



An
Bord
Pleanála

Inspector's Report ABP 310194-21

Development	Single storey dwelling and ancillary works.
Location	Durling, Bailey Green Road, Howth, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0495
Applicant	Eoghan Duffy
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Michael A. O'Neill
Observer(s)	None
Date of Site Inspection	16/07/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The appeal site forms part of a larger 0.43 hectare site on which there is a single storey dwelling accessed at the end of a private road. It comprises part of the front garden area of the existing dwelling. The site boundaries are delineated by mature planting and trees. A long driveway serving a dwelling bounds the site to the east. A coffee stand placed alongside this driveway backs onto the site. A single storey dwelling bounds the site to the north-west. Bailey Green and a public car park bound the site to the south. Access to cliff walks is available from the said car park

2.0 Proposed Development

The application was lodged with the planning authority on the 06/10/20 with further plans and details received 03/03/21 follow a further information request dated 26/11/20. Copies of revised public notices were received 23/03/21.

The proposal is for a single storey dwelling with a stated floor area of 121.7 sq.m. in what currently comprises part of the front garden area of the applicant's parents' dwelling. The existing entrance is to be used.

The application is accompanied by:

- Planning Report
- Visual Impact Assessment report
- Screening for Appropriate Assessment (amended by way of FI)
- Services Report (amended by way of FI)
- Arborist/Tree Report Planning Authority Decision

2.1. Decision

Grant permission for the above described development subject to 11 conditions.

Condition 8 requires that all works within tree root protection areas are undertaken under the direct supervision of an arboricultural consultant.

2.2. Planning Authority Reports

2.2.1. Planning Reports

The 1st Planning Officer's report can be summarised as follows:

- The proposal is considered to be an acceptable form of development within the RS zoning objective.
- The southern portion of the site zoned open space may be within Council ownership. Clarification required.
- In terms of the SAAO 5 units per hectare density restriction, density should be calculated based on the total number of dwellings relative to the overall site area within the defined boundary. The area is calculated as being approx. 2.1 hectares. There are 7 existing dwellings. The proposal will result in a density of c.3.8 units per hectare and is acceptable.
- Discrepancies in the plans and particulars to be addressed.
- The contemporary design is acceptable.
- The dwelling would not unduly impact on the visual amenities or protected views.
- No impacts on residential amenities of adjoining properties arise.

Further information recommended.

The 2nd report following FI notes that the red line has been amended to reflect the correct ownership boundaries. The amended details are acceptable. A grant of permission subject to conditions is recommended.

2.2.2. Other Technical Reports

Water Services has no objection subject to conditions.

Transportation Planning Section has no objection.

Parks Section recommends further information seeking a tree survey and landscape plan. The 2nd report following FI has no objection subject to conditions.

2.3. Prescribed Bodies

Irish Water recommends further information seeking a pre-connection enquiry in order to determine the feasibility of connection to water/waste water infrastructure. The 2nd report following FI has no objection subject to conditions (said enquiry was made).

2.4. Third Party Observations

An objection to the proposal received by the planning authority is on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeal summarised in section 6 below.

3.0 Planning History

I am not aware of any planning applications that pertain to the site.

4.0 Policy Context

4.1. Fingal County Development Plan

The site, as amended by way of further information, is entirely within an area zoned RS, the objective for which is to provide for residential development and protect and improve residential amenity.

The lands to the south and which were originally within the site boundary are zoned open space.

PM44: Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.

PM45: Promote the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.

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.

DMS29: Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units.

DMS39: 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.

DMS87: Relates to minimum open space provision for dwelling houses.

The site is within the area covered by the Howth SAAO

Objective Howth 3: Implement the Howth SAAO, the associated management plan and objectives for the buffer zone.

Map A of the SAAO shows the site located within 2 zones 'Residential Areas' and 'Land Use for Agriculture and Forestry'.

Map A delineates a density cap of 5 dwellings per hectare.

4.2. **Natural Heritage Designations**

Howth Head SAC (site code 00202) is c. 5 metres to the east of the site.

5.0 **The Appeal**

5.1. **Grounds of Appeal**

The 3rd Party appeal by Michael O'Neill, O'Neill Town Planning can be summarised as follows:

- A 3rd of the site is zoned open space and residential land uses are not permitted in 'OS' zoned lands.
- The development cannot rely on the policies in the County Development Plan or the Special Amenity Area Order.
- The total residentially zoned site (parent plus proposed site) which is subject to the density constraint is, at best 3800 sq.m., which is below the requirement for two houses (minimum 4000sq.m.), The application site is 1358 sq.m. and only 1118 sq.m. if the access road through the site is

discounted. This is substantially below the 2000 sq.m. minimum requirement. Given that both, or either, of the criteria above cannot be met, the development must be deemed a material contravention of the Development Plan and a breach of the SAAO.

- The proposed density is therefore between 7 and 9 houses per hectare rather than the maximum of 5 permitted.
- Whilst the density on the overall 2.1 hectare area is theoretically capable of supporting 10 houses it seems contrary to proper planning to allow one applicant with only half the required land area to develop a house thereby depriving other landowners development rights on their lands.

5.2. Applicant Response

The submission by Hughes Planning and Development Consultants on behalf of the applicants can be summarised as follows:

- The land uses in Map A of the SAAO are dated and conflict with the County Development Plan. The site is zoned RS – residential.
- The calculated density is based on the entire area as shown in Map A of the SAAO at 2.1 hectares. There are 7 no. dwellings currently located there. The addition of the new dwelling would result in a density of 3.8 units per hectare. This is below the density cap of 5 dwellings per hectare. The SAAO contains no guidance on how the density should be calculated therefore the judgement of the planning authority should be relied upon.
- It is considered that this density cap is limiting and contravenes national policy regarding residential density.
- The proposal would accord with national, regional and local planning policies.
- The site is well served by public transport, is located close to Howth town centre. The development is supported by SPPRs in the guidelines for Urban Development and Building Height Guidelines and the Guidelines on Sustainable Residential Development in Urban Areas.

- The site is zoned RS – residential. No works are proposed within the land zoned 'OS' to the south.
- The proposal constitutes infill development. Development plan objectives PM44 and PM45 are relevant.
- The Visual Impact Assessment prepared concludes that the proposal will not have a negative impact on the landscape and will not negatively impact the views in the area.
- The proposal meets the development standards set out in the Development Plan including private open space, car parking and protection of amenities of adjoining property.

5.3. **Planning Authority Response**

It considered that the proposed development, subject to conditions, will not unduly detract from the character of the area or the adjoining visual and residential amenity. The amended plans submitted by way of FI excluded the area zoned OS from the site boundary. All works being proposed are within lands which are zoned RS. Should the Board grant permission it is requested to attach condition 11 (section 48 financial contribution).

5.4. **Observations**

None.

6.0 **Assessment**

I consider that the substantive issue arising in the case is the acceptability of the proposal in the context of the planning policy provisions that pertain to the site.

The site is accessed at the end of a private road immediately adjacent to Bailey Green and public car park from which access to cliff walks is available. It comprises what is the front garden of a single storey dwelling set back into the site. Due to the existing boundary planting the site is not visible from Bailey Green.

The red line delineating the site boundary on the plans initially lodged included part of the said green area. Following further information in which this was queried, the site boundary was altered to omit this area and extends to the property boundary only. As amended, I calculate the site area to be in the region of 0.11 hectares with the existing dwelling retaining a site of in the region of 0.215 hectares with private open space available to the rear (north).

As per the current County Development Plan the site, as amended, is zoned RS the objective for which is to provide for residential development and protect and improve residential amenity. The proposed development for a dwelling would be acceptable in principle in such a zone. However the provisions of the Howth Special Amenity Area Order apply. As per Map A of the SAAO the site straddles 2 zones 'Residential Areas' and 'Land Use for Agriculture and Forestry'. I would concur with the agent for the applicant that these zones are somewhat dated and do not correspond with the RS zoning as set out in the current County Development Plan. In addition I note that the site immediately to the east, also covered by the Land Use for Agriculture and Forestry zone, has been developed for residential purposes.

Of greater import, however, are the density parameters identified for the area as shown on Map A of the SAAO which is capped at 5 units per hectare. The issue of how the density is calculated constitutes a material concern for the appellant who contends that the calculation should refer to the site, itself, and that a site area of 2000 sq.m. minimum would be required to comply with the density limit. The planning authority in its assessment of the application has taken the view that the density pertains to the area as delineated on the map in its entirety.

The SAAO is silent on how the density is to be calculated and, as such, it is open to interpretation. On balance, I would tend to concur with the approach taken by the planning authority and that the density be calculated on the basis of the overall area covered by the cap rather than individual site areas. On this basis I note that there are 7 dwellings within the delineated area which is calculated to be 2.1 hectares in extent. The proposed development will be the 8th unit giving a density of 3.8 units per hectare and therefore does not breach the 5 unit per hectare cap. Whilst the appellant considers that to allow for the proposal on a site area significantly less than 2000 sqm. would compromise the development rights of adjoining landowners I submit that any future development proposals would be assessed on their merits

having regard to the policies and objectives with respect to residential development that would pertain at the time.

I therefore do not consider that the proposed development would materially contravene the density or zoning provisions of the SAAO or the County Development Plan.

The county development plan by way of objective PM44 encourages and promotes the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected. I note that Objective PM45 seeks to promote the use of contemporary and innovative design solutions subject to the design respecting the character of the area.

The house is contemporary in design with a roof profile that, at its highest point, is 4.650 metres. Its floor area is also modest at 121.7 sq.m. A setback of 5.850 metres is to be retained from the existing dwelling. It will have private amenity space to the front with a stated area of 407 sq.m. It is to share the existing vehicular entrance which is an acceptable arrangement.

A Visual Impact Assessment accompanies the application. I have inspected both the site and its surroundings, as well as views towards the site from the cliff path and from which views are to be protected. I am satisfied that the proposed development will not be visible from the cliff path and will have no impact on views or prospects to, from or within the SAAO area. The existing mature trees and planting on the site boundaries is to be retained and augmented, with details of the protection measures to be incorporated during the construction phase set out in the Arborist/Tree Report and the Landscape Specification drawing submitted by way of further information.

In conclusion, I consider that the development as proposed is acceptable, would provide for an acceptable level of amenity for prospective occupants and would not adversely impact the amenities of property in the vicinity.

Appropriate Assessment – Screening

Compliance with Article 6(3) of the Habitats Directive

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act, 2000, as amended are considered fully in this section.

Background on the Application

A Screening for Appropriate Assessment prepared by NM Ecology dated 29/06/20 accompanies the application. It was amended following a further information request.

The applicant's Stage 1 AA Screening Report was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. The application is also accompanied by a Services Report.

The applicant's AA Screening Report concludes that there is not potential for significant effects because there is no risk of direct or indirect impacts on any Natura 2000 sites and that Appropriate Assessment is not required.

Screening for Appropriate Assessment – Test of likely significant effects.

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development is examined in relation to any possible interactions with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

The proposal entails the construction of a single storey dwelling.

The appeal site is located within a serviced and residentially zoned area, with existing residential development to the north, west and east and a public car park to the south. I note that it is proposed to connect to the public water supply network and the public foul drainage system. Surface water is to be disposed of within the site via

a soakaway with the existing and proposed hardstanding areas to be either permeable or drain to landscaped areas. Having regard to this, I consider that the only potential for effects on Natura 2000 sites arises during the construction phase.

The following table gives a summary of European sites that occur within a possible zone of influence of the proposed development. Where possible connection between the development and a European site have been identified, these sites are examined in more detail.

Natura 2000 Site	Distance	Qualifying Interests	Conservation Objectives
Howth Head SAC (000202)	5 metres to east	Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] 7.7.4. European dry heaths [4030]	To maintain the favourable conservation condition of Vegetated sea cliffs of the Atlantic and Baltic coasts/European dry heaths in Howth Head SAC.
Howth Head Coast SPA (Site Code 004113)	140 metres to east	Kittiwake (<i>Rissa tridactyla</i>) [A188]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
Rockabill to Dalkey Island SAC (003000)	550 metres to east	Reefs [1170] Phocoena (Harbour Porpoise) [1351]	To maintain the favourable conservation condition of Reefs/Harbour

			porpoise in Rockabill to Dalkey Island SAC
North Bull Island SPA (002006)	1.9km to south-west	Wintering birds	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

Identification of likely effects

Due to the topography of the site with gentle falls from south-east to north-west any accidental spillage or runoff during construction would be carried away from the SAC and as such there is no likelihood of any such pollutant run-off affecting the sea cliffs or heathland areas or entering the sea and thereby affecting reefs or harbour porpoises.

With regard to Kittiwakes, a protected sea bird species that visits the sea cliffs in this area for nesting and breeding, I note that the appeal site is within an existing residential area and immediately adjoining a public car park which provides an access point to the public pathways. When considered together with the topography of the area, it is not likely that the proposed development would have a direct or indirect effect on the nesting and/or breeding of Kittiwakes.

Mitigation Measures

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project it has been concluded that the project individually or in combinations with other plans or projects would not be likely to give rise to significant effects on European Site Nos. 00202, 04113, 03000 and

02006 or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

The determination is based on demonstrated lack of any ecological connections.

7.0 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.

8.0 Reasons and Considerations

Having regard to the location of the site on residentially zoned lands in the Fingal County Development Plan 2017, the scale of the proposed development 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 comply with the density cap for the area as set out in Map A of the Howth Special Amenity Area Order, 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.

9.0 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 3rd 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. 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.

3. 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.

4. 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.

5. 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.

6. The landscaping scheme shown on drawing titled Landscape Specification received by the planning authority on the 3rd day of March 2021 shall be carried out within the first planting season following substantial completion of external construction works.

Any plants which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development, shall be replaced within the next planting season with others

of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual 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

July, 2021