



An
Bord
Pleanála

Inspector's Report

ABP-309563-21

Development	Development will consist of demolishing the existing dwelling and replacing with a two-storey dwelling to include all associated site works.
Location	Windy Ridge, The Harbour, Loughshinny, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0618
Applicant(s)	Neal & Angela Roche
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Neal & Angela Roche
Observer(s)	(1) Loughshinny Community Association (2) Mr & Mrs Bailey
Date of Site Inspection	15 th May 2021

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.151 hectares, is located in Loughshinny, north County Dublin. The appeal site overlooks Loughshinny Harbour. The appeal site is occupied by a single-storey dwelling. The site is located adjacent the cliff edge with levels falling significantly down to a walkway and the beach located to the east of such. There is a set of steps adjacent the vehicular entrance to the site and within the site boundary that facilitates access to the walkway and the beach. There is a detached single-storey flat-roofed structure to the north of the site adjacent the vehicular access and such appears to be a self-contained unit. Adjoining development includes a two-storey dwelling just west of the vehicular access to the site, which has a number of associated outbuildings on the site to the west. There appears to be a dwelling located to the south west. As noted above immediately east is the cliff edge, walkway and beach. Boundary treatment includes a stone wall along the western boundary and a wire fence along the beach side of the property.

2.0 Proposed Development

2.1. Permission is sought to demolish an existing single-storey dwelling and construct a replacement dwelling and all associated site works. The replacement dwelling is two-storeys, has a floor area of 145sqm and a ridge height of 7.241m. The dwelling features external finishes mainly of nap plaster with a stone finish on some of the elevations and a slate or/tiled shallow pitched roof. The new dwelling uses the existing entrance serving the dwelling on site.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. The Planning Authority is not satisfied based on the information submitted that the proposed development can be constructed without causing any effects to the cliff which bounds the site. The proposed development could therefore seriously injure

the amenities, depreciate the value of property in the vicinity and could endanger the health of safety or persons using the beach and path adjoining the site which would be contrary to the proper planning and sustainable development of the area.

2. The applicant has not demonstrated that the likelihood of erosion at the subject site is minimal taking into account the impact of the proposed development on erosion and the predicted impacts of climate change on the coastline. The proposed development would therefore contravene materially Objective DSM174 of the Fingal Development Plan, 2017-2023 and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (02/12/20): The Planning Authority was not satisfied that it had been demonstrated that the proposal would not have an impact on the cliff and the proposal was deemed to be a material contravention of the Development Plan on the basis of being new development outside urban areas and within 100m of a coastline at risk from erosion. Refusal was recommended based on the reasons outlined above.

3.2.2. Other Technical Reports

Water Services (02/12/20): No objection.

Irish Water (02/12/20): No objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

A number of third party submissions were received from...

Mr. & Mrs Bailey, Glenside, Loughshinny, Co. Dublin.

Loughshinny Community Association.

Donal Hurley, Loughshinny, Co. Dublin.

Linda McGirl, The Cottage, 1 Thomastown, Loughshinny, Co. Dublin.

John McClean, Glendalough, Loughshinny, Co. Dublin.

The issues raised are as follows,

- Embankment/cliff stability/public safety, increased erosion, visual impact, impact on residential amenity, incorporation of public land/access into the site. One of the submissions registers support for the proposal.

4.0 Planning History

- 4.1 F16B/0294: Re-establish a previously approved planning permission Reg. Ref. F06B/0101 to partially demolish a single storey structure and replace with a 1 and 2 storey extension to side.
- 4.2 F15B/0240: Permission refused to re-establish planning permission Reg. Ref. F06B/0101 to partially demolish a single storey structure and replace with a 1 and 2 storey extension to side. Refused due to failure to provide adequate details regarding surface water drainage proposals and to demonstrate the proposal would have no adverse impact on the stability of the embankment or potential for cliff erosion.
- 4.3 F06B/0101: Permission granted to partially demolish a single storey structure and replace with a 1 and 2 storey extension to side.
- 4.4 F04A/0877: Permission refused for demolition of an existing dwelling and construction of a new dwelling. Refused due to inappropriate design, traffic hazard and potential for increased erosion.

4.5 F03A/0663: Permission refused for demolition of an existing dwelling and construction of a new dwelling. Refused due to inappropriate design, traffic hazard and potential for increased erosion.

5.0 Policy Context

5.1 The relevant development plan is the Fingal County Development Plan 2017-2023. The appeal site is zoned 'HA' with a state objective 'to protect and enhance high amenity areas'.

The appeal site is located in an area classified as 'Highly Sensitive Landscape'.

Objective NH39

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

Objective NH60

Strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards, and sited appropriately so as not to detract from the visual amenity of the area. Development shall be prohibited where the development poses a significant or potential threat to coastal habitats or features, and/or where the development is likely to result in altered patterns of erosion or deposition elsewhere along the coast.

New Development in Coastal Areas

Coastal development must take account of the changing and dynamic nature of the coast and the need for coastal protection. As a general principle, development in coastal areas should be accommodated wherever possible in previously developed areas before consideration is given to development in greenfield sites.

In all cases proposals for coastal development must consider the need for coastal defence. Development will only be permitted where the Council is satisfied that the

development will not add to the requirement, if any, for any coastal defence works in the area over the lifetime of the development.

Objective DMS174

Prohibit new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of coastline at risk from coastal erosion, unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts of the proposed development on erosion or deposition and the predicted impacts of climate change on the coastline.

5.2 Natural Heritage Designations

Rockabill to Dalkey Island SAC (003000) c.1km from the site.

Skerries Islands SPA (004122) c.2.8km from the site.

Rockabill SPA (004014) c.3.3km from the site.

Roganstown Estuary SAC (000208) c.3.9km from the site.

Roganstown Estuary SPA (004015) c.3.9km from the site.

Lambay Island SPA (004069) c.8km from the site.

Lambay Island SAC (000204) c.8km from the site.

Malahide Estuary SAC (000205) c.9.9km from the site.

Malahide Estuary SPA (004025) c.11km from the site.

5.3 EIA Screening

- 5.3.1 Having regard to nature and scale of the development, which is demolition of an existing dwelling and construction of a new dwelling and associated site works, 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

7.1.1 A first party appeal has been lodged by Genesis Planning Consultants on behalf of Neal & Angela Roche. The grounds of appeal are as follows...

- The appellants outline amendments proposed as part of the appeal including omission of the proposed soakaway and connection of the storm water network via rainwater harvesting system to the surface water network. The appellant has also including engineering details and cross sections to demonstrate how the proposal can be constructed in manner consistent with the permission grant under ref no. F16B/0294.
- The appellants highlight the fact there is an extent permission concerning demolition and replacement of the dwelling under ref no. F16B/0294. The proposal has been designed to be consistent with the permission granted previously including in terms of footprint of development, construction methods specified, the physical status of the cliff is as per its status when assessed previously in relation the permitted development and taking account revisions proposed with the appeal submission including omission of the soakaway.
- The appellants highlight the brownfield nature of the site and the fact it is a replacement dwelling and therefore consistent with CDP policy regarding new development in coastal areas.
- The appellants state that the permitted development establishes a baseline for development of the site with the proposal being consistent with this permission in terms of construction methodology, footprint, its cross-section and that inadequate regard was given to such.
- The appellants have submitted an engineering report responding to the reason for refusal and include a Geotechnical Inspection. The report indicates that the development poses no risk of erosion to the existing cliff and that there is no evidence of erosion or deterioration of the cliffs condition.

- In relation to issues of concern a portion of the site being public property the applicant confirms that the extent of the site identified is under their control (solicitor's letter attached).
- In relation to visual impact a Visual Impact Assessment accompanies the appeal submission (originally submitted with the application) and such includes photomontages and demonstrate that the proposal is satisfactory in the context of visual amenity.

6.2. Planning Authority Response

6.2.1 Response by Fingal County Council

- No comment to make.

6.3. Observations

6.4.1 Observation by Loughshinny Community Association

- The appeal site includes a public area "the slip" (existing stepped path down to beach and cliff walk). The issue of the status in terms of public land should be resolved prior to the application proceeding.
- The nature of the works proposed including excavation, demolition and construction using heavy machinery in close proximity to the cliff poses a risk to residents and the amenity that is the beach area. It is considered that it would be appropriate that support/protection for the cliff is installed and such would be appropriate in terms of visual impact and subject to public consultation prior to being carried out.

6.4.2 Observation by Mr & Mrs Bailey.

- The cliff area at this location has been subject to erosion with concerns regarding the structural stability of the existing cliff face in conjunction with the proximity of the proposed development to such.

- The scale of the proposed development is considered to be considerably larger than that previously permitted and would have an adverse and obtrusive visual impact at a highly sensitive location.
- Impact on biodiversity with it noted that the cliff area is a habitat for flora and fauna.
- Given the proposal represents a significant increase in the scale of the proposed development permitted on site it is considered that such would be contrary to development plan policy in relation to coastline development and in the context of erosion of the existing cliff area.
- The observer raises concern regarding privacy in relation to their dwelling, which is located to the north of the site and the provision of north-facing windows orientated towards the rear of their property.
- The observer notes that unauthorised development has been carried out on the appeal site identifying a single-storey garage on site was converted to a rental property without permission.
- The inclusion of a public area (“the slip”) within the appeal site.
- Impact on structural integrity of a wall along the boundary between the appeal site and the observers.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/Development Plan policy

Cliff stability/erosion

Visual Impact

Other Issues

7.2. Principle of the proposed development/Development Plan policy:

7.2.1 The proposal is to demolish an existing dwelling and construct a new two-storey dwelling and all associated site works. The appeal site is zoned ‘HA’ with a

stated objective 'to protect and enhance high amenity areas'. Residential use is permitted in principle within this zoning subject to compliance with the Rural Settlement Strategy. In this case the proposal is for a replacement dwelling with an existing habitable dwelling on site with no requirement to comply with the settlement strategy. I would consider that the proposal is acceptable in the context of land use zoning.

7.3 Cliff stability/erosion:

7.3.1 There were two reasons for refusal with the first relating to concerns that the proposed development can be constructed without causing any effects to the cliff which bounds the site. The second reason related to the perceived failure of the applicant to demonstrate that the likelihood of erosion at the subject site is minimal taking into account the impact of the proposed development on erosion and the predicted impacts of climate change on the coastline with the proposal considered a contravention of Objective DSM174 of the Fingal Development Plan, 2017-2023.

7.3.2 The application was accompanied by two reports, a Geotechnical Inspection report (GIR) and an Outline Construction Management Plan. The GIR refers to a 2005 report (attached) that estimated slope retreat as 1m per 56 years. The GIR estimate that the rate of slope retreat is still consistent to this estimate. The report notes that there is evidence of minor slope failure but no evidence of deep seated failure with retreat being slow and small in nature. The report does state "there is always the risk of larger scale failure due to a storm event, which cannot be readily quantified". It is stated that there no significant change in slope condition between the 2005 Inspection report and the current GIR (2020). It is stated that the proposal, which does include moving the foundation of a section of the dwelling proposed closer to the slope, it is not considered to increase risk of slope failure. The GIR outlines a number of options to prevent slop retreat.

7.3.3 The appellants' view is that the condition of the slope is no different to that when it was previously assessed and permission was granted for partial demolition and extension of the existing dwelling (ref no. F16B/0294). The appellants also state that

the proposal is designed to be no closer to the edge of the slope than the permitted development and have submitted a cross section in this regard. The appellants also indicate that the construction methodology is to be the same with the erection of a heras fence to ensure no site traffic can travel within 3m of the edge of the slope. In addition an amendment is proposed with omission of a soakaway on site and connection of the storm water network via rainwater harvesting system to the surface water network.

7.3.4 The engineering response accompanying the appeal highlights the alteration including removal of the soakaway. The response notes that part of the proposed dwelling is located closer to cliff edge than the permitted development, but that such is marginal amount and would not add significant loading to the cliff edge. The response highlights that the proposal can be constructed with provision to keep construction vehicles sufficiently separated from the cliff edge. In relation to climate change the impacts identified are increased rainfall, storm events and sea level rise. In relation to erosion the response highlights a study of coastal erosion in which this area was excluded on the basis that areas within existing coastal defences were not included. The engineering response anticipates that there is minimal risk of erosion within Loughshinny Bay due to climate change.

7.3.5 As noted earlier the site is not a greenfield site and is occupied by an existing habitable dwelling. Permission has been granted on site for the partial demolition and extension of this dwelling and this permission can still be implemented. The current proposal entails demolition of the existing dwelling and construction of a new dwelling with part of the new dwelling closer to the cliff edge than previously permitted. I consider that based on the information on file that the condition of cliff area below the site has not deteriorated significantly since permission was original granted under ref no. F06B/0101 and later granted under ref no. F16B/0294. I am satisfied the proposal does not entail development significantly closer to cliff edge than the existing dwelling on site and that permitted under ref no. F16B/0294 and that the proposal can be constructed without the need for works outside of the site boundary and that provision will be made to prevent any construction activity within

3m of the cliff edge. The proposal itself is unlikely to result in erosion of the cliff face and there is sufficient information file to indicate that such is happening at a slow rate. It is clearly in the interests of the applicants to ensure adequate construction management and works to be carried out in a manner, which would not destabilise the cliff face.

7.3.6 Permission was refused on the basis that the proposal would contravene materially Objective DSM174 of the Fingal Development Plan, 2017-2023. Under Section 37 (2)(a) of the Planning and Development Act, 2000 (as amended) “subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates”.

Under Section 37(2)(b) the following is noted...

“(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan”.

I would question whether the proposal is a material contravention of Development Plan policy. The appeal site is occupied by an existing dwelling and the proposal does not deviate from the established use on site. Although the proposal is a new dwelling, there is an existing habitable dwelling on site and the location despite being governed by the Rural Settlement Strategy has an urban pattern of development. If the Board deem the proposal to be a material contravention of Objective DSM174 the proposal could be granted having regard to Section 37(2)(b)(iv) and the pattern of development in the area including the fact the appeal site is occupied by a habitable dwelling.

7.4 Visual Impact:

7.4.1 The proposal was not refused on the basis of visual impact, but the location of the site on a prominent coastal site in an area classified as 'Highly Sensitive Landscape' is raised by one of the observers. The existing dwelling on site is a single-storey dwelling. Permission was granted under ref no. F06B/0101 to partially demolish a single-storey structure and replace with a 1 and 2 storey extension to the side. This permission was re-established under ref number F16B/0294.

7.4.2 The proposal is for a two-storey dwelling with a ridge height of 7.241m. The site is a prominent location, but is located in a small settlement with an existing dwelling on site and a number of existing houses in the vicinity including two-storey dwellings. I would of the view that the overall design and scale of the proposed dwelling would not be excessive in scale and is in keeping with existing dwellings in the vicinity. I am satisfied that the design of the dwelling, although not of high architectural merit, is of a reasonable standard and would not be excessively obtrusive at this location relative to the scale of existing development on site and that on adjoining sites. The applicants/appellants submitted a Visual Impact Assessment including photomontages illustrating the visual impact of the development previously granted on site and that proposed in this application. I would be off the view that this illustrates that the visual impact of the proposal would be acceptable and is no more prominent than the development previously permitted on site.

7.5 Other Issues:

7.5.1 There is an existing stepped pathway from the public road down to the beach and a walkway running below the eastern boundary of the site below the embankment/cliff face. This walkway is noted as being a public access by the observers and they raise concerns about its inclusion within the site boundary. The appellants notes that he has control over the entire site contained within the redline boundary and has submitted a solicitors letters and details of the folio numbers relevant to the site. This is a land ownership issue which is not a planning matter or issue that can be resolved by the Board. I would note that despite being located within the site boundary, there is no proposal to alter this access as part of the proposed development.

7.5.2 One of the observers whom live in the dwelling to the north of the site and to the west of the vehicular access raise concerns about privacy and orientation of windows. The proposed replacement dwelling, although larger in scale than the existing dwelling is located on the footprint of the existing dwelling and is no closer to the observers dwelling than the existing dwelling on site. I am satisfied that sufficient separation is provided between the proposed and the existing dwelling on the adjoining site or any other dwellings as well as the fact there is a limited amount of windows on the northern elevation with only one windows at first floor level. I am satisfied that the design, scale and orientation of the dwelling has adequate regard to the amenities of adjoining properties.

7.5.3 In relation to biodiversity, the proposal is for a replacement dwelling on site that is already in residential use. The proposal entails no alteration or works outside of the site or in the area to the west. The issue of slope stability and erosion is dealt with in a previous section of this report. I am of the view that the proposal would have no significant or detrimental impact on biodiversity or any habitats or species in the vicinity of the site.

8.0 Recommendation

8.1. I recommend a grant of permission based on the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2017 to 2023, and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or result in an adverse impact of the stability of the cliff face to the east. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and in accordance with the revised plans submitted to Board on the 01st day of March 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. Reason: In the interest of clarity.

2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

3. The detail of the external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. 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.

Reason: To protect the residential amenities of property in the vicinity.

5. The site works and building works required to implement the development shall only be carried out between 7.00 hours and 18.00 hours, Monday to Friday and between 08.00hours and 14.00 hours on Saturdays and not at all on Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of adjacent dwellings.

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including traffic management, noise, vibration and dust management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and the amenities of the area.

7. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery

and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

8. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Colin McBride
Planning Inspector

17th May 2021