



An
Bord
Pleanála

Inspector's Report ABP-306039-19

Development	Extension to nursing home
Location	4, 5 and 6 Tivoli Terrace, Dun Laoghaire, Co. Dublin
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D19A/0506
Applicants	Breege Muldowney
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Parties
Appellants	1. Graham and Fiona Mongey 2. Anne Milner
Observers	Con O'Leary
Date of Site Inspection	15 th October 2020
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in a suburban area c12 km south-east of Dublin city centre and c600m south of Dun Laoghaire town centre. Its area is stated to be 0.11ha on the submitted application form. It consists of the curtilage of a pair of two-storey over basement Victorian houses in use as a nursing home at 4/5 Tivoli Terrace, along with part of the curtilage of the original Victorian semi-detached house at No. 6 that includes a smaller 'mews' house attached to its side and its vehicular access to the street.. The stated floor area of the structures on the site is 639m². Development and land uses in the vicinity include an apartment building to the west (Clifton Court) and houses to the east and south. There is an open space to the north on the opposite side of the street.

2.0 Proposed Development

2.1. The proposed development would involve the demolition of a small house to the side of No. 6 Tivoli Terrace and part of the existing nursing home including 2 bedrooms, a conservatory, a shed and a store. The floor area of the structures that would be demolished is stated as 144m² on the application form.

2.2. The floor area of the proposed new structures stated on the application form was 1,052m². The floor area of the new structures that would be authorised by the planning authority's decision would be 952m² and would include:

- An additional floor of accommodation in the original houses under a new mansard roof;
- An extension to the side and rear of the original houses with a 3-storey element on their the east side and c4.6m from the original back wall; a 2 storey element close to the rear boundary of the site with the curtilages of the houses to the south at Nos. 6 to 8 Tivoli Road; and two single storey elements along the sides of the back of the site linking them. The extension would enclose a courtyard of c8.6m by 8.6m.
- A service block and plant room in front of the original houses and a reorganisation of the parking and accesses in front of the extended nursing

home and the neighbouring house at no. 6 Tivoli Terrace, including the widening of two vehicular accesses to the street.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 12 conditions. Condition 1 referred to the plans and particulars submitted to the council with the application and as further information on 8th October 2019. Condition no. 2 reduced the width of the proposed plant room to 5.5m.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report stated that the location of the nursing home in an established residential area was in keeping with its zoning and section 8.2.3.4 of the development plan. The layout and extent of the proposed two storey extension to the rear of the site and the single storey extension in the west of the site are similar to that granted under D09A/0891. There is concern about the visual impact of the extension on the eastern side of the site on adjoining residential properties which would be mitigated by a reduction in height. Further information should be sought on the matter. The rear extension will give rise to undue overlooking, overbearing and overshadowing impacts. The existing nursing home may be substandard in respect of the requirements in the development plan for 15m² of open space per resident. The location and layout of the proposed courtyard is acceptable. The existing nursing home has 18 bedrooms. The proposed extension would increase this to 43 bedrooms and 50 bedspaces. The size and scale of the proposed development may be considered appropriate for the subject site subject to it not having a negative impact on the amenities of property in the vicinity. It was recommended that further information be sought on cycle parking, drainage and construction management, as well as revised plans that would reduce the scale of the proposed extension on the eastern and southern boundaries of the site with at a minimum the omission of 4 of the bedrooms. The report on the further information noted that 4 proposed

bedrooms and two storeys had been omitted from the proposed structure at the back of the site. This has mitigated concerns about the visual impact on adjoining sites. The other submitted details are acceptable and a grant of permission was recommended.

3.2.2. Other Technical Reports

The initial report from the Drainage Planning Department sought details of SuDS measures to reflect the proposed increase in the footprint of the building on the site. The report on the further information stated no objection subject to conditions.

The initial report from the Transportation Planning Department sought details of cycle parking, drainage and construction management. The report on the further information stated no objection subject to conditions

3.3. **Third Party Observations**

Observations were made to the council which raised concerns about the proposed development similar to those raised in the subsequent appeals.

4.0 **Planning History**

4.1. There have been numerous applications for permission on the site, as set out in the council planner's report. The following in particular may be noted –

D18A/0813 – the council refused permission in August 2018 for an extension to the nursing home stating that it would constitute over-development of the site and seriously injure the visual and residential amenities of adjoining dwellings, with a second reason referring in particular to the it being overbearing and intrusive to the dwelling to the east.

PL06D. 247108, Reg. Ref. D16A/0398 – the board refused permission on 21st December 2016 for an extension to the nursing home for three reasons. The first reason stated that the proposed alterations to the existing Victorian structures would conflict with the development plan's policies on older buildings. The second reason stated that the extension would represent over-development and would be substandard in terms of private open space. The third reason stated that the

development would overbear neighbouring residential properties and seriously injure the amenities. The planning authority had decided to refuse the application.

D09A/0891 – the council granted permission for an extension to the nursing home, and subsequently extended the appropriate period of the permission to 13th October 2020. The permitted development included a mansard roof. It had a floor area of 419m².

PL06D. 238838, Reg. Ref. D09A/0173 – the board refused permission on 31st August 2011 for an extension to the nursing home stating that it would be visually obtrusive and overbearing when viewed from the apartment block to the west and would overshadow the rear amenity space on the site.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Dun Laoghaire County Development Plan 2016-2022 applies. The site is zoned 'A' with the objective to protect and/or improve residential amenity. Policy RES 3 at section 2.1.3.3 of the plan deals with residential densities and states that proposals should balance the need for sustainable residential development with the reasonable protection of the character and amenities of an area. Policy RES 9 is to support independent and/or assisted living for older people. Policy AR5 is to retain, where appropriate, and encourage the rehabilitation and suitable reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of a streetscape in preference to their demolition and redevelopment.

5.1.2. Section 8.2.3.4 (xiii) of the plan refers to Nursing Homes for the Elderly/Assisted Living Accommodation. It states that when dealing with planning applications for such developments a number of criteria will be taken into account including –

- Such facilities will be resisted in remote locations at a remove from urban areas. They should be located into established neighbourhoods / residential areas well served by community infrastructure and amenities. Future residents should expect reasonable access to local services such as shops and community facilities.
- The potential impact on residential amenities of adjoining properties.

- Adequate provision of open space.
- Provision of adequate parking facilities.
- The design and proposed materials.
- The size and scale of the proposal must be appropriate to the area.
- Located within close proximity of high quality public transport links and the site should be well served by good footpath links.

5.1.3. Section 8.2.8.2 of the plan states adequate and suitable open space should be provided for Nursing Homes/Housing for the Elderly/Assisted Living Accommodation. Planning applications for such developments should:

- Include detailed open space and landscaping plans that take account of the location of the facility and orientation.
- Provide at least 15 sq.m. open space per resident (unless otherwise agreed with the Planning Authority).
- Have regard to the availability/suitability of already existing open space.
- Respect the specific needs of the residents of the facility.
- Be accessible for all users

5.2. **Natural Heritage Designations**

None

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The appeal from Graham and Fiona Mongey

- The proposed extension would result in an excessive scale and intensity of development that would not be suitable for a site of this size in an established built-up area. The site is not large enough to provide the space for outdoor amenity, parking, waste management and ancillary works that would be required by the extended nursing home.

- The proposed development would appear overbearing and intrusive from the back garden and kitchen/dining room of the appellant's house to the south at Glenbeigh Tivoli Road and would seriously injure the amenity and depreciate the value of their property. The council planner's report failed to consider the impact on adjoining properties although it would have been raised in the council's grounds for refusing the previous application D18A/0813. The appellants' house is called Glenbeigh and was not properly marked on the submitted site sections/elevations; a dimension was not shown for the distance between the nearest point of the proposed development and the appellants house which is 4.95m. The height of the proposed two-storey extension near the appellants' property is variously shown as 5.6m or 5.75m. The shadow cast would cover most the appellants' back garden in the late afternoon/evening. The proposed parapet height is above that which was previously refused by the council and the board under D18A/0813. The proposed extension would impinge on the appellants' property and appears to take no account of the boundary wall. An overshadowing analysis should have been sought.
- The proposed development would therefore seriously injure the character of the area and the amenities of property in the vicinity of the site contrary to its zoning objective and section 8.2.3.4 of the development plan.

6.2. The appeal from Anne Milner can be summarised as follows-

- The appellant owns the house to the south of the site at 7 Beech Homes, Tivoli Road. The council's decision to grant permission does not follow the precedent of previous decisions by it and the board to protect residential amenity. Although the property at 6 Tivoli Terrace has been incorporated into the site, the proposed development will have a negative effect on the amenities of other neighbouring properties.
- The proposed development will overbear and overshadow the property of the appellant and others. The parapet height would be greater than that of the development previously permitted under D09A/0891. Drawings inconsistently show the height as 5.75m or 5.6m. The increased massing was not assessed by the council.

- The demolition of 6 Tivoli Terrace would contravene policy AR5 of the development plan to retain older buildings that are not protected structure.
- The development would leave only 65m² of open space to serve a nursing home with 43 bedspaces. This would be 90% less than the recommended 15m² per resident recommended in section 8.2.8.2 of the development plan.
- The proposal would be overdevelopment of the site. The 50cm wide space between the edge of the proposed extension and the site's boundaries could not be maintained and would be likely to become unsightly.
- The proposed higher residential density needs to be considered in relation to the amenities of the area in accordance with its zoning objective and sections 2.1.3.3 and 8.2.8.2 of the development plan
- The proposed development would result in the loss of a dwelling in the context of severe housing pressure.

6.3. Planning Authority Response

The response states that no new matter was raised that would justify a change of attitude to the proposed development.

6.4. Applicant Response

The response consists of a letter from the applicant's architect dated 12th July 2019. It can be summarised as follows-

- There have been grants of permission to extend the property and a recent refusal under D18A/0813. After that refusal the applicant consulted with the council. The height of the proposal along the western boundary is the same as that granted under D09A/0891. That permission expired on 13th October 2019. The proposed extension is further back from the boundary with 5, 6 and 7 Tivoli Road than the permitted one. It has a flat roof and omits the previously permitted windows facing 6 and 7 Tivoli Road. The previously permitted extension was found to be deficient in terms of universal access, means of escape and fire compartmentation so its layout and footprint have

been remodelled. The height and scale as are previously granted with no development in floor levels or roof height.

- The location and zoning of the site are suitable for a nursing home. The location accords with section 8.2.3.4 of the development plan which states that nursing homes should be located in established neighbourhoods and residential areas. The proposed would be in keeping with the policy RES 9 to support independent and/or assisted living for older people. The need to adapt and extend the facility is essential to comply with current regulations and ensure the long term viability of the facility.
- The proposed development is described. It involves the demolition of an adjoining mews house to the east and some parts of the existing nursing home. A 3 storey extension would be built to the side of the nursing home and will be finished in copper cladding. The proposed rear extension would be pulled back marginally from the southern boundary of the site. The proposed rear extension would have a height of 8.5m when viewed from the south which would be reduction of the overall height granted under D09A/0891. The floor level would reduce the visual impact to surrounding properties. All rear boundary walls would remain in place. The closest window on the back of the first and second floor extension would be 19.4m from No. 8 Tivoli Road and splayed. The height and scale of the current proposal is as granted under the previous permission. The extended lift shaft to second floor level shall not be visual from Tivoli Terrace South.
- Drawings showing shadows from the proposed development are included in the letter. There would be no shadow cast on properties to the south until late evening.
- The board is requested to uphold the council's decision to grant permission.

The applicant's response was circulated for comment

6.5. Further Responses

- 6.5.1. The planning authority stated that no new matter was raised that would justify a change of attitude to the proposed development.

- 6.5.2. Anne Milner's response stated that the applicant's response did not address her grounds of appeal and her concerns are restated. Consultations between a developer and the council are not relevant to an appeal. The primary use of the site for a nursing home is not disputed. The submitted shadow study does not show the shadows cast around the equinox which would be in line with good practice.
- 6.5.3. The response from Graham and Fiona Mongey states that the applicant's response fails to take account of previous refusals on the site. The current proposals should be considered on their own merits and not in relation to a lapsed permission granted in 2010. The parapet of the roof of the proposed extension on their boundary would be higher than the eaves of the previously approved roof. The impact of the proposed development on the residential amenity of the area would materially contravene section 8 of the development plan. The submitted plans show the proposed block build partially in the appellants' garden with the boundary wall removed. The submitted sunlight analysis shows overshadowing of the appellants' property at 6pm which is late afternoon.

6.6. **Observations**

- 6.6.1. An observation from Con O'Leary stated that he was a joint owner of an apartment in Clifton Court. It states that it would not make sense to address a previous refusal of permission on the grounds of excessive scale by expanding the proposed development.

7.0 **Assessment**

- 7.1. The planning issues arising from the proposed development can be addressed under the following headings-
- Policy and the principle of development
 - Residential amenity
 - The character of the area

7.2. Policy and the principle of development

- 7.2.1. Section 8.2.3.4 of the development plan favours the location of nursing homes in established residential areas such as the one in which the current site lies. This implies that upgrades and improvements to existing homes in these areas should be facilitated to allow their continued operation and location there. General planning policy would therefore support the principle of the proposed development. However this is subject to a requirement for any particular proposal to avoid serious injury to the character of the area and the amenities of property in the vicinity.
- 7.2.2. There is an obligation to consider an application for permission for a proposed development on the merits or otherwise of that proposal with due regard to the material considerations set out in section 34(2) of the planning act and the submissions made in the course of the application and appeal. In this context a previous grant of permission by the planning authority that has expired would not justify a proposed development that was not otherwise acceptable. If there were an extant planning permission on the site that was capable of implementation, then this would be relevant to the consideration of a new application because it would represent an alternative possibility against which the proposed development could be compared, rather than simply against the status quo as would usually be the case for a planning application. This situation does not apply in this case. The grant of permission for an extension to the nursing home under D09A/0891 should not constrain the consideration of the present application, therefore.

7.3. Residential Amenity

- 7.3.1. The two storey element of the proposed development at the rear of the site would present a 5.75m high wall very close to the boundaries with the back gardens of the houses along Tivoli Road including those at 6 and 7 Beech Homes and at 'Glenbeigh'. These gardens are of no more than average size for suburban houses. The proposed development would be overbearing and visually intrusive when viewed from those gardens and from the windows at the back of those houses to an extent that would seriously injure their visual amenity. This injury would be exacerbated in the case of Glenbeigh by the shadow cast by proposed extension over the substantial part of Glenbeigh's garden to its west.

- 7.3.2. The three storey extension to side and rear of the existing houses and the installation of a mansard roof would result in more windows facing the properties on Tivoli Road. However those windows would maintain an adequate separation distance from the boundaries of the site and the houses opposite. The proposed development would not seriously injure the privacy of neighbouring properties, therefore. The construction of the proposed development would give rise to noise and disturbance that would affect the neighbouring houses. However such disruption would be for a limited period and could be subject to controls imposed by condition that would afford adequate protection to the amenities of those properties. The proximity of the rear extensions to the boundaries of the site would restrict the ways in which the proposed development could be built and maintained, but would not render construction or maintenance unfeasible. The submitted drawings properly describe the proposed development, including the amendments submitted to the planning authority as further information, and the surrounding lands. The naming and numbering scheme for the houses along Tivoli Road is not straightforward and does not appear to have been accurately shown on the submitted site plans. However the structures on those properties are accurately shown and the matter would not prevent consideration of a grant of permission.
- 7.3.3. The proper planning and sustainable development of the area would require that residential properties, including nursing homes, would afford their occupants with a reasonable amount of private open amenity space. The guidelines for nursing homes issued by HIQA also refers to this need. Section 8.2.8.2 of the development plan quantifies this requirement as 15m² open space per resident. The proposed development would reduce the amount of private amenity space on the site to c74m² in an enclosed courtyard to serve more than 40 residents. The diminished open space would be well below the applicable standard set out in the development plan would not provide an acceptable amenity for the occupants of the proposed development. It would also represent a significant deterioration compared to the current situation on the site.

7.4. **The character of the area**

- 7.4.1. Although the site is not in a designated Architectural Conservation Area and does not contain protected structures, the houses upon it are part of and contribute to an

historic streetscape of considerable merit in terms of architectural heritage and urban design that is worthy of some protection in line with the proper planning and sustainable development of the area. The proposed development would maintain the front façade of the main Victorian houses on the site. The demolition of the small mews house between that pair of houses and the ones to the west would not significantly detract from the character of the street or the level of residential accommodation in the area. The proposed extension to the side of the nursing home would achieve an acceptable standard of modern architectural design that was distinct from and subservient to the Victorian houses that establish the character of the street. Other elements of the proposed development, however, would injure that character. Notwithstanding its limited height, the proposed plant and service room in front of the original houses would breach the building line in a manner that was not justified by the step forward in the buildings to the east of the site or otherwise. The widening of the proposed vehicular accesses would diminish the constraints on the movement of vehicles into and out of the site that are necessary to protect that character of a narrow street that cannot cater for faster turning movements. The widening would also interfere with the existing arrangements for on-street parking and increase the visual impact of cars parked on the curtilages of the buildings on the site. The mansard roof would not be in keeping with the proportions and historic character of the early Victorian houses on the site and neighbouring sites and would be readily visible in lateral views as one walked along the street. The proposed development would therefore injure the historic built environment of a street in an unacceptable manner.

8.0 Recommendation

8.1. I recommend that permission be refused

9.0 Reasons and Considerations

1. The proposed development, by reason of the scale the proposed two-storey structure in close proximity to the southern boundary of the site, would be visually obtrusive and overbearing in views from the adjoining residential properties on Tivoli Road and would unduly overshadow the garden behind at

the house at 'Glenbeigh'. The proposed development would fail to provide adequate private open space for its occupants in accordance with the standards set out at section 8.2.8.2 of the Dun Laoghaire-Rathdown County Development Plan 2016-2022. It would therefore seriously injure the residential amenities of the area and of properties in the vicinity of the site.

2. The proposed development, by reason of the proposed structure in front of the original houses on the site, the installation of a mansard roof and the widening of vehicular accesses, would seriously injure the established historic character of the streetscape at Tivoli Terrace in a manner and to an extent that would be contrary to the proper planning and sustainable of the area.

Stephen J. O'Sullivan
Planning Inspector

16th October 2020