



An
Bord
Pleanála

Inspector's Report

ABP-305415-19

Development	Division of site and construction of house, demolition of conservatory, alterations to side vehicular entrance and associated site works.
Location	12, Orchardton, Rathfarnham, Dublin 14
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0201
Applicant(s)	Frank O'Sullivan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Parties v Grant
Appellants	(1) Ursula Doyle & John Keogh (2) Timothy Brosnan (3) Conor Daly
Observers	(1) Michael & Niamh O'Neill
Date of Site Inspection	20.11.2019

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The subject site is located at 12 Orchardton, Rathfarnham, Dublin 14, approx. 1.2km south of Rathfarnham village. The site contains a two-storey detached house with a white plaster external finish and brown quoins. It has a single-storey flat roof area to the side. The site is a corner site with frontage to both the front/south east and side/north east. Both roads are short culs-de sac. The existing house addresses a small public open space area to the south east.
- 1.2. Other houses within the Orchardton development to the south, north east and east are detached two-storey houses similar to the existing house on site.
- 1.3. The side of the single-storey area is built onto the boundary with a pedestrian gate adjacent. There is a grass verge area of varying widths between the north western site boundary and the cul-de-sac roadway except towards the end of the cul-de-sac where there is an established vehicular entrance to the rear garden area. This entrance comprises a timber gate. The remainder of the boundary to the side comprises a plastered block wall. The area to the rear of the house comprises a garden area. There is a small shed in the northern corner. There is also a single-storey 'garden studio' in the western corner in a kink in the boundary.
- 1.4. The site has a stated area of 0.0398 hectares.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of a detached two-bedroom two-storey house in the rear garden area, alterations to the existing vehicular access to the side and ancillary site works as well as the demolition of the conservatory of the existing house and garden structures.
- 2.2. The proposed house has a stated floor area of 96.8sqm with an indicated maximum height of 7.37 metres. The proposed external finish is primarily brick with some render and a standing seam metal roof.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 7 no. conditions of a standard nature including the removal of structures to be demolished prior to the commencement of development, surface water drainage, Irish Water connections, the removal of Class 1 exempt development rights on site (extensions and garages) and a financial contribution.

3.2. Planning Authority Reports

The Planning Officer's report was the basis for the decision. The Planning Officer concluded that the proposed development would not seriously injure the amenities of the area or property in the vicinity and would accord with the zoning objective and provisions of the South Dublin County Council Development Plan 2016-2022.

3.2.1. Other Technical Reports

Roads Department – No objection subject to conditions.

Water Services – Indicated no objection subject to surface water issues being addressed.

Parks & Landscape Services (Public Realm) – Comment made.

Environmental Health Officer – No objection subject to conditions.

3.3. Prescribed Bodies

Irish Water – No objection subject to conditions.

3.4. Third Party Observations

8 no. submissions were received on file from residents of Orchardton or Butterfield Park adjacent to the west. 7 no. submissions were objections to the proposed development with 1 no. submission in favour. The main issues raised in the submissions objecting to the proposed development can be summarised as follows:

- Overlooking to the opposite side of the cul-de-sac.

- The applicant is not the landowner and land registry detail in this regard was submitted.
- Adverse impact on the amenity of rear gardens.
- Overbearing and shadowing impact.
- Concern about the integrity of adjacent boundary walls from construction.
- No space to the side for ongoing maintenance.
- Overdevelopment of the site.
- Concern about the configuration, design, size and external finishes proposed/negative visual impact/out of character with the existing pattern of development in the vicinity.
- Contrary to Section 11.3.2 (Residential Consolidation) of the South Dublin County Council Development Plan 2016-2022.
- Concern with the alteration of a public area to a driveway outside the site boundary and outside the applicant's ownership. This should have been referenced in the public notice.
- Additional traffic impact on the cul-de-sac.
- Similar previous proposals at No.11 in the original area of Orchardton were refused.
- Undesirable precedent.

4.0 **Planning History**

None relevant.

5.0 Policy Context

5.1. South Dublin County Council Development Plan 2016-2022

The site is in an area zoned 'Objective RES; To protect and/or improve residential amenity'. Residential development is permitted in principle under this zoning objective.

Housing Policy 17 states it is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County.

H17 Objective 3 – To favourably consider proposals for the development of corner or wide garden sites within the curtilage of existing houses in established residential areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation.

H17 Objective 5 – To ensure that new development in established areas does not impact negatively on the amenities or character of an area.

Section 11.3.2 (Residential Consolidation) (ii) (Corner/Side Garden Sites) sets out criteria that should be met such as being of a sufficient size, design (building line and roof profile), architectural language and dual frontage.

5.2. Natural Heritage Designations

None in the vicinity of the site.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, which is a fully serviced suburban location, 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 stage, and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

3 no. third-party appeals were received from occupants of houses in the immediate vicinity of the subject site. The main issues raised can be synthesised as follows:

- The Planner's Report ignored issues raised in the submissions.
- As referenced in the Planner's Report there is a deficiency in the private open space area retained by the existing house.
- Green space in the public realm is being lost with the formation of the house entrance/Concern with the alteration of a public area to a driveway outside the site boundary and outside the applicant's ownership. This should have been referenced in the public notice.
- A 3 metre vehicular access width was permitted whereas the Roads Department standards require a 3.5 metres width.
- It is disputed that the application is for a house in a corner or side garden i.e. Policy H17 Objective 3, but it should be assessed as a rear garden or rear access proposal/standards for backland houses has not been addressed.
- The development is not consistent with the requirements of Section 11.3.2 (Residential Consolidation) of the South Dublin County Council Development Plan 2016-2022/out of character with the existing pattern of development in the area/overdevelopment.
- Overshadowing and overbearing impact to adjacent properties.
- Contrary to the zoning objective.
- Adverse dominant visual impact.
- Overlooking impact to the opposite side of the cul-de-sac.
- Land registry detail indicates that the applicant does not own the site as claimed.
- Additional traffic impact on the cul-de-sac.

- Similar previous proposals at No.11 in the original area of Orchardton were refused.

6.2. Applicant's Response

The main points raised can be summarised as follows:

- The proposed development is supported by national objectives and guidelines, regional guidelines and the County Development Plan 2016-2022 with regard to urban development, sustainable intensification of suburban areas etc.
- The proposed development will not have undue impact on residential amenity.
- There is no uniformity in house types in the area around the subject site.
- 72sqm private open space will be retained for the existing house, not 67sqm as cited in the Planner's Report. 55sqm is provided to the proposed house.
- A front garden area is not necessary to provide a high standard of living.
- The development can constitute backland development. The development sits comfortably within the site and is not piecemeal development. The planning authority was right to assess the application as a corner site.
- No undue overshadowing will take place. The submitted overshadowing sketch has no technical basis and is unreliable.
- The proposed house is 1.385 metres lower than the existing house at No. 12 and therefore it will not be overbearing. No overlooking will occur to the rear.
- With regard to land ownership and the content of land registry detail submitted the response states that the site has formed the rear garden of No. 12 for 25 years since having been acquired and the applicant is satisfied that there is sufficient legal interest in the land to make a planning application.
- With regard to the land outside the site boundary it is noted that the Planner's Report stated these works will be subject to the necessary consents of the Council.

- The 3 metres entrance width is acceptable given the absence of traffic on the cul-de-sac. The existing vehicular entrance was permitted in 1985 under Reg. Ref. 467130.
- Two precedent examples of similar developments are set out.
- A brief Architectural Statement accompanies the response.

6.3. **Planning Authority Response**

The planning authority confirms its decision and the appeal raises no new issues.

6.4 **Further Appeal Responses**

Dr. Diarmuid Ó Gráda, on behalf of the appellants Ursula Doyle & John Keogh and Timothy Brosnan, made a further response. The issues raised are similar to those referenced in the appeals.

6.4. **Observations**

1 no. observation has been received from Niamh & Michael O'Neill, No. 137 Butterfield Park. The issues raised are generally similar to those referenced in the appeals but also include:

- Concern about the protection of the north western boundary wall.
- Inadequate assessment of the application by the planning authority.
- Insufficient conditions relating to construction works.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of the Proposed Development
- Residential Amenity

- County Development Plan 2016-2022 Policy
- Impact on Adjacent Property
- Appropriate Assessment
- Miscellaneous Issues

7.1 Principle of the Proposed Development

7.1.1 The site is in an area zoned 'Objective RES; To protect and/or improve residential amenity' under the South Dublin County Council Development Plan 2016-2022. Residential development is permitted in principle under this zoning objective. The Plan states, in Housing Policy 17 and within H17 Objective 3, that residential consolidation and sustainable intensification at appropriate locations will be supported. The development of corner or wide garden sites within the curtilage of existing houses in established residential areas will be favourably considered.

7.1.2 I therefore consider that the provision of an additional house on the site within an established residential location is acceptable in principle.

7.2 Residential Amenity

7.2.1 The appeals reference overdevelopment of the subject site.

7.2.2 Table 11.20 of the South Dublin County Council Development Plan 2016-2022 requires a four-bedroom house to have a minimum 70sqm private open space. The Planner's Report stated that only 67sqm was retained by the existing house. However, the applicant's response states that 72sqm private open space is to be retained and this area was referenced in the original planning application. Given the provision of approximately 70sqm I consider adequate private open space is to be retained with the existing house.

7.2.3 It is stated that 55sqm private open space has been provided for the proposed house which is the minimum area cited for a two-bedroom house in Table 11.20. Though restricted in shape it is considered to be useable and acceptable.

- 7.2.4 The proposed 96.8sqm house is substantially larger than the minimum 80sqm for a two-bedroom house cited in both Table 5.1 of the Quality Housing for Sustainable Communities Guidelines and Table 11.20 of the Plan.
- 7.2.5 Car parking for the existing house is accommodated within the front curtilage of the house. One off-street car parking space is provided with the proposed house and this is considered acceptable in the context of Table 11.24 of the Plan which sets out a maximum 1.5 spaces per two-bedroom house.
- 7.2.6 Therefore, it is considered that the development is acceptable in terms of residential amenity to existing and proposed houses and does not comprise overdevelopment.

7.3 County Development Plan 2016-2022 Policy

- 7.3.1 There is some dispute as to which subsection of Section 11.3.2 (Residential Consolidation) of the Plan the proposed development is more relevant i.e. (ii) (Corner/Side Garden Sites) or (iii) (Backland Development). Given that the proposed house addresses and is accessed directly onto the public road where there is already an established vehicular access and which is independent of the existing house I consider that subsection (ii) (Corner/Side Garden Sites) is the more relevant subsection of the Plan.
- 7.3.2 It is noted that an Architectural Statement has been submitted as part of the applicant's response to the appeal. This acknowledges that the house design does not seek to mimic the existing houses but is more contemporary in style which respects the existing form and scale. The house is a detached two-storey house which is similar to other houses within the Orchardton development in the vicinity. The house is a contemporary addition which is not a pastiche of existing design. The house itself is in a relatively isolated position within Orchardton and would be the only house on this side of the cul-de-sac. It is lower than the existing house on site and it is not considered its size could be considered to be excessive in the context of existing houses in the vicinity.
- 7.3.3 Although the house design is more contemporary than those within the vicinity it is not considered that it would result in a visually incongruous feature on the streetscape. The submitted images and contiguous elevation drawing show a house

that sits comfortably within the streetscape. The house is constructed close to the front boundary but it is not considered any existing building line exists that would be breached.

- 7.3.4 I consider that the proposed development would be consistent with the provisions of Section 11.3.2 (Residential Consolidation) of the Plan and would sit comfortably in the streetscape.

7.4 Impact on Adjacent Property

- 7.4.1 The appeals reference undue overlooking, shadowing and overbearing impact to adjacent properties as a result of the proposed development.

- 7.4.2 It is not considered any overlooking occurs. The three windows at first floor to the rear do not serve habitable rooms and are opaque and there are no first-floor side elevation windows. Windows to the front/north east overlook the cul-de-sac and increase passive surveillance to this public area. Houses on the opposite side of the cul-de-sac are approx. 22 metres away and, notwithstanding, houses facing each other across a circulation road is a standard feature of housing developments.

- 7.4.3 Given the approx. 24-28 metres lengths of the rear gardens to Nos. 137 and 139 Butterfield Park to the north west and to the height of the proposed house it is not considered likely that any shadowing will unduly affect the houses. Shadowing to houses on the opposite side of the cul-de-sac is also unlikely to be a significant issue because of the proposed separation distance. Notwithstanding, shadowing impact to the rear gardens of houses to the west will occur in the morning period. However, it is not considered that this would result in an unacceptable adverse impact on the residential amenity on the adjacent properties.

- 7.4.5 When development occurs there is inevitably an unavoidable impact on the receiving environment. The proposed house will alter the existing streetscape. However, it is considered that the proposed house, which has a significantly smaller floor area (96.8sqm as opposed to 138sqm when the conservatory is removed) and a ridge height 1.385 metres lower than the existing house, would not result in an overbearing presence on the streetscape and would sit comfortably within it. Given the lengths of the rear gardens of properties on Butterfield Park it is considered that,

while there will clearly be an impact, it would not be so excessive that a refusal of permission is appropriate.

7.4.6 I therefore consider that the proposed development would not have any undue impact on adjoining property in terms of overlooking, shadowing or overbearing.

7.5 **Appropriate Assessment**

7.5.1 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location remote from any 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.

7.6 **Miscellaneous Issues**

7.6.1 There are some other issues raised in the appeals which can be addressed as follows:

- There appears to be a lack of clarity as to precise ownership of the entire area within the red line site boundary. It is noted that the applicant claims sufficient legal interest to make a planning application. Section 34(13) of the Planning & Development Act, 2000 (as amended) is relevant in this regard i.e. a person shall not be entitled solely by reason of a permission to carry out any development.
- There are some works proposed outside the red line site boundary to the grass verge area. The planning authority notes that this aspect of the development will be subject to the necessary consents of the Council. This is considered satisfactory.
- This is a standard construction project and standard construction activity is likely. Notwithstanding, in the interest of residential amenity a condition relating to construction hours can be included.
- Condition 6 of the planning authority decision removed Class 1 and 3 exempt development rights (extensions and garages). Given the relatively limited

private open space areas associated with the existing and proposed houses I consider that this is a reasonable condition.

8.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the South Dublin County Council Development Plan 2016-2022, 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 be consistent with the provisions of the Plan and would not seriously injure the residential or visual amenities of the 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. Details of the materials, colours and textures of all the external finishes to the proposed house 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 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 developer shall enter into water and waste water connection agreements with Irish Water prior to commencement of development.

Reason: In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, 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 property in the vicinity.

6. The kerb at the vehicular entrance shall be dished and widened at the developer's expense to the width of the driveway entrance and to the satisfaction of the Planning Authority. Any gates shall not open outwards.

Reason: In the interests of pedestrian and traffic safety and the proper planning and sustainable development of the area.

7. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 (as amended), no development falling within

Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the houses without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the houses and in the interest of the amenities of the area.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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 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.

Anthony Kelly
Planning Inspector

10.12.2019