



An
Bord
Pleanála

Inspector's Report ABP 307477-20

Development	Construction of a new detached two storey 3 bedroom house and new vehicular access from Thornleigh Court to rear of existing Mall House Apartments.
Location	Mall House, Kilbush Lane, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F19A/0551
Applicant	Frank Ruigrok
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party
Appellant(s)	Andrew Butterly
Observer(s)	Martina De Lacey Sharon Casey and others.
Date of Site Inspection	29 th September 2019.

Inspector

Brendan Coyne

1.0 Site Location and Description

- 1.1. The site (0.02 ha) comprises the southern section of an area of shared amenity space to the rear / south of a two-storey apartment block known as Mall House, which is located c. 190m north of Lower Main Street in Rush, Co. Dublin. Mall House contains 2 no. apartments at both ground and first floor level. The southern and western boundaries of the site adjoin a cul-de-sac serving 4 no. two storey semi-detached dwellings, known as Thornleigh Court. The eastern boundary adjoins a site containing an end-of-terrace two storey dwelling, No. 8a Cois Trá. The western, southern and eastern boundaries of the site are defined with a wall c. 1.8m high and its northern boundary is undefined. The site is currently under grass. The ground floor level of Mall House and patio areas to the rear of the ground floor apartments are c. 0.6 metres below the ground level of the site. A wall c. 1.8m high subdivides the patios to the rear of the 2 no. ground floor apartments. Both patios contain a small block built shed with pitched roofs at their south-western and south-eastern corners respectively. The 2 no. first floor apartments within Mall House have balconies along their rear / southern elevations. Thornleigh Court is accessed via a laneway which is bound by walls c. 2m high on either side and a pedestrian footpath along its southern side. A shared visitor parking area providing 2 no. parking spaces is located within Thornleigh Court, to the west of the subject site. A triangular shaped grassed area adjoins the western boundary of the site. Thornleigh Court is located within a 50 km/hr speed limit zone.

2.0 Proposed Development

- 2.1.1. Application as lodged on the 20th November 2019 - Permission sought for the following;
- Construction of a detached 2 storey 3 no. bedroom dwelling (109 sq.m.) to the rear of Mall House Apartments.
 - New vehicular access from Thornleigh Court, serving the proposed new dwelling.
 - The provision of a new 1.8m high wall along the northern boundary of the site.
- 2.1.2. Revised Proposal as submitted by way of Significant Further Information on the 16th March 2020. Amendments include:

- Vehicular entrance reduced to 4m wide.
- Reduction in the ridge height of the dwelling from 8.75m to 8m.
- Provision of permeable paving to the front of the dwelling and the provision of a water butt and new surface water drain.
- Provision of 5.6 sq.m. internal storage space.

2.1.3. Documentation submitted includes;

- Shadow Analysis
- Engineering Report detailing SuDS for the proposed dwelling
- Infiltration Test Report
- Revised site plan, floor plan, elevations, section and drainage drawings.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Fingal County Council granted permission for the proposed development, as amended by way of Significant Further Information submitted on the 16th March 2020, subject to 14 no. Conditions. Noted Conditions include:

No. 3 The permitted development shall be in accordance with the drawings submitted by way of additional information on the 16th March 2020.

No. 4 The roof ridge height and external finishes of the permitted development shall be in accordance with drawing submitted by way of additional information on the 16th March 2020.

No. 5 The front / western and southern side boundary walls shall be in accordance with the drawing submitted by way of additional information on the 16th March 2020.

No. 6 All bathrooms / ensuite windows shall be fitted with obscure glass.

No. 7 Drainage requirements.

3.2. Planning Authority Reports

3.2.1. Planning Reports (23rd January 2020 and 10th June 2020)

- The proposed development complies with Objective DMS24 of the Fingal Development Plan 2017 – 2023 with regards internal room area and width requirements.
- The proposal provides 60sq.m. private amenity space to the rear of the dwelling. This complies with the requirements of Objective DMS87 of the Development Plan.
- The proposal would not negatively impact on the visual amenity of the area.
- No undue overlooking of adjoining properties is anticipated.
- The revised proposal, submitted by way of additional information, reduces the height of the proposed dwelling from 8.75m to 8m, to mitigate its overshadowing impact on the shared amenity space to the rear of Mall House.
- The shadow analysis details that the private amenity space to the rear of the proposed dwelling will not be overshadowed in the morning but will be in shadow during the afternoon and evening period.
- The height of the front boundary wall is acceptable.
- The revised 4m wide vehicular entrance is acceptable.
- The proposal provides adequate in-curtilage turning space to allow vehicles exit the site in forward gear.
- Revised drainage plans submitted detail the provision of permeable paving to the front of the dwelling and the provision of a new water butt and surface water drain.
- Revised floor plans submitted detail the provision of adequate internal storage space.

3.3. Other Technical Reports

3.3.1. Transportation Planning Section:

First Report: Further Information requested requiring details regarding the front boundary wall and the proposed vehicular entrance reduced to a maximum width of 4m.

Second Report: No objection subject to Conditions.

3.3.2. **Water Services Department:**

First Report: Further Information requested requiring details regarding (i) the location of surface water sewer in proximity to the proposal (a minimum separation distance of 3m is required) and (ii) the provision of SuDS, including the provision of rainwater butts as a minimum acceptable measure.

Second Report: No objection subject to Conditions.

3.4. **Prescribed Bodies**

Irish Water:

No objections.

4.0 **Planning History**

P.A. Ref. F07A/0054 Permission REFUSED in 2007 to Frank Ruigrok for the creation of vehicular access to the rear / south of Mall House, opening onto Thornleigh Court, for use as occasional access for maintenance of rear garden of the apartment block. The reason for refusal was as follows;

1. The proposed new vehicular access is considered unnecessary, is onto a substandard narrow residential road over which the applicant has not established a right of way. The proposed development is thus unacceptable and would be contrary to the proper planning and sustainable development of the area.

P.A. Ref. F05A/1406 Permission GRANTED in 2005 to Frank Ruigrok for alterations to 4 no. apartments, previously approved under P.A. Ref. F03A/0998, including alterations to elevations to remove string course in the brick work.

P.A. Ref. F03A/0998 Permission GRANTED in 2004 to Frank Ruigrok for the construction of 4 no. 2-bedroom apartments accessed from Kilbush Lane and associated car parking, stores and landscaping.

Note: Under this planning application permission was sought for a 1 no. 3-bedroom house accessed from Thornleigh Court to the rear of the apartment block but was omitted by way of Further Information response and its space was provided as communal private amenity space serving the apartments.

P.A. Ref. F02A/0767 / ABP Ref. PL06F.200435 Permission REFUSED ON APPEAL in 2003 to Frank Ruigrok for the construction of a two storey block of 4 two bed and 4 one bed apartments with vehicular access from Kilbush Lane and Thornleigh South, 10 car parking spaces, bin/garden store and all associated site works.

The reasons for refusal were as follows;

1. The proposed development, by reason of its excessive height, bulk and depth, would be out of character with the pattern of development in the area and would constitute overdevelopment on this site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would give rise to an unacceptable level of overlooking of adjoining dwellings, which would seriously injure the amenities of property in the vicinity.
3. The proposed development, by reason of the additional vehicular movements generated on a narrow residential road network, would tend to create serious traffic congestion.

5.0 Policy and Context

Fingal County Development Plan 2017-2023

Zoning: The site is zoned objective 'RS - Residential' which seeks 'to provide for residential development and protect and improve residential amenity'.

Objective PM44 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 Promote the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.

Objective PM65 Ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements.

Chapter 12 Development Management Standards

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 A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

Objective DMS29 Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units.

Objective DMS30 Ensure all new residential units comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents.

Objective DMS39 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 DMS44 Protect areas with a unique, identified residential character which provides a sense of place to an area through design, character, density and/or height and ensure any new development in such areas respects this distinctive character.

Objective DMS87 Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:

- 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.
- Houses with 4 or more bedrooms to have a minimum of 75 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 DMS91 Require communal amenity space within apartment developments, in the form of semiprivate zones such as secluded retreats and sitting out areas, complies with or exceeds the minimum standards set out in Table 12.6.

Table 12.6 Open Space requirement for Apartment and Duplex Units

Objective DMS126 Ensure that necessary new entrances are designed in accordance with DMRB or DMURS as appropriate, thereby avoiding the creation of traffic hazards.

Table 12.8 Car Parking Standards

5.1. National Guidelines

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)

5.2. Natural Heritage Designations

- 5.2.1. The site is located 0.6 km to the north of the Rogerstown Estuary SPA (Site Code: 004015) and SAC (Site Code: 000208).

6.0 Environmental Impact Assessment - Preliminary Examination

- 6.1.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive 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 and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. A third-party appeal was received from Andrew Butterly, who resides at No. 2 Thornleigh Court, which is a semi-detached house located adjacent, to the south-west of the appeal site. The grounds of appeal document submitted refers to the appellant's original objection submitted to the Planning Authority, which the appellant states has been ignored and not taken into account. The following is a summary of the issues raised in both the grounds of appeal submission and original objection submitted to the Planning Authority.
- The 3 no. reasons for refusal given under ABP Ref. PL06F.200435 in 2002 (detailed in Section 4.0 above) are relevant to the proposed development.
 - The proposal is considerably larger and bulkier than surrounding dwellings.
 - The proposal would overlook surrounding properties, particularly the rear garden and bathroom window on side elevation of the neighbouring dwelling to the east of the site, house Nos. 2 and 3 Thornleigh Court and the rear of house Nos. 45 and 46 Thornleigh.
 - The apartments within Mall House would overlook the proposed development.

- The proposal would block sunlight reaching the ground floor apartments within Mall House. Such development would be contrary to the Sustainable Urban Housing: Design Standards for New Apartment Guidelines.
- The proposal would overshadow the communal private amenity space serving the apartments within Mall House.
- The proposal would block light entering the rooms of house Nos. 2, 3 and 4 Thornleigh Court.
- The proposal would reduce green space within Thornleigh Court and reduce the shared amenity area serving the residents of the apartments within Mall House from 313 sq.m. to 172 sq.m.
- The width of the access lane serving Thornleigh Court does not meet the minimum standard width requirements as outlined in the 'traffic signs manual chapter 8'.
- Given the narrow width of the access lane serving Thornleigh Court, a traffic management plan is required.
- Concern that construction traffic will not be able to turn or reverse on the access laneway.
- Emergency services and refuse trucks cannot adequately access Thornleigh Court. Residents are required to bring their bins to the entrance of the cul-de-sac.
- The proposal could create a traffic hazard by reason that the appellant would have to reverse across the proposed entrance when exiting their property.
- Concerns expressed with regards cracking along the walls either side of the access laneway. The proposal would increase the volume and loading of traffic on this narrow road, which may impact the structural integrity of these walls.
- The existing visitor parking facilities within Thornleigh Court cannot cater for existing residents. The proposal will result in additional parking in the visitor parking area.
- When the applicant responded to the additional information request, the site notices were not amended to 'yellow' in colour, as required. As such, residents in the vicinity were not aware of the submission made.

- The Planning Authority incorrectly addressed the site as “Mill House” instead of “Mall House” on the Council online planning search database and correspondence issued. This affected people observing the Council’s website during the Covid-19 shut down of Fingal County Council’s offices to the public.
- An incorrect date of 16/03/2019 for additional information correspondence was recorded on the Council’s website. Copy of screenshot demonstrating same submitted.
- Regarding history file P.A. Ref. F03A/0998, the Council’s online records are missing details of correspondence to the applicant.
- The extent of the site does not correlate with the actual size of the site. The appellant details the dimensions of the site and its proximity from Mall House on aerial photographs and provides a copy of the site plan and floor plan of the proposal submitted.

7.2. Applicant Response

7.2.1. The response received from Joseph English Architecture representing the Applicant, is synthesised as follows;

- The typographical error is an insignificant mistake which should have no bearing on the validity of the planning application.
- A yellow site notice is not required, as per the Planning and Development Regulations.
- The drawings submitted are accurate.
- The shadow diagram analysis submitted shows that overshadowing of adjoining property would be minimal.
- The proposal complies with Development Plan policy with regards overlooking and separation distances required between first floor windows.
- The proposal would not result in overlooking of dwellings within Thornleigh Court or the apartments in Mall House by reason that there are no first-floor window openings on its side elevations.

- The shared amenity space serving the apartments within Mall House would exceed Development Plan standards.
- Previous development refused permission under P.A. Ref. F02A/0767 / ABP Ref. 06F.200435 related to a development requiring 10 no. parking spaces, which has no relation to the proposed development which requires 2 no. parking spaces.
- The proposal provides an in-curtilage turning area, to enable cars leaving in forward gear.
- The proposal provides no change to the turning circle of cars within Thornleigh Court.
- The proposal provides no change to the access road serving Thornleigh Court and provides an improvement to visibility due to the lowering of the boundary walls.
- Construction vehicles will be located on site as much as possible during construction to minimise disturbance.
- The cracks on the walls to either side of the access lane are not within the ownership of the applicant and are not related to the proposed development.
- The proposal will not alter the opening of the laneway into Thornleigh Court and its width is based on roads requirements of older regulations.

7.3. Planning Authority Response

7.3.1. The Planning Authority's response is as follows;

- The third-party appeal states, incorrectly, that the revised site notices received by the Planning Authority on foot of significant additional information should have been printed on a yellow background. This is not the case. Article 19(4) of the Planning and Development Regulations 2001 (as amended) requires that where a valid planning application is made and a subsequent application is made within 6 months from the date of making the first mentioned application in respect of land substantially consisting of the site or part thereof, the site notice for the subsequent application shall be printed on a yellow background.

- It is acknowledged that there was a typographical error in the name of the apartment building on the Council's website. The Planning Authority does not consider that members of the public were prevented from participating in the process because of the said typographical error.
- Following the erection / publication of the revised site notice, an additional 2 no. observations were received in respect of the proposed development.
- Regarding history file P.A. Ref. F03A/0998, the physical file is available for viewing by members of the public.
- It is considered that the remaining issues raised in the appeal submission have generally been addressed in the Planner's report relating to this application.

7.4. Observations

7.4.1. Two third-party observations were received from the following parties;

- Martina De Lacey of house No. 4 Thornleigh Court.
- C/o signed observation from Sharon Casey, Audrey Dunne, Sandra Gough and Ernie Grimes of house Nos. 45 and 46 Thornleigh and house Nos. 1 and 3 Thornleigh Court.

Issues raised are summarised as follows;

- Concern regarding access for emergency services into Thornleigh Court and the creation of on-street parking along the cul-de-sac.
- Concern regarding the impact of construction traffic along Thornleigh Court.
- The proposal would result in loss of private amenity space serving the apartments within Mall House.
- The proposal would result in overlooking and overshadowing of neighbouring property.
- The Planning Authority incorrectly addressed the site as "Mill House" instead of "Mall House" on the Council website. This affected Martina De Lacey's observation of the site and her ability to make an observation on the planning application.

8.0 Assessment

8.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Overlooking
- Overshadowing
- Impact on Amenity Areas
- Roads / Access Issues
- Procedural Issues

These are addressed below.

8.2. Overlooking

8.2.1. The third-party appellant expresses concern that the proposed development would result in overlooking of the private amenity space to the rear of neighbouring dwelling No. 8a Cois Trá and house Nos. 45 and 46 Thornleigh and would overlook house Nos. 2 and 3 Thornleigh Court. The appellant also expresses concern that the apartments within Mall House would overlook the proposed development.

8.2.2. The Planning Authority in its assessment determine that the proposal would not overlook house No. 8a Cois Trá or the apartments within Mall House by reason that there are no windows proposed on the side gable walls of the proposed dwelling at first floor level and that the window opes on its rear / eastern elevation at first floor level would serve ensuite w.c.'s and a bathroom. The Planning Authority report states that, given the separation distance of 18 metres between the first-floor window opes on the front / western elevation of the proposed dwelling and the rear / eastern boundaries of house Nos. 45 and 46 Thornleigh, overlooking would not occur.

8.2.3. A separation distance of 24m would be maintained between the first-floor front (western) elevation of the proposed dwelling and the rear / eastern boundary wall of house Nos. 45 and 46 Thornleigh. This separation distance accords with the

requirements of Section 12.4 of the Fingal County Development Plan which requires a minimum standard of 22 metres separation distance between directly opposing rear first floor windows. As such, it is my view that no undue overlooking would occur between the proposed dwelling and house Nos. 45 and 46 Thornleigh.

- 8.2.4. The proposal does not provide any window opes on its southern side elevation at first floor level. As such, overlooking of adjacent houses to the south within Thornleigh Court would not occur.
- 8.2.5. The proposal provides 3 no. window opes on its rear / eastern elevation, at first floor level. Given that these window opes would serve 2 no. ensuite w.c.'s and a bathroom, I consider that the proposal would not result in overlooking of the side elevation or rear amenity space of neighbouring dwelling no. 8a Cois Trá. Notwithstanding this, to prevent overlooking I recommend that a Condition be imposed requiring that these first-floor rear window opes be permanently fitted with obscure glazing, in the event of a grant of permission. I noted during site inspection that the western side elevation of house No. 8a Cois Trá contains 1 no. obscure glazed window ope on its side / western elevation at first floor level. As such house No. 8a Cois Trá would not overlook the private amenity space to the rear of the proposed dwelling.
- 8.2.6. The proposal does not provide any window opes on its northern side elevation at first floor level. As such, overlooking of the shared amenity space and apartments within Mall House would not occur.
- 8.2.7. A separation distance of 11 metres would be maintained between the proposed 2m high northern side boundary wall of the proposed dwelling and the rear / southern elevation of the first-floor apartments within Mall House. I consider that this would be sufficient to prevent overlooking of the private amenity space to the rear of the proposed dwelling from the first-floor apartments within Mall House.
- 8.2.8. Having regard to the above, it is my view that the proposed development would not result in overlooking of neighbouring property and the proposed dwelling would not be overlooked by the apartments within Mall House or the neighbouring dwelling to the east. The proposed development complies with Development Plan policy with regards overlooking. I recommend, therefore, that this ground of appeal should not be upheld.

8.3. **Overshadowing**

- 8.3.1. The appellant expresses concern that the proposed dwelling would block sunlight reaching the ground floor apartments within Mall House and daylight entering the rooms of house Nos. 2, 3 and 4 Thornleigh Court. The appellant also expresses concern that the proposal would overshadow the communal amenity space serving the apartments within Mall House.
- 8.3.2. The roof ridge height of the proposed dwelling, as revised by way of further information submission, is 8 metres. The roof profile of the proposal is pitched with gable side ends. The proposed dwelling has a first-floor depth of 6.5m. and is orientated on an east / west axis. The proposal would maintain a separation distance of 11.8m from the rear / southern elevation of the apartments within Mall House, 7.2m from the western side elevation of house No. 8a Cois Trá and 15.2m from the front elevation of the closest dwellings to the south, house Nos. 3 and 4 Thornleigh Court.
- 8.3.3. The shadow analysis submitted illustrates and details the shadow cast by the proposed dwelling on adjoining property on the 21st December and the March / September equinoxes for the hours 10am, 12 noon and 3pm and the 21st June Summer Solstice for the hours 8am, 11am, 3pm and 7pm. The shadow analysis indicates the following on these dates;
- December 21st – Winter Solstice: Some additional overshadowing at the north-eastern corner of the shared amenity space to the rear / south of Mall House at midday. No additional overshadowing at 10am or 3pm.
- March / September - Equinoxes: No significant additional overshadowing at 9am. At midday the proposal provides some overshadowing from the northern boundary wall and the pitched roof of the proposed dwelling on the shared amenity space to the rear / south of Mall House. Likewise, the proposal would provide some additional overshadowing at 4pm on the shared amenity space to the rear of Mall House and the rear amenity space of neighbouring dwellings Nos. 8a and 1a Cois Trá.
- June 21st – Summer Solstice: No significant overshadowing at 8am, 11am, 3pm and 7pm.
- 8.3.4. With regard Daylight, Sunlight and Overshadowing, Objective DMS30 of the Fingal Development Plan 2017-2023 seeks to ensure all new residential units comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to

Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents.

- 8.3.5. Having regard to the orientation, layout, scale and height of the proposed dwelling and its distance from the dwellings to the south, I am satisfied that the proposal would not result in loss of daylight to the neighbouring dwellings to the south in Thornleigh Court, as put forward by the appellant. Having reviewed the shadow analysis submitted, I am satisfied that the proposed dwelling would not cause any significant overshadowing of the private balconies and patio areas serving the apartments with Mall House on the March / September Equinoxes and on the 21st June, and that at least half of the shared amenity space of Mall House would receive at least two hours of sunlight on the March / September Equinoxes, in accordance with the recommendations of Section 3.3.17 of the Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.E. 2011).
- 8.3.6. Having reviewed the shadow analysis submitted, I am satisfied that the rear southern elevations of the apartments within Mall House would receive in excess of 25% of annual probable sunlight hours, including at least 5% of annual probable sunlight hours in the winter months between the 21st September and 21st March, in accordance with the recommendations of Section 3.2 of the Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.E. 2011). The proposal would not cause significant additional overshadowing of the private amenity space to the rear of house No. 8a Cois Trá, which is north facing or the rear amenity space of adjacent house No. 1a Cois Trá. I recommend, therefore, that the appeal should not be upheld in relation to this issue.

8.4. Impact on Amenity Areas

- 8.4.1. The appellant objects to the proposed development on the grounds that it would reduce the amount of green space within Thornleigh Court and reduce the area of shared amenity space serving the apartments within Mall House. The appellant expresses concern that this would greatly impact the residents of the apartments who use this space frequently. I note that the Planning Authority report considered that the amount of shared amenity space retained for the apartments within Mall House would be acceptable.

- 8.4.2. The proposal would maintain 144 sq.m. of communal amenity space to the rear / south of Mall House, serving the 4 no. 2 bedroom apartments. This complies with the requirements of Table 12.6 of the Fingal County Development Plan which requires that a minimum of 7 sq.m. communal amenity space be provided for a 2-bedroom apartment. The 144 sq.m. of communal amenity space maintained for the apartments within Mall House would be well in excess of the minimum 28 sq.m. communal amenity space required.
- 8.4.3. With regard impact on amenity space within Thornleigh Court, I consider that the triangular green area (c. 65 sq.m.) adjoining the western boundary of the site is residual. I consider that the creation of the proposed new vehicular entrance across the southern end of this green space would have a minimal intrusion upon this area of amenity space. I do not consider its intrusion into and reduction of the size of the area of residual amenity space significant enough to warrant refusal for the proposed development. I recommend, therefore, that the appeal should not be upheld in relation to this issue.

8.5. Roads / Access Issues

- 8.5.1. The appellant expresses concern with regards the width of the access lane serving Thornleigh Court and its ability to provide adequate access / egress for construction traffic, emergency and waste collection vehicles, and the impact of the increase in volume and loading of such traffic on the structural integrity of the walls on either side of the access road. The appellant also expresses concern that the proposal could create a traffic hazard by reason that the appellant would have to reverse across the proposed entrance when exiting their property (No.2 Thornleigh Court) and that the proposal would place an increased demand for parking space within the existing visitor parking area in Thornleigh Court.
- 8.5.2. With regards the appellants concern regarding the width of the access road serving Thornleigh Court, I consider that the principle of this road is established and permitted in accordance with the parent planning permission of Thornleigh Court. Any non-compliance issues with this permission pertaining to the access road is an enforcement issue, which is a function of the Planning Authority. I note that the

Planning Authority Transportation Planning Section report confirms that there is good inter-visibility of vehicles and pedestrians utilising the shared access road.

- 8.5.3. With regard construction traffic and its impact on the structural integrity of the walls on either side of the access road, I consider that this issue is controlled under separate Building Regulations. Notwithstanding this, I consider it appropriate that in the event of a grant of permission, a Condition should be imposed requiring the developer be responsible for the full cost of repair in respect of any damage caused to the adjoining public road arising from construction work and make good any damage to the satisfaction of the Planning Authority. I note the Planning Authority imposed such requirement under Condition 9(a) of its grant of permission.
- 8.5.4. The proposed development provides 2 no. car parking spaces within the curtilage of the site. This complies with relevant car parking standards, as set out in Table 12.8 of the Fingal County Development Plan. Given that the vehicular entrance to the proposed dwelling is located along its western boundary, I do not consider that the proposal would create an unacceptable traffic hazard to vehicles accessing / egressing dwellings to the south within Thornleigh Court, whose access arrangements would remain unchanged.
- 8.5.5. An unrestricted visitor parking area with the capacity for 2 no. vehicles, is located within Thornleigh Court, to the west of the appeal site. Given that the proposed development would result in an increase of only 1 no. additional dwelling within Thornleigh Court and would provide its own in-curtilage parking, and that each dwelling within Thornleigh Court has its own in-curtilage car parking, it is my view that the proposal would not adversely impact on visitor car parking within Thornleigh Court. I note the Planning Authority Transportation Planning Section report outline no objections to the proposed development subject to standard conditions. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

8.6. Procedural Issues

- 8.6.1. The appellant objects to the proposed development on the ground that the revised site notice erected on the site was not amended to 'yellow' in colour, and thereby residents in the vicinity were not aware of the revised proposal submitted by way of additional information.

- 8.6.2. Article 35(1)(b) of the Planning and Development Regulations 2001 (as amended) sets out the requirements with regard notice of further information or revised plans and requires that *‘where a planning authority receives further information or evidence following a request under article 33, or revised plans, drawings or particulars following a request under article 34, and it considers that the information, revised plans, drawings or particulars received, as appropriate, contain significant additional data, the authority shall ...require the applicant, to erect or fix a site notice on the land or structure to which the further information relates, in the form set out in Form No. 4 of Schedule 3 or a form substantially to the like effect and to submit a copy of the notice to the planning authority’*. It is not a requirement under Article 35(1) that a revised site notice be printed on a yellow background, as put forward by the appellant. As set out in Article 19(4) of the Planning and Development Regulations 2001 (as amended) a yellow notice is required when a valid planning application is made on any land or structure, within six months from the date of making a previous application, where the second application is in respect of land substantially consisting of the site or part of the site to which the first application related.
- 8.6.3. The appellant objects to the proposed development on the grounds that the Planning Authority incorrectly addressed the site as “Mill House” instead of “Mall House” on the Council’s online planning search database and correspondence issued. The appellant states that this is affected people observing the site on the Council’s website during the Covid-19 shut down of Fingal County Council’s offices to the public. The appellant also highlights that an incorrect date was recorded on the Council’s website for the receipt of additional information correspondence. The dated recorded was the 16/03/2019 when it should have 16/03/2020.
- 8.6.4. The Planning Authority address this issue in their response to the Grounds of Appeal, as detailed in Section 7.3 above. It is my view that these were typographical errors and not significant enough to warrant refusal for the proposed development. I am satisfied that these errors did not prevent concerned parties from making representations to the Council on the proposed development in response to the significant further information submitted. The third-party appellants have made a valid planning appeal to An Bord Pleanála and the issues raised in this appeal are addressed above.

- 8.6.5. The appellant objects to the proposed development on the grounds that the extent of the site does not correlate with the actual size of the site. The appellant details the dimensions of the site and its proximity from Mall House on aerial photographs and provides, as a cross reference, a copy of the site plan and floor plan of the proposal submitted. Having reviewed the maps, plans and drawings submitted, I am satisfied that they are drawn to scale in accordance with the requirements of Articles 22 and 23 of the Planning and Development Regulations 2001 (as amended).
- 8.6.6. In consideration of the above, I recommend that the appeal should not be upheld in relations to these grounds of appeal.

8.7. Screening for Appropriate Assessment

Having regard to nature and scale of the proposed development to provide one additional house in a fully serviced and zoned residential area and the nature of the receiving environment and the distance and lack of connections to the nearest European sites: Rogerstown Estuary SPA (Site Code: 004015) and SAC (Site Code: 000208), 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.

9.0 Recommendation

- 9.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

10.0 Reasons and Considerations

- 10.1. Having regard to the residential land use zoning of the site, the pattern of development in the area, the size of the site and the layout and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not adversely impact on the residential amenity of the area and would be acceptable in terms of traffic safety and convenience. The

proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 16th day of March 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
3.	<p>The applicant or developer shall enter into a water connection agreement with Irish Water prior to the commencement of this development.</p> <p>Reason: In the interest of public health.</p>
4.	<p>(i) Any entrance gates shall open inwards towards the site and not outwards onto the public road.</p> <p>(ii) All works shall be carried out at the developer's expense and to the requirements of the planning authority.</p> <p>Reason: To ensure a satisfactory standard of development and in the interest of traffic safety.</p>

5.	<p>The first-floor window opens on the eastern elevation of the proposed dwelling shall be permanently fitted with obscure glazing.</p> <p>Reason: To prevent overlooking of adjoining residential property.</p>
6.	<p>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.</p> <p>Reason: In the interest of visual amenity.</p>
7.	<p>(i) All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the applicant / developers own expense.</p> <p>(ii) The applicant or developer shall be responsible for the full cost of repair in respect of any damage caused to the adjoining public road arising from the construction work and shall either make good any damage to the satisfaction of the planning authority or pay the Council the cost of making good any such damage upon requirement by the Council</p> <p>Reason: To protect the amenities of the area.</p>
8.	<p>All public service cables to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.</p> <p>Reason: In the interest of visual amenity.</p>
9.	<p>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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

10.	<p>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.</p> <p>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.</p>

Brendan Coyne
Planning Inspector
07th October 2020