



An
Bord
Pleanála

Inspector's Report

ABP-310198-21

Development	Subdivision of existing site, new entrance to existing house and construction of new dwelling
Location	Bushwell, Kinsealy Lane, Malahide, Co Dublin, K36 KX61
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0092
Applicant(s)	Breda Corrigan.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Breda Corrigan
Observer(s)	None
Date of Site Inspection	05 th of November 2021.
Inspector	Karen Hamilton

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1.0 Site Location and Description

- 1.1. The site is located within the grounds, side garden, of a bungalow (c.0.04ha) along the west of Kinsealy Lane, Malahide. The bungalow, known as Bushwell, is accessed directly from the Kinsealy Lane and has a large private garden to the front, rear and sides. The site is surrounded by mature trees and there is a garage to the east of the existing dwelling. The sites along the same side of the Kinsealy Lane, to the west, have similar characteristics, with large sites and detached dwellings.
- 1.2. Access to a residential estate, Sleepy Hollow, is located to the south of the site. There is an overgrown derelict site directly to the rear of the Bushwell site, between the Sleepy Hollow estate. The site is relatively flat.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - Subdivision of an existing site.
 - New entrance for the existing dwelling.
 - Construction of a new detached dwelling (3 no. bedroom) which uses the existing dwelling entrance.
 - Alteration to the existing site including the removal of the existing shed and alteration of the mains and local drainage.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse for three reasons stated below:

1. The proposed development results in the subdivision of the site which is considered to be piecemeal and ad-hoc in nature and creates a poor layout which is at variance with the prevailing pattern of development and would give rise to a significant native impact upon the visual amenities of the area. The proposed development represents overdevelopment of this restrictive site and

would be contrary to the proper planning and sustainable development of the area.

2. The ad hoc separation of the site results in substandard private amenity spaces to serve the proposed dwelling which by virtue of the unusable nature of the private amenity space does not accord with Objective DMS87 of the Fingal Development Plan 2017-2023. When considered cumulatively the 4 no. courtyard spaces proposed would offer little amenity value to the occupants of the 3-bed dwelling. The proposed development would be contrary to the proper planning and sustainable development of the area.
3. Drawings submitted indicate that it is proposed to finish the dwelling with a dark timber clad. Having regard to the separation distances provided, the material finish and the design of the dwelling it is considered that the proposed dwelling would be overbearing upon the host dwelling. As such, in its current form the proposed dwelling would give rise to a negative impact upon the residential amenities of the surrounding areas and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission for the three reasons previous stated above. The report is summarised below:

- The Planning Officer is concerned with the ad-hoc nature of the proposal, the design of the dwelling on the site (relative to the existing dwelling) and the visual impact of the dwelling set back from Kinsealy Lane.
- The Planning Officer considers the proposed design does not have regard to the semi-rural nature of the existing laneway.
- It is noted that the restrictive nature of the site and the layout of the proposal has led to the unsatisfactory provision of private open space as it is designed in a courtyard format (c.28m²) and other terrace areas.
- It is also considered the use of external materials will have an overbearing nature on the host dwelling.

3.2.2. Other Technical Reports

Water Services: No objection subject to conditions.

Parks and Green Infrastructure: Additional information required on the landscaping plan, the proposed boundary treatment and the quantum of private useable open space remaining for the proposed dwelling.

Transportation Planning Section: Additional information required on the sightlines for both entrances in line with DMURS (2m set back and sightlines 59m, 2.4m for a shared entrance) along with 3rd party consents.

3.3. Prescribed Bodies

Irish Water: No objection subject to a pre-connection agreement.

Dublin Airport Authority (DAA): No objection subject to the inclusion of a noise condition.

3.4. Third Party Observations

None received.

4.0 Planning History

4.1. Subject site

F16A/0174

Retention permission granted for a converted attic (c.42m²) and permission granted for a new single storey rear extension (c. 10m²) 2 new dormer style windows to the front and 1 new dormer to the rear, minor alterations to the front porch and the creation of a new site access off Kinsealy Lane. (expired 30th of May 2016).

- Condition No 4 required the existing entrance to be closed off. Access shall be provided through the northern boundary fence to the existing garage on the adjacent site, if required. A footpath was required along the front of the proposed development.

4.2. At the rear of the site

PL06.228570 (Reg Ref F08A/0059)

Permission granted to the applicant (B & P Corrigan) for permission consequent to a grant of outline permission (F04A/1631) for 2 no dormer style dwellings, revised driveway access to proposed dwellings from existing driveway, new boundary wall between existing dwelling and adjacent proposed dwelling and associated works.

4.3. Site to the north

F16A/0153

Permission granted for 2 no. detached 2 storey houses and associated site works with access from existing vehicular entrance to Evergreen from Kinsealy Lane and the provision of a new vehicular entrance to Evergreen from Kinsealy Lane.

5.0 **Policy Context**

5.1. **Fingal County Development Plan 2017-2023**

The site is location on lands zoned as Residential, RS, where it is an objective to “*Provide for residential development and protect and improve residential amenity*”

The site is located in Noise Zone C.

Infill, Corner and Backland Sites

Objective 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.

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

Section 12.4: Design Criteria for Residential Development

- Density: reference to national guidance and promotion of higher densities
- Objective DM24: compliance with minimum standards in Tables 12.1, 12.2 and 12.3

- Separation distance: Objective DMS28 a minimum of 22 m from opposing first floor windows. Objective DMS29 a separation distance of at least 2.3m from side walls.
- Daylight/ Sunlight: Objective DMS30 compliance with B.R.209,2011 and B.S.8206

Underutilised infill and corner sites

Objective 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.

Objective DMS40:

New corner site development shall have regard to:

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- The existing building line and respond to the roof profile of adjoining dwellings.
- The character of adjacent dwellings and create a sense of harmony.
- The provision of dual frontage development in order to avoid blank facades and maximise surveillance of the public domain.
- Side/gable and rear access/maintenance space.
- Level of visual harmony, including external finishes and colours.

5.2. **Natural Heritage Designations**

The site is located c. 2.9km to the west of Malahide Estuary SPA (site code 004025) and Malahide Estuary SAC (site code 000205).

There are a number of proposed Natural Heritage Areas in the vicinity of the site as follows:

- Malahide Estuary (c.2.5km to the east)

- Sluice Rive Marsh (c. 1.3km to the south east)
- Feltrim Hill (c.1.2km to the west)

5.3. EIA Screening

The site is located within the garden of a bungalow and associated with residential use with an existing outbuilding and carparking area.

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. 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

The grounds of appeal are submitted by a planning consultant on behalf of the applicant, and owner of the site, in relation to the refused permission by the planning authority (PA). The issues raised have been summarised below:

6.1.1. Land use Zoning

- The site is zoned as residential and located in Dublin Airport Noise Control Zone C.
- The proposed house was designed with the requirements of Objective DA07

6.1.2. Proposed development

- Other than the applicant's house to the south, the proposed house is 27m to the closest house to the north.
- The proposal also includes a new entrance.

6.1.3. Reason for Refusal No.1

- There is currently a grant of permission on the site to the north (F16A/0153) for 2 no dwellings.

- The planning officer did not refer to this application which suggests they are not aware of the existing precedence set.
- The adjoining site is owned by the applicant's sister and indicates the prevailing pattern of development.

6.1.4. Over development

- The density on the applicant's site will be 6.9 units per ha whilst the permitted development to the north is 7.31 units per ha.
- The proposal is not considered overdevelopment.

6.1.5. Visual amenities

- The views from Sleepy Hollow indicate the site is dominated by trees and hedgerows.
- There would be no impact of the proposed development from Sleepy Hollow.
- In addition, there is heavy vegetation along the Kinsealy Road and along the boundary with the north of the site.
- The development would be well hidden by vegetation cover and at a distance from third party properties.
- Images (included in the grounds of appeal) of the site from the north and south, from the front entrance (with vegetation and without vegetation) and from the rear of the site.
- The images indicate that the proposal is not ad-hoc and is following the adjacent precedence.
- The proposal will not give rise to a significant negative impact on the visual amenity by reason of presence of dense and mature vegetation in the vicinity.

6.1.6. Reason No 2

- The ad-hoc nature of the proposal and substandard private amenity space was raised in the second reason for refusal.
- Chapter 12 (development management standards) provides guidance on the provision of private amenity space.

- Objective DMS87 also provides guidance for the quantum of open space.
- The proposal includes the minimum required open space at the rear of the front building lines.
- The open space is at a high standard and would not be overlooked such as those dwellings in traditional housing estates.

6.2. Reason No. 3

- The proposed dwelling will be located to the north of the existing dwelling and is modest in scale.
- The submitted images show that the site is large enough to accommodate the proposed site which is modest in size and scale.
- The proposed house would not be visible from the road.
- An example of the charred timber finish has been submitted (picture supplied). This material is an environmentally friendly method of wood preservation and timber cladding.
- There is no substantive reason for refusal under this matter.

6.3. **Applicant Response**

The applicant is the appellant.

6.4. **Planning Authority Response**

A response was received from the planning authority to state they had no further comment and request the Board to uphold the decision to refuse. In the event of a grant of permission a Section 48 Contribution condition should be applied.

6.5. **Observations**

None submitted.

7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of Infill Development
- Design and Layout
- Impact on Residential Amenity
- Access and new entrance
- Appropriate Assessment.

Principle of Infill Development

7.2. The proposed development includes the subdivision of an existing residential plot to accommodate an additional detached dwelling. In addition, a new entrance is proposed for the existing dwelling. The applicant lives in the existing detached bungalow (Bushwell) to the south of the subject site. Permission was previously granted for 2 no detached dwellings on the site to the rear (PL06.228570 (Reg Ref F08A/0059) this permission was not executed. Permission was also granted for 2 no detached dwellings at the rear of an existing dwelling to the north of the site (F16A/0153).

7.3. The proposed development was refused for 3 no reasons of which the first reason relates to the ad-hoc and piecemeal nature of the proposal which the PA considered represented overdevelopment of the site. The grounds of appeal submit that having regard to the permission granted to the north of the site for 2 no. dwellings (F16A/0153) a precedence for similar development is already in existence and this proposal represents a reduced density (6.9 uph) as opposed to the adjoining site (7.31uph).

7.4. The site is zoned RS – Residential, in the Fingal County Development Plan 2017-2023 where it is an objective to “*provide for residential development and protect and improve residential amenity*”. Residential is permissible. The site is located within the development boundary of Malahide, a “Moderate Sustainable Growth Town” for Fingal. In general, the policy objectives of the development plan to consolidate development in defined growth centres and ensure high quality residential developments. The development of underutilised infill and corner sites are

encouraged where they can ensure the protection of amenities, privacy and the established character of the area. The design and layout are further detailed below.

- 7.5. Although the grounds of appeal argue the principle of infill is acceptable at this location, it is my opinion that the first reason for refusal relates in the most part to the design and layout which in turn leads to a piecemeal development (as further addressed below). This aside, the Board will note the policies and objectives of the development plan promote the efficient use of lands, including infill development and having regard to the residential zoning on the site, where residential and infill is permitted in principle, therefore I have no objection to the principle of development at this location subject to compliance with other planning requirements, detailed below.

Design and Layout

- 7.6. The proposed dwelling is a 3-storey dormer dwelling with a contemporary design. The layout is based around three separate areas interconnected by a corridor. Parcels of private amenity space are located around the periphery of the site in courtyard/ terrace areas. The dwelling includes sloped roofs for each of the separate areas of the dwelling and the external material includes a dark timber clad. Photomontage illustrations of the proposal are included with the grounds of appeal.
- 7.7. The dwelling is set to the north of the existing dwelling. Objective PM45 of the development plan promotes the use of contemporary and innovative design solutions for infill, corner and backland sites, subject to the design respecting the character and architectural heritage of the area. Objective DMS39 provides further guidance to state that the infill development should respect the height and massing of existing dwelling and retain the physical characteristics of the site. I note the site has been split from the existing dwelling (and associated garden) in an unusual manner. It is my opinion that this configuration takes into account the right of way to the site at the rear (further discussed below) and the design proposal of the infill dwelling is in response to the layout of the site rather than the surrounding area. This aside, the Board will note a variety and range of house types along the Kinsealy Lane and although the existing dwelling on the site is a traditional bungalow style, the Sleepy Hollow residential estate to the west of the site includes similar dormer style bungalows with a contemporary design.

- 7.8. In relation to the external materials for the new dwelling, the Board will note the third reason for refusal relates to the choice of materials and the impact on the existing dwelling, which is considered to have an overbearing impact on the existing dwelling. The grounds of appeal include the submission a of a picture of the dark timber clad. It is argued that the external materials proposed are appropriate and provides an environmentally sustainable construction option. In addition, the grounds of appeal state that the current vegetation throughout the site, and along the boundary, will prevent the site being particularly visible. Whilst I note the objectives of the development plan promote the use of contemporary designs and innovative design solutions, these are subject to respecting the character of the area. It is my opinion that the inclusion of a dark timber finish is not in keeping with the character of the area and I do not consider the submitted documentation to contextual elevations illustrate that the external treatment of the dwelling is an appropriate response. Although the site currently contains mature landscaping, the proposed dwelling will be visible from the existing dwelling. In this regard, it is my opinion that the design of the dwelling would not be in keeping with Objective PM44 of the development plan which requires infill sites to respect the character of the area and the proposal would have a negative impact on the visual amenity of the occupants of the existing dwelling.
- 7.9. To this end, whilst I have no objection to the overall contemporary design of the dwelling, I consider the use of a dark timber clad on a small infill site, directly adjacent to an existing dwelling would have a serious negative impact on the visual amenity of these occupants and would not be in compliance with the policies and objectives of the development plan for the appropriate development of infill and backland sites.

Impact on Residential Amenity

Existing dwelling

- 7.10. Overlooking: The proposed dwelling is located to the north of the existing bungalow, c. 2m from the side of the dwelling. The first floor of the proposed development includes a bedroom with the window orientated towards the east. Having regard to the design of the proposal it is my opinion there would be no significant negative impact on any surrounding dwellings by way of overlooking.

- 7.11. Overshadowing: The proposed dwelling is location to the north of the existing bungalow and c. 27m to the south of the adjoining dwelling to the north. Having regard to the dormer style design and the location to the north of the existing dwelling, I do not consider the proposal will have any significant negative impact on the residential amenity of the occupants of the surrounding area b reason of overshadowing.
- 7.12. Overbearing: As stated above, the overall scale and mass of the proposed dwelling, which is contemporary in design, would not have a significant negative impact on the occupants of the adjoining dwelling. I have previously raised concern in relation to the propsoed external materials and the impact on the visual amenity. I have considered this treatment and finishes would have an overbearing impact having regard to this negative visual impact.

Proposed dwelling

- 7.13. The second reason for refusal relates to the design and layout of the private amenity space which the PA considered was substandard. The grounds of appeal refer to the open space requirements in the development plan, chapter 12 and Objective DMS87 and consider the open space proposal (c. 64m²) is in keeping with the 60m² stated in the development plan.
- 7.14. Objective DMS87 of the development plan requires a minimum open space provision for three-bedroom houses of 60m² which is to be located behind the front building line of the house. As stated above, the proposal includes c. 64m² of private amenity space and this is located in 4 separate areas including 2 courtyards and 2 terrace areas.
- 7.15. The report of the Parks and Green Infrastructure Section of Fingal Council requested additional information on the proposed development for a number of reasons of which one required the provision of an additional quantum of private open space for the dwelling as the current proposal provided a limited useable private open scape as it consisted mainly of incidental areas.
- 7.16. I note the layout of the private amenity space is in a courtyard style around the edges of the site with the largest courtyard (c.28m²) located beside the kitchen livening area. The other 2 larger courtyard areas, along the north, will adjoin an area which will potentially provide access into the site at the rear, west, of the site. Having

regard to the limited size of these open space areas (c. 8.4m² and c.17m²), and the orientation onto a right of way, I consider the amenity value of these spaces is seriously restricted. In addition, I note the west facing elevation does not clearly illustrate if access from bedroom No 1 can be provided onto terrace 2. To this end, I do not consider terrace No.2 can be considered in the quantum of open space and therefore the requirements of Objective DMS87 cannot be fully complied with.

- 7.17. Therefore, having regard to the location of the site, directly adjacent to a right of way and the layout of the separate amenity areas, I do not consider the private amenity space proposed delivers functional private amenity space. In this regard, I consider the proposal would have a negative impact on the residential amenity of the future occupants of the dwelling.

Access and New Entrance

- 7.18. The proposed development includes the retention of the existing access for the proposed dwelling and a new separate entrance for the existing dwelling.

Right of Way

- 7.19. The site layout plan indicates a right of way through the existing entrance, along the north boundary, towards the site at the rear (west). There is a previous grant of permission on the site at the rear (PL06.228570 (Reg Ref F08A/0059) for 2 no dwellings. The permitted access into the rear of the site was via the existing access, along the right of way illustrated in the current application. Permission was granted to the applicant although the site layout plan does not include this area currently within the applicant's control or ownership.
- 7.20. Although this permission expired on the 25th of February 2008 and therefore no longer extant, the Board will note the existence of the right of way associated with that site. As stated in my assessment of design and layout and impact on residential amenity, the location of the right of way, in my opinion, determined the site layout and in turn the layout of the dwelling and associated amenity space. The potential future access and movement of traffic along the north of the site will, in my opinion, have implications for the viability of the private amenity space along the north of the subject site and in the absence of any landscaping details or boundary treatment, have negative impact on the residential amenity.

Sightlines

- 7.21. The Transport Section requested additional information in relation to the sightlines of both entrances. The Transport Section noted the existing entrance was substandard in its current form and a traffic hazard. This entrance was required to be upgraded to meet the DMURS standards (2m setback and 59m sightlines). It was also noted that third party consents would be required to upgrade this entrance. The Transport Section considered a shared entrance could be viable although this would also have to meet the DMURS standards.
- 7.22. Additional information was not requested for the requirement of the transport section. I note the grounds of appeal did not provide any further details on any upgrades to the existing entrance or the provision of a shared entrance. In this regard, it is my opinion that the access arrangement into the site cannot meet the DMURS standards. Should the Board be minded granting permission for the proposed development I do not consider it reasonable to include a condition to meet these standards, as third-party consents may be required. In this instance, it is recommended that the applicant and Transport Section have further opportunity to provide details.

Appropriate Assessment

- 7.23. The site is located c. 2.9km to the west of Malahide Estuary SPA (site code 004025) and Malahide Estuary SAC (site code 000205). The site is associated with the residential use on the site and is maintained as a private garden. The lands are serviced and within a built-up urban area. The proposal does not include any significant alteration to the vegetation and there are no habitats on the site associated with any European Sites. The site is not connected to any adjoining European Sites by any hydrology, and I do not consider there is any source-pathway-receptor.
- 7.24. Having regard to the location, scale and nature of the proposed development it is considered that no appropriate assessment issues arise. 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

- 8.1. I recommend that planning permission should be **refused** for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the limited area and access arrangements associated with the site and its relationship to adjoining property, the lack of useable private amenity space and choice of external material, it is considered that the proposed development represents inappropriate infill/ backland development, would result in a substandard residential unit and would seriously injure the amenities of property in the vicinity by reason of uncoordinated piecemeal development and inappropriate design. In this regard, it is considered the proposed development would be contrary to the policies and objectives of the Fingal County Development Plan 2017-2023, in particular ObjectivePM44 which require infill proposals to respect the character of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karen Hamilton

Senior Planning Inspector

08th of November 2021