



An
Bord
Pleanála

Inspector's Report

ABP-310465-21

Development	Removal of garage and construction of a house.
Location	"Sheans", Back Strand, Malahide, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0156
Applicant(s)	Richard and Jo McAllister.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party
Observer(s)	None.
Date of Site Inspection	29 th September 2021.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.19ha and is located at Back Strand, at the north end of Malahide. It contains a detached, 2-storey mansard style house which is set behind the building line.
- 1.2. Back Strand is characterised by a mix of traditional and contemporary buildings, including a variety of house types and apartment buildings and there are also two protected structures immediately north of the site.

2.0 Proposed Development

- 2.1. Permission is sought for removal of an existing garage and construction of a two-storey detached including associated site works.
- 2.2. The existing garage is located along the eastern boundary of the site and comprises of a single storey structure, which has a stated area of 60sqm and which is subdivided internally to provide for a car port and a number of storage rooms
- 2.3. The proposed house has a primarily 2-storey, contemporary design, providing living accommodation and a garage/workshop at ground floor level and 2 en-suite bedrooms at first floor level. The house would have a maximum flat roof height of 6.35m.
- 2.4. The proposed development has been amended as part of the appeal, in order provide for greater separation of 1.6m from the main dwelling on the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on 13th May 2021, for 3 reasons as follows: -

1. *The applicant is proposing to subdivide the site to the rear with shared arrangement to the front. The proposed development which provides for an unequal subdivision of the existing large plot would be ad-hoc in nature, haphazard and considered an inappropriate infill development. The*

development would set a poor precedent for similar development within the environs and would be contrary to the proper planning and sustainable development of the area.

2. *Given the size of the site and the area of the site given over to the proposed development, it is considered that the approach to this development appears disjointed and piecemeal. It is considered that the demolition of the existing house and the construction of a more comprehensive designed scheme would be a more appropriate arrangement for the development of the lands. The proposed development is unacceptable in its current form and is contrary to the proper planning and sustainable development of the area.*
3. *Objective DMS29 of the Fingal County Development Plan 2017-2023 seeks to '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.' From assessment of the drawings submitted the applicant has provided for a separation distance of only 1m from the side elevation of the host dwelling. As such, the development falls short of the requirement of DMS29 of the Fingal County Development Plan 2017-2023. The development is therefore contrary to a development plan objective.*

3.2. Planning Authority Reports

- 3.2.1. A planning report dated 12th May 2021 has been provided, which reflects the decision to refuse permission. The report outlined that the development is acceptable in principle under the zoning and that the requirements of objective DMS24 (minimum standards for new residential environment) had been complied with. Issues relating to overlooking and overbearance were not expected to arise whilst the level of overshadowing of 9a Back Strand was considered to be minor. Concerns were expressed regarding the unequal nature of the proposed subdivision of the plot, which was considered inappropriate, and a desire was also expressed for a more comprehensive redevelopment of the site. The report also stated that objective DMS29 (separation distance between houses) had not been complied with and questioned whether it could be complied with, if the applicant was offered an

opportunity to revise the proposed layout. The report recommended that permission should be refused for 3 reasons, which are as per the Planning Authority's decision.

3.2.2. Other Technical Reports

A **Water Services** report dated 6th April 2021 has been provided, which outlined no objection to the development subject to a number of standard recommended conditions.

A **Parks and Green Infrastructure** report dated 14th April 2021 has been provided, which requested that a landscaping plan should be submitted for agreement, to include proposals for protection of trees within the site.

An undated **Transportation Planning Section** report has been provided, which outlined no objection to the development subject to a number of recommended conditions.

3.3. Prescribed Bodies

3.3.1. Irish Water made a submission dated 13th April 2021, which outlined no objection to the development subject to a standard recommended condition.

3.4. Third Party Observations

3.4.1. None received.

4.0 Planning History

F94B/0358 - Permission granted for a garage and utility room to the side of the existing dwelling

5.0 Policy Context

5.1. Ministerial Guidelines

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

5.1.1. Section 5.9 relates to inner suburban / infill developments, promoting the provision of additional dwellings in such locations where it can assist in revitalising an area and utilise the capacity of social and physical infrastructure. For infill development (which includes backland areas) the Guidelines advise that a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

5.2. National Planning Framework

5.2.1. National Policy Objective 6: *‘Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.’*

5.2.2. National Policy Objective 11: *‘In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.’*

5.3. Development Plan

5.3.1. The site is zoned ‘RS’ under the Fingal County Development Plan 2017-2023, with an objective to *“Provide for residential development and protect and improve residential amenity.”*

5.3.2. The zoning map identifies that the adjoining sites to the west are protected structures, RPS Nos. 381a and 381b. The Strand is also identified as a preserved view on the zoning map.

5.3.3. In relation to infill, corner and backland sites, Objectives PM44 and PM45 are relevant, stating that it is an Objective to:

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.'*

5.3.4. Objective DMS29 is also relevant, stating that it is an objective to: -

'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.'

5.4. Natural Heritage Designations

5.4.1. The subject site is not located within or adjacent to any designated European Site. The Malahide Estuary SAC (Site Code 000205) and SPA (Site Code 004025) lie on the opposite side of Back Strand, approx. 15m from the front of the site.

5.5. EIA Screening

5.5.1. The subject development is for a single house, on a site of 0.19ha, falling well below both of the applicable thresholds for mandatory EIA, as set out at Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended).

5.5.2. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, which comprises the construction a single house on serviced land, it is considered that 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

6.1.1. An appeal document has been prepared by O'Neill Town Planning, which summarises the proposed development and applicable planning policies and presents the grounds of appeal, which can be summarised as follows: -

- Refusal reason No. 1
 - The applicants intend to construct another house on the other side of the plot, which together with the current proposed development, will make the best use of the site without the need to demolish the existing house. This approach is considered to be more in keeping with the character and pattern of development in the area.
 - The development would not set a poor precedent for the area, in view of the site area and compliance with relevant standards in relation to size, parking and private open space. Further, the development will not affect daylight or sunlight at adjoining properties
 - The reason for refusal is unsustainable and should be rejected by the Board.
- Refusal reason No. 2
 - The reason for refusal does meet with the standards issued within guidance issued by the Department in respect of sustainable and justifiable reasons for refusal. The reason is opinionated and bears little resemblance to the tests normally applied when writing an order for refusal of permission.
 - The Planning Authority has no objection to the architecture, design, size, massing, juxtaposition or lack of services or facilities. The development has been deemed to be piecemeal because the applicants did not submit a masterplan for the overall site.
 - The development complies with all policies and standards of the development plan and a grant of permission will provide for increased densities in urban areas.

- Densification targets within Ministerial guidance can only be achieved if sites like this are allowed to be developed with well-designed houses such as that proposed.
- A precedent would not be set as the development would mirror what has been allowed in the immediate neighbourhood.
- Refusal reason No. 3
 - The side walls of the houses overlap for 2.5m and it was proposed to have a 1m gap at this point.
 - There are precedents within the county and in other counties where a 2.3m gap is not required or adhered to. The requirement for such a gap in this instance is debatable.
 - As part of the appeal, the separation distance is increased to 1.6m and small changes to the layout have increased the quantum of private open space to the rear to 150sqm. Revised drawings have been provided, to reflect these amendments.
- The development provides an acceptable form of development on an under-utilised site and is consistent with the vision and strategy of the NPF, which seeks to make better use of under-utilised land. The Board is requested to overturn the Planning Authority's decision.

6.2. Planning Authority Response

- 6.2.1. A submission was received from the Planning Authority on 7th July 2021, which requested that permission should be refused. The submission also requested that provision should be made for a financial contribution if permission is granted.

6.3. Observations

- 6.3.1. None.

6.4. Prescribed Bodies

- 6.4.1. The appeal was circulated to The Heritage Council, the Minister for Culture, Heritage and the Gaeltacht and An Taisce. No responding submissions have been received.

7.0 Assessment

- 7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the appeal are as follows:

- Principle of development;
- Scale of development;
- Built heritage;
- Residential amenity;
- Drainage;
- Appropriate Assessment.

7.2. Principle of Development

- 7.2.1. The proposed development is consistent with the 'RS' zoning objective, as set out in the Fingal County Development Plan 2017-2023.

7.3. Scale and layout

- 7.3.1. Refusal reason No. 1 of the Planning Authority's decision stated that the unequal sub-division of the plot would be ad-hoc in nature and haphazard. Refusal reason No. 2 stated that given the size of the site and the area given over to the proposed the development, the approach to development was disjointed and piecemeal and a desire was expressed for a more comprehensive designed scheme.
- 7.3.2. The planning report suggests that the existing house on the site should be demolished, to assist in providing a more appropriate arrangement.
- 7.3.3. In response to refusal reason No. 1, the applicant states that they intend to build another house on the other side of the plot and that this would be in-keeping with the character and pattern of development in the area. A masterplan layout has been provided as part of the appeal, which indicates the construction of a further house on the opposite side of the main house.

- 7.3.4. In response to refusal reason No. 2, the applicant states that the reason does not meet with the standards issued within guidance issued by the Department in respect of sustainable and justifiable reasons for refusal. The applicant also states that the refusal reason arose because the applicants did not submit a masterplan for the overall site.
- 7.3.5. Objective PM44 of the development plan 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.
- 7.3.6. I do not have any particular objection to the applicant's approach to development of the site. Policy Objectives 6 and 11 of the NPF together promote development patterns which result in more people and activity within existing cities, towns and villages and the development of side garden plots such as this contributes to the achievement of critical mass. In this instance, the proposed development meets or exceeds the minimum standards of the development plan. Further, the proposed house is set behind the front plane of the house and below its ridge, which I consider are appropriate responses to design challenges presented by the protected structure building adjacent to the front of the site.
- 7.3.7. The proposed house is a modern but low-key addition to the streetscape, which will not, in my view, have any unacceptable impact on visual amenity or built heritage.
- 7.3.8. I also note that the masterplan layout provided as part of the appeal indicates that a further house could be provided on the site. Although it is not a matter for consideration in this appeal, designing a house on the north-west side of the plot is likely to be more challenging, given the increased visual connection with the protected structure building.
- 7.3.9. Regarding refusal reason No. 3, which related to the development falling short of the requirement of development plan objective DMS29, I note that as part of the appeal the applicant has amended the proposal, to increase the level of separation from the existing house to 1.6m. Whilst this increased level of separation continues to fall short of the minimum requirement of objective DMS29, I am satisfied that there is an adequate level of separation between the houses and that both will have adequate means of access to their rear gardens. I consider it would be unjustified to refuse the development on the basis of non-compliance with objective DMS29.

7.1. Built Heritage

- 7.1.1. The subject site is to the rear of a pair of semi-detached, thatched cottages, which are identified as Protected Structures under the county development plan (RPS Ref. Nos. 0381a and 0381b). The cottages are also identified on the National Inventory of Architectural Heritage, stated as being of 'Regional' importance and dating to c.1775.
- 7.1.2. The contiguous elevation drawing submitted with the application (drawing No. RJ 1220-201) depicts the relationship of existing and proposed development within the site to the protected structures.
- 7.1.3. The development will be a noticeable and modern addition to the streetscape but it would be set below the ridge of the main house. The protected structures are located in an area which contains a mix of traditional and contemporary building designs, of varying scales and heights, and I do not consider the development would have a significant or undue impact on their character and setting. I note that the Planning Authority did not express any concerns relating to this issue.

7.2. Residential Amenity

Proposed House

- 7.2.1. Table 12.1 of the development outlines internal standards for new houses, including of relevance to this appeal, 2-bed, 2-storey houses. The overall size of the house significantly exceeds the minimum requirement of Table 12.1 and individual and aggregate room layouts also meet or exceed the minimum requirement.
- 7.2.2. A rear garden area of 150sqm is also identified, exceeding the requirements of objective DMS87, which requires a minimum of 60sqm for houses of 3 bedrooms or less. Although the size is not stated, a substantial rear garden would be retained for the main house.
- 7.2.3. The site layout drawing identifies that a post and timber panel fence would be provided along the shared boundary with the main house. The height of the fence is not stated but this can be controlled by condition.

Neighbouring Houses

- 7.2.4. For neighbouring housing, issues to be considered relate to potential overshadowing and overlooking.

- 7.2.5. Overshadowing of the garden of the main house and also the south-east adjoining garden may occur. BRE guidance '*Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice*' (2011) recommends that for a garden or amenity area to appear adequately sunlit throughout the year, at least half of it should receive at least two hours of sunlight on March 21st. I am satisfied that both gardens will remain adequately sunlit throughout the year and that any overshadowing would be minor and not of an unacceptable degree.
- 7.2.6. Regarding overlooking, I noted on my visit to the site that there is a ground floor window at the south corner of the main house, which provides light onto the main living area of the house. Should the Board decide to grant permission, I would recommend that a condition be attached requiring that this window should be blocked up, in order to maintain privacy.
- 7.2.7. There are rear-facing and front-facing windows at first floor level, which have the potential to overlooking neighbouring properties.
- 7.2.8. Regarding the rear-facing first floor window, this is within c. 7m of the rear boundary and looks toward the rear adjoining garden. I do not consider that the level of any such overlooking would be significant or undue as the rear adjoining garden is over 30m long and I am satisfied that there is adequate separation between houses.
- 7.2.9. Regarding the front-facing window, whilst this looks towards the rear garden of the east-adjoining property, there is a detached building within the rear garden of the neighbouring property (identified on the site layout drawing as a shed) which will restrict the available view of the primary amenity area to the rear of the house. As such, I do not consider that the level of any such overlooking would be significant or undue.

7.3. **Drainage**

- 7.3.1. Foul water is proposed to drain to the public network. The site layout drawing indicates that there is a foul drainpipe routeing under the existing garage. It is unclear whether this drain is to be rerouted or built over but I am satisfied that this can be resolved by condition, to be agreed with Irish Water. Irish Water did not express any objection to the development and requested that the applicant be required to enter into a connection agreement prior to the commencement of development.

7.3.2. Surface water is identified on the application form as being drained via soakaway and also via connection to the public network. No details of the proposed soakaway have been provided, however; I note that the Planning Authority's Water Services department has not objected to the development. I am satisfied that the issue can be resolved by condition, with the location and size of the soakaway to be agreed with the Planning Authority.

7.4. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

7.4.1. 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

7.4.2. A screening report for Appropriate Assessment was not submitted with the application. Therefore, this screening assessment has been carried out de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

7.4.3. 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).

7.4.4. The proposed development is examined in relation to any possible interaction 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 development is summarised at Section 2 of this Report. In summary, permission is sought for a detached, 2-storey house on an existing side garden plot with a stated area of 0.19ha. The site is served by the public water and foul water networks. Foul drainage is proposed to drain to the public network. Surface water is stated as draining via both soakaway and connection to the public drain.

7.4.5. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, I consider the following impact mechanisms require examination:

Construction phase

- Disturbance of species of conservation interest within a European site due to disturbance associated with construction activities (noise, vibration, lighting, etc).
- Impact on water quality within a European site arising from discharges from the site during construction work.

Operational Phase

- Surface water discharges from soakaways impacting water quality within a European site.

Submissions and Observations

7.4.6. The submissions from the applicant and the Planning Authority are summarised as Section 6 of this Report. No submissions were received from prescribed bodies or third parties.

European Sites

7.4.7. The development site is not located in or immediately adjacent to a European site. The closest European sites are Malahide Estuary SAC (Site Code 000205) and SPA (Site Code 004025), both of which lie on the opposite side of Back Strand, approx. 15m from the front of the site.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
Malahide Estuary SAC (Site Code 000205)	Mudflats and sandflats not covered by seawater at low tide, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows,	0.01	Weak overground connection

	Mediterranean salt meadows, Shifting dunes along the shoreline with Ammophila arenaria, Fixed coastal dunes with herbaceous vegetation.		
Malahide Estuary SPA (Site Code 004025)	Great Crested Grebe, Light-bellied Brent, Goose, Shelduck, Pintail, Goldeneye, Red-breasted, Merganser, Oystercatcher, Golden Plover, Grey Plover, Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Redshank, Wetland and Waterbirds.	0.01	Weak overground connection

Construction phase impacts

7.4.8. Regarding potential disturbance of qualifying interests within the SPA, the potential for such impacts is low, given the level of built form and human activity in this part of the town, including a number of residential properties. Qualifying interests are likely to already experience and be habituated to a degree of disturbance associated with human activity in the area. The proposed development also does not require specialist construction methods. I am satisfied that the potential for likely significant effects on qualifying interests within the SPA can be excluded.

7.4.9. Regarding potential discharges, I would also consider the risk is low, in light of the smallscale nature of the development and the c.50m separation distance between the main construction site and the extent of intervening land which acts as a buffer between the site and the European sites. Any such potential discharge from the site is likely to be smallscale and I consider the likelihood of any such discharge being transferred to the European site is low. Indeed, in the event that a discharge from the

site was transferred to the European sites, the quantity is unlikely to be of such a scale that significant effects would arise. I am satisfied that the potential for likely significant effects on qualifying interests within the European sites can be excluded.

Operational Phase

- 7.4.10. The application form indicates that surface water is to be partly drained via soakaway. The risk of pollutants being transferred via groundwater is low. Indeed, in the event that a discharge from the site was transferred to the European sites, the quantity is unlikely to be of such a scale that significant effects would arise. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the European sites can be excluded.

Mitigation measures

- 7.4.11. 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

- 7.4.12. 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 combination with other plans or projects would not be likely to give rise to significant effects on European Site Nos. 004025 or 000205, 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.

8.0 Recommendation

- 8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the 'RS' zoning which applies to the site under the Fingal County Development Plan 2017-2023, under which residential development is permissible, together with the nature and scale of the proposed development and the pattern of

development in the vicinity, it is considered that, subject to compliance with the conditions below, the proposed development would be in keeping with the character of the area and would not seriously injure the amenities of the area or the amenities of properties in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The applicant shall submit and agree proposals for blocking up of a ground floor window at the south corner of the main house, in order to maintain privacy within the main house.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>The post and timber panel along the shared boundary between the proposed house and main house on the site shall be a minimum height of 1.8m.</p> <p>Reason: In the interest of residential amenity.</p>
4.	<p>Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
5.	<p>The design and layout of the access to the site from Back Strand, including visibility splays, shall comply with the requirements of the planning authority,</p>

	<p>details of which shall be agreed in writing prior to the commencement of development.</p>
6.	<p>A naming and numbering scheme for the development shall be submitted and agreed with the Planning Authority prior to occupation of the dwelling.</p> <p>Reason: In the interest of clarity.</p>
7.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0800 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Barry O'Donnell
Planning Inspector

13th October 2021.