



An
Bord
Pleanála

Inspector's Report ABP 310404-21.

Development	Removal of existing dwelling and construction of detached two storey over basement dwelling with basement yard and external basement stairs at rear, recessed terrace at first floor level, double A pitch roof with central valley and PV Panels.
Location	13 Hillside Drive, Rathfarnham, Dublin 14.
Planning Authority	Dun Laoghaire Rathdown County Council.
P. A. Reg. Ref.	D21A/0039.
Applicant	Gregory and Carol Edwards.
Type of Application	Permission
Decision	Refuse Permission
Type of Appeal	First Party X Refusal
Appellant	Gregory and Carol Edwards.
Date of Site Inspection	31 st July, 2021
Inspector	Jane Dennehy

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Planning Authority Response	9
7.0 Assessment.....	9
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13

1.0 Site Location and Description

- 1.1. The site which has a stated area of 1,380 square metres and is that of a detached two storey house with a stated floor area of 352 square metres on the south side of Hillside Drive setback behind front curtilage parking and gardens and with a deep garden to the rear which adjoins the Castle Golf club grounds. There are two vehicular entrances of Hillside Drive and a main entrance and a second entrance, for a granny flat towards the west side boundary at the front of the house. The surrounding area is characterised by low density residential development mainly of two storey detached houses.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for demolition of the existing dwelling, which has a stated area of 352 and for construction of a new detached, two storey over part basement house with a basement yard to the side and an external basement access stairs to the rear, a recessed terrace and a first-floor level and a double A pitched roof incorporating a central valley along with PV panels and associated site development works. The stated floor area is 472 square metres.
- 2.2. An additional information submission was lodged on 9th April, 2021 comprising a detailed written submission about the existing dwelling and several attachments including a BER advisory report, for the dwelling, overlay drawings, a statement by a consulting engineer, a statement by the applicant, a sales brochure and drawings for a dwelling at No 29 Hillside Drive for which permission was granted for demolition.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission based on the following reason: -

“The Planning Authority is not satisfied that the existing dwelling on the subject site is beyond repair due to structural defects. Furthermore, the Planning Authority is also not satisfied that the demolition and rebuilt

approach proposed would result in a more efficient use of energy vis a vis retrofitting the existing house. Therefore, it is considered that the proposed development is contrary to section 8.2.3.4 (xiv) of the Dun Laoghaire Rathdown County Development Plan, 2016-2022. The proposed development would therefore not be in accordance with the proper planning and sustainable development of the area.”

3.2. **Planning Authority Reports**

- 3.2.1. The **planning officer** in his initial report indicated a recommendation for an additional information request in which the applicant was requested to provide a justification or rationale for the proposed demolition having regard to the provisions of section 8.2.3.4 ((xiv) of the CDP.
- 3.2.2. The proposed dwelling is stated to be satisfactory with regard to the other standard considerations and with regard to impacts on residential amenities and visual amenities.
- 3.2.3. The **planning officer** in his supplementary report on the lodged further information submission which included an engineer’s report indicated that he was not satisfied that the proposed demolition and replacement as opposed to retrofitting could be justified based on energy efficiency. It is also stated that the size of the existing dwelling is also noted as being capable of providing adequate levels of amenity and accommodation options. Refusal of permission was recommended.
- 3.2.4. The report of the **Transportation planning section** indicated no objection to the proposed development.
- 3.2.5. The report of the **Drainage section** indicated no objection to the proposed development subject to conditions with standard requirements. It is noted in the report the application provides for a separate underground surface water drawing system with a soakaway whereas the existing dwelling discharges to a combined system.

4.0 Planning History

P. A. Reg Ref. D04A/0555: Permission was granted for replacement of a garage at the side with a ground floor granny flat with a stated floor area of 54 square metres. to the side and rear incorporating a bay window

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dun Laoghaire Rathdown County Development Plan, 2016-2022 according to which the site is within an area subject to the zoning objective: - A: *“to protect and or improve residential amenity”*.

Development management standards are set out in Chapter 8: -

According to section 8.2.3.4 (xiv)

“The planning authority will assess single replacement dwelling within an urban area on a case-by-case basis and may only permit such developments where the existing dwelling is beyond repair due to structural defects. For all applications relating to replacement dwellings a strong justification/rationale shall be provided by the applicant. Applicants for replacement dwellings shall also have regard to Policies AR5 and AR8 (sections 6.1.3.5 and 6.1.3.8) In this regard, the retention and reuse of an existing structure will be encouraged over replacing a dwelling.”

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was lodged by Chris Boyle Architecture on behalf of the applicant on 2nd June 2021 in which it is claimed that there is strong justification for the proposed demolition of the existing dwelling and construction of a new replacement dwelling.
- 6.1.2. The submission includes a appendices in which prior planning applications for development involving demolition and replacement with the planning authority’s administrative area are discussed for the purposes of establishing precedent for the

proposed development, and a written statement by the applicant's consulting engineer along with a second opinion. From an engineering perspective.

6.1.3. Appendix A and Appendix B contains examples of other planning applications with extracts from the planning officer reports on proposals for demolition and replacement within the administrative area of the planning authority for the purposes of supporting the applicant's case for favourable consideration of the current proposal.

6.1.4. Appendix C contains a statement prepared by the applicant according to which there are four children one of whom has autism and has special accommodation and spatial needs which are described in detail.

6.1.5. Also included is a statement by the applicant's consulting engineer regarding the structural assessment of the existing dwelling and the option for deep retrofitting which was not determined to be viable for several reasons. A second opinion provided by "Byrne Looby" in which a similar view regarding the existing structure is indicated is also included the appeal submission.

6.1.6. According to the appeal: -

- The planning authority did not consider and disregarded the submitted expert engineering opinion properly. The planning officer does not have relevant qualifications and failed to consider the statements in the Opinion that the dwelling is not suited for a deep retrofit having regard to Part L of the Building Regulations that refurbishment requires substantial demolition weakening the structure and that the structure which dates from the 1940s is beyond its design life.
- Refurbishment and substantial demolition cause additional risk to safety and health. There are serious implications when planning officer ignore expert advice provided: Three prior applications where alternative to demolition and rebuild to provide for compliance with section 8.2.3.4(xiv) failed resulting in entire demolition for structural reasons and safety grounds. The application of section 8.3.2.4 (xiv) was subjective in each case. (Extracts from the application submission and planning officer reports are provided in Appendix A of the appeal.)

- There was a robust consideration of alternatives, to substantiate the rationale required under section 8.3.2.4 (xiv) of the CDP and the case that a replacement dwelling is the safest and most sustainable option from a structural perspective which also provides accommodation suited to the needs of the applicant prior to lodgement of the application in which details were provided.
- The statement that the existing 352 square metres floor area is capable of providing adequate accommodation is unsubstantiated and ignores the special needs of the applicant which were described in the application. The proposal should not be considered on a basis of being (34%) larger than the existing to be demolished.
- The CDP provisions in section 8.2.3.4 (*additional accommodation in existing built-up areas*) are not applicable to replacement dwellings and are applicable to larger developments. The existing house has more bedrooms than the proposed house. The planning officer mistakes quantity for quality with regard to the accommodation needs. The proposed new dwelling is a bespoke solution arrived at after an iterative process providing quality accommodation to the applicant's requirements. The design also offsets low quality attic accommodation by using roof space to enhance the first-floor level and the attic is offset by the inclusion of the basement.
- The larger replacement dwelling would be more energy efficient than the existing dwelling. The floor area of the proposed dwelling which will have a minimum BER rating of A2 is 367.4 square metres increasing to 471.8 with the inclusion of the basement of 104.4 square metres. The BER rating of C1 for the existing house as an energy value of 57,200 kWh. The A2 rating of the proposed house the energy value is 17692.5 kWh.
- It is acknowledged that in theory a dwelling is not beyond repair due to structural defects. The issue as to justification is not just structural defects and it is not a matter of blanket ban if the existing is not beyond repair. It is matter of costs and viability can be demonstrated in cost benefit analysis. Owners should not be incentivised to allow house to fall into dereliction in order to become eligible for demolition and replacement.

- A review of the planning register has not shown any application for which demolition is sought because the structure is beyond repair due to structure effects as provided for in section 8.3.2.4 (xiv) of the CDP. The cases made for demolition and replacement being the appropriate solution are cost based for remodelling and retro fitting to meet Building Regulation standards. Development plans for other planning authorities do not have similar provisions to section 8.3.2.4 (xiv) of the CDP.
- The applicant's special needs in respect of lifelong care for a family member and accommodation needs details of which were included under one of the headings in the further information submission which were not taken into consideration by the planning authority. (Details are in appendix C of the appeal submission.)
- For the development at No 29 Woodside Drive (demolition and replacement dwelling) there was no requirement for the dwelling to be beyond repair or requirement for strong justification by the planning authority. (P. A. Reg. Ref D19A/0609 refers.) Extensive evidence was provided in the application to demonstrate comparability and a requirement for a similar decision.
- A grant of permission under P.A. Reg. Ref. D18A/0250 for change from one house (Permitted under P. A. Reg. Ref. 07A/1643) to two to five bedroom houses at No 5 Hillside Drive is comparable in that the two houses, to include the additional new house were required, by condition to read as one house.
- A grant of permission under P.A. Reg. Ref. D18A/1408 provided for demolition and construction of a replacement dwelling which provides for a three-storey dwelling instead of the addition of a third storey to the existing rather than the existing being beyond repair due to structural defects. The proposed development is comparable because of the requirement for an additional floor in the form of the basement

A grant of permission under P.A. Reg. Ref. D20A/0501: following appeal overturning the planning authority decision to refuse permission for demolition and replacement. In this instance, (with reference to the extracts from the Inspector's report,) the existing dwelling was suited for refurbishment adaptation and is similar.

6.2. Planning Authority Response

In a letter to the Board the planning authority confirms its assessment of the application and the reasons and considerations for its decision to refuse permission.

7.0 Assessment

- 7.1.1. The issue central to the decision to refuse permission by the planning authority is that of conflict with the provisions of section 8.2.3.4 (xiv) of the CDP and as to how these provisions should be interpreted and applied.
- 7.1.2. For the purpose of clarification, at the outset, it is noted that it is contended that the applicant's circumstances and requirements are a material consideration in respect of the proposed development but these issues are not direct planning considerations. The statement in the planning officer's report, having regard to the provisions of section 8.2.3.4 (xiv) of the CDP that the rationale for the applicant's proposal to construct a replacement dwelling is substantively based on the applicant's preferences and accommodation requirements is supported. The applicant's special requirements which it is asserted in the appeal are among the grounds to justify the proposed demolition and replacement with a new, specifically designed dwelling are appreciated but the proposed development cannot be justified on these grounds.
- 7.1.3. It should be borne in mind in this regard that the determinants in consideration proposals for development are confined to planning merits having regard to the legislative framework. Therefore, with regard to the planning framework a prerequisite for possible favourable consideration is for it to be established that the proposed development is consistent with the interests of the proper planning and sustainable development.
- 7.1.4. There is no doubt that the existing dwelling is not "beyond repair due to structural defects" and this is acknowledged in the appeal. The applicant's case for the proposed demolition and replacement is based more on the merits of demolition and replacement with a dwelling constructed to contemporary standards, as opposed to a major retrofit, reordering and upgrading likely involving partial demolitions and extensions. It is asserted in the appeal that a cost benefit analysis, if carried out,

would favour the demolition and replacement option. An environmental cost benefit analysis would be a more appropriate exercise in that undisputedly the intent behind the provisions of 8.2.3.4 (xiv) of the CDP is the interests of sustainable development, environmental costs and energy and efficiency.

- 7.1.5. If the provisions of this section of the CDP are to be strictly applied, having regard to these considerations it would be unlikely that there is a sufficient case for the proposed demolition of the existing dwelling and its replacement with a new dwelling could be justified although it is fully agreed that the replacement dwelling would have high energy efficiency in its performance post construction. It is appreciated that to bring the existing dwelling to BER A2 rating as is indicated for the proposed dwelling, or even to a B rating involves a considerable project and outlay in conjunction with probably proposals for remodelling, reordering and upgrading, undoubtedly involving some demolition, considerable C and D waste and new build elements to modern standards.
- 7.1.6. In the appeal it is contended that the provisions of section 8.2.3.4 (xiv) of the CDP are particularly onerous and it is pointed out that similar provisions are not included in the development plans of other planning authorities. There are relatively similar but less onerous provisions in development plans whereby demolition of housing stock and other buildings are discouraged in favour of renovation and refurbishment to contemporary standards but it is agreed that section 8.2.3.4 ((xiv) is particularly onerous and that flexibility in its interpretation and application would be reasonable.
- 7.1.7. The existing dwelling is a fine example of early to mid-twentieth century suburban residential development from its period of merit and interest and it contributes to and integrates positively into the established character, layout, and amenity of Hillside Road and the surrounding residential area. However, neither the house or the area in which it is located are subject to any special architectural heritage designations by way inclusion on the record of protected structures, designation as a statutory ACA or other relevant specific objectives within the CDP.
- 7.1.8. Further to review of the proposed development, (which the applicant asserts is the outcome of several iterations), it is agreed with the planning officer that the replacement dwelling is fully acceptable for the application site, compatible with the existing surrounding development and in accordance with the general development

management standards of the CDP as set out in chapter 8. The drainage arrangements are an upgrade from the perspective of environmental interest and sustainable development although increased surface water runoff may be a likely outcome of the proposed development. The Drainage division has indicated no objections to the proposed semi basement element within the development.

- 7.1.9. With regard to precedent, the various applications details of which are provided in the appeal submission and appendices, have been reviewed, none of which appear to sufficiently comparable for complete and direct precedent to be taken to support the proposed development.
- 7.1.10. With regard to the cases referred to in the main appeal, for example, the development at No 6 Cunningham Road (at which photographs of the existing dwelling which have been reviewed) in which the planning authority decision to refuse permission was overturned following appeal involved a considerably smaller, single storey dwelling on a large plot than the current proposal. It had not been established that the existing dwelling was beyond repair as required under section 8.2.3.4 ((xiv) of the CDP. (P.A. Reg. Ref D20A/0501/ PL308343 refers.)
- 7.1.11. With regard to development at No 29 Woodside Drive comprising removal of a house and construction of a detached house to which P. A Reg. Ref. D19A/-0609 refers, the planning authority's website has been consulted but the planning officer report and appeal details are unavailable with the exception of the Order for the final grant of permission, on 14th October, 2019 (following appeal) subject to twelve conditions. Furthermore, details of the application and appeal could not be located via the Board's website and mapping records.
- 7.1.12. It is apparent from the foregoing cases raised in the appeal that in determining decisions to grant permission involving demolition of dwelling and construction of replacement with new dwellings following appeals in the administrative area of the planning authority, permission has been granted without confirmation that it has been demonstrated that the existing dwelling to be demolished is "beyond repair due to structural defects" as provided for in section 8.2.3.4(xiv) of the CDP.
- 7.1.13. The permitted development at No 5 Hillside Drive, involving replacement of a permitted development of one house with two houses is not considered to be of direct relevance (PL D18A/0250) is not considered to be of direct relevance.

7.1.14. The permitted development at Dovedale, Stillorgan Grove whereby a proposal for demolition and replacement was permitted (with no appeal) on grounds that an additional storey could not be supported by an existing dwelling's structure is noted. However, it is not accepted that the existing dwelling subject of the current application and appeal could not support additional accommodation over the first-floor level. (D18A/1048 refers.)

7.1.15. In conclusion, with some reservation, with regard to possible future precedent, it is considered that a flexible approach could be taken with regard to the provisions of section 8.2.3.4 (xiv) of the CDP, bearing in mind that the proposed replacement dwelling is considered to be fully compatible with the existing surrounding development's character and layout and in accordance with development management standards provided for in Chapter 8 of the CDP. Therefore, with regard to the case for demolition and replacement, from the perspective of the interests of sustainable development and the application of the provisions of section 8.2.3.4 ((xiv) of the CDP, it is considered that the proposed development accords with the interest of the proper planning and sustainable development of the area and a grant of permission is recommended.

7.2. Environmental Impact Assessment Screening.

7.2.1. Having regard to the nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.3. Appropriate Assessment.

Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, 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. It is recommended that the appeal be upheld, that the planning authority decision be overturned and, that permission be granted based on the reasons and considerations and subject to the conditions which follow: -

9.0 Reasons and Considerations

Having regard to the, the size and configuration of the site, the established character and layout of development in the area and, the Dún Laoghaire-Rathdown County Development Plan 2016-2022 according to which the site is located within an area subject to the zoning objective to protect provide for and/or improve residential amenities and to the design and scale of the proposed new dwelling, , it is considered that, subject to compliance with the conditions set out below, the proposed development would be compatible with and would satisfactorily integrate into the existing built development would not seriously injure the residential amenities of adjacent properties and would 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 particulars lodged with the planning authority on 9th April, 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. The east and west side elevation windows at first floor level shall be fitted with obscure glazing.

Reason. In the interest of the protection of the residential amenities of adjoining properties.

3. Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.

Reason: In the interest of public health.

5. The demolition and construction works 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, noise management measures and off-site disposal of construction/demolition waste.

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

6. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

7. Details of the materials, colours and textures of all the external finishes to the proposed dwelling, including roof slates/tile, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. Details of all landscaping and boundary shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development and shall be fully implemented to the satisfaction of the planning authority within the first planting season following occupation the development.

. **Reason:** In the interests of clarity and residential amenity

9. 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

Jane Dennehy

Senior Planning Inspector

31st July, 2021.