



An
Bord
Pleanála

Inspector's Report

ABP-304532-19

Development	Construction of detached house in the side garden of Shanid
Location	Shanid, Beech Park Road, Foxrock, Dublin D18 R9C1
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/1200
Applicant(s)	L. Sheehan & A. Kraemar
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Betty & Michael Cody
Observer(s)	None
Date of Site Inspection	30 th July 2019
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.02668 ha is located at the end of Beech Park Road and is accessed from a private road which serves two dwelling houses only; Shanid and Verona. The appeal site forms the side garden of the existing dwelling known as Shanid. This dwelling has car parking provided within the front setback and its principal amenity space is located to its side and rear. The existing dwelling has a double storey built form with a single flat roof extension to its rear.
- 1.2. The appeal site is located in an established residential area which is characterised by single and two storey detached dwellings of a varying architectural forms and styles.
- 1.3. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail

2.0 Proposed Development

- 2.1. Permission is sought for the following:

- 1) A 3-bedroom 2 storey detached house (97.17 sqm) in the side garden of Shanid
- 2) The demolition of the existing 2m high x 41m long boundary wall with the adjoining neighbour at No. 53 Beech Park Road
- 3) The construction of a new replacement 41m long boundary wall with the adjoining neighbour at No. 53 Beech Park Road. This new replacement boundary wall is to be 2m in height as measured from the external ground level on the adjoining neighbour's side at no. 53 Beech Park Road.
- 4) All associated site works

- 2.2. The application was accompanied by the following:

- Cover letter from the applicants agent Peter O'Dwyer Architects setting out inter alia reasons for applying for the house (the site belong to the applicants (Leonard Sheehan) father) and compliance with Section 8.2.8.4 Private Open

Space Quantity, Section 8.2.4.5 Car Parking Standards, Section 8.2.4.9 Vehicular Entrance & Hardstanding Area

- Shadow Study Report
- Letter from Breffni & Nollaig Tomlin, owners of No 53 Beech Park Road giving consent to the applicant to demolish the existing boundary between both properties and to build their proposed house on the new boundary wall between both properties.

2.3. The first party submitted the following further information as summarised:

- Revised public notices
- Letter from Murphy Solicitors who act on behalf of Peter Sheehan and Angela Sheehan of Shanid who have reviewed the applicant's title and can *confirm* that the clients are the owners of the lands outlined with a brown line on map attached. Further that access to the existing property and the proposed new property is, and will be, along the road / driveway shaded green on the map. It is confirmed that the clients are the owners of the lands shaded green. Access to the proposed property will be in common with the clients and the owners of the adjoining property Verona. As the clients are the owners of the lands shaded green they are able to grant the appropriate right of way.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. DLRCC issued a notification of decision to grant permission subject to 13 no generally standard conditions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. The **Case Planner** in their first report requested further information as follows:

- 1) *As the proposal includes the provision of a new vehicular access to a private laneway to serve a new dwelling, the applicant is requested to demonstrate*

their ability to undertake the proposed works by using the existing wayleave by way of deeds or a legal opinion.

3.2.3. The **Case Planner** in their second report and having consider the further information submitted recommended that permission be granted subject to 13 no conditions. The notification of decision to grant permission issued by DLRCC reflects this recommendation.

3.2.4. Other Technical Reports

- **Drainage Planning** – No objections subject to conditions set out in the report.
- **Transportation Planning** - No objections subject to conditions set out in the report.

3.3. **Prescribed Bodies**

- **Irish Water** – No objections

3.4. **Third Party Observations**

3.4.1. There are two observations recorded on the appeal file. The first from BPS Planning on behalf of Betty & Michael Cody, Verona, Beech Park Road in response to the planning application. The issues raised relate to right of way, legal interest, contrary to National Planning Guidance, contrary to DLRCC Development Plan 2016 – 2022, drainage, construction and operational traffic impact, construction management impact, undesirable precedent and depreciation of property values.

3.4.2. The second observation is also from Betty & Michael Cody, Verona, Beech Park Road in response to the further information submitted. The submission states they have agreed to purchase a portion of land at the entrance to both houses (map attached). Stated that the observer does not agree to the applicant crossing over this lands for the purpose of entry or exit.

4.0 Planning History

4.1. There is no evidence of any previous planning appeal at this site. It is noted that there was a previous planning application at this location that may be summarised as follows:

Reg Ref D02A/0939 – DLRCC refused permission in 2002 for a new single storey dwelling to the front of the existing detached dwelling house at Shanid, Beech Park Road for two reasons summarised as follows:

- 1) Overdevelopment of site by reason of the lack of provision of open private space, infringement of the building line, visual impact and serious injury to the amenities of the area
- 2) Development description is confusing and misleading

5.0 Policy Context

5.1. Development Plan

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

5.1.2. **Policy RES3: Residential Density** states that 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. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009).
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).

- 'National Climate Change Adaptation Framework - Building Resilience to Climate Change' (DoECLG, 2013).

5.1.3. **Policy RES4 Existing Housing Stock & Densification** states that it is Council policy to improve and conserve housing stock of the County, to densify existing built up areas, having due regard to the amenities of the existing established residential communities and to retain and improve residential amenities in established residential communities.

5.1.4. **Section 8.2.3.4(v) Corner / Side Garden Sites** states as follows:

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. In these cases the Planning Authority will have regard to the following parameters (Refer also to Section 8.2.3.4(vii)):

- *Size, design, layout, relationship with existing dwelling and immediately adjacent properties.*
- *Impact on the amenities of neighbouring residents.*
- *Accommodation standards for occupiers.*
- *Development Plan standards for existing and proposed dwellings.*
- *Building lines followed where appropriate.*
- *Car parking for existing and proposed dwellings.*
- *Side/gable and rear access/maintenance space.*
- *Private open space for existing and proposed dwellings.*
- *Level of visual harmony, including external finishes and colours.*
- *Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.*
- *Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.*

- *Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.*

It is also recognised that these sites may offer the potential for the development of elderly persons accommodation of more than one unit. This would allow the elderly to remain in their community in secure and safe accommodation. At the discretion of the Planning Authority there may be some relaxation in private open space and car parking standards for this type of proposal.

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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

6.1.1. The third party appeal has been prepared and submitted by BPS Planning Consultants on behalf of Betty & Michael Cody, Verona, Beech Park Road. The issues raised may be summarised as follows:

- **Overview** - No objection to the owners of Shanid extending their existing dwelling. Objection to an entirely new residential property being constructed in a private walled development of two detached houses served by a private entrance and road.
- **Legal Interest** - The appellant has not given permission to the applicant to access the proposed dwelling across the piece of land located at the vehicular entrance to Shanid and Verona. The appellant has purchased this piece of

land and is in the process of registering it with the Land Registry. No permission has been given to access the site via a private entrance and road which is a Right of Way pertaining only to Shanid and Verona and not to any other house or premises. The appellant and their legal advisors have reviewed the submission made by the applicant and submit that the applicant does not in fact own the area of land over which the proposed development would require access. DLRCC was advised of same. Submitted that the issue of the ownership of the relevant section of laneway has not been addressed by the applicant and that DLRCC has acted prematurely and in a manner that would leave the appellant no alternative but to take legal action were the Board to grant permission.

- **Public Notices** – The proposed new vehicular entrance, proposed driveway, demolition of part of the existing wall and the existing 7sqm shed is not referenced in the public notices.
- **Private (not taken in charge) Estate** – The appellants property, Verona, and the adjoining dwelling Shanid which is proposed to be subdivided to facilitate this planning application, currently comprise of a two dwelling housing estate located at the end of Beech Park Road. Once inside the vehicular entrance off Beech Park Road, one enters a private housing estate. The entrance is private, the internal access road is private, the boundary wall are private, the underground pipes serving the two houses are private etc. Nothing inside the walls of the area in which Shanid and Verona are built has been taken in charge by the local authority. The areas is not public property over which permission can be given for access to pipes etc.
- **Contrary to National Planning Guidance** – Reference is made to Section 5.9 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas – Cities, Towns and Villages (2009) where *a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.* The proposed dwelling will impact on the character of the area, as this house design departs from the existing appearance and design of Shanid and Verona.

- **Contrary to DLRCC Development Plan 2016-2022 Policy** – Taken in conjunction with existing development on the site, it is considered that the proposed development of a separate house would result in overdevelopment of the site by reason of the lack of quality provision of private open space for the existing house. The proposed development would be visually obtrusive and would seriously injure the amenities of the area and of property in the vicinity. The scheme is contrary to Policy RES1 Supply of Zoned Land, Policy RES3 Residential Density, Policy RES4 Existing Housing Stock and Densification, Section 8.2.3.1 Quality Residential Design and Part (V) Corner / Side Garden Site of Section 8.2.3.4 Additional Accommodation in Existing Built Up Areas.
- **Vehicular Noise & Light Overspill** – The proposed new vehicular entranceway and accessway adjoining the private access road would result in noise and light overspill from additional vehicles entering and existing day and night.
- **Drainage** – The applicant sought permission to access, and if necessary upgrade the existing surface and foul drainage and foul drainage pipes that run across the appellant's property. The appellant has not agreed to allow the proposed developments surface water to pass through their property. Alternatives should be proposed.
- **Construction & Operational Traffic** – The existing private access entrance and road are narrow in width and there is no vehicular turning area. The applicant submits that the road is not capable of taking any further residential traffic without causing traffic issues for Verona and Shanid.
- **Construction Impact** – Requested that working hours be restricted to 8am to 6pm and that no flexibility be permitted with no work on Sunday or Bank Holidays. A Construction Management Plan, Noise and Vibration Management Plan and Dust Management Plan is also required. Requested that the applicant should liaise with the appellant in respect of these issues.
- **Precedent** – If permitted would set an undesirable precedent for similar developments on restricted sites

- **Depreciation in Property Values** – The development would seriously injure amenities and depreciate the values of property.
- **Recommendation** – Requested that permission be refused in relation to limited rights of way to Shanid and Verona only, no rights or permission to connect or increase the discharge of foul and surface water, contrary to the zoning objective for the site and traffic hazard.

6.2. Applicant Response

6.2.1. The first party response to the appeal has been prepared and submitted by the applicant and may be summarised as follows:

- **Applicant** - The applicants currently live at Shanid with Leonard Sheehan's parents and have done so for more than 5 years. The applicant intends to move into the new house when it is built.
- **Traffic** – Traffic volume would stay the same. The applicant is already turning vehicles in and out of their parent's property without any problems or restrictions to other users. With the two parking spaces in front of the new house our cars would be further away from the appellant's property, Verona.
- **Construction** – The applicant would comply with normal construction hours and aim to keep any inconvenience or disturbance to a minimum. Privacy, dust and noise and barrier will be erected along the property boundary. There is no need for delivery or construction vehicles to encroach on the neighbouring property but could erect a set of gates that can be closed when deliveries are being made to alleviate that concern.
- **Drainage** – The surface water would not be routed into any sewer but dealt with in accordance with the guidance in the planning permission.
- **Right of Way** - It is not within the remit of the Board to decide on matters of right of way, title and access and it cannot do so. These matters will have to be resolved in a different forum.

6.3. **Planning Authority Response**

- 6.3.1. DLRCC refers to the previous Planners Report and states that *the grounds of 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.*

6.4. **Observations**

- 6.4.1. There are no observations recorded on the appeal file.

6.5. **Further Responses**

- 6.5.1. There are no further responses recorded on the appeal file save for Peter O'Dwyer Architects who states that they are no longer agent for the applicant.

7.0 **Assessment**

7.1. Public Notices

- 7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Access (Right of Way)
- Drainage
- Other Issues

8.0 **Principle**

- 8.1. The operative plan for the area is the Dun Laoghaire Rathdown County Council 2016 – 2022. Under the provision of this Development Plan the site is zoned Objective A which seeks to protect and / or improve residential amenity and where residential development is permitted in principle subject to compliance, with the relevant policies, standards and requirements set out in plan.

8.2. This is a compact serviced urban site. The proposed dwelling reflects the character of the area and is compatible in relation to design and scale with adjoining dwellings in terms of proportions, heights and materials and represents an appropriate and reasonably sympathetic design response to the sites context. The private open space to serve the new dwelling is well considered without significant diminution of the amenity value of the principle dwelling. Further the scheme will not result in any significant over shadowing of adjoining properties and will not result in an unreasonable loss of natural light to neighbouring residential properties. The design approach and layout is therefore supported.

9.0 Access (Right of Way)

9.1. The appellant states that they have not given permission to the applicant to access the proposed dwelling across the piece of land located at the vehicular entrance to Shanid and Verona. It is stated that this is a Right of Way pertaining only to Shanid and Verona and not to any other house or premises. The appellant states that they have purchased this piece of land and is in the process of registering it with the Land Registry.

9.2. The applicant in their response to the further information submitted a letter and maps from Murphy Solicitors who states that access to the existing property and the proposed new property is, and will be, along the road / driveway shaded green on the maps submitted and that Peter Sheehan and Angela Sheehan of Shanid are the owners of these lands who are able to grant the appropriate right of way.

9.3. Any said dispute of the ownership of lands and rights of way and way leave agreements is a matter to be resolved between the parties, having regard to the provisions of Section 34 (13) of the 2000 Planning and Development Act (as amended) where it states that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted and should the appellant or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant

10.0 Drainage

- 10.1. The applicant proposes to connect source water from a new connection. With regards to wastewater management / treatment it is proposed to connect to the applicant's waste drain which has an existing public connection. Proposed surface water disposal will be by means of public sewer / drain.
- 10.2. The appellant states that the applicant sought permission to access, and if necessary upgrade the existing surface and foul drainage and foul drainage pipes that run across the appellant's property. The appellant states that they have not agreed to allow the proposed developments surface water to pass through their property and that alternatives should be proposed.
- 10.3. It is noted that DLRCC Drainage Planning Section had no stated objections to the proposed development subject to conditions set out in their report requiring that no surface water is discharged to the sewer but shall be infiltrated locally to a soakpit or similar.
- 10.4. I am satisfied that there is capacity in the public drainage infrastructure to accommodate the proposed dwelling house subject to a condition requiring that the water supply and drainage arrangements, including the attenuation and disposal of surface water, comply with the requirements of the planning authority for such works and services.
- 10.5. However similar to Section 10 Access (Right of Way) above any said dispute of the ownership of lands and rights of way and way leave agreements is a matter to be resolved between the parties, having regard to the provisions of Section 34 (13) of the 2000 Planning and Development Act (as amended) where it states that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted and should the appellant or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

11.0 Other Issues

- 11.1. **Public Notices** – I note the appellants concerns with regard to the public notices and lack of reference to the proposed new vehicular entrance, proposed driveway, demolition of part of the existing wall and existing 7sqm shed. It is not for An Bord Pleanála in this instance to determine whether the application was in breach of the Planning and Development Regulations 2001.
- 11.2. **Traffic Impact** – Given the urban location of the appeal site within an established residential neighbourhood I am satisfied that the vehicular movements generated by the proposed development would not have a material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area particularly taking into account the location and scale of the development. Accordingly I am satisfied that the proposed development provides for a safe means of access to and from the site which will not result in the creation of a traffic hazard and that the proposed development would function satisfactorily from a traffic point of view
- 11.3. **Construction Impact** – In the normal course of development, the impact on adjoining uses arising from construction is often considered an inconvenience but short term in nature and therefore generally considered acceptable. It is recommended that should the Board be minded to grant planning permission that a condition be attached restricting construction hours and requiring that all construction activities on site to be conducted in a manner such that there will be no generation of noise, dust, fumes, vibrations, electrical interference or debris onto public roads such as would give rise to reasonable cause for annoyance to any person in any residence or public place in the vicinity. The attachment of these conditions notwithstanding it falls to the relevant Planning Authority to ensure the developer complies with these conditions and that there is no unreasonable disturbance or loss of amenity associated with construction activities.
- 11.4. **Property Values** – The scheme before the Board is for a new dwelling house in the side garden of an existing house, Shanid within a serviced urban area where such developments are considered a permissible use and where it is reasonable to expect developments of this kind would normally be located. Therefore the proposed

scheme is not considered to be a bad neighbour in this context and I do not therefore consider that to permit this development would lead to a significant devaluation of property values in the vicinity. Accordingly, I am satisfied that this matter is not material to the consideration of this appeal.

11.5. **Appropriate Assessment** - Having regard to the nature and scale of the proposed development comprising the construction of detached house in the side garden of Shanid and its 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 a European site.

11.6. **Development Contributions** – Dun-laoghaire Rathdown County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th December 2015. The proposed development does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

12.0 Recommendation

12.1. It is recommended that permission be **GRANTED** subject to the reasons and considerations set out below

13.0 Reasons and Considerations

13.1. Having regard to the site's location on serviced urban lands and the policy and objective provisions in the Dun Laoghaire Rathdown County Development Plan 2016-2022 in respect of residential development, the nature, scale and design of the proposed development, to the pattern of existing and permitted development in the area, 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 or of property in the vicinity and would be acceptable in terms

of traffic and pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

14.0 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. Details of the materials, colours and textures of all the external finishes and boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the attenuation and 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.

4. The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays, 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 residential amenities of adjoining property in the vicinity

5. All public service cables for the development, including electrical and

telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity

6. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

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, as amended. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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

Mary Crowley

Senior Planning Inspector

14th August 2019