



An
Bord
Pleanála

Inspector's Report

ABP-309364-21

Development	Construct part 2-storey and part single storey detached house with north facing dormer attic window and vehicular entrance, and all associated drainage and site works.
Location	31 Palmer Avenue, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0121
Applicant(s)	Mykolas Kliusenkovas.
Type of Application	Planning Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Mykolas Kliusenkovas.
Observer(s)	None.
Date of Site Inspection	17 th May 2021.
Inspector	Elaine Sullivan

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.027 ha and is located at the end of a cul-de-sac in a residential development. This development was permitted in 2006 under PA Ref. F19A/0775 and has been mostly completed apart from the sites on either side of the cul-de-sac. Planning permission was granted for 8 no. houses along the cul-de-sac and would have been numbered from 24-31. To date only two of the houses on the southern corner, (No's 24 & 25), have been completed. No's 26, 27 & 28 appear to be substantially completed but are boarded up and secured with fencing.
- 1.2. Foundations have been laid on the sites for No's 29, 30 and 31, (the appeal site), and all sites are currently secured with fencing. The access road to the front of the houses has been completed to the kerb line but the public footpath only extends to the front of No. 26.
- 1.3. The site faces onto an area of green space to the east, which was originally planned for development of apartments, and is directly adjacent to a pedestrian access to the Kenure Demense park and sports grounds.

2.0 Proposed Development

- 2.1. Planning permission is sought for the development of a detached 2-storey house of 180sqm with dormer window to the side. The house would have a garden of c.87sqm to the rear and off-street parking to the front. It would be connected to the mains water drainage.

3.0 Planning Authority Decision

3.1. Decision

The PA refused planning permission for the following reason;

- The red line boundary indicated on the revised site layout plan does not encompass all land necessary to carry out the proposed development for the benefit of pedestrian safety; specifically, the proposed works to the footpath which is required to mitigate sightlines from the site entrance. As such, the proposed development in its current format would endanger pedestrian safety

by reason of traffic hazard on account of lack of adequate footpath provision. The proposed development would therefore be contrary to Objective DMS129 of the Fingal Development Plan 2017 – 2023 and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Three planning reports were prepared for the application following a request for further information and clarification of further information.

The first report dated the 30th June 2020 included the following;

- The development of a dwelling at this location is acceptable.
- A dwelling of similar design and style was previously permitted on the site as part of a larger residential development, (Ref. F06A/0775, which was extended to the 25th October 2013).
- The dwelling proposed complies with Development Plan Standards contained in Tables 12.1 and 12.3.
- Visually, the proposed dwelling is considered to be acceptable.
- Further information was requested with regard to the provision of adequate sightlines, whether the footpath proposed under Ref. F06A/0775/E1 will be completed and the provision of a second parking space within the curtilage of the site.

The second report of the Planning Officer dated the 13th August 2020 includes the following;

- The Transportation Planning Section is satisfied with the information submitted regarding sightlines and parking.
- However, the works proposed are outside of the of the red line boundary and consent for these works have not been provided by the relevant landowner.
- The applicant is requested to clarify the information submitted by providing a letter of consent and a revised site layout.

The third report dated the 8th January 2021 includes the following;

- The red line boundary of the site has not been amended to reflect all the works required to achieve sightlines required. However, reduced sightlines are acceptable given the context of the site.
- Notwithstanding the letter of consent from the adjoining landowner, it is not appropriate to condition works outside the red line boundary of the site as any such works are unenforceable.
- The lack of a footpath is of concern as it would result in an unsafe pedestrian environment.
- As the procedural issue of the extent of the red line boundary has not been complied with it is recommended that planning permission be refused.

3.2.2. Other Technical Reports

- Transportation Planning Section – The proposed development is located in a 50km per hour speed limit. The footpath to the site is unfinished. Sightlines from the site would be acceptable. However, the palisade fencing on the neighbouring site would restrict visibility. This is of concern as there is a pedestrian connection to the astropitch and park lands to the north of the site. Further information is requested.
- Water Services Department – The applicant is requested to submit a surface water drainage proposal.

3.3. Prescribed Bodies

Irish Water – No objection.

3.4. Third Party Observations

No observations submitted to the PA.

4.0 Planning History

F06A/0775 – Planning permission granted by the PA on the 15th September 2006 for residential development consisting of 4 detached 4 bedroom two storey houses, 14

semi-detached two and a half storey 4 bedroom houses, 2 semi-detached two storey 3 bedroom houses, 11 terraced two storey 3 bedroom houses, 27 two bedroom apartments in 2 three storey buildings, ancillary site works and the demolition of one house.

F06A/0775/E1 – Extension of duration permitted by the PA on the 23rd January 2012. The permission was extended to the 25th October 2013.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023.

5.2. The subject site is zoned 'RS' – Residential, the objective of which is to 'Provide for residential development and protect and improve residential amenity'.

5.3. The following objectives are relevant to the appeal;

5.4. **Objective DMS24** - Require that new residential units comply with or exceed the minimum standards as set out in Tables 12.1, 12.2 and 12.3, which relate to gross floor area, aggregate living and bedroom areas, storage and room size.

5.5. **Objective DMS29** - Promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards.

5.6. Natural Heritage Designations

5.7. No designations apply to the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows;

- The site at 31 Palmer Avenue is part of a larger development that was not completed by the developer. The applicant seeks to renew the original permission and to construct a family home.

- Part of the lands are in receivership with two separate Receivers. In response to the clarification of further information, the Receivers of the site provided documentation agreeing to allow the applicant to proceed with building as well as agreeing to set back the palisade fencing to allow for completion of the footpaths.
- Works were also carried out by the Receivers to set back the fencing on the adjoining sites to improve the sightlines from the subject site.
- A revised site map showing an extended red line boundary is submitted with the appeal for the consideration of the Board. Drawing No. 07-20-05/2 shows and that extends from No. 26 to the northern boundary of the site. This area includes a 2m strip which would contain the public footpath. The footpath is to be completed during the construction phase of the proposed development.
- A letter from the Receiver has also been submitted giving permission to the applicant to set back the temporary fencing on the property adjoining the site to facilitate sightlines pending completion of these units.

6.2. Planning Authority Response

A response from the PA was received on the 10th March 2021 and includes the following;

- Planning permission was refused on the basis that the red line boundary as submitted on the revised site layout plan did not encompass all the land necessary to carry out the works to the footpath which are required to provide adequate sightlines from the site entrance.
- On account of this procedural matter the PA considers that the proposal in its current format would endanger pedestrian safety by reason of lack of adequate footpath and would be contrary to Objective DMS129 of the Development Plan.

6.3. Observations

- None received.

7.0 Assessment

I consider the main issues in determining this appeal are as follows;

- Principle of Development
- Access & Public Realm
- Appropriate Assessment

7.1. Principle of Development

The principle of development on the site was established under the original planning application, Ref. F06A/0775. Apart from a single storey extension of c. 26sqm to the rear and some internal alterations the proposal is the same as that previously permitted.

I note that the proposed development is in accordance with the development standards relating to new residential development as set out in Chapter 12 of the CDP. The house has been designed to in conjunction with the wider residential development and would mirror the house on the opposite corner of the terrace. As such, I am satisfied that the scale and design of the proposed development is appropriate for the site and would integrate visually with the existing development. It is also my view that development of the site would visually improve the existing terrace and could encourage the development of the vacant sites to the south.

7.2. Access & Public Realm

The PA's main reason for refusal is that the applicant did not adequately demonstrate that they had the authority to carry out works within the public realm to ensure a safe access and pedestrian environment.

As part of the appeal, the applicant has submitted a drawing showing an extended red line boundary and a letter from the Receiver granting permission for works to be carried out on the lands outside the applicant's ownership. These works would include the construction of a 2m wide dished footpath to the front of No's 27, 28, 29, 30 & 31 and further north to meet the boundary of the park. The information also

states that the works to complete the public footpath will be completed during the construction phase.

I am satisfied that the information submitted provides sufficient detail to ensure that the works to complete the public footpath can be carried out within the remit of the planning application, and that the necessary permission from 3rd parties has been included.

I note that the metal palisade fencing to the front of the vacant sites has been set back by 2m to allow for adequate sightlines from the appeal site following construction. In my opinion this is sufficient to provide adequate sightlines to allow for a safe egress from the site. There is also some visibility through the palisade fencing to allow for pedestrian inter-visibility and the footpath will also be in place following completion of the development.

7.3. Appropriate Assessment

The appeal site is neither within nor immediately abutting any European site. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the 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 planning permission be granted for the development.

9.0 Reasons and Considerations

9.1. Having regard to the nature and scale of the proposed development, for the construction of a 2 storey detached dwelling within a residential development, it is considered that subject to the conditions set out below, the proposed development would be in accordance with the policies and objectives of the Fingal County

Development Plan 2017-2023, and the RS zoning for the site, and would not seriously injure the visual or residential amenities of the area or the amenities of property in the vicinity of the site. The proposed development 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 [as amended by the further plans and particulars submitted on the 21st day of July 2020 and on the 11th day of December 2020 and by the further plans and particulars received by An Bord Pleanála on the 5th day of February, 2021], 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>The works to complete the public footpath as shown in Drawing No. 07-20-05/2 shall be completed prior to the occupation of the permitted house.</p> <p>Reason: In the interest of orderly development and public safety.</p>
3.	<p>The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.</p> <p>Reason: To protect the residential amenities of property in the vicinity.</p>
4.	<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</p>

	<p>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>
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.</p> <p>Reason: In the interest of public health.</p>
6.	<p>The applicant shall comply with the requirements of Irish Water.</p> <p>Reason: In the interest of public health.</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>

Elaine Sullivan
Planning Inspector

18th May 2021