



An
Bord
Pleanála

Inspector's Report

ABP-305199-19

Development	Permission for proposing amendment to previously permitted development (D17A/0397, ABP-300517-17) comprising the demolition of existing dwelling and construction of an infill residential scheme of 22 units.
Location	Site (c.0.94 ha) located at Glensavage, Avoca Road, Blackrock, Co Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D19A/0240
Applicant(s)	Bartra Property Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Redmond and Yvonne Joyce
Observer(s)	1. Peter and Maria O' Sullivan

2. Olive White
3. Tom O' Carroll

Date of Site Inspection

14th November 2019

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The subject site has an area of 0.94 hectares and is located on the southern side of Avoca Road, Blackrock, Co. Dublin.
- 1.2. The site is irregular in shape and is currently a construction site comprising of 2 No. apartment blocks totalling 14 apartments and 8 No. detached houses.
- 1.3. The western boundary adjoins the rear gardens of houses on Avoca Road and Linden Grove. The southern boundary adjoins the rear gardens of houses on Grove Paddock and the eastern boundary adjoins the rear gardens of houses on Avoca Park. Residential development in the area is generally characterised by large detached and semi-detached houses ranging in height from one to two storeys.

2.0 Proposed Development

- 2.1. Permission sought for amendments to a previously approved development granted under PA Ref. D17A/0397 and ABP-300517-17 as amended by PA Ref. D18A/1205. The proposed development comprises a new set-back penthouse floor to each of the 2 No. permitted 3 storey apartment blocks to provide an additional 2 No. 2 bedroom apartments.
- 2.2. Details submitted to the Planning Authority dated the 2nd of July 2019 provided for the following:
 - 2 No. shadow studies
 - Revised drawings providing for timber slat screening on the southern and south west elevations.
 - Provision of a railing to restrict access to the north western portion of the terrace. It is stated that this will be used for maintenance only.
 - Photomontages
 - Response in relation to finishes
 - Swept path analysis and alterations to parking area
 - Provision of bicycle parking spaces
 - Details of proposed sedum green roof

3.0 Planning Authority Decision

3.1. Permission granted by Planning Authority subject to 10 No. conditions. Noteworthy conditions are as follows:

Condition No. 3 required revised plans and elevations to be submitted to and agreed in writing with the Planning Authority prior to commencement of development providing for alternative screening mechanisms for the proposed penthouse level terraces of Blocks A and B which demonstrate that overlooking of adjoining properties is precluded.

Condition No. 4 required the applicant to ensure that the relocation of the proposed bike store shall not impact upon existing or proposed planting/ trees.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority raised concerns in the first report dated the 28th day of May 2019 regarding overlooking from the penthouse level terraces. Concern was also expressed in relation to overshadowing. Further Information was requested to address these concerns. A second report dated the 23rd day of July 2019 considered that the additional overshadowing impact was minor and would not unreasonably compromise the residential amenities of properties to the north. Concern was expressed in relation to overlooking, however it was considered that this could be addressed by condition.

3.2.2. Other Technical Reports

Drainage Department report dated the 23rd of May 2019 required Further Information. The second report dated the 10th of July recommended permission subject to conditions.

Transportation Department required Further Information in their first report. The second report recommended permission subject to conditions.

The **Housing Department** Reports dated the 8th of May 2019 and the 8th of July 2019 both advise that negotiations on the Part V agreement are already at an advanced stage on the parent permission and recommend permission subject to conditions.

3.3. **Prescribed Bodies**

- No reports

3.4. **Third Party Observations**

A total of 9 No. observations were submitted to the Planning Authority. The issues raised are similar to those set out in the third party appeal and observations.

4.0 **Planning History**

PA Ref. 18A/1205

Permission granted for amendments to a previously permitted development (PA Ref. D17A/0397/ ABP Ref. 300517-17), consisting of minor elevational amendments to permitted dwellings Nos. 1-8 comprising revised fenestration and ground floor entrance arrangements, including new windows to permitted basement level of dwelling No. 5, revised fenestration arrangements to the permitted apartment blocks A and B, and an enlarged stair core tower at roof level of the permitted apartment Block A and B.

PA Ref. D17A/0397/ ABP Ref. 300517-17

Permission granted by Planning Authority and ABP for the demolition of existing two storey dwelling and ancillary two storey structure and the construction of an infill residential scheme (22 No. units) as follows: 3 No. 1 bedroom, single storey detached dwellings, 4 No. 5 bedroom part single storey part two storey detached dwellings, 5 bedroom detached dwelling, 2 No. 3 storey apartment blocks accommodating 14 No. apartments.

5.0 Policy Context

5.1. Project Ireland 2040 - National Planning Framework

- 5.2. The NPF includes a Chapter, No. 6 entitled 'People, Homes and Communities'. It sets out that place is intrinsic to achieving good quality of life. National Policy 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".
- 5.3. National Policy Objective 35 seeks "to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights".
- 5.4. National Planning Objective 13 also provides that "In urban areas, planning and related standards, including in particular height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected".
- 5.5. **Section 28 Ministerial Guidelines**
- 5.6. The following is a list of section 28 Ministerial Guidelines considered of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- 'Urban Development and Building Heights' Guidelines for Planning Authorities
- '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)
- 'The Planning System and Flood Risk Management' (including the associated 'Technical Appendices')
- 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'

5.7. **Development Plan**

5.8. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016 – 2022. The subject site is zoned A: “To protect and/or improve residential amenity.”

Relevant policies and objectives include:

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.”

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.”

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.

Where a site is located within 1 kilometre pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities of 50 units per hectare will be encouraged.

Section 8.2.3.2 of the Plan set out quantitative standards for residential development.

Section 8.2.8.4 sets out standards for private open space.

5.9. **Natural Heritage Designations**

5.9.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 1.3km east of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 1.3km east of the site.

5.10. EIA Screening

5.10.1. Having regard to the nature of the development comprising 2 No. additional apartments within a permitted scheme and the urban location of the site there is no rear 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 first party appeal can be summarised as follows:

- Condition No. 13 of ABP Ref. 300517-17 required that ‘no additional development shall take place above roof parapet level...’ The proposed development violates this condition.
- Concern regarding absence of measures to prevent overlooking on the western elevation to prevent overlooking.
- The figures used for distance between 27 Linden Grove and Apartment B are incorrect and as such the analysis is based on incorrect measurements.

6.2. Applicant Response

The response from the applicant can be summarised as follows:

- A number of design measures have been included in order to assuage concerns in relation to overlooking including the setting back of the proposed penthouse, the introduction of a herbaceous border to the eastern, western and northern elevations to soften the building line, use of opaque glass for all

windows on the eastern elevation, use of timber slats for screening and provision of a high level window on the northern elevation.

- An assessment of the impact of the proposal on 27 Linden Grove was undertaken and it was found that light to the windows continued to meet acceptable standards. The distances between this property were correctly calculated using a CAD Model and based on a separation distance of 17.8m to windows 1 and 2 and a distance of 13.8m to windows 3-6.

6.3. **Planning Authority Response**

- The grounds of appeal do not raise any new matters, so no additional comment is made.

6.4. **Observations**

The third party observations submitted can be summarised as follows:

- Concerns regarding impact on residential amenities - overlooking, overbearing nature, overshadowing and loss of privacy.
- Visual Impact
- Contrary to Condition No. 13 of ABP 300517
- Photomontages show the proposed development in the best possible light.

6.5. **Further Responses**

The responses submitted can be summarised as follows:

- The proposals put forward to alleviate overlooking are unsatisfactory and unacceptable.
- The photomontages submitted do not reflect accurately the proposed development.
- Concerns regarding overbearing impact.

- Contravention of Development Plan requirement to respect the height and massing of existing homes.

7.0 Assessment

7.1. The main issues that arise for consideration in relation to this appeal can be summarised as follows:

- Impact on Residential Amenities
- Visual Impact
- Appropriate Assessment

7.2. Impact on Residential Amenities

- 7.2.1. Permission is sought for amendments to a previously permitted development to provide for the construction of a new set-back penthouse level to each of the 2 permitted 3 storey apartment blocks to provide 1 No. additional 2 bedroom apartment within each apartment block increasing the total number of units proposed within the development from 22 to 24.
- 7.2.2. Concerns raised in relation to the proposed penthouse level in both the third party appeal and observations relate to impacts on residential amenity including overlooking, overbearing impacts, and overshadowing.
- 7.2.3. I refer the Board to the previous Inspector's report under ABP Ref. 300517-17 which concluded that Apartment Blocks A and B as originally proposed would not unreasonably impact on the amenity of adjoining property. I note that Condition No. 13 by the Board required that no additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission. The stated reason was to protect the residential amenities of property in the vicinity and the visual amenities of the area.
- 7.2.4. The key question in my view, relates to the additional impact on residential amenities of adjoining properties of the proposed additional floor on both apartment blocks.

- 7.2.5. In the initial planning report dated the 29th day of May, 2019, the Planning Authority expressed concerns regarding the potential for overlooking from the south and south west terraces of Blocks A and B. I note that the revised drawings submitted to the Planning Authority dated the 2nd day of July 2019 provided for the extension of timber slat screens to the proposed additional fourth floor level. On the southern and south western elevations of Blocks A and B, the timber slat screening will extend by c.2.5m and c. 1.8m respectively. The Planning Authority considered that as there were 'c. 300m gaps between the proposed timber slat screening, it was unclear how this would preclude overlooking of the properties within the vicinity.' It recommended that a condition be included which required the applicant to provide alternative screening mechanism of the proposed penthouse level terraces of Blocks A and B which demonstrate that overlooking of adjoining properties is precluded.
- 7.2.6. The response to the appeal advised that compliance with this condition would comprise of screening to the south-west, south and south-east corners using vertical timber slats to a height of 1.8m above the finished terrace level. It is proposed that the frequency of slats would be increased from that shown on the Further Information drawings.
- 7.2.7. I note that a parapet wall is also proposed on the terraces which consists of a solid wall with railing on top together with planting. It is proposed that the northern terrace will be used for maintenance only and it is proposed that a railing will restrict access as indicated in Drawing No. A-FI109 submitted to the Planning Authority dated the 2nd day of July 2019. A high level window is proposed on the northern terrace. Opaque glazing is proposed on the eastern terrace.
- 7.2.8. Having reviewed the drawings and details submitted to the Planning Authority together with the details submitted in the appeal response to the Board, I am satisfied that the proposed development will not unduly impact on the residential amenities of adjoining properties by reason of overlooking.
- 7.2.9. In relation to the matter of overshadowing two No. Daylight and Sunlight Studies were submitted to the Planning Authority dated that 2nd day of July 2019. The first study examined the impact between the permitted and proposed schemes on Cedar Cottages and concluded that the the main impact would be between the hours of

11AM to 1PM on March 21st. It was concluded that the set back level will have a 'minor to no impact on the houses located at Cedar Cottages.'

- 7.2.10. The third party appeal considers that 'access to light has already been adversely affected with only two storeys of the apartment blocks in-situ at present.' It is also stated that the distance between windows 3,4,5,6 and 7 in the appellant's house at No. 27 Linden Grove is 14.03m and not 17.8m as indicated in the Shadow and therefore the calculations are erroneous.
- 7.2.11. The second Daylight and Sunlight Study examined the impact between the permitted scheme and the proposed scheme on three houses in the immediate vicinity of the site - No. 27 Linden Grove, No. 29 Linden Grove and No. 10 Grove Paddock.
- 7.2.12. The response to the appeal includes a response from the consultants that were responsible for preparing the Daylight and Sunlight Studies. It states that the separation distances were calculated using an AutoCad and includes copies of both the site plan and the AutoCad site plan superimposed over the original site plan. It states that windows 1 and 2 are 17.8m distance and windows 3-6 are 13.8m distance.
- 7.2.13. Having reviewed the Daylight and Sunlight Studies, I note that whilst there is a minor increase in overshadowing to the properties at Cedar Cottages at the hours of 11AM and 1PM (March Equinox), I consider that this is marginal above that already permitted at this location. I consider that the distances submitted by the applicant in relation to the appellants dwelling at No. 27 Linden Grove are correct. The results indicate that any over shadowing impact would be marginal above the permitted scheme and within acceptable limits.
- 7.2.14. Thus, having regard to the overshadowing and day light factor analysis submitted, together with the comparison between the permitted scheme and the proposed new penthouse level in both blocks, it is considered that the level of overshadowing generated by the development would not be so significant as to warrant a refusal. Furthermore, the results indicated in the studies exceed the requirements of the BRE guidelines and am satisfied that the proposed development would not unduly impact the amenities of adjoining properties in terms of overshadowing.

7.3. Visual Impact

- 7.3.1. A number of concerns have been raised in relation to the overall height and overbearing impact of the proposed development. Concern is also expressed that the photomontages are designed to show the development in the best possible light.
- 7.3.2. The applicant has submitted a photomontages from two vantages points which show the existing baseline situation and the proposed development. I consider that the photomontages give a realistic view of the existing site and surrounds together with the development proposed. I am satisfied that the locations chosen for the photomontages are in very close proximity to the site and would be important areas to assess the impact of the proposed development from. I also refer the Board to the photographs taken on the site inspection.
- 7.3.3. A key objective of the NPF is to encourage greatly increased levels of residential development in our urban areas and significant increases in building heights and overall density of development. I am of the view that the proposed additional floor will have minimal visual impact on the surrounding area. I do not consider that the proposed development will have an overbearing impact on existing development and the set back of this floor from the main bulk of the apartment blocks will significantly assist in the assimilation of the proposed development within this established streetscape.
- 7.3.4. I note that item 1 (e) of the Further Information Request had asked the applicant to consider an alternative material/ finish for the principle elevations of the penthouse level. The applicant responded that the proposed materials contribute to visual cohesion and subtly integrate the proposed additional level with the permitted scheme. The Planning Authority report does not concur with this view and considered 'that an alternative finish to the proposed painted render would articulate the building further and soften its presentation- e.g. the use of zinc or a similar finish.' I do not concur with the view of the Planning Authority in relation to this matter. I consider the proposed development would integrate to a greater extent with permitted development in the vicinity if the finishes were similar to the permitted apartment blocks as proposed in the details submitted to the Planning Authority dated the 2nd day of July 2019.

7.3.5. Overall, I am satisfied that the design has been carefully considered and can be assimilated into the streetscape at this location and make a positive contribution to the public realm.

7.4. **Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the development, 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**

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

9.0 **Reasons and Considerations**

Having regard to the Dun Laoghaire Rathdown County Development Plan 2016-2022, the planning history of the site and the pattern of 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, would not give rise to traffic hazard and would, otherwise, be in accordance with the provisions of the County Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 2nd day of July, 2019, and by the further plans and particulars received by An Bord Pleanála on the 13th day of

September, 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

2. The terms and conditions of the parent and amending permissions granted for the development under planning register reference number D17A/0397/ABP Ref. No. ABP-300517-17 and D18A/1205 shall be complied with, unless they are modified by the terms and conditions of this permission.

Reason: In the interest of clarity.

3. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 96(4) and 96(2) and 3 (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

4. 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

Emer Doyle
Planning Inspector
12th December 2019