



An
Bord
Pleanála

Inspector's Report ABP – 303327 – 18.

Development	Retention of alterations to previously permitted planning application regarding the subdivision of communal areas, construction of new pathways and relocation of car parking spaces.
Location	No.s 75-94 Cois Inbhir, Beaverstown Road, Donabate, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F18A/0569.
Applicant	John Heneghan.
Type of Application	Retention.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Marzena Kisiel.
Observers	None.
Date of Site Inspection	20 th March 2019.
Inspector	Patricia-Marie Young.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies: None.	4
3.4. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy and Context.....	4
5.1. Development Plan.....	4
5.2. Natural Heritage Designations	4
5.3. Environmental Impact Assessment	5
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Applicant Response	5
6.3. Planning Authority Response	6
7.0 Assessment.....	6
8.0 Recommendation.....	9
9.0 Reasons and Considerations.....	9
10.0 Conditions	9

1.0 Site Location and Description

- 1.1. The appeal site consists of No.s 75 to 94 'Cois Inbhir' and the surrounding communal areas on which they are sited, in Donabate, Co. Dublin. The site has a stated 0.33ha area and consists of 20 no. 2-bedroom 2-storey back-to-back part brick and part dashed dwelling within five blocks each containing four matching dwellings that form part of a larger residential scheme (Cois Inbhir) located to the east of Beaverstown Road. These blocks are setback from a looped access road that encloses them and what was originally the communal open space which consisted mainly of green areas, and pathways. The 'Cois Inbhir' residential scheme is characterised by highly coherent in built form and appearance 2-storey semi-detached and terrace dwelling units.

2.0 Proposed Development

- 2.1. Retention permission is sought for amendments to previously permitted applications P.A. Reg. Ref. No.s F02A/0900 and F04A/118 comprising of the subdivision of the existing communal areas surround No.s 75 to 94 Cois Inbhir by way of the erection of a 'two-rail' type post and rail timber fence, the construction of new paths to provide independent access to each dwelling, and relocation of existing car parking spaces to facilitate the construction of new pathways and fences, all on a site of 0.33 hectares. This retention application also includes amended design location of bin enclosures, relocation of lamp standards, relocation of ESB mini pillars, amended exterior boundary treatment layouts and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Retention permission was **granted** subject to conditions including -

Condition 3 which relates to bin stores for the dwelling units.

Condition 4 requires revised plans and details including the relocation of ESB mini pillars at No.s 80, 84 and 86; and, where necessary boundaries to be appropriately relocated.

3.2. **Planning Authority Reports**

3.2.1. **Planning Officer Report:**

This report is the basis of the Planning Authorities decision.

3.2.2. **Other Technical Reports:** None.

3.3. **Prescribed Bodies:** None.

3.4. **Third Party Observations**

3.4.1. Two submissions were received by the Planning Authority during their determination of this application. The substantive issues raised related to design, layout and visual amenity concerns.

4.0 **Planning History**

P.A. Reg. Ref. No. F10A/0255: Permission was **granted** for the development of communal areas around Unit No.s 75 to 94 Cois Inbhir.

P.A. Reg. Ref. No. F04A/1118: Permission was **granted** for amendments to previously approved development under P.A. Reg. Ref. No. F02A/0900, which included but was not limited to revisions to elevational treatments to house No.s 75 to 94.

5.0 **Policy and Context**

5.1. **Development Plan**

5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site lies within an area zoned 'RS' which has an aim to: "*provide for residential development and protect and improve residential amenity*". Chapter 3 of the Development Plan deals with the matter of residential development.

5.2. **Natural Heritage Designations**

5.2.1. None relevant.

5.3. Environmental Impact Assessment

5.3.1. Having regard to the serviced nature of the site, the minor nature and scale of the development for which retention is sought and any amendments that may be considered appropriate by way of condition, the lack of any direct hydrological connectivity from the site to any nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the development sought. Therefore, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows -

- There is a deviation between what was permitted under P.A. Reg. Ref. No.s F10A/0255 and what is currently being applied for i.e. there is 400mm less width between the piers and the post/rail fence.
- The footpath has an 800mm width. This makes it too narrow for a vehicle to pass through with ease. This width is further reduced by the piers overhanging capping stones. It is difficult for residents to pass with a car in this space particularly with a waste bin as a result and it is considered that this space is too restricted in width to allow emergency service access.
- The Board is requested to impose a condition for an enlargement of the car parking and footpath area consistent to what was originally permitted under P.A. Reg. Ref. No. F10/0255 at the entrance to No. 83 Cois Inbhir.

6.2. Applicant Response

6.2.1. The Applicants response can be summarised as follows -

- The works done to subdivide the communal areas were finished in 2017 and the gardens to the north and south of the path, car space, piers and entrance to

which the appellants raises concerns have been transferred in ownership to these adjoining properties.

- The appellant was offered the parking bay and footpath to No. 83 on the *proviso* they are accepted as they are.
- This estate was completed in 2006 and the position of the mini-pillars have been accepted by the Planning Authority under P.A. Reg. Ref. No.s F04A/1118.
- The erection of a fence provides a visual barrier to the mini pillar making it safer.
- The privatisation of the parking spaces also means that these spaces serve only the owners of the dwelling houses they have now been transferred to.
- The Board should note that the owners of the parking bay at No. 84 are in consultation with the ESB to move the mini pillars.
- This application is for retention not new development with the mini pillars, light standards and parking areas in relation to No.s 80, 84 and 89 being argued to be '*in situ*' since 2006.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows -

- No objection is raised to the inclusion of a condition relating to the enlargement of the car parking and footpath areas referred to by the appellant at No. 83 Cois Inbhir.
- Should the Board uphold the Planning Authority's decision it is requested that a Section 48 Contribution Condition be imposed.

7.0 Assessment

7.1. Overview

7.1.1. The main issues in this appeal are those raised by the appellant in their grounds of appeal submission to the Board and by the Applicant in their response. I am satisfied that no other substantive issues arise. The issues are addressed under the following headings -

- Principal of the Proposed Development
- Civil Matters
- Amenity Impact
- Appropriate Assessment

7.2. Principle of Proposed Development

7.2.1. By way of this application retention is sought for alterations made to a previously permitted applications P.A. Reg. Ref. No.s F02A/0900 and F04A/118. It essentially consists of the subdivision of an open communal landscaped area that previously surrounded dwelling units the back to back 2-storey dwelling units of No.s 75 to 94 Cois Inbhir in order to facilitate the privatisation of this space in the form of footpaths, boundaries and car parking spaces. The appeal site, which forms part of the Cois Inbhir residential development scheme, is zoned 'RS'. The objective for such lands is to provide for residential development and protect and improve residential amenities. I consider that the general principal of this development is consistent with this zoning objective, subject to safeguards.

7.3. Civil Matters

- 7.3.1. It would appear that outside of the appellants property, No. 83 Cois Inbhir, that the applicant has completed the transfer of the subdivided communal spaces to the other remaining dwelling units of No.s 75 to 82 and No.s 84 to 95. These landowners raised no objection to the retention development sought under this application.
- 7.3.2. The landowners that now adjoin the footpath and car parking space that has been created to serve No. 83 have not provided any written consent to have any encroachment into their properties for the widening of these or other works.
- 7.3.3. Whilst I do not consider the applicants requests to have the widths of the footpath and entrance to the car parking space that has been laid out to serve the appellants property unreasonable, in the absence of consent of the adjoining landowners I question the *vires* of recommending the Board to attach such a condition should they be minded to grant retention for the development sought under this application.

7.3.4. I am also cognisant that Section 7.3 of the Development Management Guidelines for Planning Authorities sets out the basic criteria for conditions. They include but are not limited to that they are 'enforceable'. In addition, Section 7.3.3 further indicates that a condition should not be imposed if it cannot be made effective and that conditions should be capable of being complied with. In this case I consider a condition requiring an increased width of the footpath and entrance to the car parking space that is set out to serve the appellants property is not within the applicants power to fulfil and as said there is no consent that such works would be acceptable to the affected adjoining property owners nor is there any easements over these properties that would facilitate such a provision.

7.3.5. I therefore consider that the concerns raised predominantly give rise to legal concerns and are outside of the remit of the Board. Should the Board be minded to grant retention permission as is recommended by way of this assessment I recommend the inclusion of an advisory note reiterating Section 34(13) of the Planning & Development Act, 2000, as amended.

7.4. **Amenity Impact**

7.4.1. I consider that the development sought under this application that are substantially *in situ* gives rise to no substantive impact on residential and/or visual amenities. Having inspected the site and its setting the works have been carried out in consistent manner with the surrounding Cois Inbhir residential development. They also give rise to an increased level of safety, security and privacy for occupants of No.s 75 to 94 Cois Inbhir, the properties for which this application relates.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the development for which retention is sought, the location of the appeal site within an existing residential estate within the suburban area of Donabate that has been completed since 2006, the lack of any hydrological link to any European site and the separation distance to the nearest European Site, I consider no appropriate assessment issues arise and that the development would not be likely to have a significant effect, individually or in combination, with other plans or projects on a European site.

7.6. **Other Matters**

7.6.1. **Bin Enclosures:** Should the Board be minded to grant retention permission for the development sought under this application I recommend that they include a condition like Condition No. 3 which requires each of the dwelling units to which this application relates have access to one of the types of bin enclosures identified in Drawing No. 50-46-01. I consider that such a condition is reasonable in the interests of both residential and visual amenities.

7.6.2. **ESB Mini Pillars:** Should the Board be minded to grant retention permission for the development sought under this application I recommend that it include a condition reiterating the requirements of Condition No. 4 of the Planning Authority's decision to grant retention permission. In this regard, I consider that the ESB mini pillars which are in the car parking spaces of dwelling units No.s 80, 84 and 86 are poorly sited in that they diminish the effective functional use of these spaces. It is therefore appropriate that they are relocated to a suitable position that does not interfere with existing infrastructure services or cause any undue obstruction to pedestrian and vehicle movement on site. I consider that such a condition is reasonable as it is in the interest of proper planning and sustainable development.

8.0 Recommendation

8.1. I recommend a **grant** of retention permission.

9.0 Reasons and Considerations

Having regard to the provisions of the Fingal Development Plan, 2017-2023, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential and visual amenities of the surrounding area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. All townhouse units shall have access to a bin store of one of the types identified in the submitted drawings, i.e. Drawing No. 50-46-01 received by the Planning Authority on the 12th day of October 2018.

Reason: In the interest of residential and visual amenity.

3. Within 6 weeks of the final grant of permission the developer shall submit for the written agreement of the Planning Authority revised plans and details to demonstrate the following: -
 - (i) The ESB mini pillars located in the car parking spaces of unit numbers 80, 84 and 86 shall be removed and relocated to a more suitable location within the garden of the said dwelling units or other location as agreed with Electric Ireland.
 - (ii) Where necessary boundaries and any other structures shall be relocated to ensure access to all manholes within the subject site are maintained and not obstructed by any structures.

Reason: In the interest of proper planning and sustainable development of the area.

Advisory Note: Section 34(13).

Patricia-Marie Young
Planning Inspector

16th April 2019