



An
Bord
Pleanála

Inspector's Report

ABP-307719-20

Development	Use of the 'caretaker's lodge' approved under Reg. Ref. F05A/1172 as an open residential use
Location	Sutton Castle, Red Rock, Sutton, Dublin 13
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0143
Applicant(s)	Sutton Castle Developments Ltd (in liquidation).
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Observer(s)	Hilary Doheny, A and MT Bailey.
Date of Site Inspection	29 th September 2020
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. Sutton Castle is a four storey, Victorian mansion house located on Howth Head, south of Shielmartin Road and overlooking Dublin Bay. The site contains the original mansion house and a substantial modern extension, set on mature and well-maintained grounds, together with two detached buildings and surface car parking spaces. The detached buildings are a caretaker's lodge and a services building, both located north of the main building complex and within the main parking area. This appeal concerns the caretaker's lodge.
- 1.2. Constructed in the early 1900s, Sutton Castle was originally occupied as a dwelling house before its use was changed to a hotel and, later, to an apartment complex containing 17 units in total. The structure is a Protected Structure (RPS. No. 0578) under the Fingal County Development Plan.
- 1.3. The caretaker's lodge is adjacent to the property boundary and is adjoined by detached housing on the other side.

2.0 Proposed Development

- 2.1. The proposed development comprises the use of an existing caretaker's lodge, previously granted under Reg. Ref. F05A/1172, for open residential use. Under condition 3 of F05A/1172, the lodge may only be used as a residence for a caretaker who is employed by the company maintaining the site.
- 2.2. The development includes minor alterations to the structure, seeking to incorporate an existing integral storage area within the floor space of the house and amendments to the east and north elevations, consisting of the removal of doors and the insertion of window opes.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 2nd July 2020 Fingal County Council refused permission for two reasons, as follows:

1. *The proposed development would contravene a condition attached to an existing permission for development, (condition no. 3 F05A/1172) and as such would be contrary to the proper planning and sustainable development of the area.*
2. *The subject site is zoned under Objective HA-High Amenity within the Fingal County Development Plan 2017-2023. The applicant has not demonstrated satisfactorily to the Planning Authority compliance with the Rural Housing Policy as set out within Table RF03 of the Fingal Development Plan 2017-2023. The proposed development would therefore materially contravene the Objective RF31, Objective RF32, Objective 34 and Objective RF39 of the Fingal Development Plan 2017-2023.*

3.2. **Planning Authority Reports**

3.2.1. Planning Report dated 2nd July 2020, which reflects the decision to refuse permission. The report cited particular concerns relating to compliance with the Rural Housing Strategy, i.e. that the applicant had not demonstrated any rural housing need.

3.2.2. Other Technical Reports:

Conservation Officer – Report dated 25th May 2020, which outlined no objection to the development.

Transportation Planning Section – Undated report, which sought additional information in relation to proposed parking provision, where none was indicated within the application documents.

Water Services – Report dated 27th April 2020, which outlined no objection subject to a number of standard planning conditions.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. A number of letters of objection were received, the issues raised within which can be summarised as follows:

- Concerns regarding ownership of the caretaker's lodge
- Concerns regarding the loss of resident support services and amenities.
- Concerns that the proposed change of use is not consistent with condition 3 of F05A/1172.
- Concerns that the applicant has not discussed the proposal with apartment owners.
- Concerns that the proposed development is not in keeping with the proper planning and sustainable development of the overall site.

4.0 Planning History

F05A/1172 – Permission granted on 24th November 2005 for revisions to a previously approved residential development at Sutton Castle, comprising minor alterations to the approved car parking layout and the erection of a single storey caretaker's lodge with storage shed to side, and 1 staff car parking space. Condition 3 on the Final Grant required as follows:

3. The 'caretakers lodge' shall remain under ownership of the applicant – Sutton Castle Development Ltd. and shall be used as a residence for a caretaker who is employed by the company maintaining the site. It shall not be used otherwise or sub-divided from the company by any way of sale, letting or otherwise. When the structure is no longer required for use as a 'caretakers lodge' by the applicant, its use shall revert to that of storage or other use related to the overall site. Reason: To ensure that the lodge is used for a caretaker only and in the interests of residential amenities and the proper planning and sustainable development of the area.

F05A/0569 - Retention permission granted on 3rd August 2005 for revisions to approved residential development, including minor alterations to apartments, revised landscaping, amended parking layout and associated development.

F05A/0171 - Retention permission granted on 11th May 2005 for revisions to approved residential development, consisting of minor alterations to apartments.

- F02A/1141 - (An Bord Pleanála Ref. PL06F.201085) Permission granted on 24th May 2003 for redevelopment of Sutton Castle Hotel to provide 17 apartments and including associated development.
- F01A/0370 - (An Bord Pleanála Ref. PL06F.126311) Permission granted on 20th June 2002 for redevelopment of the Sutton Castle Hotel, to provide 21 apartments, including internal and external modifications to Sutton House and construction of a two-storey building and extension of existing buildings.
- F99A/0308 - (An Bord Pleanála Ref. PL06F.111810) Permission refused on 19th January 2000 for a new suite hotel comprising 51 suite units and to include conversion of Sutton House.
- F98A/1209 - (An Bord Pleanála Ref. PL06F.110353) Permission refused on 20th September 1999 for redevelopment to provide 40 apartments to include the conversion of Sutton House, including demolition of existing buildings and construction of new buildings

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is zoned 'HA', High Amenity, under the Fingal County Development Plan 2017-2023, with an objective to '*Protect and enhance high amenity areas.*'

Objectives RF26 and RF32 are directly relevant to the proposed development, relating to rural housing, where they state that it is an Objective to:

'Ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community.

Permit houses in areas with zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.'

5.2. Howth Special Amenity Area Order

- 5.2.1. The site is located in an area designated as "Other Areas". Schedule 3, Part 2, Objective 3.4 seeks the prevention and limitation of development in "Other Areas" and

to 'preserve the beauty and distinctive character of the natural, semi-natural and open areas within the special amenity area.'

5.2.2. Schedule 3, Part 2 identifies that in this location, 'the conversion of an existing building which is in good condition to a residential structure', is open for consideration.

5.3. **Natural Heritage Designations**

5.3.1. The site is adjacent to the following Natura 2000 sites:

- North Bull Island SPA
- North Dublin Bay SAC

5.4. **EIA Screening**

5.4.1. Having regard to the limited nature and scale of the proposed development it is considered that 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The grounds of appeal can be summarised as follows:

- The application clearly sought to amend condition 3 of Reg. Ref. F05A/1172. If granted, the proposed development would not contravene the condition.
- There is no caretaker utilised for Sutton Castle and this space is thus unrequired and underutilised.
- The proposal does not seek to enlarge the footprint of the building, rather seeking to minor alterations in order to provide a second bedroom and revised window opes.
- The proposal complies with county development plan Objective RF28, which encourages the reuse and adaptation of existing rural buildings in preference to new-builds.

- The existing building is primarily a residential building and the nature of the use will not change in any way, instead the potential resident would change.
- There are conflicting development plan objectives pertaining to the site.
 - The HA zoning objective and objective RF34 seek to restrict housing development in such locations, to those involved in farming, however; the Howth Special Amenity Area Order (SAAO) identifies that the conversion of an existing building to a residential use is open for consideration. The proposal is consistent with the Howth SAAO.
 - There is contradiction between Objectives RF34 and RF64 of the development plan, which results in a lack of clarity regarding rural housing policy as it relates to developments in HA zoned areas. The development plan facilitates people who are not from a rural area to convert a rural building into a home, but do not allow local people to build a home unless they are actively involved in farming.
- An Bord Pleanála has previously granted permission in Howth for a similar development, under Ref. PL06F.246363 and the Inspector on that appeal noted the provision for rural conversion proposals, under the Howth SAAO.
- The appeal site is within the Metropolitan area of Dublin, within walking distance of services and amenities and public transport.
- The proposed development accords with the provisions of the National Planning Framework.
- The rural settlement strategy is not applicable in this instance as permission is sought for a residential use of a building which is currently partly in residential use. It should be noted that the rural settlement strategy seeks to reuse existing stock, in preference to new build.
- Sutton Castle is not a typical High Amenity Area as it is in fully residential. The provision of a residential use within the setting is appropriate sustainable development.

6.1.2. The appeal also addresses a number of issues identified within the Planner's Report:

- The previously approved staff car park space, which was provided as part of the caretaker's lodge, will be utilised.

- The application site is in the ownership of liquidator, not the management company. Reference is made to elements of the management company agreement.
- Residents of Sutton Castle do not have access to the lodge or the use of it. Access to car parking spaces is also not affected by the development.
- No submission was made by the management company, with submissions instead made by 3 residents out of the total of 17 living in the complex.

6.2. Planning Authority Response

- 6.2.1. Submission dated 18th August 2020 received, outlining that the application was assessed against the policies and objectives of the Fingal County Development Plan 2017-2023 and existing government policy and guidelines. The proposal was assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and the character of the area. An Bord Pleanála is requested to uphold the Planning Authority's decision. In the event that permission is granted, a condition requiring payment of a financial contribution should be attached.

6.3. Observations

- 6.3.1. Submissions have been received from Hilary Doheny and A and MT Bailey, each of whom is resident at Sutton Castle. A number of the issues raised within the submissions are as per the submissions on the planning application. Additional issues raised can be summarised as follows:
- Part of the observer's reason for purchasing their apartment was the presence of a caretaker on the site 24/7.
 - The reason Sutton Castle has no caretaker currently is that the Managing Agent was unable to fill the position recently. A cohort of apartment owners have an appetite to reinstate the position of a live-in caretaker.
 - It is untrue to state that the unit is used as storage by owners. A list of the items stored has been supplied and includes a wide range of household maintenance items.

- To grant permission for the proposal would benefit one party, whilst removing a benefit from apartment owners at Sutton Castle.
- The appeal states that only 3 residents made submissions in relation to the application. Even if one submission was made, the validity of the points made is the important issue.
- The appeal makes comment, in relation to maintenance, about a more cost-effective solution and more affordable level of service charge and that the building will be lying vacant and underutilised. Residents may have voted to trial alternatives, but that does not mean that consent has been given to the proposed change of use.
- Refusal reason 1 of the Planning Authority's decision is very clear. It is considered that the planning authority envisaged a situation arose whereby the use as a caretaker's lodge was discontinued, the residents should benefit from the amenity of storage or other use related to the overall site.
- Refusal reason 2 is also agreed with. A new residence would do nothing for other residents, other than add to the intensiveness of the use of the caretaker's lodge.

6.4. Further Responses

6.4.1. None received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the proposed development are:

- Observer issue relating to ownership of the caretaker's lodge,
- Principle of the proposed use,
- Residential amenity,
- Parking,
- Other issues,
- Appropriate Assessment

7.2. **Observer Issue Relating to Ownership of the Lodge**

- 7.2.1. Both of the observers have raised the issue of ownership of the lodge, indicating that the Sutton Castle Management Company has a beneficial interest in it. The issue was raised in submissions at the planning application stage and the Planner's Report identified the provisions of the Development Management Guidelines (2007), which state that when doubts are raised in relation to sufficiency of the legal interest, further information may be sought. The Planner's report states that further information was not sought, as the recommendation would have been a refusal of permission in any case.
- 7.2.2. I note that the applicant has provided additional information in relation to the issue within the grounds of appeal, in particular providing an extract of the Management Company Agreement between Sutton Castle Developments Ltd and the Management Company.
- 7.2.3. Section 5.13 of the Development Management Guidelines (2007) outlines that '*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts.*' Section 5.13 also states that '*Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis.*' In this instance, I do not consider it clear that the applicant does not have sufficient interest, in order that a refusal of permission would be justified. Rather, I would draw the Board's attention to Section 34(13) of the Planning and Development Act, 2000, as amended (the Act), which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development.*' The issue of ownership is a matter for the Courts, as necessary.
- 7.2.4. I am satisfied that the appeal can be determined, on the basis of the information provided.

7.3. **Principle of the Proposed Use**

- 7.3.1. The Planning Authority's refusal identifies the applicant's failure to demonstrate compliance with the Rural Housing Policy as set out in Table RF03 of the development plan. In short, the Planning Authority considers that a rural generated housing need must be demonstrated, to allow the lodge to be converted to an open residential use

in this 'HA' location. The proposed development is identified as a material contravention of the development plan.

7.3.2. Having read the application and appeal documents, I am of the opinion that the proposed development does not represent a Material Contravention of the development plan, since there is a permitted, albeit limited residential use of the lodge in place. Whilst the public notices describe the proposed development as a change of use development, there is no change of the residential use of the lodge, in practice. What the applicant is effectively seeking to do is remove the restriction on occupation of the dwelling which was imposed under Reg. Ref. F05A/1172. I am therefore satisfied that Section 37(2) of the Act is not applicable in this instance and the appeal can be considered on this basis.

7.3.3. In relation to a proposed open residential use of the lodge, whilst I note that the site is in a rural area for the purposes of land-use zoning, it was evident on my visit to the site that it is not in a typical rural location. It is located at the south end of the Sutton built-up area and is immediately adjoined by low and medium density housing. Indeed, the wider Sutton Castle site itself is in use as medium density housing, as an apartment complex. It is also connected to the centre of Sutton by footpaths and is served by public transport, with a Dublin Bus stop approx. 100m north of the gated entrance. I consider the site to be a very sustainable location for a house and consider the proposed open use to be acceptable in principle, in this context.

7.4. Residential Amenity

7.4.1. The internal layout of the lodge would remain largely intact, with the incorporation of the existing store as an en-suite bedroom and utility room. I consider the internal layout to be acceptable.

7.4.2. The proposed private garden area would be enclosed by 1.8m high timber panel fencing, which is shown on the application drawings as running behind the parking spaces to the front of the dwelling and also parallel to the west end of the lodge. I do not consider the installation of such a fence would affect the character and setting of the protected structure or would impact on the enjoyment of the wider garden space by existing residents. Similarly, the addition of a 600mm high rail to delineate the remaining boundaries would have no impact.

7.5. Parking

7.5.1. The Planning Authority's Transportation Planning Section requested additional information in relation to proposed parking, where none was identified within the application documents. I note from the grounds of appeal that the staff car parking space provided for the lodge will be provided for the new occupier and that there is adequate parking elsewhere within the complex for existing residents. I consider this solution is acceptable.

7.6. **Other Issues**

7.6.1. There are a number of mature and well-maintained trees within the complex. Whilst they are unlikely to be impacted by the development, for completeness a condition shall attach requiring the applicant to agree tree protection measures with the Planning Authority.

7.6.2. A condition should be applied in order to secure a financial contribution in accordance with the Planning Authority's Section 48 Development Contribution Scheme.

7.7. **Appropriate Assessment**

7.7.1. Having regard to the nature and scale of the proposed development, which is a change of use development and which requires only minor construction works, outside of any Natura 2000 site, I do not consider that any Appropriate Assessment issues arise and I do not consider 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 permission for the proposed development be granted, subject to conditions as set out below.

9.0 **Reasons and Considerations**

9.1. Having regard to the provisions of the Fingal County Development Plan 2017-2023 and the Howth Special Amenity Area Order, together with the nature and scale of the proposed development and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the proposed development would be in keeping with the character of the area and would not seriously injure the amenities of the area or the amenities of properties in the vicinity. The proposed

development, which would not represent a Material Contravention of the development plan, would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>A parking space shall be provided and maintained for the sole use of the occupiers of the dwelling hereby permitted.</p> <p>Reason: In order to safeguard the residential amenities of future occupiers</p>
3.	<p>Proposed boundary treatments shall be submitted and agreed with the Planning Authority prior to the commencement of development.</p> <p>Reason: To protect the residential amenity of the adjoining residential property.</p>
4.	<p>Tree protection measures shall be agreed with the planning authority and implemented on the site prior to the commencement of development.</p> <p>Reason: In order to ensure the protection of retained trees on the site in the interests of biodiversity and visual amenity.</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>

6.	<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>
7.	<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>

Barry O'Donnell
 Planning Inspector

7th October 2020