



An
Bord
Pleanála

Inspector's Report

ABP-306457-20

Development	Demolition of single storey extension, garage and dwelling and construction of two storey dwelling
Location	7 Balrothery Gardens, Balrothery, Balbriggan, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F19A/0529
Applicant(s)	Patricia Halligan
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Patricia Halligan
Observer(s)	None
Date of Site Inspection	6 th of May 2020
Inspector	Angela Brereton

1.0 Site Location and Description

1.1. The residential area is to the south west of Balbriggan town centre and to the east of the Dublin Road. The area is to the west of the golf course on the opposite side of School Lane. The subject site has a stated area of 0.0232ha and is located in the side/rear garden area of end of terrace property no.7 Balrothery Gardens. It is bound to the north by an area of landscaped open space and there is a pedestrian pathway to provide linkages close to the subject site. There is a small single storey side extension to the existing house and a large detached garage to the side. A block wall forms the northern and western boundaries. Nos.5 & 6 Balrothery Gardens are on a lower level and to the west (rear of the site).

2.0 Proposed Development

2.1. This is to consist of the following:

- Demolition of single storey extension and detached garage to the side of the existing dwelling and
- The construction of a 2 storey, 2 bedroom detached dwelling to the side of the existing dwelling and associated site works;
- Permission is also sought for vehicular access and car parking in front of the existing dwelling.

2.2. Documentation submitted includes:

- Details providing a context and a rationale for the Proposal from Fingal Planning Consultants.
- Drawings including a Site Layout Plan, Floor Plans, Sections and Elevations have been submitted.

3.0 Planning Authority Decision

3.1. Decision

On the 19th of December, 2019 Fingal County Council decided to refuse permission for the proposed development for the following reasons:

1. The subject site is within the 'RS' zoning objective under the Fingal DP 2017-2023, the objective of which is 'to provide for residential development and protect and improve residential amenity'. The proposed development by virtue of the constrained nature of the site, the minimal rear garden depth, the proximity of the window opes serving the living area to the rear site boundary, results in a proposal which would constitute overdevelopment, provide an unacceptable level of amenity for residents and therefore contravene materially the 'RS' zoning objective for the area, 'to provide for residential development and protect and improve residential amenity' and would be contrary to the proper planning and sustainable development of the area.
2. The subject development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area, would seriously injure the amenities and depreciate the value of property in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planner's Report

This has regard to the locational context of the site, planning history and policy and to the reports submitted. Their Assessment includes the following:

- The proposal complies with the Residential zoning objective.
- They note concerns about the provision of private amenity open space in accordance with Objective DMS88.
- The proposed development by virtue of the constrained nature of the site, the minimal rear garden depth, the relationship of window opes to the adjoining site boundaries would result in an unacceptable quality of residential development and would represent overdevelopment of the site.
- They note a redesign of the dwelling since the previous refusal and provide that the scale and design of the proposed dwelling is generally considered acceptable and would not unduly impact on the visual amenity of the surrounding area.

- The access and parking area proposed are acceptable to the Transportation Planning Section.
- A revised surface water drainage proposal would be required.
- The project is not likely to have a significant effect on any European site, either alone or in combination with other plans and projects.
- An EIA is not required.
- There are no objections to the proposal on Archaeological grounds.
- They conclude that the proposed dwelling would constitute overdevelopment of the site by virtue of the limited rear garden depth, which would result in a poor level of amenity being afforded to the occupants of the proposed dwelling. They also note concerns that the window opening serving the living area would be adjacent to the rear site boundary. They consider the proposal would be contrary to the 'RS' residential zoning objective.

3.3. Other Technical Reports

Transportation Section

They have no objection to the proposal subject to recommended conditions including relative to the driveway access.

Water Services

They have no objections subject to recommended conditions. This includes that a new surface water drainage proposal should be submitted.

Planning & Strategic Infrastructure Department

The Community Archaeologist notes that the proposed development site is located on a previously developed site. No archaeological mitigation is therefore required and there are no objections to this development on archaeological grounds.

3.4. Prescribed Bodies

Irish Water

They have no objections subject to recommended conditions.

3.5. Third Party Observations

There are no submissions/objections noted on file.

4.0 Planning History

The Planner's Report has regard to the Planning History of the site and this includes the following permissions refused by the Council to the applicant Patricia Halligan:

- Reg.Ref. F19A/0266 – Permission refused for demolition of single storey extension to side of existing dwelling and the construction of a first floor extension over existing garage, the change of use of garage to residential and associated site works to provide a 2 bedroom, 2 storey detached dwelling. Permission was also sought for vehicular access and car parking in front of the existing dwelling.

The reasons for refusal considered in summary that the proposal would not comply with the 'RS' zoning objective in that it would constitute overdevelopment and would detract from residential amenities in the area. Also, that it would set an undesirable precedent for other similar developments.

- Reg.Ref. F19A/0055 – Permission refused for a first floor extension over existing garage, the change of use of the garage to residential and associated site works to provide a 2 bedroom, 2 storey detached dwelling. Permission was also sought for vehicular access and car parking in front of the existing dwelling.

The reasons for refusal included in summary that the proposal would constitute an overdevelopment of the site, would result in inadequate separation distances and cause overlooking, would result in substandard residential amenity and would be contrary to Objectives DMS28 and DMS29 of the Fingal DP and also to the 'RS' residential zoning objective. Would result in an undesirable precedent, would be out of character with the development in the area and contravene Objective DMS39 relating to infill development.

- Reg.Ref. F96B/0340 – Permission granted for extension to garage including part pitched roof and part flat roof on the subject site.

Copies of these Decisions are included in the History Appendix to the Report.

5.0 Policy Context

5.1. National Policy

- Project Ireland 2040 National Planning Framework (2018).
- Design Manual for Urban Roads and Streets (DMURS) (DHPLG and DTTS 2019).
- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, (DEHLG 2009) and the accompanying Urban Design Manual: A Best Practice Guide, (DEHLG 2009).

5.2. Fingal Development Plan 2017-2023

Zoning

The site lies within an area zoned 'RS' which has an objective to: *“provide for residential development and protect and improve residential amenity”*

The vision seeks to: *Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.*

The land to the north is zoned 'OS' open space where the objective seeks to:

“preserve and provide for open space and recreational amenities.”

The site is also within a Zone of Archaeological Notification.

There is an Indicative Cycle/Pedestrian Route shown for the proximate local roads.

Placemaking

Chapter 3 refers to Placemaking and includes regard to infill, corner and backland sites and to extensions.

Objective PM44 seeks to: *Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.*

Objective PM45 seeks to: *Promote the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.*

Development Standards

Section 12.4 provides the Design Criteria for Residential Development. This includes that all new dwellings shall comply with Development Plan standards in relation to accommodation size, garden size and car parking.

Objective DMS24 – *Require that new residential units comply with or exceed the minimum standards as set out in Tables 12.1, 12.2 and 12.3.*

Objective DMS28 has regard to Separation distances.

Objective DMS30 to Sunlight and Overshadowing.

Objective DMS39 provides: *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.*

Objective DMS 40 provides that new corner site development shall have regard to the following:

- *Size, design, layout, relationship with existing dwelling and immediately adjacent properties.*
- *Impact on the amenities of neighbouring residents.*
- *The existing building line and respond to the roof profile of adjoining dwellings.*
- *The character of adjacent dwellings and create a sense of harmony.*
- *The provision of dual frontage development in order to avoid blank facades and maximise surveillance of the public domain.*
- *Side/gable and rear access/maintenance space.*
- *Level of visual harmony, including external finishes and colours.*

Private Open Space - Houses

Objective DMS87 seeks to: Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) and includes the following:

- *3 bedroom houses or less to have a minimum of 60 sq m of private open space located behind the front building line of the house.*
- *Narrow strips of open space to the side of houses shall not be included in the private open space calculations.*

Objective DMS88 seeks to: *Allow a reduced standard of private open space for 1 and 2 bedroom townhouses only in circumstances where a particular design solution is required such as to develop small infill/ corner sites. In no instance will the provision of less than 48 sq m of private open space be accepted per house.*

Table 12.8 provides the Car Parking Standards.

5.3. Natural Heritage Designations

The site is located c. 6kms west of Skerries Islands SPA (site code 004122).

5.4. EIA Screening

Having regard to the nature the proposed development, the serviced nature of the site, the distance between the site and sensitive receptors and the lack of any direct hydrological connectivity from the site to any nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. Therefore, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Fingal Planning Consultants have submitted a First Party Appeal on behalf of the Applicant. Their grounds of appeal include the following:

- They note the residential zoning and that there were no objections to the proposal.

- The proposed development complies with planning policies and objectives in the Fingal DP 2017-2023. They provide details of this relative to a number of such and in particular to the 'RS' Residential Zoning and to Infill, Corner and Backland Sites.
- They note that Objective DMS88 allows for a reduced standard of private open space.
- They have regard to the Council's reasons for refusal and note that the subject site area is 232sq.m and there are numerous sites in Fingal that gained permission on similar or smaller site areas and provide reference nos. for these.
- There is no change in the garden depth, and they note the existing garage has been on site since 1996 (F96B/0340 refers) and they propose to maintain the established garden depth.
- They are providing private open space of 89sq.m. Objective DMS88 of the Fingal DP allows for 48sq.m. and they note the site is located adjacent to public open space.
- It is common with many developments to have windows facing a boundary at a distance of over 4m.
- They note that there are no other similar sites in the area so there is no possibility of setting a precedent, undesirable or otherwise. This is a stand-alone proposal and will have no knock-on effect in the area.
- They ask the Board to overturn the Council's reasons for refusal and to grant permission for this modest infill development.

6.2. Planning Authority Response

The PA provide that following a review of the submission they have no further comment to make in respect of the issues raised in the appellant's submission.

In the event that this appeal is successful, they request that provision be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

7.0 Assessment

7.1. Policy Considerations

- 7.1.1. The appeal site is located on lands that are zoned Objective 'RS' Residential Development with a stated objective '*to provide for residential development and to protect and improve residential amenity*' under the provisions of the Fingal Development Plan, 2017-2023. Under this land use zoning objective '*Residential*' development is identified as a permissible use. Section 12.4 provides the Design Criteria for Residential Development. The First Party contend that the proposal is for an appropriately scaled infill development on this corner site and that the design will respect the built pattern of residential development in the immediate area and make the most efficient use of serviced lands in the wider 'Balrothery' area.
- 7.1.2. Regard is also had to the 'National Planning Framework Plan 2040' which seeks to increase housing supply and to encourage compact urban growth, supported by jobs, houses, services and amenities rather than continued sprawl and unplanned, uneconomic growth. Chapter 4 refers to *Making Stronger Urban Places* and includes National Policy Objective 4 which seeks to: *Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.*
- 7.1.3. Also, of note is Section 5.9 of the 'Sustainable Residential Development in Urban Areas Guidelines, 2009' which provides: *In residential areas whose character is established by their density or architectural form, 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.*
- 7.1.4. It is considered that the principle of an infill residential development is acceptable relative to the residential land use zoning. The issue is whether it is acceptable on this corner site, and whether the Council's reasons for refusal can be overcome. This application is being considered de novo by the Board. Regard is had to the documentation submitted, including the First Party grounds of appeal, planning history, compliance with planning policy and guidelines, design and layout, impact on the residential amenities of neighbouring properties and the character of the area and access and drainage issues in this Assessment below.

7.2. Background issues

7.2.1. As noted in the Planning History Section above a number of recent applications relative to residential development have previously been refused on this site. Reg.Refs. F19A/0055 and F19A/0266 refer. Details submitted with the current application provide that the main differences in this application are:

- Separation distance between dwellings increased to 2.3m
- The floor area has been decreased from 152sq.m to 112sq.m.
- They have increased the private open space from 56sq.m to 89sq.m.
- They have moved the proposed bedroom window to the side elevation, to eliminate overlooking of no.6 Balrothery Gardens to provide passive surveillance to the public open space.
- They have amended the roof design to match the existing dwelling.

7.2.2. It is noted that the current proposal is for the construction of a two storey detached house in the side garden to the north of the existing terrace of 4no. 2 storey houses in Balrothery Gardens. The issue is whether the reasons for refusal can be overcome in the redesign of the current proposal.

7.3. Design and Layout and Impact on Adjoining Properties

7.3.1. As shown on the plans the current proposal seeks to demolish the existing detached single storey garage/games room and to construct a 2 storey 2 bed roomed detached house. The application form provides that the floor area of the existing dwelling is 122sq.m, of that to be demolished is 92sq.m and of the proposed works is 112sq.m. The proposed ridge height of the pitched roof is shown as c.7.5m and is to match that of the adjoining terrace. It is provided that the roof and external walls finish are to match the existing.

7.3.2. The proposal includes a single storey rear element to provide kitchen/living accommodation, with flat roof design, to extend c. 3.5m further than the rear of no. 7 Balrothery Gardens. The windows at ground and first floor level (hall, landing and bathroom) on the southern elevation (adjacent to no. 7) are to have obscure glazing. It is noted that these windows are not to the main living area. The first floor bedroom

window on the northern elevation is to look towards the open space. The en-suite window on the rear elevation is to be obscure glazed.

- 7.3.3. Section 12.4 of the Plan provides the Design Criteria for Residential Development. It is noted that the internal floor area including room sizes complies with and exceeds the minimum standards as set out in Tables 12.1 and 12.3 and therefore complies with Objective DMS24 of the Fingal DP. Objective DMS87 refers to private open space. As shown on the Site Layout Plan the existing house no.7 Balrothery Gardens will have a rear garden area of in excess of 60sq.m which complies with this Objective. The proposed 2 bedroom house provides less than 60sq.m at the rear of the house i.e c. 50sq.m and this is narrow i.e c. 4m in width. However, taking account of the triangular space in the northern side garden area the area of open space is increased to c. 89sq.m. The Council's concerns relative to this and the impact of the rear windows and the short rear garden area are noted. The First Party considers that this is in compliance with Objective DMS88 which makes an allowance for a reduced standard to 48sq.m of private open space for 1 and 2 bedroom town houses.
- 7.3.4. It is also noted that the current proposal allows for the minimum 2.3m between the proposed and existing house, which is in accordance with Objective DMS29. However, as shown on the Site Layout Plan there will be less than 22m distance from the rear windows of the proposed dwelling house (c.19m) to that of the opposing first floor rear windows of nos.5&6 Balrothery Gardens. This would be contrary to Objective DMS28 of the Plan. Of note is that Section 12.4 provides: *A minimum standard of 22m separation between directly opposing rear first floor windows shall be observed, normally resulting in a minimum rear garden depth of 11m. However, where sufficient alternative private open space (e.g. to the side) is available, this may be reduced - subject to the maintenance of privacy of adjoining residential amenities.*
- 7.3.5. As noted above in this case the rear garden depth would be 4m, which would result in a shorter rear garden and closer views of the rear boundary wall from the proposed kitchen/dining area. However, it must also be noted that the First Party provides that the proposed single storey element will not extend further than the footprint of the existing garage structure. I would recommend that if the Board

decides to permit that it be conditioned that a ground floor kitchen window also be included in the northern elevation.

7.4. Regard to Impact on the Character and Amenities of the Area and Precedent

- 7.4.1. The PA is concerned that this proposal in view of the constrained nature of the site, would result in overdevelopment and would set an undesirable precedent, for such infills in the area. The First Party notes that the subject site has an area of 232sq.m, and provides that there are numerous sites in Fingal that have been granted planning permission on similar smaller sites. They provide a number of planning references relevant to sites in the Skerries and Malahide area.
- 7.4.2. While note is had of these, each case presents a different scenario and must be considered on its merits. The issue of precedent can only be considered if it would result in sustainable development that would not detract from the character and amenities of the area.
- 7.4.3. While this proposal will result in a short rear garden, regard is also had to the existing scenario relative to the footprint of the garage. I would consider that in view of the configuration of the site, the area to the north should also be considered as private open space. I consider that the design and layout of the current proposal is an improvement on that previously refused on this site. I also note that the proposed dwelling will not project forward of the building line and the layout has been designed to prevent overlooking. There is a sizable public open space to the north of the site. Subject to the conditions below it would be my opinion that the proposal would integrate with the existing housing in the area and would not impact adversely on the character and amenities of the area.

7.5. Access issues

- 7.5.1. The applicant is proposing to widen the existing vehicular access and to create a shared access and driveway for the existing and proposed properties. The Council's Transportation Report notes that the shared access would be a total width of 10.4m. They consider that this would be excessively wide and recommend that the entrance widths to dwellings should not exceed 4m to reduce the potential impact on pedestrians using the public footpath by minimising the crossover distance at the

proposed entrance. They provide that there is scope to provide two separate vehicular entrances with a maximum width of 4m each. They also provide recommendations relative to the front boundary wall, footpath and verge, the undergrounding of services and stormwater disposal.

- 7.5.2. The Site Layout Plan shows 2no. on-site car parking spaces for each property. This would be in accordance with the car parking standards set out in Table 12.8 of the Fingal DP. Therefore, the existing site when subdivided would accommodate 2no. separate entrances and 2no. on site spaces per dwelling. I would recommend that if the Board decides to permit that these issues be conditioned and that revised plans be submitted showing 2no. separate vehicular entrances.

7.6. Drainage issues

- 7.6.1. It is provided that all services are available on site and currently serve the existing dwelling. The Site Layout Plan submitted shows the location of services. It is noted that the foul sewer runs to the rear of the property and the public watermain to the front. Irish Water has no objection to the proposal subject to conditions.
- 7.6.2. The Council's Water Services Department has no objection subject to conditions. These include that in order to satisfy the requirements of the GSDSDS and to comply with SuDs that in view of the site constraints the applicant is requested to submit a new surface water drainage proposal. If the Board decides to permit it is recommended that an appropriate drainage condition be included.

7.7. Screening for Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development within a serviced urban area and separation 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 the conservation objectives of any European site.

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the location of the site on residentially zoned lands in Balbriggan and the policies and objectives of the Fingal Development Plan 2017 – 2013, to the nature, scale and design of the proposed development, and to 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 detract from the character of the area, and would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would not endanger public safety by reason of a traffic hazard. 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 as amended by the further plans and particulars received by An Bord Pleanála on the 20th day of January, 2020, 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 proposed development shall be amended as follows:
 - (a) The single storey kitchen extension shall include a further window inserted in the northern elevation.
 - (b) The first floor windows in the western and southern elevations shall be obscure glazed.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of the visual and residential amenity of the area.

3. Permission is granted for one dwelling only and the entire premises shall be used as a single dwelling unit.

Reason: In the interests of clarity and the residential amenity of the area.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, 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 house, including the rear garden area, without a prior grant of planning permission.

Reason: In the interest of the residential amenities of the area.

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

Reason: In the interest of visual amenity.

6. Details of proposed boundary treatments at the perimeters of the site, including heights, materials and finishes, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual and residential amenity.

7. The vehicular access, and parking area serving the proposed development, shall comply with the requirements of the planning authority for such works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

8. Water supply and drainage arrangements, including the attenuation and disposal of surface water, and including rainwater and guttering details shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.

Reason: In the interest of public health.

10. All public services to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.

Reason: In the interest of visual amenity.

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, protection of the public roads and public footpaths, and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

12. The development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 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.

13. 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 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.

Angela Brereton
Planning Inspector

13th of May 2020