



An
Bord
Pleanála

Inspector's Report

ABP-306733-20

Development	Construction of house
Location	South west portion of the garden of Carreen, Golf Lane, off Westminster Road, Foxrock, Dublin 18 D18 K7R0
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D19A/0638
Applicants	Thalia Maree & Brendan Rogers
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Parties v Grant
Appellants	Thalia Maree & Brendan Rogers
Observers	(1) Maire Reynolds (2) Hugh & Maeve Markey (3) Barry Thornton & Clíodhna Bourke (4) Niall & Maeve Pelly

Date of Site Inspection

15.05.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located close to the end of a cul-de-sac (Golf Lane) approx. 650 metres north east of the centre of Foxrock village and east of the grounds of Foxrock Golf Club. Golf Lane is a narrow and well-maintained lane off Westminster Road and provides access to a number of houses.
- 1.2. The overall property of 0.37 hectares is currently occupied by Carreen, a dormer-style detached house whose entrance faces north east, away from Golf Lane. There is a mix of house types along Golf Lane but they are all detached houses. The site comprises a corner area of Carreen which is currently part of the garden adjacent to the lane. The northern part of the site is slightly raised above the grassed garden level as a soft landscaped area. There are some trees within the boundary and part of a detached timber clad structure which is to be removed. There is a timber fence along the party boundary with the adjacent property to the north west, Two Hoots, a 1 ½ storey house facing onto Golf Lane
- 1.3. The site has a stated area of 0.08 hectares.

2.0 Proposed Development

- 2.1. The application is for permission for:
 - A two-storey house with habitable attic level,
 - New vehicular access and pedestrian gates,
 - New boundary treatments, garden shed and site development works.
- 2.2. The proposed house has a stated floor area of 366sqm and a height of approx. 9.2 metres.
- 2.3. In addition to standard planning application plans and particulars the application was accompanied by a 'Ground Investigation Report'.
- 2.4. Further information was submitted in relation to, inter alia, a revised foul and watermain layout, vehicular entrance detail, revised surface water drainage proposals, a letter from Irish Water and a landscape plan.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for 1 no. reason as follows:

1. The proposed development would be premature by reason of an existing deficiency in the provision of sewerage facilities, pending the upgrade of the existing Irish Water foul drainage network for which there is no defined timeframe for the commencement of the necessary improvement works. The connection of the proposed development to the current foul drainage system would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 21.10.2019 and 28.01.2020 formed the basis of the planning authority decision. The Report concluded that, while the further information response was generally acceptable, having regard to the wastewater network constraints it was considered that the proposed development would be premature and prejudicial to public health until such time as the required upgrade works were identified and undertaken and the development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Parks & Landscape Services – Further information recommended in relation to a Tree Report, landscape design rationale and appointment of an ecologist. (No report received based on the further information response).

Transportation Section – No objection subject to conditions on foot of the further information response.

Drainage Planning Section – No objection subject to conditions on foot of the further information response.

3.3. Prescribed Bodies

Irish Water – In the initial submission on the planning application, Irish Water noted that it was intended to discharge surface water to the Irish Water foul/combined wastewater collection system. Irish Water will not facilitate a surface water connection to the Irish Water network. There are significant wastewater network constraints in the foul sewer in which this development proposes to connect. Currently Drainage Area Plan (DAP) with hydraulic modelling for the area is in progress which will determine system deficiencies and outline needed upgrades in existing Irish Water infrastructure. The DAP hydraulic model for existing network and current load will be available in early 2020 (subject to change). Irish Water recommended further information in relation to submission of a pre-connection enquiry in order to determine the feasibility of connection to the Irish Water network.

An updated Irish Water report was received based on the further information response (which included a letter from Irish Water stating that, based on the details provided, the proposed connection to the Irish Water network for 1 no. house can be facilitated). The updated Irish Water report reiterated previous comments in relation to significant constraints in the wastewater network and alters the timeline for availability of the DAP hydraulic model to Q4 2019 (subject to change). (The report was signed on 11.01.2020). The report states that the connection is feasible subject to completion of upgrades identified but that Irish Water does not have any plans to commence upgrade works to its network in this area.

3.4. Third Party Observations

4 no. submissions were received from Barry Thornton & Clíodhna Bourke, Kiribili, Marie Reynolds, Windy Nook, Niall & Maeve Pelly, Petone and Hugh & Maeve Markey, Two Hoots; all properties on Golf Lane. The main issues raised can be synthesised as follows:

Traffic-Related Issues

- Golf Lane is a private lane with each section of road owned by the owners of the houses fronting onto it. It allows for only one car to pass at a time and has a 2.1-3.5 metres paved width. There is no footpath and the road is shared with vulnerable users. It is inadequate to cater for additional residential traffic. Much

of the lane forms part of a heavily-used pedestrian right-of-way from Westminster Road to Springfield Park and beyond.

- If cars meet each other one has to pull into the side, depending on availability of gaps. The gaps also serve as car parking for excess cars to the 9 no. houses on Golf Lane.
- The application and that under P.A. Reg. Ref. D19A/0639 will increase the number of houses from 9 no. to 12 no. and the number of cars by at least 33% and will be a traffic hazard to current lane users.
- There is no space for overtaking beyond Petone which will result in cars reversing to make way for an oncoming car and this will be a safety risk.
- If permission is granted for all 3 no. houses one shared entrance should be provided/the proposed entrance gate should be indented to ensure adequate visibility/two proposed exits (vehicular and pedestrian) are unnecessary and add additional dangers to the lane.
- 2 no. car parking spaces are inadequate for a house of this size/no provision for visitor parking.
- Increased bin congestion at the top of Golf Lane will affect driver's visibility.
- Cars parked on the laneway will block access to Windy Nook.
- If granted permission, the lane should be kept clear at all times during construction and damage to the lane should be rectified.
- Reference is made to required amendments for access to Petone during the planning process of that application.

Scale of Development

- Height and density of the proposed house and proximity to Golf Lane.
- Excessively close to site boundaries/overbearing impact and loss of privacy to the courtyard of Two Hoots
- Impact on residential and visual amenities of existing residents.
- The proposed house is higher than its neighbours.
- The design and layout maintain the value of Carreen and the proposed house with no regard to the impact on the value of neighbouring houses/devaluation of property.

- There is scope for a revised, less imposing house more in line with the natural surroundings.

Natural Landscape

- A Tree Survey should be submitted given the sylvan nature of the area and the proposal to remove a number of trees.
- Multiple vehicular and pedestrian entrances would mean the destruction of the hedgerow bordering Carreen impacting wildlife and greatly change the character on the upper portion of the laneway.

Miscellaneous

- Not opposed to the development of the site in principle (cited in two submissions).
- Some drawings are misleading and do not show house extensions in Springfield Park.
- The application should be considered in conjunction with P.A. Reg. Ref. D19A/0639/overall overdevelopment of the site.
- Construction of a new water main and foul sewer the length of Golf Lane appears to require permission from the various landowners. Existing services will not be capable of absorbing an additional 3 no. houses. Water pressure is very poor.
- Permission should be refused to be consistent with other decisions made under P.A. Reg. Ref. D06A/0846 (Windy Nook) and P.A. Reg. Ref. D12A/0430 / ABP Reg. Ref. PL06D.241537 (Currane, Gordon Ave.) in terms of overdevelopment, overlooking impact etc.
- The development is not consistent with the 'corner/side garden sites' and 'infill sites' sections of the Dun Laoghaire Rathdown County Development Plan 2016-2022.
- The development could have a serious impact on the on intermittent flooding that occurs in the pedestrian lane linking Golf Lane and Springfield Park due to the loss of soft landscaping and provision of hard surface.
- Concern is expressed about the adequacy of the attenuation tank and the trial soakage pit was outside the site boundary.

- If permitted, the applicants should be levied with the cost of bringing public lighting along the length of the lane as it only extends to the pedestrian lane.
- Windows overlooking Two Hoots should have opaque glazing.
- Working hours should be limited to standard hours.

4.0 Planning History

4.1. The relevant planning history of the site is as follows:

4.2. P.A. Reg. Ref. D19A/0639 – Permission was refused in 2020 for 2 no. part two-storey part single-storey houses within the grounds of Carreen for the same reason as that cited in the application subject of this appeal. A first-party appeal of the planning authority decision is currently under consideration under P.A. Reg. Ref. ABP-306740-20.

4.3. A Certificate of Exemption from Part V was granted under V/101/19.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown County Development Plan 2016-2022

5.1.1. The site is in an area zoned 'Objective A; To protect and-or improve residential amenity'. Table 8.3.2 (Zoning Objective 'A') of the Plan indicates residential development is permitted in principle. For the majority of the length of Golf Lane it is also a public right-of-way connecting Westminster Road to Springfield Park (north east of the site).

5.1.2. Policy RES 3 of the Plan states it is 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 the area, with the need to provide for sustainable residential development. Policy RES 4 states it is policy to, inter alia, densify existing built-up areas having due regard to existing residential amenity.

5.1.3. Development management parameters relating to corner/side garden site development (subsection (v)) and infill development (subsection (vii)) are contained in Section 8.2.3.4 (Additional Accommodation in Existing Built-up Areas) of the Plan.

5.2. **Natural Heritage Designations**

5.2.1. The closest natural heritage areas are South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC approx. 3.1km to the north.

5.3. **EIA Screening**

5.3.1. 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**

The main points made can be summarised as follows:

- The small waste load generated is estimated to be 3 litres/minute.
- The letter received from Irish Water dated 15.11.2019 in response to a pre-connection enquiry clearly states a proposed connection to the network can be facilitated. However, this letter is contradicted by the Irish Water further information report where Irish Water now claims that there are significant wastewater network constraints. This is difficult to understand, and reference is made to two planning applications (P.A. Reg. Refs. D19A/0652 and D18A/0111) on Gordon Ave., Foxrock for single houses where a condition required the applicants to enter into a connection agreement with Irish Water.

The same criteria should apply, and permission should be granted subject to a similar condition.

- The Planning Report indicates the application meets all the development standards and criteria of the planning authority save the proposed wastewater connection. The appellants do not consider the reason for refusal to be valid, particularly in light of Paragraph 5.4 (Planning Conditions) of the Draft Guidelines for Planning Authorities Water Services 2018. The matter for refusal should be dealt with during the connection agreement with Irish Water. Irish Water stated that there is capacity in the system and the appellants accept matters regarding upgrading etc. need to be dealt with.
- The applicant is the daughter of the owners of Carreen who wants to be closer to her ageing parents.

6.2. Planning Authority Response

The planning authority response can be summarised as follows:

- Any additional loading from a single unit, cumulative single units or multiple units will increase the loading on what is an already deficient system.
- With regard to the previous applications referenced, the Irish Water report for P.A. Reg. Ref. D19A/0652 did not reference the significant wastewater network constraints. P.A. Reg. Ref. D18A/0111 pre-dates recent Irish Water reports highlighting the significant wastewater network constraints in the area. The Board should note P.A. Reg. Ref. D19A/0190 / ABP Reg. Ref. ABP-304644-19 where permission for a development of 20 no. units was refused because it would be premature by reason of an existing deficiency in the provision of sewerage facilities, pending the upgrade of the network for which there is no defined timeline. Wording in the Irish Water report for D19A/0190 is the same as the wording used in the current application.
- As the Irish Water report states that there are no plans to commence upgrade works then dealing with this during any connection agreement negotiations cannot be relied upon as a basis for granting permission.

6.3. Observations

4 no. observations have been received from the same residents of Golf Lane who made submissions on the initial planning application. The issues raised are generally similar to those referenced in the submissions received by the planning authority but also include:

- The decision of the planning authority is supported.
- Whether the additional waste loading is small or not is irrelevant in a matter that would be prejudicial to public health.
- The development must be considered in tandem with P.A. Reg. Ref. D19A/0639 / ABP Reg. Ref. ABP-306740-20 and is effectively a commercial development dressed up as providing a house for a daughter, son and downsizing for the owners of Carreen.
- The same pre-connection enquiry letter from Irish Water, referring to one house with Connection Reference No. CDS19007656, has been submitted as part of both planning applications and referenced in both appeals. This is misleading and how could Irish Water respond to a query when they were not provided with the full information?
- The Irish Water letter is addressed to the landowners/applicants for the concurrent application; not the appellants in this application. The Irish Water letter of 10.01.2020 is 'based on information provided' and the question is posed as to whether Irish Water was aware of the proposal for 3 no. houses when that letter was issued.
- The letter submitted as part of the further information response cannot take precedence over a report from a statutory consultee.
- Issues identified in relation to metering new supplies in Springfield Park and the landowner has no rights over third-party property for the passage of services/a connection agreement would require the consent of other residents on Golf Lane which has not been given.
- Discrepancies regarding the water supply between the original application and further information submission (both on Drawing No. GK19195-C100).

- Both planning applications referenced in the grounds of appeal connect directly into the main wastewater network and are not comparable to the current application(s).
- The appellants' interpretation of Paragraph 5.4 of the Draft Guidelines is erroneous/the planning authority correctly refused the application in accordance with Paragraph 5.3.3 (v) of the Draft Guidelines.
- As Irish Water is a separate statutory body the Board cannot direct that water connections are made and instead may make it a condition of permission that connection be part of the grant. Where water services are not capable of accommodating the proposed development, it cannot be cured by a condition.
- There is some confusion relating to pipework on Golf Lane in terms of ownership and the number of pipes. This should be clarified with Irish Water before any development proceeds on Golf Lane.
- While the Transportation Section of the planning authority may have no issue with the volume of traffic egressing onto the public road at Westminster Road the residents have a right to determine what happens on private property.
- Some flooding has occurred on site.

6.4. **Further Responses**

None received.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Report 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:

- Zoning
- Scale of the Proposed Development

- Foul Water Connection
- Traffic
- Appropriate Assessment

7.1. Zoning

7.1.1. The proposed development is located in an area zoned for residential use and residential development is permitted in principle under this zoning in the Dun Laoghaire Rathdown County Development Plan 2016-2022. The principle of development is therefore acceptable, subject to the detailed considerations below.

7.2. Scale of the Proposed Development

7.2.1. Concern is expressed in the submissions about the scale and height of the proposed house.

7.2.2. Policies RES 3 and RES 4 of the County Development Plan 2016-2022 promote higher residential densities in urban areas while maintaining the residential amenity and character of the area. Houses on Golf Lane have no consistent design but are detached houses on relatively generous site areas and I consider the proposed development maintains the general character of the area in this regard. I do not consider the development to have any impact on the general sylvan nature of Golf Lane given that the trees to be removed to accommodate the proposed house are smaller ornamental trees within the garden of Carreen.

7.2.3. The proposed house has a stated floor area of 366sqm and a height of approx. 9.2 metres. Its building line is similar to that of the adjacent house to the north west. While the provision of a house at this location will impact on the receiving environment I do not consider that there would be any significant undue impact on the residential amenity of the property to the north west, having regard to County Development Plan policy to densify areas such as this. I do not consider that shadowing or overbearing impacts are such that would warrant a refusal of permission on this basis. The 3 no. above ground floor north west side elevation windows could be fitted with opaque glazing to remove any overlooking to the adjoining property. In terms of height and general bulk, as shown on the submitted contextual elevation drawings submitted, I

do not consider the proposed house to have an excessive height in the context of existing houses and would not comprise an obtrusive or incongruous feature on the laneway.

- 7.2.4. I consider that the proposed house would be consistent with the general pattern of development in the vicinity and would be acceptable in principle.

7.3. Foul Water Connection

- 7.3.1. This issue is of major significance and formed the basis of the planning authority's reason for refusal.

- 7.3.2. A report was received from Irish Water on foot of the initial application which identified significant wastewater constraints in the foul sewer to which it was proposed to connect. Work to determine deficiencies and needed upgrades was ongoing. Notwithstanding, the Irish Water report recommended that the applicant engage with Irish Water through the submission of a pre-connection enquiry to determine the feasibility of connection to the network and further information was issued by the planning authority requesting this engagement, among other issues. As part of the further information response a letter from Irish Water was submitted. This letter is addressed to the landowners, as opposed to the applicants, and states that, based upon the details provided and the capacity currently available, subject to a valid connection agreement, a connection to the network can be facilitated. It is noted that the letter contained in the further information response is identical to the letter submitted in the further information response to the concurrent planning application P.A. Reg. Ref. D19A/0639, including the same connection reference number relating to 1 no. house. Notwithstanding the content of this letter, an updated report from Irish Water based on the further information response reiterated the constraints in the foul network. The report stated that connection is feasible subject to the completion of upgrades identified but there are no plans to commence upgrade works to the network in this area.

- 7.3.3. The grounds of appeal reference the contradiction in the Irish Water correspondence and consider that permission should be granted with an appropriate condition included.

7.3.4. The Draft Water Services Guidelines for Planning Authorities 2018 are referenced in the grounds of appeal and observations. Section 5.3.3 of these draft guidelines state that where the planning authority has been advised by Irish Water that there are existing deficiencies in the provision of wastewater collection and disposal facilities that need to be addressed, and where there are no planned upgrades in the short to medium term and that the capacity constraints are such that the development is unlikely to be satisfactorily serviced within the lifetime of the permission, the planning authority should take the view, based on available information, that the development is premature pending the required upgrades and refuse permission. I consider that this section of the guidelines takes priority over Section 5.4 which relates to planning conditions. While there is a contradiction between the different Irish Water documents received during this planning application process, I consider that the statutory reports sent directly to the planning authority are the most pertinent. The most recent report clearly states that any connection is only feasible subject to completion of upgrades identified in the DAP, but there are no plans to commence upgrade works to the network. The Development Management Guidelines for Planning Authorities (2007) states, in Section 7.3.5, that it may be unreasonable to make a permission subject to a condition which has the effect of deferring the development for a very long time. The example condition is where permitted development should not be carried out until a sewerage scheme for the area, which may only be at the preliminary design stage, has been completed. The example is not dissimilar to the current application. In such cases, according to the guidelines, if the development is genuinely premature, the application ought to be refused.

7.3.5. The planning authority response to the grounds of appeal refers to P.A. Reg. Ref. D19A/0190 / ABP Reg. Ref. ABP-304644-19 at Carrigmore, Golf Lane, Torquay Road, Foxrock (a different Golf Lane). Irish Water submitted a similar report to the planning authority to that received under the current application in terms of the constraints in the foul network. The Board refused permission because the development would be premature by reason of an existing deficiency in the provision of sewerage facilities. I consider that the same reason for refusal is applicable to this application.

7.4. Traffic

- 7.4.1. Submissions received on file reference the limited width of Golf Lane, the increase in the number of houses using the lane as a result of this application and the concurrent application, and the traffic hazard from increased interaction with more vulnerable users on this laneway which also acts as a public right-of-way to Springfield Park and beyond.
- 7.4.2. While the laneway is narrow in places it is a low-speed environment. Vehicular users of the lane would be aware of the nature of the lane and act accordingly. In terms of the current application I do not consider that one additional house would create any undue increased risk to pedestrians, cyclists or other vulnerable road users and I do not consider a refusal of permission on this basis to be reasonable.

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 and with no hydrological pathway to 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.

8.0 Recommendation

- 8.1. I recommend that the planning application be refused for the following reason and consideration.

9.0 Reasons and Considerations

1. The proposed development would be premature by reason of an existing deficiency in the provision of sewerage facilities, pending the upgrade of the existing Irish Water foul drainage network for which there is no defined timeframe for the commencement of the necessary improvement works. The connection of the proposed development to the current foul drainage system

would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

18.05.2020