



An
Bord
Pleanála

Inspector's Report ABP 309617-21

Development	Remove chimney from gable and construct house in side garden.
Location	109 Forest Hills, Rathcoole, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD20B/0164
Applicant	Kevin & Geraldine Joy
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	Kevin & Geraldine Joy
Observer(s)	None
Date of Site Inspection	15/05/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

Forest Hills is a mature residential estate to the south of Rathcoole village centre comprising of terraced two storey dwellings with access to Rathcoole Boys Soccer Club grounds via the estate.

No.109 is an end of terrace dwelling served by private open space to the rear and side. A mature hedge delineates the boundary to the road. A path with a grass strip and mature trees provides pedestrian access to Cherry Walk to the north (rear) of the dwelling. The side boundary of the dwelling to the path is delineated by a block wall. No. 108 bounds the path to the east with a single storey side extension constructed up to the boundary.

2.0 Proposed Development

The application was lodged with the planning authority on the 20/05/20 with further plans and details submitted 15/10/20 and 12/01/21 following requests for further information and clarification of further information dated 17/07/20 and 12/11/20 respectively.

Permission is sought for the removal of the chimney to the gable of No. 109 and to construct a 88 sq.m. two storey two bedroom dwelling to the side. The external finishes are to match the dwellings in the vicinity. It is to be served by 55 sq.m. rear garden and a new vehicular entrance.

The gable wall of the dwelling is to be setback from the 900mm surface water sewer that runs in the centre of the path bounding the site to the east.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the above described development for 1 reason which can be summarised as follows:

The proposed development does not provide for the 5 metre setback required to the 900mm surface water sewer resulting in inadequate space to allow for access for

maintenance purposes. The proposal would, therefore, be prejudicial to public health.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **1st Planner's** report in the Record of Executive Business and Chief Executive's Order notes:

- The previous refusal for a dwelling on the site is noted but the current proposal will be assessed against the current County Development Plan.
- The building line of the proposed dwelling to the rear would not have an adverse impact on amenities of adjacent dwellings and conforms to the appropriate space standards of the County Development Plan.
- Passive surveillance to the walkway can be achieved by requiring a window at 1st floor level.
- The requirements of Water Services Section and Irish Water noted. Further information on same recommended.

The **2nd Planner's** report following further information recommends clarification of further information. There may be scope to reduce the footprint and floorspace of the dwelling to increase the setback to the surface water sewer.

The **3rd Planner's** report following clarification of further information recommends refusal of permission on the grounds that the proposal would be prejudicial to public health with inadequate space to allow for access to the sewer for maintenance purposes.

3.2.2. Other Technical Reports

Water Services in its 1st report dated **24/06/20** recommends further information requiring details on setback from the 900mm surface water sewer, engineering design solutions which shall ensure that there will be no additional load bearing onto the existing sewer and maintenance of adequate access, in addition to details of the attenuation system to be provided to the rear of the dwelling. The **2nd** report dated **27/10/20** following further information recommends a refusal of permission. The

proposal is too close to the existing 900mm surface water sewer at 3 metres. There should be a minimum set back of 5 metres. Details on the rain water harvesting system are outstanding. The **3rd report** dated **27/01/21** reiterates the refusal of permission recommendation.

Executive Parks Superintendent Public Realm has no comment.

Roads Section has no objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water in its submission dated **26/06/20** recommends further information on water supply and foul drainage and pre-connection enquiry. The **2nd report** dated **10/11/20** following further information recommends clarification of further information. The **3rd report** dated **28/01/21** following clarification of further information has no objection subject to conditions.

3.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to devaluation of property in the vicinity by way of infringement of existing building line, contravention of the zoning objective, proximity to culverted stream and previous refusal in 2006.

4.0 **Planning History**

SD06A/0121 - permission refused for dwelling on the site.

5.0 **Policy Context**

5.1. **Development Plan**

South Dublin County Council Development Plan 2016-2022

The site is within an area zoned RES the objective for which is to protect and/or improve residential amenity

HOUSING (H) Policy 17 Residential Consolidation - support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County.

H17 Objective 3 - favourably consider proposals for the development of corner or wide garden sites within the curtilage of existing houses in established residential areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation.

Chapter 11 – Implementation

Corner/Side Garden Sites Development on corner and/or side garden sites should meet the criteria for infill development in addition to the following criteria:

- The site should be of sufficient size to accommodate an additional dwelling(s) and an appropriate set back should be maintained from adjacent dwellings,
- The dwelling(s) should generally be designed and sited to match the building line and respond to the roof profile of adjoining dwellings,
- The architectural language of the development (including boundary treatments) should respond to the character of adjacent dwellings and create a sense of harmony. Contemporary and innovative proposals that respond to the local context are encouraged, particularly on larger sites which can accommodate multiple dwellings,
- Where proposed buildings project forward of the prevailing building line or height, transitional elements should be incorporated into the design to promote a sense of integration with adjoining buildings, and
- Corner development should provide a dual frontage in order to avoid blank facades and maximise surveillance of the public domain.

Table 11.20 sets out minimum Space Standards for different Houses Types:-

2 bedroom dwelling – 80 sq.m. with 55 sq.m. private open space

5.2. Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Once Consultant Engineers on behalf of the 1st party appellants can be summarised as follows:

- The 5 metre wayleave is a standard distance, arbitrarily assigned to all drains over a certain diameter and depth.
- Under Irish Water's Code of Practice for Water Mains a 3 metre separation is required for a 100mm water main/foul sewer.
- Confirmation by Irish Water of connection received (copy attached).
- On review of the Water Services Planning report there is no record of consideration of the proposed measures presented as part of the application to protect and provide access to the pipework.
- From a perspective of protecting adjoining properties and employee safety the Council would be required to provide a temporary trench control on either side of the laneway. The purpose of which would be to restrain and prevent movement of the boundary wall to No.109 and the existing dwelling built up to the boundary of No.108. The trench control could only extend 2.5 metres either side of the existing sewer and not rely on the 5 metre arbitrary setback requirement.
- The case for a relaxation of the 5 metre setback requirement as presented, includes the provision of a contiguous pile wall along the eastern boundary which would provide protection along the face of the boundary of the laneway to facilitate excavations required for the repair or replacement of the sewer. Such a permanent contiguous pipe wall provides a more robust and secure trench control to the boundary than would be provided by a traditional temporary trench control method, the type of which the local authority would be required to provide on the east of the laneway in any work undertaken.
- The Council and Irish Water would have no access over properties to either side. The proposed development with the protective measures provided

would result in no further onerous conditions on their work within the laneway than would already exist.

6.2. **Planning Authority Response**

The issues raised in the appeal have been covered in the planner's report

6.3. **Observations**

None

7.0 **Assessment**

At the outset I note that permission was refused for a dwelling on the site under ref. SD06A/ 0121 and pre-dates the current development plan. The proposal before the Board will be assessed in the context of the current 2016 County Development Plan and the relevant policies and objectives.

The site is located within an area zoned RES in the current South Dublin County Development Plan the objective for which is to protect and/or improve residential amenity. The plan, by way of H17 Objective 3, supports development of dwellings on corner/side gardens, subject to appropriate safeguards and standards.

Relative to the criteria required to be satisfied in terms of corner/side garden sites (as set out in Section 11 of the Plan) I note:

- The site is of a sufficient size to accommodate the additional dwelling. The proposed dwelling with a stated floor area of 88 sq.m. and rear garden area of 55 sq.m. meets the minimum requirements for 2 bedroom dwellings as set out in Table 11.20 of the Plan. The rear garden to be retained to serve No.109 will be 60 sq.m. I consider that a condition precluding exempted development provisions save with a prior grant of permission to be appropriate in this instance
- The dwelling design and roof profile matches that adjoining. Whilst the building line to the rear extends beyond that of the adjoining dwelling this is considered acceptable and would not adversely impact on the said property's amenities or the visual amenities of the area.

- A window serving a bedroom, in addition to a window serving the landing, are proposed thereby avoiding a black façade in the gable and allow for surveillance of the public domain.
- A new vehicular access is proposed providing for 2 no. off street parking spaces.

The proposal in terms of size, design and layout is acceptable in principle.

I consider that the substantive issue arising in the case pertains to the proposed setback to the 900mm surface water pipe that runs along the pathway bounding the site to the east.

The proposed dwelling is c. 5.65 metres wide and is to maintain a 900mm setback from the side boundary. Cherry Walk bounding the site to the east is a pedestrian path approx. 5.65 metres wide with a central grass strip with mature trees. No. 108 which bounds the path to the east has been extended right up to its boundary. A 900mm surface water sewer is laid in the centre of the path, in addition to both a foul sewer and a water main. The proposed dwelling is to maintain a 3 metre setback from the said services. I note that Irish Water has no objection to the proposal with the results of the pre-connection enquiry accompanying the appeal.

The local authority requires a 5 metre setback from the surface water sewer so as to allow for maintenance although the local authority would not have right of access to the existing side garden to undertake such works. The basis for this separation distance is not set out and I can find no reference to same in the current County Development Plan.

By way of further information the agent for the applicant has provided details of an engineering design solution to allow for the relaxation of the separation distance and includes the provision of a contiguous pile wall along the eastern boundary providing protection along the face of the boundary of the laneway to facilitate excavations required for the repair or replacement of the sewer. The pile wall would be provided prior to construction of the dwelling. Such contiguous pile walls would be a standard form of construction used to provide boundary protection for the excavations of basements or construction of embankments.

I consider that the said design solution to be acceptable and that subject to its implementation the access requirements to the said surface water sewer would not be adversely affected as to give rise to concerns in terms of public health.

Appropriate Assessment – Screening

Having regard to the location of the site and the nature and scale of the proposed development it is concluded no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the location of the site on residentially zoned lands in the South Dublin County Development Plan 2016-2022, to the development standards for dwellings in side gardens of the Development Plan and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or the amenities of property in the vicinity and would not be prejudicial to public health. 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, as amended by the further plans and particular submitted on the 15th day of October, 2020 and the 12th day of January 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. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Part 1 of Schedule 2 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the new and existing dwelling.

3. Details of the materials, colours and textures of all external finishes to the proposed dwelling and boundary treatment 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 developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

5. Drainage arrangements including the disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

7. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

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, 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.

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.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2021