (outline) and condition number 1, 7 and 10 attached to the permission granted by Fingal County Council on the 12th day of July 2007, under planning register reference number F07A/0251 (permission consequent).
2. Having regard to the planning history of the site, in particular the use of this part of the site as open space serving the overall development as granted by F06A/1270 and F07A/0251, and the minimum requirement for the quantum of open space (10%) required in the Fingal County Development Plan 2017-2023, it is considered that the proposed development would seriously injure the residential amenity of existing residents by reason of loss of open space.

The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The proposed development does not include adequate information on any connection for the foul water, water supply or the treatment of the soakaway for the adjoining road. The applicant has not submitted sufficient information to indicate they have control or ownership over any of the lands to undertake works to the road to service the site and surrounding area. In the absence of adequate information to service the site the proposed development would be premature, would lead to a traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area

Karen Hamilton
Planning Inspector

11th of February 2019