



An  
Bord  
Pleanála

## Inspector's Report ABP 308898-20

### Development

House with garage accessed through a shared driveway, boundary treatments and connection to public foul sewer. A Natura Impact Statement is included with the planning application.

### Location

Adjacent to, "Seafoam", South Shore road, Rush, County Dublin

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F20A/0517

### Applicant(s)

Adrian and Emma Leonard

### Type of Application

First Party v Condition

### Planning Authority Decision

Grant Permission with Conditions.

### Type of Appeal

First Party

### Appellant(s)

Adrian and Emma Leonard

### Observer(s)

None

### Date of Site Inspection

20<sup>th</sup> April 2021

### Inspector

Brendan Coyne

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## **1.0 Site Location and Description**

- 1.1. The site is located on the southern side of the South Shore Road and has a stated area of 0.16 hectares. The site comprises the garden/yard to the eastern side of an existing detached single storey dwelling known as 'Seafoam'. The site is accessed from the South Shore Road via a right of way laneway. This laneway also serves a dwelling to the east of the site and provides public access to the South Beach seashore, which adjoins the southern boundary of the site. The South Shore Road is characterised with single and 2 storey detached dwellings of varying form and design.

## **2.0 Proposed Development**

- 2.1. Permission sought for the following;
- Construction of a detached 2 storey 4 no. bedroom dwelling (282 sq.m.) with attached garage,
  - Access via existing shared driveway,
  - New boundary treatment,
  - Connection to public foul sewer and proposed soakaway,
  - All associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Fingal County Council GRANTED permission for the proposed development subject to 19 no. Conditions. Noted Condition of relevance to this appeal includes:

#### **Condition No. 19:**

Prior to Commencement of development the developer shall pay the sum of €27,695 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority

in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Basis for the Planning Authority's decision. Includes:

- The subject site is zoned 'RS' and 'HA' in the Fingal County Development Plan.
- The proposed dwelling is located on the part of the site zoned 'RS', where the use class 'residential' is permitted in principle.
- No further boundary treatment should be erected within the 'HA' zoning section of the site.
- A planning condition should be attached to any grant of permission restricting exempted development in the form of sheds, garages and walls etc.
- The internal and private amenity space of the proposed dwelling accords with Development Plan standards.
- The proposal would not overshadow adjacent property.
- Overlooking at first floor level from the proposed first floor balconies and side elevation windows opes can be dealt with by way of Condition requiring appropriate screening measures and opaque glazing.
- The scale and design of the proposed dwelling is considered acceptable.
- The site is indicated on Sheet No.14 'Green Infrastructure' of the Fingal Development Plan as being within a 'Highly Sensitive Landscape'.

- Objective NH39 of the Fingal Development Plan requires a visual impact assessment to be prepared prior to approving development in highly sensitive areas.
- The applicant has not submitted a visual impact assessment with the planning application. However, the design of the proposed dwelling is considered acceptable within the context of Objective NH39.
- The proposal accords with Objective NH60 in relation to its impact on the visual amenities of a coastal area.
- The applicants have submitted a Natura Impact Statement for the proposed development. The planning authority concur with the conclusion of the Natura Impact Statement that the proposed development would not adversely affect the integrity of any Natura 2000 sites.

### 3.2.2. Other Technical Reports

**Transportation Section:** No objection subject to Conditions.

**Water Services Section:** No objection subject to Conditions.

**Irish Water:** No objection subject to Condition.

## 4.0 Planning History

**F19A/0112** Permission GRANTED in 2019 to Adrian & Emma Leonard for the demolition of a single storey structure formerly used as a fish factory (290m<sup>2</sup>) and all associated site works.

**F18A/0548** (WITHDRAWN) Permission sought in 2018 by Adrian & Emma Leonard for the demolition of a single storey structure formerly used as a fish factory 290m<sup>2</sup> & the construction of a two-storey dwelling with integrated garage, boundary walls and associated works.

## 5.0 Policy and Context

### 5.1. Development Plan

#### 5.1.1. Fingal County Development Plan 2017-2023

**Zoning:** The northern section of the site is zoned objective 'RS – Residential' which seeks to 'Provide for residential development and protect and improve residential amenity'.

The southern section of the site is zoned 'HA - High Amenity' which seeks to 'Protect and enhance high amenity areas'

**Specific Objective:** The site is designated a 'Highly Sensitive Landscape' on Sheet No. 14 'Green Infrastructure 1' of the Development Plan.

**Objective NH39** Require any necessary assessments, including visual impact assessments, to be prepared prior to approving development in highly sensitive areas.

#### 5.1.2. Fingal County Council Development Contributions Scheme 2021-2025

Section 9 sets out the level of contributions to be paid (except where an Exemption or Reduction applies) in respect of the different classes of public infrastructure and facilities as follows: -

Class of Public Infrastructural Development	€ per square metre of Residential Development	€ per square metre of Industrial/Commercial class of Development
Class 1: Transportation Infrastructure & Facilities	€54.02	€42.18
Class 2: Surface Water Infrastructure & Facilities (incl. Flood Relief)	€ 4.91	€ 3.83
Class 3: Community & Parks facilities & Amenities	€39.28	€30.68
Total of Contributions Payable	€98.21	€76.69

### 5.1.3. Relevant National Planning Guidelines

Development Contributions Guidelines for Planning Authorities (2013)

Development Management Guidelines (2007)

### 5.2. Natural Heritage Designations

The southern boundary of the site adjoins the Rogerstown Estuary SPA (Site Code: 004015) and SAC (Site Code: 000208).

### 5.3. EIA Screening

Notwithstanding the proximity of the proposed development to the Rogerstown Estuary SPA and SAC, the nature and scale of the development would not result in a real likelihood of significant effects on the environment. 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. A first-party appeal was received from the applicants Adrian and Emma Leonard, appealing the financial contributions made by Fingal County Council under Condition No. 19 of the grant of permission.

The following is a summary of the grounds of appeal.

- The applicants purchased the 'Seafoam' dwelling in April 2018 which comprised a large site containing a recently disused fish factory and a separate dwelling.
- In October 2018, the applicants applied for planning permission under P.A. Ref. F18A/0548 for a dwelling on the subject site but withdrew the application on the grounds that the Council could not make a decision to grant permission for the proposed new dwelling pending the completion of a study for coastal erosion for the area.
- The applicants withdrew the application as they needed to proceed with demolishing the fish factory, as it was in a somewhat dangerous state, including issues with loose asbestos sheets.
- In 2019, under P.A. Ref. F19A/0112, the applicants were granted permission to demolish the fish factory and thereupon proceeded to demolish the fish factory in January 2020.
- In August 2020, Fingal County Council completed the coastal erosion study. Following this, the applicants submitted the subject application to the Planning Authority under P.A. Ref. F20A/0517.
- Fingal County Council granted permission for the proposed dwelling subject to a Condition requiring development contributions of €27,695.
- Under the Fingal County Council Development Contribution Scheme 2016-2020, it states that "appropriate reductions in respect of demolition work will be allowed excluding structures exempt from contributions. Demolition must be necessary to facilitate their proposed development".



- Development and/or planning permission for the new house was not possible without the demolition of the fish factory.
- It is clear from F18A/0548 that the demolishing of the sheds and construction of the new home were inherently interlinked and dependent on each other.
- Due to delays in the completion of the coastal erosion study, the demolition of the sheds had to be expedited for reasons of safety and to improve the amenity of the site.
- The layout and design of the dwelling submitted under P.A. Refs. F18A/0548 and the subject application are almost identical. This clearly shows the original intention for the site and the reasons for demolishing the sheds has not changed.
- Demolition works were necessary to facilitate the proposed development.
- It is only reasonable and fair that the area which was demolished (290 m<sup>2</sup>) be used to offset against the area which is to be constructed (282 m<sup>2</sup>).

## 6.2. Planning Authority Response

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

- The Development Contributions due were assessed in accordance with the Development Contributions Scheme 2016-2020, which was adopted by Fingal County Council on the 14<sup>th</sup> December 2015 and came into effect on the 1<sup>st</sup> January 2016.
- Condition No. 19 requires the payment of a financial contribution in the sum of €27,695 which was calculated as follows;

Proposed Works Area: 282 m<sup>2</sup>

Total Levy Due: 282 m<sup>2</sup> x €98.21 = €27,650.00

## 6.3. Further Responses

6.3.1. The appellant's response to the Planning Authority's submission, is as follows;

- The demolition of the fish factory was necessary in order to facilitate the proposed development under the subject application / appeal P.A. Ref. F20A/0517.
- The Fish factory was not an exempt development.
- The Planning Authority's response does not provide clarity as to why the demolition of the fish factory sheds were not taken into account when calculating the Development Contributions.
- It was the applicants' original intention that the demolition of the fish factory and the new development be part of the one planning application. Events conspired that the timing of the submission of these two planning applications ended up being different, as set out in the grounds of appeal.
- In the interests of fairness and justice, the appellants believe they should be treated as though they are the one and the same. In any event, exemption 10 (m) does not preclude demolition works that have been carried out from being considered in the calculation of Development Contributions.

## **7.0 Assessment**

- 7.1.1. This is an appeal against the financial contributions made by Fingal County Council under Condition No. 19, attached to its grant of permission for a detached 2 storey 4 no. bedroom dwelling (282 sq.m.) with attached garage.
- 7.1.2. Under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 7.1.3. Condition No. 19 of the permission requires the developer to pay a development contribution sum of €27,695 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority, as a contribution towards expenditure that was and / or that is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Fingal County Development Council Contribution Scheme.

- 7.1.4. In the Planning Report, the total floor area of the proposed development is stated as 282 sq.m. and is levied at a rate of €98.21 per square metre of residential class of development, as per Section 9 of the Fingal County Council Development Contribution Scheme 2021-2025. The Planning Authority calculated the total development contribution levies for the permitted development as €27,695.00.
- 7.1.5. In the grounds of appeal, the appellants contest that the development contribution sum applied does not include reductions in respect of demolition works of the previous fish factory on the site, which had a floor area of 290 sq.m. This fish factory was demolished further to a grant of permission for its demolition under P.A. Ref. F19A/0112. The appellants put forward that planning permission for the new house was not possible without the demolition of the fish factory. The appellants detail how permission was sought in 2018 under P.A. Ref. F18A/0548 for the demolition of the fish factory structure and the construction of a two-storey dwelling on the site, almost identical to that under the subject appeal. The applicants withdrew this application on the basis the Council could not make a decision to grant permission for the proposed new dwelling pending the completion of a study of coastal erosion for the area. Due to delays in the completion of the coastal erosion study, the demolition of the sheds had to be expedited for reasons of safety and to improve the amenity of the site. The appellants put forward that it is only reasonable and fair that the area which was demolished (290 m<sup>2</sup>) be used to offset against the area which is to be constructed (282 m<sup>2</sup>).
- 7.1.6. In response to the grounds of appeal, the Planning Authority confirms that the Development Contributions due were assessed in accordance with the Development Contribution Scheme 2016 – 2020 which was adopted by Fingal County Council on the 14<sup>th</sup> December 2015 and came into effect on the 1<sup>st</sup> January. Having regard to Section 9 of the Fingal County Council Development Contribution Scheme 2016 – 2020 I note that residential development is levied at a rate of €76.14 per square metre. I note however that since the grant of permission for the proposed development by the Planning Authority on the 8<sup>th</sup> December 2020, a new Fingal County Council Development Contributions Scheme 2021-2025 was adopted by the Council and came into effect on the 1<sup>st</sup> January 2021. Section 9 of the new Development Contributions Scheme 2021-2025 requires that residential development is levied at a rate of €98.21 sq.m. Given that the final grant date of the proposed development would have been

the 5<sup>th</sup> of January, where no appeal was lodged within four weeks of the decision of the Planning Authority, it is my view that the requirements of the new Development Contributions Scheme 2021-2025 should apply to the proposed development.

- 7.1.7. Section 11 of the new Development Contributions Scheme 2021-2025 sets out exemptions and reductions whereby certain categories of development are exempted from the requirement to pay development contributions or may pay a reduced rate, as stated under the Scheme. Section 11(q) sets out exemptions and reductions for development comprising demolition and rebuild as follows;

*(q) Demolition and Rebuild:*

*Where permission is granted to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be calculated as follows:*

- Where a contribution has been previously paid – the contribution will be levied on the increased floor area of the new build over the old.*
- If no contribution was previously paid – reductions in respect of demolition work will be allowed, excluding structures exempt from contributions. Demolition must be necessary to facilitate the proposed development.*

*The Scheme does not provide for any rebate or refund in this regard.*

- 7.1.8. Under previous application P.A. Ref. F19A/0112, permission was granted in September 2019 to Adrian & Emma Leonard for the demolition of a single storey structure formerly used as a fish factory (290m<sup>2</sup>) and all associated site works. Having regard to the Planning Authority's report under this application, I note that the Planning Authority considered the structure to be demolished was in a poor state of repair and detracted from the visual amenity of the surrounding area. The Planning Authority considered the removal of this structure would enhance the amenities of the area. Having regard to the grounds of appeal, the appellants state that the demolition of the former fish factory had to be expedited for reasons of safety and to improve the amenity of the site. On this basis, it is my view that the former fish factory structure had to be demolished for safety reasons, as stated by the appellants, regardless of whether or not planning permission was granted for a dwelling on the site. Having regard to the drawings submitted under P.A. Refs. F19A/0112 and F18A/0548, I note

that former fish factory structure was located to the north of the existing dwelling 'Seafoam' and the footprint of the previously proposed dwelling submitted under P.A. Ref. F18A/0548 was located to the eastern side 'Seafoam', without an overlay of both. The footprint of the proposed dwelling under the subject appeal is similar to that previously proposed under P.A. Ref. F18A/0548. I note however that the location of the proposed dwelling under the subject appeal has been moved c. 5m northwards to that previously proposed under P.A. Ref. F18A/0548. The O.S. Site Location Map submitted show that the overlay of the proposed dwelling and the footprint of the previous fish factory structure is marginal, if any. In any event, the former fish factory structure had to be demolished on the grounds of safety, as confirmed by the appellants. It is my view, therefore, that the demolition of the fish factory structure was not necessary to facilitate the proposed dwelling. On this basis, I am satisfied that the Fingal County Development Contribution Scheme 2021 – 2025 has been **correctly** applied. The calculation of the quantum of the financial contribution levied by the Planning Authority appears to be correct.

## 8.0 Recommendation

- 8.1.1. I recommend that Condition no. 19 should remain as stated by the Planning Authority.

## 9.0 Reasons and Considerations

Having regard to:

- (a) The submissions made in this appeal,
- (b) The provisions of the Fingal County Council Development Contribution Scheme 2021-2025 and in particular Section No.'s 9 and 11 of the scheme,

The Board considers that Condition No. 19 has been correctly applied and determined in accordance with the Fingal County Council Development Contribution Scheme 2021-2025.

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Brendan Coyne  
Planning Inspector

21<sup>st</sup> April 2021