



An  
Bord  
Pleanála

## Inspector's Report ABP-310868-21

### Development

Amendment to previous permission to include a revised site boundary, and to allow for a realignment of the access road.

### Location

Lands to the rear of the residential development known as Brehons Chair, Kellystown Road, Rathfarnham, Dublin 16.

### Planning Authority

Dun Laoghaire-Rathdown County Council

### Planning Authority Reg. Ref.

D21A/0138

### Applicant(s)

Audrey Conlon

### Type of Application

Permission

### Planning Authority Decision

Grant Permission with Conditions.

### Type of Appeal

Third Party

### Appellants

Peter Owens

**Date of Site Inspection**

6<sup>th</sup> October 2021

**Inspector**

Paul O'Brien

## **1.0 Site Location and Description**

- 1.1. The subject site comprises of an area of land that extends from an existing hammerhead/ turning area at the end of a cul-de-sac within the Brehons Chair residential development. Brehons Chair is a development of detached houses dormer and two-storey houses located to the south of the M50 and is accessed from the west of the Kellystown Road, Rathfarnham, Dublin 16.
- 1.2. Brehons Chair is characterised by its low density and extensive areas of open space, with a large area located to the north western side, which includes a number of standing stones, the location of a Megalithic tomb - portal tomb. The other characteristic of the site is the steep slope from the Kellystown Road entrance and right across the site. The subject site slopes steeply on a north to south axis. There are extensive amounts of trees planted within and surrounding this residential development.
- 1.3. The subject site, with a stated area of 0.4549 hectares was fenced off from access on the day of the site visit. This is a long narrow stretch of land that is clearly proposed to be a road/ residential street. To the west and south are constructed, though vacant, detached houses and which are not currently accessible by pedestrian or vehicle.
- 1.4. As stated, Brehons Chair is accessed from the Kellystown Road. Large pillars and gates provide access to Brehons Chair, though these were open on the day of the site visit. Keypads and security cameras suggest that the gates may be closed on a regular basis, and this is the case in a Google Street View from July 2018.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of the following amendments to the existing permitted development of five detached houses as granted under ABP Ref. PL06D.249163/ PA Ref. D17A/0530 as follows:
  - A revised application site boundary (red line boundary) allowing for the omission of 158 sq m of land to the north-west of the site.
  - The inclusion of 213 sq m of adjoining lands to the north-east of the site, giving a net increase of 55 sq m of land when compared to the permitted development.

- The revisions to allow for the re-alignment of the entrance road, services and all associated site/ landscaping works on these lands. The road is to be 5.5 m wide and a footpath to the western side to be 2 m only.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

The Planning Authority decided to grant permission subject to conditions following the receipt of further information. Conditions are generally standard. Condition no. 2 requires all other development to be in accordance with the previous permission under ABP Ref. PL06D.249163/ PA Ref. D17A/0530.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. **Planning Reports**

The Planning Report reflects the decision to grant permission for the proposed development. Further information was sought in relation to the provision of a detailed Quality Audit which is to include a Road Safety Audit, Access Audit, Cycle Audit and Walking Audit and which is to demonstrate that the development is in accordance with the Design Manual for Urban Roads and Streets (DMURS). Secondly, full details were requested in relation to the revised connection with the existing hammerhead in the Brehons Chair Development, with particular reference to how it relates to the accesses to no. 20 and 21 of the Brehons Chair residential development. Full details were provided in response and which were considered to be acceptable to the Planning Authority Case Officer.

##### 3.2.2. **Other Technical Reports**

**Drainage Planning – Municipal Services Department:** No objection.

**Transportation Planning:** Further information requested in relation to the provision of a detailed Quality Audit (to include a Road Safety Audit, Access Audit, Cycle Audit and Walking Audit) in accordance with the Design Manual for Urban Roads and Streets (DMURS).

**Environmental Health Officer:** No comment to make on this application.

### 3.2.3. **Prescribed Bodies**

None.

### 3.2.4. **Objections**

A single letter of objection to the development were received to the original application.

The following points were made in summary:

- The access road was always proposed to be located at the edge of the open space.
- The revised road layout would result in the splitting of the open space – ‘F’ zoned lands.
- The road would impact on the ‘line of view’ that connects the National Monument to the north with the mountains to the south.
- The children’s area of play would be negatively impacted by the proposed development/ revised road layout.
- Submitted plans do not provide correct finished floor levels and other details.
- Concern that the new road layout is not safe especially for the use of emergency vehicles.
- The agreement between the developer and the Brehon Chair Management Company is not relevant as planning applications are to be considered in the context of sustainable planning for the area.
- The development will result in abrupt transition between land use zones.
- Concern about the separation distance between houses and also raises concerns about overbearing and overshadowing impacts.

Photographs and a survey by Reynolds Surveying Ltd are included in support of the objection to the development.

## 4.0 **Planning History**

- 4.1.1. **P.A. Ref. D17A/0530/ ABP Ref. PL06D.249163** refers to a February 2018 decision to grant permission for five houses and all associated site works at Brehons Chair, Kellystown Road, Rathfarnham, Dublin 16. The following section of the Inspector’s report is relevant (also noted by the Planning Authority Case Officer):

'I agree with the point that the lands are zoned 'F' and the access road is through an existing open space area within the estate. However, I note that it is at the edge of the open space and is in the same location previously proposed. I do not consider that it splits the open space area or makes it unusable. I consider that the overall impact will be minimal and that the open space will still be available for active and passive recreational activities. I draw the Board's attention to the Board Order of PL06D.241949- one of the previous outline permissions on the site which states the following:

'In deciding not to accept the Inspector's recommendation to refuse outline permission, the Board considered that the proposal complied with the zoning for the site, that the loss of open space was marginal, that the residual open space to the existing estate was adequate...'

Whilst I accept that the impact of 5 No. houses will be greater than the 3 previously granted, I consider that the existing open space is well located within the site and the usability of same will not be compromised to an undue degree by the proposed development. I note that concerns raised regarding the gradient of the existing open space and the access road though this, however, it is my view that a precedent has already been set by the outline permission for 3 No. dwellings on this site and I consider that the access road will be acceptable in terms of traffic safety'.

- 4.1.2. **PA Ref D13A/0067/ ABP Ref. 06D.241947, PA Ref D13A/0068/ ABP Ref. 06D.241946, PA Ref D13A/0069/ ABP Ref. 06D.241949, PA Ref D13A/0070/ ABP Ref. 06D.241945, PA Ref D13A/0071/ ABP Ref.06D.241948** refer to individual outline permissions for five detached units on five individual plots. On appeal to the Board, outline permission was granted for Plots 1, 2 and 5 (PL06D.241945, PL06D.241946 and PL06D.241949) and refused for plots 3 and 4 (PL06D.241947 and PL06D.241948).

## **5.0 Policy and Context**

### **5.1. Development Plan**

- 5.1.1. Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the subject site is zoned F ‘To preserve and provide for open space with ancillary active recreational amenities’. The permitted houses are located on lands zoned A ‘To protect and/or improve residential amenity’.
- 5.1.2. ‘Brehons Chair’ – RMP no. 022-033 refers to a Portal Tomb - Megalithic Tomb, located to the north of the existing houses.
- 5.1.3. Chapter 8 of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 refers to ‘Principles of Development’ and the following are relevant to the subject development:
- 8.2 ‘Development Management’ – with particular reference to section 8.2.3 ‘Residential Development’.

### **5.2. Natural Heritage Designations**

- 5.2.1. None

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The development has been appealed by Peter Owens of Brehons Chair, Kellystown Road, Rathfarnham. Mr Owens raises the following points in his appeal:
- Concern about planning ‘scope creep’ as permission was consistently refused for development in the area and then permission was granted by An Bord Pleanála without any explanation as to why it was acceptable to seriously compromise the F zoning objective that applies to the site.
  - The permitted development contained inaccurate drawings and no opportunity was provided to comment on these. These inaccurate drawings result in negative impacts on existing residential amenity. Permission was granted for the

provision of a road, serving the proposed houses, which ran over third-party lands. This information was conveyed to An Bord Pleanála before a grant of permission was issued.

- Concern is raised about the drawings and details submitted in support of the subject application. No details have been provided in relation to the constructed houses.
- The provision of open space is overstated.
- Concern that the finished floor levels of the houses have changed from what was originally permitted.
- Details provided in relation to enforcement are not complete – cases have been open in relation to the positioning of windows and the disposal of soils on site.
- The gradient of the new road is excessive for those in wheelchairs, for cyclists and lorry movements. The gradient is set at 10%.
- The new road is located in a children's play area.
- The new road will use up more of the open space/ F Zoned lands.

Photographs, plans and a survey by Reynolds Surveying Ltd, dated September 2018, have been submitted in support of the appeal.

## **6.2. Applicant's Response**

6.2.1. The applicant has engaged Ferreira Architects to prepare a response to the appeal. The following points are made:

- Permission was granted for the five detached houses and when the road was under construction, it was found that it would impact on mature boundaries of no. 20 Brehons Chair. No agreement was forthcoming on resolving this issue and a new road alignment was required.
- Agreement was made with the Management Company of Brehons Chair to adjust the road alignment.
- The legal and planning background to the development of these houses is provided. The legal agreement allowed for the development of a road between two indicated points.



- The only issue that is under consideration is the development of the access road to serve these five houses and which cannot be occupied until this road is complete.
- Most of the points raised in the appeal are not relevant to this application. The permitted houses were built in accordance with the relevant grant of permission under P.A. Ref. D17A/0530/ ABP Ref. PL06D.249163. There is no requirements for elevational drawings for a road alignment.
- No comment will be made about the Dun Laoghaire-Rathdown Case Officers.
- The road width does not change, though the alignment of the road does change from what was permitted.

In conclusion, it is proposed that the permitted road alignment will be revised to ensure that the mature boundary of an existing house is not negatively impacted upon. The road serves permitted houses, and it is to the benefit of the Brehons Chair residents that this issue be addressed.

### **6.3. Planning Authority Response**

- 6.3.1. The Planning Authority had no further comment to make, as no new issues have been raised in the appeal.

## **7.0 Assessment**

- 7.1. The main issues that arise for assessment in relation to the appeal can be addressed under the following headings:

- Nature of Development
- Impact on the Amenity of the Area
- Traffic Issues
- Other Issues
- Appropriate Assessment Screening

### **7.2. Nature of Development**

- 7.2.1. It is necessary to restate here what the proposed development includes. The application is for an amendment to a previous grant of permission, under P.A. Ref.

D17A/0530/ ABP Ref. PL06D.249163 and which is for a revised alignment of an access road that serves five houses. The houses have been constructed and from the applicant's response to the appeal, the original road alignment would not work as it impacted on the mature boundary of a third party. It is stated that agreement could not be reached on the location of this road and hence the need to revise its alignment.

7.2.2. It is clear from the submitted information that the realignment is relatively minor. The road and associated footpath will be moved further to the east. There is no change in the width or status of the access road, its function remains the same as originally permitted, to provide access to the permitted and now constructed five detached houses.

7.2.3. I will not comment on these five houses as they were permitted under a previous application and subsequent appeal, and they do not form part of this application/ appeal. Any issues in relation to their positioning on site/ height/ design and fenestration should be raised with the Planning Authority as enforcement is not a matter for the Board to consider.

### **7.3. Impact on the Amenity of the Area**

7.3.1. The appellant has raised the issue of loss of open space due to the revised road alignment. This is a complex issue as the site is zoned 'F' for open space/ amenity uses and the development of a road would not normally be permitted over/ on such lands. The Planning Authority Case Officer has referred to Section 7.15 of the Development Management Guidelines (2007) and the following section in particular:

'A statement of objectives in a development plan should not be regarded as imposing a blanket prohibition on particular classes of development and does not relieve the planning authority of responsibility for considering the merits or otherwise of particular applications'.

This is noted and whilst I agree with the general intention of this section of the guidelines, caution has to be applied when dealing with development that contravenes the zoning of a site and which may give rise to Material Contravention issues.

7.3.2. I note the fact that the development of a road was accepted under ABP Ref. PL06D.241949 and that the loss of open space would be minor. The principle of a

road on this open space has therefore been established. The realignment moves the road to the east and as stated there is no increase in the width of the road. The road is located as close to the western boundary of these lands as is possible and feasible in the context of serving these houses.

- 7.3.3. I am satisfied that permitting this development would not give rise to Material Contravention of the plan. This is a relatively minor revision to a permitted development and no new issues have arisen. The difference in land take at 55 sq m is not significant in the context of the overall residential development and the provision of open space.
- 7.3.4. I note the comments made in relation to impact on the character of the area and loss of amenity space/ children's play area. From the site visit it was apparent that Brehons Chair was well served by open space and the area around the monument to the north provides the largest and most useable piece of space. I accept that part of the subject site has undergone development and is behind a fence, however I do not accept that this area would have provided a significant play area for children. The gradient of the site is significant and as such the open space adjacent to the access road does not allow for the normal playing of ball games/ sports where a relatively flat area would be required for such games/ play. The nature of play that took place prior to and post the proposed development of this road would not change.
- 7.3.5. From the site visit it appears that the Brehons Chair development may be a gated residential development, though access was freely available on the day of the site visit. Considering the location of Brehons Chair, which is somewhat remote at present from large scale residential development, it is likely that the only people using the existing open space will be residents living adjacent to these areas of open space. I am satisfied that the realigned road will not result in such a loss of open space as to have a negative impact on the residential amenity of those living in the area.
- 7.3.6. In conclusion, I wish to restate that whilst the development of a road on a defined area of open space would not normally be considered acceptable, the fact that permission was already approved for a road here and considering the unique characteristics of the site and the fact that there is an abundant area of open space in Brehons Chair allows for acceptance of the proposed development.

#### **7.4. Traffic Issues**

- 7.4.1. Concern was expressed in the appeal about the proposed gradient of the realigned access road. This is not a new issue; the permitted road would have had a similar gradient to that now proposed and the numerous potential difficulties identified by the appellant would have happened anyway. I have to consider the fact that five houses have been constructed and are not currently accessible by anyone, thereby preventing their sale/ occupation. Some form of pedestrian/ vehicular access is therefore required here.
- 7.4.2. The Quality Audit prepared by Bruton Consulting Engineers, in response to the further information request, identifies the gradient at 9.778% as relatively steep, especially during icy conditions. A salt store is in place, and it is proposed that an additional store be provided near the top of the road. Additionally, it is proposed that the road surfacing be revised to provide for a high friction surfacing. In relation to pedestrians etc., again the issue of the gradient has been identified and it is recommended that a railing and rest/ dwell areas be provided to allow those with mobility impairment to rest/ break their journey.
- 7.4.3. I have noted the issues raised in the Quality Audit and the recommendations to address the identified issues of concern. These recommendations are acceptable. Whilst everyone has the right to use a public footpath, I do not foresee that there will be many visitors on foot to these houses considering their somewhat isolated location etc.
- 7.4.4. No issues of concern have been raised in relation to vehicle or pedestrian safety in relation to the realignment of this road. As stated, there is no change in the nature or status of the road which is only proposed to be an access road serving five detached houses.

#### **7.5. Other Issues**

- 7.5.1. The Drainage Planning – Municipal Services Department, and the Environmental Health Officer, have reported no objection to the proposed development.
- 7.5.2. I have read in detail the letter of objection and subsequent appeal. Many of the issues raised are in relation to the original development and subsequent construction of the five houses. As already reported, I cannot comment on these matters as they do not form part of the original application.

## 7.6. Appropriate Assessment Screening

- 7.6.1. Having regard to the nature and scale of the proposed development – the minor realignment of an approved access road, and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, it is considered that the development would not give rise to a significant effect individually or in combination with other plans or projects on an European site.

## 8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the following conditions and reasons.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 and the planning history of the site, to the location of the site in an established residential area and to the nature, form, scale and design of the proposed development, which is the minor realignment of an already approved access road, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 19 <sup>th</sup> of February 2021 and by the further plans and particulars received by the Planning Authority on the 21 <sup>st</sup> of May 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
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	<p>commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, and apart from compliance with the conditions of this permission, the development shall be completed in accordance with the terms and conditions of the Planning Authority reference D17A/0530/ An Bord Pleanála reference PL06D.249163, and any agreements entered into thereunder.</p> <p><b>Reason:</b> In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.</p>
3.	<p>The following shall be complied with in full:</p> <p>i) The developer shall comply in full with the recommendations and measures outlined in the submitted Quality Audit prepared by Bruton Consulting Engineers, as received by the Planning Authority on the 21<sup>st</sup> of May 2021.</p> <p>ii) The road including footpaths, turning area and kerbs shall comply with the detailed standards of the Planning Authority for such road works</p> <p><b>Reason:</b> In the interest of traffic and pedestrian safety.</p>
4.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>

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Paul O'Brien

Planning Inspector

7<sup>th</sup> October 2021