



An
Bord
Pleanála

Inspector's Report ABP-308883-20

Development

Construction of a detached 4 bedroom two storey dwelling with ancillary canopy, car port, garden shed and two number car parking spaces, all to rear of Cranfield, the demolition of existing garage and alterations to roof of shed, widening of the existing entrance to facilitate a shared access together with all associated site works and services.

Location

Cranfield, Kerrymount Avenue, Dublin 18, D18 R2P9.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D20A/0517

Applicant(s)

Duncan Fox and Ruth Leggett

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

First Party v. Conditions

Third Party v. Decision

Appellant(s)

Duncan Fox and Ruth Leggett

Brian and Paula Harrison

Observer(s)

None.

Date of Site Inspection

27th April, 2021

Inspector

Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located within the well-established suburb of Foxrock, Co. Dublin, along the southern side of Kerrymount Avenue in the Foxrock Architectural Conservation Area where the prevailing pattern of development is characterised by a range of housing types, although predominantly comprising large, detached dwellings on generous plots in a sylvan setting. The site itself has a stated site area of 0.156 hectares, is irregularly shaped, and comprises a substantial portion of the rear garden serving the adjacent two-storey, detached dwelling house of 'Cranfield' in addition to an area occupied by a single storey garage / shed to the north of same and the existing site access arrangement from Kerrymount Avenue. It extends westwards between 'Cranfield' and the property known as 'Cnocard' to the north (a particularly large dwelling undergoing renovation works which has been extended considerably to include a 'pool-house' that abuts the boundary shared with the application site) before continuing southwards to adjoin the rear garden of 'Rosbeg' on Claremount Road. There are a substantial number of trees throughout the site which presents as a well landscaped garden area enclosed by a combination of concrete post & timber panel fencing and mature trees / hedging etc.

2.0 Proposed Development

- 2.1. The proposed development consists of the subdivision of the existing housing plot occupied by 'Cranfield' and the subsequent construction of a detached, two-storey dwelling house (floor area: 280m²) to the rear of that property with the demolition of an existing garage (and associated alterations to the roof of an adjacent shed), together with the widening of the existing site entrance from Kerrymount Avenue to facilitate a shared access arrangement to both the existing and proposed dwellings.
- 2.2. The contemporary design of the proposed dwelling employs a flat-roofed construction with an overall ridge height of 6.3m and is characterised by its use of rectangular forms. Notable features include the recessing of the first-floor accommodation from the south-eastern corner of the building footprint and the provision of a single storey annex / canopy to the northwest incorporating a car port, garden shed, enclosed yard (with bin storage), and a walled courtyard. External finishes will include painted render, charred timber cladding, aluminium doors &

windows, and a concrete canopy. Water and sewerage services are available via connection to the public mains.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 17th November, 2020 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 13 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, surface water drainage, landscaping, and development contributions (including a supplementary development contribution), however, the following conditions are of note:

Condition No. 2 – Requires the north-facing windows of the first-floor family bathroom and Bedroom No. 3 (as identified on Drg No. 1920-PL-FF PLAN FI) to be permanently glazed in frosted glass. In addition, all of those windows shown as being fitted with opal glass are to be permanently glazed in opaque / frosted glass.

Condition No. 6 - Refers to the widened vehicular entrance off Kerrymount Avenue and states that it is not to exceed a maximum of 4.0m in width as per Section 8.2.4.9: '*Vehicular Entrances and Hardstanding Areas: (i) General Specifications*' of the Development Plan. It also refers to the use of Sustainable Urban Drainage Systems, the need to avoid traffic conflicts on the public road during construction, the prevention of any mud, dirt, debris or building material from being carried onto or placed on the public road or adjoining properties as a result of the works, and the repair of any damage to the public road arising from the construction activities.

Condition No. 7 - Refers to the protection of trees on site and requires the implementation of all the recommendations pertaining to tree retention and protection as outlined in the tree report and

accompanying drawings. The developer is also required to retain the services of an Arboricultural Consultant to ensure the protection of all those trees listed for retention and to certify that the works have been completed in accordance with the original landscaping drawings.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report notes the site location within the Foxrock Architectural Conservation Area and states that while there is generally a presumption against the demolition of buildings in such areas, the existing garage is of no significance to the ACA. It is further considered that the design of the proposed dwelling will not detract from the visual amenity or character of the streetscape and ACA. The report then states that although the proposal is acceptable in principle, concerns arise as regards the potential for overlooking of the existing dwelling house to the northeast ('Cranfield') and the adjacent property to the immediate west ('Cnocard'), however, given the oblique relationship with 'Rosbeg' to the east, the separation distances available, and the intervening boundary treatment, it is not considered that there will be any undue overlooking of that property. It is subsequently recommended that further information be sought with respect to issues of residential amenity, landscaping / boundary treatment, and wastewater infrastructure capacity.

Following the receipt of a response to a request for further information, a final report was prepared which assessed the revisions proposed to the house design before concluding that the installation of louvres to the north-facing windows serving the first floor family bathroom and Bedroom No. 3 would not be acceptable as a solution to prevent the overlooking of adjacent property and, therefore, the windows should be glazed in frosted glass as a condition of any grant of permission. The additional details provided with respect to the landscaping and boundary treatment proposals etc. were also considered with the report then recommending a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports:*

Architectural Conservation Officer: States that the proposed development will not have a detrimental impact on the character of the Foxrock Architectural Conservation Area and that the contemporary design of the proposal is to be welcomed in that it will add to the narrative and evolution of the ACA and will be clearly legible as a later addition. Furthermore, no concerns arise as regards the modified vehicular entrance which will retain its essential appearance and character with the changes proposed having only a neutral impact on the streetscape character. Accordingly, there is no built heritage objection to the proposed development.

Drainage Planning, Municipal Services Dept.: No objection, subject to conditions.

Transportation Planning: No objection, subject to conditions.

Parks and Landscape Services: Recommends that further information be sought in respect of the existing trees on site (primarily to avoid disturbance within tree root protection areas), the appointment of a suitably experienced and qualified ecologist, and the wider landscaping proposals.

3.3. **Prescribed Bodies**

- 3.3.1. *Irish Water:* States that the existing wastewater infrastructure in the area is deficient and that the applicant should engage with Irish Water to ascertain its capacity to accommodate the proposed development.

3.4. **Third Party Observations**

- 3.4.1. A total of 2 No. submissions were received from an interested third party (the appellants) and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The proposal is not in keeping with the Foxrock Architectural Conservation Area and is out of character with the surrounding pattern of development.
- Comparable backland development has previously been refused permission in the vicinity of the site.
- The proposal is contrary to the provisions of the Development Plan, including Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas*'.

- The insensitive design, two-storey construction, height, siting, and excessive scale of the proposed dwelling.
- Overdevelopment of the application site.
- The proposed dwelling is not subsidiary to the existing house.
- Detrimental impact on the residential amenity of neighbouring property by reason of overlooking / loss of privacy, overshadowing, an overbearing appearance & visual intrusion.
- The undermining of the development potential of adjacent lands.
- Inconsistencies / inaccuracies in the submitted plans and particulars as regards the size of the proposed dwelling house.
- The setting of an undesirable precedent for similar development in the area.
- The suitability / appropriateness of the proposed access arrangements.
- Adverse impact on the character & setting of the existing property of 'Cranfield'.
- Concerns as regards the accuracy of the tree survey, the proposal to fell trees along the shared site boundary and / or outside of the application site, and the potential for construction works to damage those trees proposed for retention.
- Concerns as regards the adequacy / suitability of the surface water drainage & attenuation proposals.
- Traffic safety concerns arising from the intensification of use of the site access and its proximity to the roundabout serving Kerrymount Avenue.
- The level of disruption / disturbance arising during the construction phase and the need to ensure the appropriate management of construction activities, with particular reference to delivery vehicles & contractor parking etc.

4.0 Planning History

4.1. On Site:

None.

4.2. On Adjacent Sites:

4.2.1. (to the immediate west-northwest-north: 'Croncard'):

PA Ref. No. D04A/1580. Was granted on 1st April, 2005 permitting D. Traynor permission for the construction of a dormer two-storey double garage and storeroom at Cnocard, Kerry Mount Avenue, Foxrock, Dublin 18.

PA Ref. No. D04B/0176. Was granted on 3rd June, 2004 permitting D. Traynor permission for a single storey and two storey dormer extension to the side and rear of the existing house to comprise a poolhouse and ancillary one bedroom staff accommodation and completion and retention of minor alterations to existing permission (Reg. Ref. D03B/0020) to include omission of study, redesign of entrance portico, alteration of rear bay windows and consequential internal and elevational changes. All at Cnocard, Kerry Mount Avenue, Foxrock, Dublin 18.

PA Ref. No. D03B/0020. Was granted on 14th April, 2003 permitting Joe and Deirdre O'Reilly permission for a two-storey side extension and two-storey plus dormer rear extension at Cnocard, Kerry Mount Avenue, Foxrock, Dublin 18.

4.2.2. (to the immediate east: 'Rosbeg'):

PA Ref. No. D12B/0067. Was granted on 24th May, 2012 permitting Brian and Paula Harrison permission for the demolition of existing single storey element to side of existing two-storey dwelling and replacement with dormer extension to side and single storey extension to rear comprising living, storage, bedroom, and sanitary accommodation together with minor internal alterations and all associated site works, at Rosbeg, Claremont Road, Carrickmines, Dublin 18.

4.2.3. (to the immediate south):

PA Ref. No. D21A/0507. Application by FWNH Limited for permission for the demolition of dwelling known as Tall Trees; Construction of 1-3 storey extensions to the east and west wings of the nursing home to accommodate an additional 33 no. bedrooms and associated resident amenities; widened vehicular access from Claremont Road; 6 no. car parking spaces at surface level and reconfiguration of part of existing basement to provide 3 no. additional parking spaces; landscaping, boundary treatments and associated site works and services. All at Four Ferns

Nursing Home, & Tall Trees, Brighton Road and Claremont Road, Foxrock, Dublin
18. No decision to date.

4.2.4. **Other Relevant Files in the Immediate Vicinity:**

(‘Innisfallen’):

PA Ref. No. D10A/0709 / ABP Ref. No. PL06D.238639. Was granted on appeal on 26th July, 2011 permitting David and Yseult Wall permission for the demolition of an existing two-storey detached house and outbuildings and the construction of a replacement two-storey with attic detached house and all associated site works, at ‘Innisfallen’, Kerrymount Avenue, Foxrock, Dublin.

PA Ref. No. D08A/0358 / ABP Ref. No. PL06D.229691. Was refused on appeal on 3rd February, 2009 refusing R. Murphy permission for the demolition of existing house and outbuildings and the construction of 2 No. detached houses with vehicular access/egress to Kerrymount Avenue and site development works, all at Innisfallen, Kerrymount Avenue, Foxrock, Dublin.

- Having regard to the design, scale and massing of the proposed houses and their proximity to the site boundaries, it is considered that the proposed development would be out of character with the pattern of development in this Architectural Conservation Area, would be oppressive and visually obtrusive in the streetscape and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, contravene the provisions of the current Development Plan for the area and, by itself and the precedent it would set for further such development, would be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D04A/0132 / ABP Ref. No. PL06D.206938. Was refused on appeal on 26th August, 2004 refusing Richard Murphy permission for the construction of a one and a half storey dwelling with new access from Kerrymount Avenue and associated site works to the rear of ‘Innisfallen’, Kerrymount Avenue, Foxrock, Co. Dublin.

- Having regard to the nature of the long established residential area characterised by single houses on large plots, it is considered that the proposed development, located in a backland setting, would be out of character with the pattern of development in the area and would set an

undesirable precedent for similar types of development by reason of its location, scale and relationship to adjoining properties. The proposed development would give rise to visual obtrusion and overlooking and would seriously injure the amenities of the area and of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D00A/1255 / ABP Ref. No. PL06D.124001. Was refused on appeal on 30th November, 2001 refusing John Sheehan permission for a new dwelling house to the rear of Innisfallen, Kerry Mount Avenue, Foxrock, Co. Dublin.

- The proposed development would be located in a backland setting and in proximity to site boundaries with adjoining residential properties, especially to the east. The proposed development, due to its bulk, scale and fenestration, would seriously injure the amenities of the area and of property in the vicinity, by reason of visual obtrusion and overlooking, and would, therefore, be contrary to the proper planning and development of the area.

(‘Turnberry’):

PA Ref. No. D08A/1410. Was refused on 25th February, 2009 refusing Patrick Shovlin outline permission for 3 No. two-storey detached houses on individual sites with new access road from Brighton Road to include part demolition of existing single storey on north-western elevation of Altmor, all on a site to the side and rear of the existing dwelling. The site also included land associated with and to the rear of 'Turnberry', Kerry Mount Avenue, Foxrock, Dublin 18.

- Due to inadequate sightlines at the junction of the laneway and Brighton Road, the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- Having regard to the footprint of the proposed dwellings in relation to their individual plot sizes, it considered that the proposed development does not adequately reflect the existing pattern of development in the area that informs the character of the Foxrock Architectural Conservation Area and Conservation Area. Therefore, it is considered that the proposed development

would have an adverse impact on character of the Foxrock Architectural Conservation Area and would, therefore, be contrary to the proper planning and sustainable development of the area.

- It is considered that the proposed dwellings would visually intrude to an excessive degree on the dwelling to the north and would have a significant impact in terms of overlooking to the rear of the existing dwelling by reason of their close proximity to the northern front boundary of the site. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D07A/1107 / ABP Ref. No. PL06D.226126. Was refused on appeal on 9th May, 2008 refusing Patrick & Julie Shovlin permission for the demolition of the existing three-storey dwelling, attached garage and mews and the provision of a replacement two-storey over basement dwelling, a new vehicular access from Kerrymount Avenue, and all associated site development works, all on a site at 'Turnberry', Kerrymount Avenue, Foxrock, Dublin.

- It is considered that, notwithstanding the amendments proposed, the proposed replacement dwelling house, by reason of its scale and elaborate design, would be out of character with the existing development in this Architectural Conservation Area, would be oppressive and visually obtrusive to neighbouring properties and in the streetscape and would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D06A/1396 / ABP Ref. No. PL06D.221117. Was refused on appeal on 3rd July, 2007 refusing Patrick & Julie Shovlin permission for the demolition of existing three-storey dwelling, attached garage and mews, and the provision of a replacement three-storey over basement dwelling, a new vehicular access from Kerrymount Avenue, and all associated site development works, on a site at 'Turnberry', Kerrymount Avenue, Foxrock, Dublin.

- It is considered that, by reason of its scale, nature and monumental appearance, the proposed development would be out of character with the existing development in this conservation area, would be oppressive and visually obtrusive to neighbouring properties and in the streetscape and

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

5.0 Policy and Context

5.1. National and Regional Policy

- 5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' note that, in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development, potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.
- 5.1.2. The '*Architectural Heritage Protection, Guidelines for Planning Authorities, 2004*' provide detailed guidance in respect of the provisions and operation of Part IV of the Planning and Development Act, 2000, as amended, regarding architectural heritage, including protected structures and Architectural Conservation Areas. They detail the principles of conservation and advise on issues to be considered when assessing applications for development which may affect architectural conservation areas and protected structures.

5.2. Development Plan

5.2.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

Land Use Zoning:

The proposed development site is zoned as 'A' with the stated land use zoning objective '*To protect and / or improve residential amenity*'.

Other Relevant Sections / Policies:

Chapter 2: Sustainable Communities Strategy:

Section 2.1: Residential Development:

Policy RES4: Existing Housing Stock and Densification:

It is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

Chapter 6: Built Heritage Strategy:

Section 6.1.4: Architectural Conservation Areas (ACA):

Policy AR12: Architectural Conservation Areas:

It is Council policy to:

- i. Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA).
- ii. Ensure that all development proposals within an ACA be appropriate to the character of the area having regard to the Character Appraisals for each area.
- iii. Seek a high quality, sensitive design for any new development(s) that are complimentary and/or sympathetic to their context and scale, whilst simultaneously encouraging contemporary design.
- iv. Ensure street furniture is kept to a minimum, is of good design and any redundant street furniture removed.
- v. Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

Policy AR13: *Demolition within an ACA:*

It is Council policy to prohibit the demolition of a structure(s) that positively contributes to the character of the ACA.

(The proposed development site is located within the 'Foxrock Architectural Conservation Area'.

Foxrock Architectural Conservation Area Character Appraisal:

Section 9: *Future Development:*

(1) Infill Development and Sub-division of Existing Sites:

Development proposals in this regard need to respect the special character of the ACA and have regard to the scale, massing, height, design and setting of existing structures. New structures should be subservient to the existing structure with due regard to site coverage and design. In assessing applications for the infill / subdivision of existing sites, the Planning Authority will have regard to the following:

- The extent to which new proposals respect the special character of the ACA.
- The extent to which new structures are subsidiary to the main dwelling and do not diminish or relegate its status within the site.
- The extent to which proposals have regard to the scale, massing, height and design of existing structures, both on the application site and on adjoining lands.
- The extent to which existing boundary treatments, hedgerows and trees are retained and existing access points used.
- The extent to which new structures are set back from site boundaries and reflect the existing pattern of development in the area.
- The extent to which hedgerows, suitable trees and soft landscaping elements inform internal boundaries in favour of walls or other hard landscaping features.

(5) New Buildings:

The development of new buildings within the ACA should be a stimulus to imaginative, high quality design, and seen as an opportunity to enhance the area.

What is important is not that new buildings should directly imitate earlier styles, rather that they should be designed with respect to their context, as part of a larger whole, which has a well established character and appearance of its own.

Development Criteria for New Buildings:

- i. New developments must not adversely affect the character of the streetscape.
- ii. New developments must respect the existing pattern of development in the area with regard to setting and should be appropriately set back from the public road.
- iii. The scale, massing and height of proposed developments must be generally consistent with neighbouring dwellings.

The emphasis must be on a high quality design solution, which would preserve or enhance the special character of the area. The Planning Authority will seek to encourage high quality contemporary design solutions, which reflect the age in which we live.

Chapter 8: Principles of Development:

Section 8.2.3: Residential Development:

Section 8.2.3: Residential Development:

Section 8.2.3.1: Quality Residential Design

Section 8.2.3.2: Quantitative Standards

Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas:

(v) Corner/Side Garden Sites:

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing built up areas. In these cases the Planning Authority will have regard to the following parameters (Refer also to Section 8.2.3.4(vii)):

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Accommodation standards for occupiers.

- Development Plan standards for existing and proposed dwellings.
- Building lines followed where appropriate.
- Car parking for existing and proposed dwellings.
- Side/gable and rear access/maintenance space.
- Private open space for existing and proposed dwellings.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.

It is also recognised that these sites may offer the potential for the development of elderly persons accommodation of more than one unit. This would allow the elderly to remain in their community in secure and safe accommodation. At the discretion of the Planning Authority there may be some relaxation in private open space and car parking standards for this type of proposal.

(vi) Backland Development

Backland residential development usually involves the establishment of a new single dwelling, and a building line to the rear of an existing line of houses. Residential development within the boundary of larger detached houses does not constitute backland development and will not be assessed as such. Where the Planning Authority accepts the general principle of backland residential development to the rear of smaller, more confined sites within the existing built-up area, the following standards will apply:

- Generally be single storey in height to avoid overlooking.

- Adequate vehicular access off a lane width of 3.7m must be provided to the proposed dwelling (3.1m at pinch points) to allow easy passage of large vehicles such as fire tenders or refuse collection vehicles.
- A wider entrance may be required to a backland development to or from a narrow laneway.
- Existing dwelling and proposed dwellings shall have minimum individual private open spaces of 48 sq.m. each - exclusive of parking - for one/two bedroom units or 60 sq.m. plus for three/four or more bedroom units.
- Proposed single storey backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.
- Proposed two storey backland dwellings shall be located not less than 22 metres from the rear façade of the existing dwelling where windows of habitable first floor rooms directly face each other. Proposed two-storey backland dwellings should have a minimum rear garden depth for the proposed dwelling of 11 metres.

Where there is potential to provide backland development at more than one site/property in a particular area, the Planning Authority will seek to encourage the amalgamation of adjoining sites/properties in order to provide for a more comprehensive backland development. Piecemeal backland development with multiple vehicular access points will not be encouraged.

(vii) Infill:

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.

This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th century suburban 'Garden City' planned settings and estates that do not otherwise benefit from Architectural Conservation Area status or similar. (Refer also to Section 8.2.3.4 (v) corner/side garden sites for development parameters, Policy AR5, Section 6.1.3.5 and Policy AR8, Section 6.1.3.8).

Section 8.2.3.5: *Residential Development – General Requirements*

Section 8.2.4.9: *Vehicular Entrances and Hardstanding Areas: (iv) ACAs/Protected Structures*

Section 8.2.11: *Archaeological and Architectural Heritage:*

Section 8.2.11.3: *Architectural Conservation Areas*

5.3. Natural Heritage Designations

5.3.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The Dingle Glen Proposed Natural Heritage Area (Site Code: 001207), approximately 2.1km south of the site.
- The Loughlinstown Woods Proposed Natural Heritage Area (Site Code: 001211), approximately 2.9km southeast of the site.
- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 3.2km east-northeast of the site.
- The Fitzsimon's Wood Proposed Natural Heritage Area (Site Code: 001753), approximately 4.0km west-northwest of the site.

5.4. EIA Screening

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. First Party Appeal:

- Condition No. 2 of the notification of the decision to grant permission states the following:

'The glazing within the north facing windows at first floor level of the Family Bathroom and Bedroom 3, as identified in Drawing No. 1920-PL-FF PLAN FI shall be manufactured frosted glass and shall be permanently maintained. The glazing of all the windows identified in the drawings submitted to be fitted with opal glass shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.

Reason: In the interests of residential amenities'.

While the applicants are amenable to the provision of frosted glass in the window serving the family bathroom, it is not accepted that the use of such glass is an appropriate solution to reduce overlooking from Bedroom No. 3.

The inclusion of the north-facing window serving Bedroom No. 3 is an important element of the building design by which to provide natural light to the space in question. The width of the window has been kept narrow at 750mm as its primary function is for the distribution of natural light and not to provide views which might give rise to overlooking (please refer to the accompanying Architectural Design Statement).

- The Planning Authority raised particular concerns as regards the potential for overlooking of 'Cranfield' and sought further information with a view to addressing any such impact. In response, the first floor windows overlooking 'Cranfield' were re-examined and adjustments made to the window sizes with proposals also submitted for the installation of timber louvres to address any overlooking concerns.

It is considered that the adjustments made to the windows of Bedroom No. 3 in response to the request for further information, including the provision of

timber louvres, satisfactorily address any concerns as regards the potential for overlooking of the rear garden area of 'Cranfield'.

- The Board is requested to amend Condition No. 2 to allow for the installation of timber louvres in place of frosted glass to Bedroom No. 3.

6.1.2. **Third Party Appeal (Brian and Paula Harrison: 'Rosbeg'):**

- Given the site context, its planning history, and the applicable policy considerations, the proposed development, by reason of its design, scale and siting (including the positioning / orientation of first floor windows), will have a detrimental impact on the residential and visual amenities of the appellants' dwelling house (i.e. 'Rosbeg').
- The proposal amounts to an overdevelopment of the site.
- The two-storey construction is contrary to Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas: (vi) Backland Development*' of the Development Plan and will have a detrimental impact on the residential and visual amenities of neighbouring property by reason of overlooking, overshadowing, and an overbearing appearance.
- There are concerns as regards the close proximity of the development to the northern boundary of the appellants' rear garden.
- The deciduous tree planting along the shared site boundary offers little to no screening for most of the year. It will not screen the two-storey construction.
- The windows at first floor level within the eastern and southern elevations of the dwelling will overlook the private rear garden of the appellants' property.
- The proposed dwelling undermines the development potential of the appellants' property.
- While the Planning Authority has sought to preserve the residential amenity of the neighbouring properties of 'Cranfield' and 'Cnocard', the same level of consideration has not been given to the appellants' property. It is unacceptable that the Planning Authority has disregarded the appellants' right to privacy while actively protecting those of 'Cranfield' and 'Cnocard'.

6.2. Applicant's Response

- The proposed dwelling has been sensitively designed in response to the site context and has taken account of the need to protect the residential amenity of neighbouring housing, including the appellants' property ('Rosbeg').
- The proposal has been positioned to respect adjoining properties with the cube-shaped design of the new dwelling having been stepped back at first floor level along the southern boundary to provide an oblique relationship with 'Rosbeg' and a separation distance in excess of the Development Plan standard.
- The setting back of the first floor from the south-eastern corner achieves a separation distance in excess of 13m between its habitable windows and the boundary shared with the appellants' rear garden (with a further 19m between opposing first floor windows). At ground floor level to the nearest boundary with the rear garden of 'Rosbeg' the proposed house will be set at an angle with the plane of the façade falling away from this boundary. In addition, the established planting along the shared site boundary and the careful positioning of the proposed dwelling will negate any impact on the sylvan setting of 'Rosbeg'.
- The development accords with the applicable land use zoning objective.
- The proposal complies with the relevant development management standards (e.g. private open space, car parking etc.) for an infill dwelling house. Furthermore, having regard to the site context and the surrounding pattern of development, the proposed dwelling is of an appropriate scale.
- The proposed design, including its contemporary form, height, and external finishes, mitigates against any negative impacts on adjacent properties and ensures that the development is assimilated into the surrounding landscape.
- The design and siting of the proposed dwelling respects neighbouring properties and is in keeping with the infill nature of this large garden site.
- In response to the assertion that the two-storey construction is contrary to Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas: (vi) Backland Development*' of the Development Plan, the Board is advised that the full text of that section of the Plan includes the statement that '*Residential development within the boundary of larger detached houses does not constitute*

backland development and will not be assessed as such'. Accordingly, given that the surrounding area is generally characterised by two-storey detached houses on large plots, the application was assessed by the Planning Authority as an 'infill' proposal (pursuant to Section 8.2.3.4(vii)) as opposed to 'backland' development.

- Having regard to the size, scale, massing & orientation of the new dwelling and its relationship with neighbouring properties, the two-storey construction proposed is appropriate to the site.
- The landscaping proposals, which include for the retention of the mature planting along the intervening site boundary, will ensure that the development is adequately screened from the appellants' property.
- The windows serving Bedroom No. 1 were repositioned to ensure that neither the northern nor western elevations with full plane to the site boundaries would result in overlooking of neighbouring properties. The layout and juxtaposition of the first floor windows within the proposed dwelling ensures that there will be no direct overlooking of the appellants' property, save for the master bedroom which is located 13m from the site boundary and 32m from the nearest first floor window in 'Rosbeg'. Accordingly, there are no excessive or extensive views of 'Rosbeg' available from the proposed development.
- The layout and positioning of the proposed dwelling will not prevent the appellants from extending their property or developing their own site.
- Having regard to the distances from the boundary shared with 'Rosbeg' at first floor level, the provision of louvres or frosted windows would not be necessary or appropriate along the south-eastern elevation of the proposed dwelling.

6.3. Planning Authority Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeals are:

- The principle of the proposed development
- Overall design and layout / impact on built heritage considerations
- Impact on residential amenity
- Appropriate assessment

These are assessed as follows:

7.2. **The Principle of the Proposed Development:**

7.2.1. The proposed development site is located in a well-established residential area on suitably zoned and serviced lands. In this respect, I would suggest that the subject proposal concerns a potential infill site where the development of appropriately designed housing would typically be encouraged provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Such an approach would correlate with the wider strategic outcomes of the National Planning Framework 'Project Ireland: 2040', including the securing of more compact and sustainable urban growth as expressed in National Policy Objective 35 which aims to *'increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights'*.

7.2.2. Further support is lent to the proposal by reference to Policy RES4: *'Existing Housing Stock and Densification'* of the Development Plan which aims to increase

housing densities within existing built-up areas having due regard to the amenities of established residential communities. It is stated that the Planning Authority will encourage the densification of existing suburbs in order to help retain population levels by promoting and encouraging the development of additional dwelling units through the provision of 'infill' housing that respects or complements the established dwelling types. These policy provisions are supplemented by the guidance set out in Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas*' of the Plan which details the criteria to be used in the assessment of proposals that involve new infill development, including backland residential development or proposals that involve the redevelopment of corner / side garden sites. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' also acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

7.2.3. Therefore, having considered the available information, including the site context and land use zoning (noting that the site is within a short walking distance of both Luas and Dublin Bus services), and the design, scale & infill nature of the proposed dwelling, I am satisfied that the overall principle of the development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the character of the area and the amenities of neighbouring properties.

7.3. **Overall Design and Layout / Impact on Built Heritage Considerations:**

7.3.1. In assessing the broader compatibility of the proposal with the established pattern of development, I am cognisant that the area in the vicinity of the appeal site is generally characterised by large, detached dwellings (some of which date from the late 19th / early 20th Century) set within mature gardens on generous plots. Along Kerrymount Avenue in particular, these are typically partially obscured from view by well-maintained roadside boundary hedging and the semi-mature street trees along both sides of the roadway which make a significant contribution to the overall sylvan setting of the wider area. While this is a long established residential area dominated by single houses on large plots and characterised by a low density pattern of development, there are several instances where backland development has been

carried out to the rear of properties in the form of individual one-off dwelling houses, although there is only one such example (located to the rear of 'Verona') with access from the southern side of Kerrymount Avenue (the closest examples of backland housing relative to the appeal site are accessed from Brighton Road further south).

7.3.2. In recognition of its distinct characteristics, the wider area within which the subject site is located has been included in the Foxrock Architectural Conservation Area and, therefore, I would draw the Board's attention to the requirements of Policy AR12: '*Architectural Conservation Areas*' of the Development Plan and, in particular, to the provision whereby development proposals within an ACA are required to be appropriate to the character of the area having regard to the relevant '*Character Appraisal*'. In this respect, the '*Foxrock Architectural Conservation Area Character Appraisal*' states that the architectural character of the area is created not just by the design of the individual structures but that a significant aspect of its character is informed by the layout of sites, the setting of buildings within the sites and the surrounding landscaping. Furthermore, the overall visual character of the ACA is stated to be sylvan in nature and characterised by low density residential development with well enclosed road corridors which are almost rural in character. The location of the proposed development site along Kerrymount Avenue would seem to fall within the 'Brighton Road' sub-area of the ACA with the larger and more irregular plot sizes comparable to those situated along Brighton Road itself.

7.3.3. Section 9.0: '*Future Development*' of the Foxrock ACA Character Appraisal proceeds to state that the area is coming under considerable development pressure which may harm the balance of the landscape-dominated setting which so strongly informs its special character. Therefore, in order to safeguard the special character and to ensure the appropriate management of development within the area, proposals for infill development and the subdivision of existing sites will need to respect the special character of the ACA and to have regard to the scale, massing, height, design and setting of existing structures. New structures will also be required to be subservient to the existing structure with due regard to site coverage and design. Accordingly, in assessing applications for the infill / subdivision of existing sites, it is stated that the Planning Authority will have regard to the following criteria:

- The extent to which new proposals respect the special character of the ACA.

- The extent to which new structures are subsidiary to the main dwelling and do not diminish or relegate its status within the site.
- The extent to which proposals have regard to the scale, massing, height and design of existing structures, both on the application site and on adjoining lands.
- The extent to which existing boundary treatments, hedgerows and trees are retained and existing access points used.
- The extent to which new structures are set back from site boundaries and reflect the existing pattern of development in the area.
- The extent to which hedgerows, suitable trees and soft landscaping elements inform internal boundaries in favour of walls or other hard landscaping features.

7.3.4. The proposed development involves the subdivision of the existing housing plot occupied by 'Cranfield' followed by the construction of a new dwelling house to the rear of that property. In this respect I would suggest that direct parallels can be drawn between the backland nature of the subject proposal and the developments previously refused permission elsewhere (at 'Innisfallen') on Kerrymount Avenue under ABP Ref. Nos. PL06D.124001 & PL06D.206938. In my opinion, the nature and siting of the proposed dwelling can be best described as 'backland' as opposed to 'infill' and I am unconvinced by the applicants' reliance on the reference contained in Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas: (vi) Backland Development*' of the Development Plan which states that '*Residential development within the boundary of larger detached houses does not constitute backland development and will not be assessed as such*'. The proposed development involves the construction of a new dwelling in a backland location to the immediate rear of an existing house and thus would conform with the definition provided in Section 8.2.3.4(vi) whereby '*backland residential development usually involves the establishment of a new single dwelling, and a building line to the rear of an existing line of houses*'. Notwithstanding the foregoing, I am satisfied that the ordinary understanding of the term 'backland development' is applicable in this instance.

- 7.3.5. While I would acknowledge that there have been significant changes in planning policy at both a local and national level in recent years in support of increased densification, particularly since the Board's determination of ABP Ref. No. PL06D.206938, and although these would lend weight to the proposed development as previously outlined, it is notable that the level of protection afforded to both the subject site and the special character of the wider area in which it is situated has also been strengthened in the interim through the designation of the Foxrock Architectural Conservation Area. Given the similarities in the circumstances of the appeal site when compared to those of ABP Ref. No. PL06D.206938, including the site location in a long established residential area characterised by single houses on large plots, the comparable nature of the developments concerned with particular reference to their backland settings and relationship with adjoining properties, and the heightened protection arising from the designation of the Foxrock Architectural Conservation Area, in the interests of consistency, it is my opinion that the proposed development would be out of character with the pattern of development in the area and would set an undesirable precedent for similar types of development. In this regard, I would have serious concerns that the potential cumulative impact of multiple instances of comparable backland development would seriously erode the distinctive character of Kerry Mount Avenue and the 'Brighton Road' sub-area of the ACA.
- 7.3.6. With respect to the overall design of the proposed dwelling, I would concur with the assessment by the Architectural Conservation Officer that the contemporary appearance of the proposal will be clearly distinguishable as a later addition and thus will add to the narrative and evolution of the ACA while its positioning will not impact on the streetscape of Kerry Mount Avenue.
- 7.3.7. In terms of the size, scale, massing and height of the proposed dwelling, the Foxrock ACA Character Appraisal requires account to be taken of the extent to which the new construction will be subsidiary to the main dwelling house within the site. In this regard, the applicant has asserted that the overall scale of the proposal is appropriate to the site context and does not amount to an overdevelopment of the lands by referencing the fact that the application site at 1,560m² extends to over half of the original holding while clarifying that the floor area of the proposed dwelling is 280m² (correcting an earlier typographical error in the submitted particulars). In

response to the suggestion that the two-storey construction is contrary to Section 8.2.3.4(vi) of the Development Plan which states that backland development should generally be single storey in height, notwithstanding the applicant's assertion that the proposal does not constitute backland development (as rejected elsewhere in this report), the aforementioned provision clearly references '*two storey backland dwellings*' before detailing the criteria against which any such construction will be assessed. Moreover, the 'general' requirement for backland development to be single storey is not in itself a prohibition against the development of two-storey buildings and it is my opinion that as the subject building will be considerably lower in height than both the existing dwelling ('Cranfield') and neighbouring properties, and as it will not be visible from the public road, the two-storey construction as proposed can be accommodated in this instance. It is also of note that adequate provision has been made for car parking and private open space for both the existing and proposed dwellings. Furthermore, in terms of separation, the orientation of those first floor windows which serve habitable rooms in the proposed dwelling is such that they do not directly face towards those within the rear façade of the existing dwelling (or neighbouring properties).

- 7.3.8. On balance, it is my opinion that the design of the proposed dwelling satisfies the development management standards of the Development Plan and is generally acceptable, subject to the consideration of its impact, if any, on the residential and visual amenity of neighbouring properties. However, notwithstanding the foregoing, I would reiterate my earlier position that the proposed backland development is out of character with the pattern of development in this long established residential sub-area of the Foxrock ACA and would set an undesirable precedent for further development which would potentially undermine the distinctive character of Kerry Mount Avenue and the ACA.

7.4. Impact on Residential Amenity:

- 7.4.1. The principal issue necessitating consideration in the assessment of both the first and third party appeals is whether the proposed development will have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking with an associated loss of privacy and, therefore, I propose to consider these appeals together. It is also necessary to address the concerns raised by the third party appellants as regards the potential for the proposal to adversely impact on

the residential and visual amenities of their property as a result of overshadowing and / or an overbearing appearance as well as the possibility that it will undermine the future development of their lands.

7.4.2. In reference to the specific concerns raised by the appellants as regards the potential for the proposed development to overlook their property ('Rosbeg'), I would draw the Board's attention to the amended proposals submitted in response to the request for further information issued by the Planning Authority whereby the first floor window originally proposed in the south-eastern elevation of the dwelling house to serve Bedroom No. 3 was omitted and replaced by a new window facing south / southwest. This revision was not made at the behest of the Planning Authority but was undertaken by the applicant as part of an overall review of the proposal in response to concerns raised in the request for further information with respect to the potential overlooking arising from Bedroom No. 1 and the need to preserve the residential amenity of Cranfield'. In my opinion, the repositioning of the principal first floor window serving Bedroom No. 3 is clearly intended to reduce the likelihood of any undue overlooking of the appellants' property to the immediate east and I am satisfied that this revision, particularly when taken in combination with the separation distances involved (and noting that the 'line of sight' from the original window position would traverse two property boundaries and that further mitigation could be provided by intervening landscaping / screening measures), serves to avoid any undue loss of privacy to the neighbouring residence of 'Rosbeg' consequent on the proposed development.

7.4.3. With respect to the first floor window within the eastern / south-eastern elevation serving the 'Master Bedroom', its oblique orientation relative to 'Rosbeg' (including the rear garden area of that property), the level of screening to be provided by both the existing and proposed landscaping measures along the shared site boundary, and the separation distances involved (noting that the window in question will be in excess of 11m from the site boundary), all serve to avoid any undue overlooking of the appellants' property given the site context in a built-up urban area where some degree of overlooking would not be unexpected. I am also satisfied that the south-facing window serving the 'Master Bedroom', which is orientated to look out over the rear garden area of the proposed dwelling, will not result in any significant loss of privacy or amenity to 'Rosbeg'.

- 7.4.4. In relation to the first party appeal against the requirement set out in Condition No. 2 that the north-facing window serving Bedroom No. 3 be permanently glazed in frosted glass, the Board is advised that in response to the request for further information a number of revisions were made to the fenestration treatment with a view to protecting the amenity of neighbouring property, most notably, 'Cranfield' to the immediate north / northeast. With regard to Bedroom No. 3 in particular, the amended proposal seeks to install timber louvres across the outside of the north-facing window to avoid any '*direct overlooking of Cranfield*' and it would appear that this is intended to obviate against overlooking of the actual dwelling house as opposed to its rear garden area. This window does not face directly towards the dwelling house and is positioned approximately 6m from the intervening (new) site boundary. While I would acknowledge that the use of frosted glass in a bedroom window is not ideal, the merits of such an argument are diminished somewhat by the applicants' own proposals to use 'opal' glazing in the west and east facing windows of Bedroom Nos. 1 & 2 respectively to reduce overlooking of the rear gardens of 'Cnocard' to the west and 'Cranfield' to the east. Given that the separation between the aforementioned windows and the neighbouring garden areas are either comparable to or in excess of the distance between the north-facing window serving Bedroom No. 3 and the rear garden of 'Cranfield', it would seem reasonable that a consistent approach should be applied with respect to the fenestration. Although the proposed louvres will limit views north from Bedroom No. 3 towards the rear of 'Cranfield', given the comparatively close proximity of the site boundary, and noting that the bedroom will also benefit from a large south-facing window, I am inclined to uphold the requirement that the north-facing window should be finished in frosted glass as to further preserve the residential amenity and privacy enjoyed in the rear garden of 'Cranfield'.
- 7.4.5. With regard to the remaining concerns raised by the third party appellants, given the site context, including its location in a built-up urban area, the separation distances involved, the overall design, scale, height and siting of the proposed development, and its positioning relative to both the site boundary and surrounding properties, I am satisfied that the subject proposal will not give rise to any detrimental impact on the residential amenity of property in the area by way of overshadowing or an

unacceptably overbearing or domineering appearance and will not serve to undermine the development potential of neighbouring lands.

7.5. Appropriate Assessment:

- 7.5.1. Having regard to the nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to the nature of this long established residential area characterised by single houses on large plots, it is considered that the proposed development, located in a backland setting, would be out of character with the surrounding pattern of development within the Foxrock Architectural Conservation Area, would set an undesirable precedent for similar types of development by reason of its location, scale and relationship to adjoining properties and would, therefore, be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

30th July, 2021