



An
Bord
Pleanála

Inspector's Report

ABP-311450-21

| | |
|-------------------------------------|---|
| Development | Construction of 6 bedroom house including garage. |
| Location | Site of approx. 1,588 sqm, at the site to be known as, Imladris, Dalkey Avenue, Dalkey, Co Dublin, bounded to the south by an existing dwelling known as Scarsdale, (Eircode A96C425), and to the North and North west, by Killiney Hill Park |
| Planning Authority | Dun Laoghaire Rathdown County Council |
| Planning Authority Reg. Ref. | D21A/0084 |
| Applicant(s) | Jarlath and Susan O'Leary |
| Type of Application | Planning Permission |
| Planning Authority Decision | Grant with conditions |
| Type of Appeal | Third Party Appeal |
| Appellant(s) | Tracey Davies |
| Observer(s) | None |
| Date of Site Inspection | 29 th March 2022 |
| Inspector | Susan Clarke |

1.0 Site Location and Description

- 1.1. The site is located on Dalkey Avenue, Dalkey in south County Dublin and has a stated area of 0.1588 ha. It is located in a well-established residential area with Killiney Hill and Park located immediately east of the site. The site is situated circa 900m from Dalkey Village. Dalkey Dart Station is located approximately 800m northeast of the site. The area is characterised by a mix of architectural styles comprising predominately detached and semi-detached dwellings. The site is well screened by mature vegetation.
- 1.2. The site currently forms part of a larger plot associated with 'Scarsdale', a large detached residential property and contains a landscaped garden with a number of mature trees. The Planning Application Report submitted with the application states that the site has been subdivided from Scarsdale and is in separate ownership. The ground levels increase significantly in a northwest to southeast direction. The site is bounded by public open space associated with Killiney Park to the northeast and Scarsdale to the southwest and southeast. The site is currently accessed via the vehicular access/egress point off Dalkey Avenue to Scarsdale.

2.0 Proposed Development

- 2.1. The proposed development consists of the:
 - Subdivision of the Scarsdale plot,
 - Construction of a three storey over lower ground floor detached dwelling (734 sq m) with integrated garage (56 sq m),
 - Provision of a new pedestrian and vehicular access/egress point on Dalkey Avenue with automatic gates,
 - Landscape and boundary treatments, and
 - Associated works.

The proposed six bed, contemporary, flat roof dwelling includes terraces at Ground, First, and Second Floor Level. Three car parking spaces are proposed in the garage at Lower Ground Floor Level.

Following a Request for Further Information (RFI), the Applicant proposed reducing the height of the proposed dwelling by one metre. In addition, the building was slightly reorientated in a northwest direction and minor elevational and fenestration alterations were included.

3.0 Planning Authority Decision

3.1. Decision

Dun Laoghaire Rathdown County Council issued a Notification of Decision to Grant Permission on 31st August 2021 subject to 10 No. conditions.

Condition No. 2 requires that:

(a) The 1.8m high obscure glazed screens shown on the side (southwest) and rear (southeast) elevations at second floor ('sundeck') level on the further information drawings dated stamped 5th August 2021 shall be extended the full length of the side and rear elevations at second floor level.

(b) Obscure glazed screens shall be provided on/along the wall of the external terrace accessed from the study at first floor level. the overall height of the screening (wall and obscure glazing), shall be minimum 1.8m.

REASON: In the interest of residential amenity.

Condition No. 5 requires that:

(a) The Applicants shall ensure that the footpath including the grass verge in front of the proposed new vehicular entrances shall be dished and strengthened at the Applicant's own expense including any moving / adjustment of any water cocks /chamber covers and all to the satisfaction of the appropriate utility company and Planning Authority. With regards to the dishing and strengthening of the footpath including the grass verge the Applicants shall contact the Road Maintenance & Roads Control Sections to ascertain the required specifications for such works and any required permits.

(b) With regards to construction: The Applicants shall ensure that suitable facilities for vehicle cleansing and wheel washing, to the satisfaction of the Area Engineer, are provided on site. The Applicants shall ensure that adequate on-

site car parking facilities, to the satisfaction of Dún Laoghaire-Rathdown County Council, are made available for site workers during the course of construction. The Applicants shall maintain all footpaths and roads affected by the development works in a safe and tidy condition to the satisfaction of the Area Engineer.

REASON: In the interest of orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports (26th March 2021 and 31st August 2021)

3.2.2. Basis of Planning Authority's decision.

The Planning Officer stated that the proposed development was acceptable in principle having regard to the site's land use zoning objective. On receipt of a Response to Further Information, the Officer stated that having regard to the massing, scale and form of the proposed dwelling and associated access and boundary treatments, the proposed development would not adversely impact on the residential amenity of adjacent properties by reason of overshadowing, overlooking or overbearing appearance.

With respect to the inclusion of the embankment to accommodate a new vehicular access point along Dalkey Avenue in the planning application, the Officer stated that the Applicant is advised that the consent of the relevant property owner is required and noted the Section 34(13) of the Planning and Development Act, states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

3.2.3. Other Technical Reports

Transportation Planning (23rd March 2021 and 26th August 2021)

Drainage Planning (8th March 2021): No objection subject to condition.

Parks Department (11th March 2021 and 17th August 2021): No objection subject to condition.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Three third-party observations by local residents were submitted to the Local Authority in respect of the proposed development. A further Observation was made by the Appellant on receipt of the RFI Response by the Local Authority. The key points raised in Observations can be summarised as follows:

- The planning application includes land outside the ownership of the Applicant. The embankment along Dalkey Avenue is owned and maintained by the Local Authority; and
- The three-storey structure, including the rooftop garden is out of keeping with the house types in the area and will be obtrusive and overpowering.

4.0 Planning History

- 4.1. **Section 96 Social Housing Exemption Certificate Reg. Ref. V/006/21:** A Social Housing Exemption Certificate was issued by Dun Laoghaire Rathdown County Council in respect of the proposal on 26th February 2021.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown County Development Plan 2016-2022.

The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The Dun Laoghaire Rathdown County Development Plan 2022-2028 was adopted on 10th March 2022, but does not come into effect until 21st April 2022. The site is located in an area zoned 'A'; *To protect and-or improve residential amenity*. This zoning objective applies also to the adjoining site on Dalkey Avenue. Killiney Park and Hill is zoned Objective F with the aim "*to preserve and provide for open space with ancillary active recreational amenities*". There are no conservation objectives relating to the site.

Section 8.2.3.4 refers to 'Additional Accommodation in Existing Built Up Areas' and sets out policies relating to corner/side garden sites (V).

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing built up areas. In these cases the Planning Authority will have regard to the following parameters

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Accommodation standards for occupiers.
- Development Plan standards for existing and proposed dwellings.
- Building lines followed where appropriate.
- Car parking for existing and proposed dwellings.
- Side/gable and rear access/maintenance space.
- Private open space for existing and proposed dwellings.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.

5.2. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

5.3. EIA Screening

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

6.0 The Appeal

Tracey Davies submitted a Third-Party Appeal to An Bord Pleanála on 21st September 2021 opposing the Local Authority's decision. The grounds of appeal (similar to the points raised in the Observation to the Local Authority) can be summarised as follows:

- The Local Authority has accepted the inclusion of the embankment within the red marked boundary and have granted permission to construct gates and pillars.
- The plans have inaccurate freehand drawn red lines purporting to be the boundary of both the new site and the existing property. The correct boundary of the property is located at the top of the embankment.
- The RFI Response in relation to the site boundary, only sought permission to cross the grass verge. The embankment was omitted completely.

6.1. Applicant Response

The Applicant submitted a response to An Bord Pleanála in respect to the Third-Party Appeal. The key points can be summarised as follows:

- A letter attached to the Response from Donal M. Gahan, Ritchie & Co Solicitors, which includes a 'Declaration of Identity' from Pat O'Hara of PA Architects, demonstrates that the applicant has sufficient registry of deeds title to make a planning application on this site and the planning application plans and location maps are a true reflection of the property boundary.

- An appropriate letter of consent for works in the public road has been provided by Dun Laoghaire Rathdown County Council and was submitted to the Local Authority at Further Information stage.
- The issue was thoroughly assessed by the Planning Authority and there is no basis on which to invalidate or refuse the application at this point.
- Matters of legal interest are not specifically a planning consideration and should not be used as a reason for refusing permission.
- The Applicant requests the Board to dismiss the appeal as a clear attempt at delaying the development and obstructing their neighbour as provided under Section 138 of the Planning and Development Act 2000 (as amended).

6.2. **Planning Authority Response**

The Local Authority confirmed on 20th October 2021 that it considered that the Appeal raise no new matters and that issues were assessed at application stage.

6.3. **Observations**

None received.

6.4. **Further Responses**

None received.

7.0 **Assessment**

Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Proposed Development
- Legal and Procedural Issues, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. Principle of Development

The proposed development comprises the subdivision of the Scarsdale property and the construction of a three-storey, six-bedroom dwelling. The subject development complies with the site's land use zoning (Objective A), Section 8.2.3.4(v) (Corner/Side Garden Sites) and the relevant residential development management standards. I concur with the Planning Authority that the development is not overbearing nor will not cause any significant overlooking, including the Scarsdale property. Provision of additional screening as proposed in Condition No. 2 of the Local Authority's decision will further mitigate any potential for overlooking of Scarsdale. Furthermore, due to the site's orientation and the proposed dwelling's proximity to neighbouring properties, there will be no significant overshadowing impacts. Whilst the scale and massing of the dwelling are large in comparison to neighbouring properties, due to the topography and the existing vegetation along the boundaries and the proposed landscaping plan, the contemporary dwelling will be well screened and will integrate successfully into the area. I note that the Appellant did not oppose the principle of the development (i.e. the construction of the dwelling) in the observations (dated 28th February 2021 and 15th August 2021) submitted to the Planning Authority. In conclusion, in my opinion, the development would not adversely impact on the area's residential amenity and is acceptable in principle.

7.2. Legal and Procedural Issues

The crux of this appeal relates to legal entitlement and agreement. The Appellant states that the Applicant does not own the embankment along Dalkey Avenue, which is partially incorporated into the planning application's red line boundary to accommodate a new vehicular access/egress point onto the public road. The Local Authority issued correspondence to the Applicant on 28th July 2021 consenting to the inclusion of Council owned land to traverse the grass verge for the proposed new vehicular access. This correspondence formed part of the RFI Response to the Planning Authority. Furthermore, the Applicant states in the First-Party Response to the Third-Party Appeal that they have sufficient registry of deeds title to make the planning application.

The Development Management Guidelines (at 5.13) make the point that where issues of sufficient legal interest arise in relation to carrying out proposed development that further information should be requested from the applicant and that only where it is clear from the response that the applicant does not have sufficient legal interest to carry out the development should permission be refused on that point.

As highlighted by the Local Authority and the Applicant Section 34(13) of the *Planning and Development Act 2000 (as amended)* states: “A person shall not be entitled solely by reason of a permission under this section to carry out any development.” As such, should the Board be minded to grant permission for the development, it is the Applicant’s responsibility to ensure sufficient legal interest exists to implement the permission.

In terms of the validity of the application, I am satisfied that the Applicant has provided evidence of sufficient legal interest for the purposes of the planning application and decision. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal. This is a matter to be resolved between the relevant parties, having regard to the provisions of Section 34(13) of the *Planning and Development Acts 2000 (as amended)*.

7.3. Appropriate Assessment

The site does not form part of or is it located near to any Natura 2000 site. It lies within an established suburban area that is fully serviced. Accordingly, no Appropriate Assessment issues arise. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and serviced location, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be granted subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the site's land use zoning objective (A) in the Dun Laoghaire Rathdown County Development Plan 2016-2022, and to the nature, scale and contemporary architectural design of the proposed development, it is considered that, subject to compliance with the following conditions, the proposed development would not seriously injure the residential amenities of the area due to overbearing, overlooking or overshadowing impacts, and would not be prejudicial to public health, or give rise to a traffic hazard. The proposed development 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, as amended by the further plans and particulars submitted on the 5th day 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 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>(a) The 1.8m high obscure glazed screens shown on the side (southwest) and rear (southeast) elevations at second floor level on the further information drawings dated 5th August 2021 shall be extended the full length of the side and rear elevations at second floor level.</p> <p>(b) Obscure glazed screens shall be provided on/along the wall of the external terrace accessed from the study at first floor level. the overall height of the screening (wall and obscure glazing), shall be minimum 1.8m.</p> <p>REASON: In the interest of residential amenity.</p> |
| 3. | <p>The entire dwelling shall be used as a single dwelling unit and shall not be sub-divided in any manner or used as two or more separate habitable units.</p> |

| | |
|----|---|
| | REASON: In the interest of residential amenity. |
| 4. | <p>The footpath and kerb shall be dished at the road junction in accordance with the requirements of the planning authority. Details indicating the proposed compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of clarity, and pedestrian and traffic safety.</p> |
| 5. | <p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, tree protection measures, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p> |
| 6. | <p>Site development and building works shall be carried out only between the hours of 0700 to 1800 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> |
| 7. | <p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p> |
| 8. | <p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> |

| | |
|----|--|
| | Reason: In the interest of public health. |
| 9. | <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 Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p> |

Susan Clarke
Planning Inspector

31st March 2022