



An  
Bord  
Pleanála

## Inspector's Report ABP 304531-19.

### Development

Retention of development as constructed including block boundary walls along Quarry Road and garden areas of El Dorado and House A; vehicular access to El Dorado and House A; garage structures to House A, B and C; location and fenestration and external finishes of Houses A, B and C together with all associated landscaping and site works.

### Location

El Dorado, Quarry Road, Rathmichael, Shankill, Co. Dublin.

### Planning Authority

Dun Laoghaire Rathdown County Council.

### Planning Authority Reg. Ref.

D19A/0020.

### Applicant(s)

Kalidone Developments Ltd.

### Type of Application

Retention Permission.

### Planning Authority Decision

Grant with conditions.

### Type of Appeal

Third Party.

<b>Appellant(s)</b>	Conor Molloy & others.
<b>Observer(s)</b>	1. Rathmichael Residents Association.
<b>Date of Site Inspection</b>	12 <sup>th</sup> September 2019.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1.** The appeal site, Rocklands, is accessed via Quarry Road, Rathmichael, Shankill, west of the M50. The immediate area is semi-rural in character and is characterised by houses on individual plots of varying sizes, scales and styles. The site is the original garden of El Dorado, a detached split level house dating from the 1970s that was constructed in a former quarry, the quarry face remains visible along the southern boundary of the site. Access to El Dorado is via the internal access road within Rocklands that also serve the three houses which are the subject of this appeal. The appellant's house, Quarry Lodge, bounds the application site to north. Quarry Road bounds the site to the west, Ferndale Road to the east and the rear gardens of houses form the southern boundary.
- 1.2.** Permission was granted under Planning Authority Reference D07A/1788 for a residential scheme of three detached contemporary style houses on large plots with a shared open space. The scheme is substantially complete with some individual landscaping to houses, internal fit-out of houses and some works to TIC standards remain outstanding.

## **2.0 Proposed Development**

- 2.1.** Retention of development as constructed including block boundary walls along Quarry Road and garden areas of El Dorado and House A; vehicular access to El Dorado and House A; garage structures to House A, B and C; location and fenestration and external finishes of Houses A, B and C together with all associated landscaping and site works on a site with a stated area of c.0.556 hectares.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission for retention subject to 3 conditions.

Condition No. 1. Plans and particulars.

Condition No. 3. Compliance with the parent permission (Planning Reg. Ref. D07A/1788.

Condition No. 3 related to a pedestrian crossing details.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

This formed the basis of the Planning Authorities decision, points of note included:

- The changes to be retained would not have a negative impact on the residential amenities of adjoining properties.
- Issues relating to the installation of heat pumps on site and noise complaints. The Case officer noted that the provision of such heat pumps constitutes exempted development under SI 600/2001 of the Planning and Development Regulations 2001 (as amended) subject to certain limitations.
- The Drainage section noted no objection to the changes to be retained. It is recognised that there is an overland flow issue related to road drainage.

Following a further information request on foot of a recommendation from the Transportation Planning Section relating to sightlines and pedestrian crossing details. A recommendation to grant permission for retention was made.

AA Screening:

The Report noted that there are no designated sites within the immediate vicinity. And that the nearest sites are South Dublin Bay and Booterstown Marsh and South Dublin Bay SAC. The report concluded that there is likelihood of the development having any significant impact on any Natura 2000 site either by itself or in combination with other plans or projects.

### **3.2.2. Other Technical Reports**

**Transportation Planning.** Issues relating to sightlines and pedestrian crossing were addressed to the satisfaction of the Transportation Section in the further information submission. No objection subject to conditions.

**Drainage Division.** No objection subject to conditions.

**EHO** Note the development must be in compliance with the Planning and Development Act 2000 Fourth Schedule 10(g) the development should 'not be prejudicial to public health.'

### **3.3 Submissions**

Three submissions were received by the Planning Authority from 1) Rathmichael Residents Association (Observer on the appeal), 2) Martin Bernon (Ferndale Lodge, Ferndale Road) and 3) Conor Molly (Quarry Lodge, Quarry Road) (appellant). The issues raised broadly reflect the grounds of appeal and the observations on the appeal. Points of note include:

- Non compliance with the original planning permission.
- Flooding.
- Negative impact on the residential amenities of adjoining properties.
- Would set an undesirable precedent.
- Noise from the ground to air heating pumps causing a nuisance.
- Removal of trees.

### **4.0 Planning History**

Parent Permission:

**PA Ref. No. D07A/1788** refers to a grant of permission for the construction of 3 no. 2-storey detached houses with detached garages, new access road, be Biocycle drainage system for each house and ancillary works.

**PA Ref. No. D07A/1788/E** refers to an Extension of Duration granted in 2013 until the 6<sup>th</sup> August 2018.

**Other:**

**PA Ref. No. 09A/0445 (ABP Ref. No. 06D.234765)** refers to a 2009 decision to refuse Dan McGrattan outline permission for a house and biocycle drainage treatment system in the grounds of El Dorado with an entrance off the access road permitted under D07A/1788. Reason for refusal related to public health

and risk to ground water pollution due to an excessive number of houses served by individual systems.

**PA Ref. No. D12A/0460** refers to a 2013 decision to refuse permission for the construction of 2 no. dwelling houses, access road and new Biocycle water treatment systems for each house on the grounds of 1) lack of drainage facilities and premature pending the provision of sewerage services to the area, 2) non-compliance with the EPA Code of Practice Wastewater Treatment and Disposal Systems serving Single Houses.

**PA Ref. No. D18B/0327** refers to a 2018 grant of permission for the reconfiguration and extension of existing three storey dwelling house (El Dorado) on site. The issue of wastewater treatment systems for the houses and compliance with the EPA requirements was addressed in this application.

## **5.0 Policy and Context**

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

The site is zoned under Land Use Objective 'A' with a stated objective '*to protect and/or improve residential amenity*'.

**RES7:** *It is the Council policy to encourage the establishment of sustainable communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the interim Housing Strategy.*

#### **Chapter 8. Principles of Development:**

**Section 8.2.3 Residential development** applies.

**5.2 Project Ireland 2040 - National Planning Framework** The recently published National Planning Framework includes a specific Chapter, No. 6, entitled 'People Homes and Communities'. It includes 12 objectives among which Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating

physical activity facilities for all ages. Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

### 5.3 Guidelines

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the directly relevant **S.28 Ministerial Guidelines** are:

- **‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’).**
- **‘Design Manual for Urban Roads and Streets’ (DMURS).**

### 5.4 Natural Heritage Designations

There are no designated sites within the immediate vicinity. The nearest European sites are:

- Ballyman Glen SAC (site code 000713) is c. 2.8km to the south.
- Knocksink Wood SAC (site code 000725) is c. 3.7km to the southwest.
- Wicklow Mountains SAC (site code 002122) is c. 6.2km to the southwest.
- Wicklow Mountains SPA (site code 004040) is c. 7km to the southwest.
- South Dublin Bay & River Tolka SPA (site code 004024) is c. 7.8km to the north.
- South Dublin Bay SAC (site code 000210) is c. 7.8km to the north.

## **5.5 EIA Screening**

Having regard to nature of the development to be retained comprising of changes to a permitted housing 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**

A third party appeal was lodged by Conor Molloy, Catriona Long and C. Molloy (a minor residing at this address), Quarry Lodge, Quarry Road, Rathmichael, Shankill, Co. Dublin. The owner of the adjoining property to the north of the site.

### **6.1. Grounds of Appeal**

The grounds of appeal are summarised as follows:

- Non-compliance with parent permission and a history of planning enforcement complaints.
- Overlooking and loss of privacy due to raised grounds levels of the rear garden of House A, boundary treatment and tree removal.
- Noise from air to water pump systems and the erection of noise defecting walls is having a detrimental impact on the residential amenities of the occupiers of Quarry Lodge, in particular at night time.
- Deteriorating drainage due to significant elevation of the site to the front of House B.
- Potential flooding from the rear garden of House A.
- Devaluation of property.
- Noise from tennis court along the boundary with Quarry Lodge.
- Removal of Trees has resulted in increased noise pollution and risk of flooding.



- The size of the site is too small for 4 individual treatment systems. No evidence that the systems installed comply with the EPA Guidelines.
- No evidence that an appropriate assessment was carried out.
- Request that a 6-8 foot wall be provided between the boundary for House A&B and Quarry Lodge to address noise and overlooking concerns.

## 6.2. Applicant Response

This is mainly in the form of a rebuttal. Points of note include:

- The applicants purchased the site in 2017 with the benefit of planning.
- Works commenced in February 2018 and were substantially complete by August 2018.
- The development has been completed substantially in compliance with the original planning permission.
- No trees have been removed without prior approval by DLRCC. Any undergrowth removed has been replaced with native hedgerow species.
- In response to the sound complaint. The applicant notes that the enforcement action was closed and that the air source heat pump system falls under Class 2(d) Exempted Development.
- The air to water heat exchanger referred to does not form part of the application and is more than 10m from the appellant's boundary. The EHO confirmed that there was no breach of Class 2(d) of the Regulations and therefore is not relevant to this appeal.
- Drainage has been installed in accordance with the requirements of DLRCC. The Drainage Division raised no objection to the development to be retained in their submission on file.
- The ground levels around House A have not been raised. Overlooking of the adjoining garden (Quarry Lodge) does not occur from the garden area of House A.
- No increase in flooding arises as a result of the construction of House A or its associated site works.

- Appropriate Assessment should not be considered necessary as the application is for minor alterations to an already approved and constructed scheme.
- The request by the appellant for the provision of a boundary wall between Houses A&B would require the removal of all the trees and extensive landscaping along this boundary. This would be inappropriate for this outer urban area.

Documentation submitted:

- A copy of 'Noise Monitoring Report for South Dublin Construction' dated March 2019 is enclosed with the response.
- Copy of Landscaping Compliance submission.

### **6.3 Planning Authority Response**

None.

### **6.4 Observations**

One observation was received from Rathmichael Residents Association. This is summarised as follows:

- Noise nuisance from the unauthorised heat pumps.
- Need to comply with the Enforcement Notice and demolish/removal all unauthorised development.
- A grant of permission for retention would set an undesirable precedent.

## **7.0 Assessment**

I note that the application before the Board refers to the retention of changes to the scheme permitted under PA. Ref. No. D07A/1788. An application for a similar proposal was refused permission in January 2013 on the grounds of public health and prematurity pending the provision of sewerage services to the area. This issue was not raised in the Extension of Duration application in 2013 which the Planning Authority granted in August 2013. I further note that under

PA Ref. No. D18B/0327 which related to the refurbishment, alterations and extension of El Dorado that the issues of onsite treatment systems, compliance with EPA guidance and compliance with D07A/1788 was the subject of the further information submission that was addressed to the satisfaction of the Planning Authority. It is therefore, unreasonable to revisit this issue in the current application before the Board.

The main issues in this appeal are those raised in the grounds of appeal. The issue of appropriate assessment screening also needs to be addressed. The issues can be dealt with under the following headings:

- Residential Amenity.
- Appropriate Assessment.

## **7.1 Residential Amenity**

7.1.1. The current proposal is for the retention of alterations to a permitted scheme of three detached houses known as 'Rocklands' granted permission under PA Ref. No. D07A/1788 in what was the original back garden of 'El Dorado', a detached split level house. The proposal before the Board refers to the retention of:

- Block boundary wall along Quarry Road and garden areas of El Dorado and House A.
- Vehicular access to El Dorado and House A.
- Garage structures to Houses A, B & C.
- Location and fenestration and external finishes of Houses A, B & C.
- All associated landscaping and site works.

7.1.2 The Boundary treatment along Quarry Road and bounding House A is acceptable. The use of Paladin Fence along the northern boundary of the site, separating Houses A&B from Quarry Lodge is not acceptable. I note that the appellant's request to provide a wall along this section would require the removal of trees. Boundary treatment between the site and the appellant's

property should be sufficient to provide adequate screening of the properties in the interest of protecting the residential amenities of existing and future occupiers. I am satisfied that the issue of boundary treatment can be addressed by condition that requires details to be agreed with the Planning Authority.

7.1.3 It is my considered opinion revised house location and site layout to be retained would not significantly reduce the amenities of each unit, where appropriate design solutions to the elevations have been proposed to address potential overlooking of the adjoining properties.

7.1.4 I consider the changes to the fenestration and external finishes enhance the design of the houses. The minor alterations to the site layout are acceptable and comply with the required Development Plan standards. The changes to be retained would not result in overlooking or overshadowing of adjoining residential properties and do not detract from the amenities of adjoining houses or those within the scheme.

7.1.5 The revised location of the detached garages is acceptable. The minor modification to the site layout does not have a detrimental impact on the residential amenities of adjoining properties or properties within the scheme.

7.1.6 With regard to the noise arising from the Air to Heat Pumps serving houses A&B I note that these are set back c. 11.2m and c.11m respectively from the boundary with the appellant's property. A Noise Monitoring Report submitted by the applicant with their response to the appeal has set out the noise levels associated with the heat pump systems. I have examined this report and I conclude that the noise associated with the heat pumps is within the acceptable range. I note that the appellant has not submitted an independent Noise Monitoring analysis to support his assertions. Furthermore I draw the Boards attention to the Schedule 2, Part 1, Class 2(d) of the Planning and Development Regulations 2001 (as amended) which relate to the installation on or within the

curtilage of a house of a ground heat pump system (horizontal and vertical) or an air source heat pump and the conditions and limitations required that apply.

7.1.7 The Transportation Section and Drainage Division have not raised traffic or drainage concerns and have no objection to the changes to be retained.

7.1.8 The principle of a small residential scheme at this location was assessed and deemed acceptable under PA Reference No. D07A/1788. The purpose of the current assessment is to assess the modifications to that scheme and the impact that arises from same. On balance I consider the changes to be retained minor and would not detract from the amenities of adjoining properties or those within the scheme. Subject to compliance with conditions attached to D07A/1788 I consider the proposal acceptable and would not constitute a traffic hazard or increase the potential for adjoining lands to flood.

## **7.2 Appropriate Assessment:**

7.2.1 Having regard to the location of the site and the nature of the application, 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.

## **8.0 Recommendation**

I recommend that permission for retention should be granted, subject to conditions as set out below.

## **9.0 Reasons and Considerations/ Reasons**

Having regard to the provisions of the Dún Laoghaire Rathdown Development Plan 2016-2022 and to the nature and scale of the development to be retained, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual

amenities of the area. The development to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions.

1. Save for amendments granted on foot of this permission, the development shall otherwise be completed in strict accordance with the terms and conditions of Planning Permission Reg. Ref. D07A/1788 save as may be required by other conditions attached thereto.

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

2. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by details received by An Bord Pleanála on the 21<sup>st</sup> June 2019, 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

3. The use of Paladin Fence along the northern boundary of the site is not acceptable. Revised boundary treatment and landscaping between Houses A&B and Quarry Lodge shall be submitted to and agreed in writing with the Planning Authority within two months of this order. Boundary treatment and screen planting shall be carried out within three months of this order unless otherwise agreed within the Planning Authority.

**Reason:** In the interest of visual and residential amenities.

4. 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.

5. Each entire dwelling shall be used as a single residential unit only.

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

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Dáire McDevitt  
Planning Inspector

24<sup>th</sup> September 2019