



An
Bord
Pleanála

Inspector's Report

ABP-312557-22

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| Development | Permission is sought for the retention of the lower ground studio apartment. |
| Location | No. 23A The Old Vicarage, Church Road, Swords, Co Dublin, K67 HK76. |
| Planning Authority | Fingal County Council. |
| Planning Authority Reg. Ref. | F21A/0579. |
| Applicant(s) | Deirdre Hughes. |
| Type of Application | Retention Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party. |
| Appellant | Deirdre Hughes. |
| Observer(s) | None. |
| Date of Site Inspection | 11 th day of August, 2022. |
| Inspector | Patricia-Marie Young. |

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1.0 Site Location and Description

- 1.1. The appeal site, which has a stated site 0.52ha area, relates to the lower ground level of No. 23 The Old Vicarage, Church Road, Swords, north County Dublin. It is located c110m to the south of Church Roads junction with Bridge Road and c125m to the north of Church Roads junction with Brackenstown Road, on the western edge of Swords historic core.
- 1.2. No. 23a The Old Vicarage is located in the northernmost block of the Old Vicarage residential scheme which is located roughly midway along the eastern side of Church Road which has an undulating in horizontal and vertical alignment. It is accessed from a paved courtyard that provides access and an area of parking for these dwelling units as well as the dwelling units opposite by way of a pedestrian flight of stairs. Access to Church Road is restricted by way of a separate tall metal railed electronically controlled pedestrian and vehicle gates adjoining the public domain of Church Road.
- 1.3. The surrounding area has a mature character with the predominant land use along Church Road being residential in nature. There are also a number of other uses present in the immediate vicinity including educational, religious, and residential care home facilities.

2.0 Proposed Development

- 2.1. **Retention** permission is sought for a lower ground floor studio unit apartment. According to the documents submitted the gross floor area is 36.51m².

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 16th day of December, 2021, the Planning Authority decided to **refuse** retention permission for the lower ground studio apartment for the following stated reason:

“The overall floorspace of the unit is below the minimum required standard (45 sq. m.) for a self-contained 1 bedroom apartment. The aggregate floor areas of the bedroom and combined kitchen/dining/living room are below the minimum required aggregate areas for such rooms as set out in Table 12.2 of the Fingal Development Plan and

Appendix 1 of the Ministerial Planning Guidelines on Sustainable Urban Housing: Design Standards for New Apartments 2020. Accordingly, the proposed development would contravene materially Objective DMS24 of the Fingal Development Plan 2017-2023 and would be contrary to the Ministerial Guidelines issued to planning authorities under Section 28 of the Planning and Development Act 2000, as amended. The proposed development would therefore be contrary to the proper planning and sustainable development of the area and would set an undesirable precedent for substandard residential development in this established residential area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report is the basis of the Planning Authority's decision. This report is dated the 13th day of December, 2021, and it includes the following comments:

- The drawings appear to show a one-bedroom apartment unit as opposed to a studio apartment.
- The one-bedroom apartment unit does not comply with the requirements under Table 12.2 of the Development Plan for this type of dwelling unit and it also falls short of spatial requirements set out in the Apartment Guidelines 2020.
- Reference is had to Objective DMS24 of the Development Plan.
- The proposed development would not give rise to any adverse visual impact on the character and appearance of the area as no exterior works are sought.
- It is unclear whether compliance was had with P.A. Ref. No. 97A/0507 in relation to car parking provision and as such it is unclear if the subject unit benefits from an allocated car parking space.
- The location is highly accessible by public transport.
- This proposal does not give rise to any significant servicing issues.
- No EIA, AA, built heritage or archaeological issues arise.
- Concludes with a recommendation of refusal on the basis of the dwelling unit sought not providing a satisfactory standard of amenity for existing/future

occupants; the failure to comply with relevant planning provisions and guidance through to the undesirable precedent it would set for other similar developments.

3.2.2. **Other Technical Reports**

Water: No objection.

Conservation: No objection.

Archaeology: No objection.

Transportation: No objection.

Parks: No objection.

3.3. **Prescribed Bodies**

3.3.1. **Irish Water:** No objection.

3.4. **Third Party Observations**

3.4.1. None.

4.0 **Planning History**

4.1. **Site:**

4.1.1. **P.A. Ref. No. F97A/0507:** Permission was **granted** for retention of two-storey two bedroomed mews house as approved under ABP Ref. No. PL06F.096787 (P.A. Ref. No. F95A/0172).

4.2. **Setting – The Old Vicarage**

4.2.1. **P.A. Ref. No. F96/0462:** Permission was **granted** for block of 6 no. 2-storey apartments over 4 no. one bedroomed and 1 no. two bedroomed garden apartments and a block of 3 no. two bedroomed 2-storey apartments over 1 no. one bedroomed and 1 no. two bedroomed garden apartments in the garden at the rear using access as permitted by under ABP Ref. No. PL06F.096787 (P.A. Ref. No. F95A/0172).

4.2.2. **ABP Ref. No. PL06F.096787 (P.A. Ref. No. F95A/0172):** Permission was **granted** subject to conditions for renovations and minor alterations to three existing dwellings in the main house; conversion of separate studio space to form two-bedroomed duplex

apartment; conversion of basement for a one-bedroom apartment; provision of 3 two-storey two-bedroomed mews houses; and, for 17 two-bedroomed and 1 one-bedroomed apartments in a single block of four storeys plus penthouses in the garden at the rear of a new entrance onto Church Road.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, are applicable. The site lies within an area zoned 'MC' which has a stated aim to: *"protect, provide for and/or improve major town centre facilities"*.
- 5.1.2. Chapter 12 sets out Development Management Standards for residential development.
- 5.1.3. Objective CH07 of the Development Plan is relevant. It seeks to ensure that development within the vicinity of a Recorded Monument or Zone of Archaeological Notification (which I note the site is located within) does not seriously detract from the setting of the feature and is sited as well as designed appropriately.
- 5.1.4. Objective DMS22 of the Development Plan is relevant. It requires a minimum floor to ceiling height of 2.7m in apartment units at ground floor level.
- 5.1.5. Objective DMS24 of the Development Plan is relevant. It requires all new residential units to comply with or exceed the minimum standards as set out in Tables 12.1, 12.2 and 12.3 of the Development Plan.
- 5.1.6. Objective DMS30 of the Development Plan is relevant. It requires all new units to comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R. 209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents.
- 5.1.7. Objective PM41 of the Development Plan is relevant. It seeks to encourage increased densities at appropriate locations whilst ensuring that the quality of place, residential accommodation, and amenities for either existing or future residents are not compromised.
- 5.1.8. The site and its setting are located within Dublin Noise Zone D.

5.2. Regional Planning Context

- Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES), 2019-2031.

5.3. National Planning Context

- Project Ireland 2040: National Planning Framework.
- Housing for All – A New Housing Plan for Ireland, 2021.
- Climate Action Plan, 2021.
- Sustainable Urban Housing Design Standards for New Apartment, Guidelines for Planning Authorities, 2020.
- Architectural Heritage Protection Guidelines for Planning Authorities, 2011.
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area (2009).
- Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999.

5.4. Natural Heritage Designations

- 5.4.1. This appeal site is in an established serviced urban landscape that is remote from European Sites. The nearest such sites are located c1.4km to the north east and they are Malahide Estuary SAC (Site Code: 000205) and Malahide Estuary SPA (Site Code: 004025).

5.5. EIA Screening

- 5.5.1. The proposed development is not of a nature or scale which would fall within the fifth schedule of the P & D Regulations, 2001, (as amended), such as would necessitate the carrying out of an EIAR.

5.6. Built Heritage

- 5.6.1. The site lies opposite National Monument DU04823, Classification 'HOSE', which is described in brief as 3-bay to storey former vicarage that dates back to c1675, and as

such the provisions set out under Section 12 of the National Monuments (Amendment) Act, 1994. This building is also listed in the NIAH (Ref. 11343004) and under the RPS (Ref. 0365).

5.6.2. The site is located within the Zone of Archaeological Notification which relates to the town of Swords which is afforded protection as a Recorded Monument (Note: DU011-035) and as set out above is afforded protection under Section 12 of the aforementioned Act.

5.6.3. The site setting is rich in its archaeological and built heritage including several National Monuments, Protected Structures and NIAH listed architectural buildings and structures.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of this First Party Appeal can be summarised as follows:

- This is an existing development, and the room sizes are consistent with those at the time the building was constructed in 1997. With the unit occupied since its original construction and by the current occupant for 9 years.
- Permission is sought for a studio unit and the design standards referred to by the Planning Authority relate to new developments. The guidelines referred to are guidelines as opposed to absolute limits.
- At the time this development was constructed the Development Plan did not include any specific requirements regarding apartments.
- There are many apartments that do not comply with current standards.
- This is not a proposed development, but an existing apartment.
- The apartment is not substandard. It is in a good condition, well insulated and it has its own car parking space.
- It is not accepted that this development is contrary to the proper planning and sustainable development of the area.

- It is not accepted that this development, if permitted, would set an undesirable precedent in this established residential area.
- Precedence has no relevance to existing development.
- No Third-Party objections were received.
- The assessment of this application by the Planning Authority is focused on the standards that were not in place at the time the unit was constructed.
- The Board is sought to overturn the decision of the Planning Authority.

6.2. **Planning Authority Response**

6.2.1. The Planning Authority's response can be summarised as follows:

- The Board referred to their Chief Executives Order which details the assessment of this planning application.
- No other comments to make; with the exception of if the Board is minded to grant retention permission that a Section 48 Development Contribution is included.

6.3. **Observers**

6.3.1. None received.

6.4. **Referrals**

6.4.1. The Board referred this appeal case to An Chomhairle Ealaíon, An Taisce, Failte Ireland, The Heritage Council and the Development Applications Unit. No responses were received.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. The main issues in determining this appeal are as follows:

- Principle of the Development Sought
- Design

- Appropriate Assessment

7.2. Principal of the Development Sought

- 7.2.1. I first note to the Board that the site forms part of a mature established residential scheme known as The Old Vicarage located in the historic heart of the settlement of Swords in north County Dublin. This scheme would appear to date to the late 1990s. The site and its urbanscape setting are zoned 'MC' under the current Development Plan. The objective of which is protecting, providing for and/or improve major town centre facilities.
- 7.2.2. Chapter 11 of the Development Plan sets out the vision for 'MC' zoned lands as follows: *"consolidate the existing Major Towns in the County, (Blanchardstown, Swords and Balbriggan). The aim is to further develop these centres by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The zone will strengthen retail provision in accordance with the County Retail Strategy, emphasise urban conservation, ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car-based traffic and enhance and develop the existing urban fabric. In order to deliver this vision and to provide a framework for sustainable development, masterplans will be prepared for each centre in accordance with the Urban Fingal Chapter objectives"*.
- 7.2.3. In addition, this chapter of the Development Plan also lists residential development as permitted in principle.
- 7.2.4. Based on the foregoing I concur with the Planning Authority that the general principle of residential development at this established residential location on 'MC' zoned land is acceptable, subject to safeguards.
- 7.2.5. Secondly, by way of this application retention permission is sought for a 36.51m² lower ground floor studio unit apartment that is contended to have been constructed in circa 1997 and thereafter occupied as a single habitable independent dwelling unit not internally or functionally connected with No. 23 The Old Vicarage. It is also contended that its current occupant is considering purchasing it from its owners and that this application is being sought to regularise compliance with planning.

- 7.2.6. According to the information provided with this application and on appeal together with an examination of the planning history of No. 23 The Old Vicarage, at some point after the completion of the lower ground floor level retention permission was sought for it under P.A. Ref. No. F97A/0507. The description of the development given with this application described the development sought under the said planning application as the retention of lower ground floor of two-storey two-bedroomed mews house (end unit nearest garden) at No. 23 The Old Vicarage. On the 18th day of September of the same year retention permission was granted for a development and it was subject to six number conditions.
- 7.2.7. The development for which retention was sought under P.A. Ref. No. F97A/0507 appears to have related in its entirety and solely to the lower ground floor area now subject of this application. It is now before the Board for its determination by way of a First Party Appeal on foot of the Planning Authority's decision to refuse retention permission for the reason set out under Section 3.1.1 of this report above. By way of this appeal the appellant seeks that the Board overturn the Planning Authority's decision on the basis that this is an existing dwelling unit and that it should not be subject to current planning policy provisions as well as guidance. They also contend that it provides a good standard of residential amenity for its occupants and there is precedent for dwelling units of this size.
- 7.2.8. As such this application relates to permission for retention of development, which it is submitted has been in place for a period of 25 years. For the purposes of clarity, it should be noted that the period for which a development has been in place is immaterial to consideration of a planning application for permission for retention. Although, I am cognisant that there are implications regarding enforcement proceedings through to non-compliance issues having regard to the conditions attached to the grant of retention permission P.A. Ref. No. F97A/0507. With this including Condition No. 1 which required that the development be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application for the stated reason of ensuring that the development shall be in accordance with the permission and that effective control be maintained.
- 7.2.9. I also note that similarly the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered "*as with any other application*". This is in accordance with planning

law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place and to do otherwise as suggested by the appellant the Board should do in their determination of this case before them would be contrary to proper planning practice. It would also set an undesirable precedent in the determination of other similar applications and ultimately it would be contrary to the proper planning as well as sustainable development of the area.

- 7.2.10. Thirdly, in relation to the description of the development, including that set out in the public notices. I do not accept the description given for the development sought under this application including the public notices are accurate in describing the dwelling unit sought under this application.
- 7.2.11. On this point I consider that it is generally accepted that studio apartments contain only one room that includes every function of the space except for the bathroom.
- 7.2.12. That is to say they typically consist of one large room that serves as a combined living, eating, and sleeping with no barrier walls. They are also referred to as single room dwelling places or studio flats.
- 7.2.13. This type of dwelling unit is clearly not what is sought under this application having regard to the submitted documentation. With the submitted drawings showing clearly that this dwelling unit for which retention is sought contains a separate bedroom, a separate kitchen/living, a bathroom, and a small hallway cabinet all partitioned and all accessible from a separate hallway. With the said rooms all accessed via their own separate doors.
- 7.2.14. I therefore do not accept the appellants argument that the dwelling unit sought is a studio unit and I concur with the Planning Authority that it is appropriate and reasonable that given the design, layout, and internal arrangement of the subject dwelling unit that it is considered as a one-bedroom apartment dwelling unit against all relevant planning policy provisions and guidance.
- 7.2.15. For clarity the relevant planning policy provisions and guidance that are applicable are that which are currently in place at the time in which the Board is making its determination of this appeal case and not as suggested those that were in place a quarter of a century ago. The current relevant planning provisions and guidance for

apartment units at local through to national level in a manner consistent with one another seek to achieve qualitative and quantitative residential amenity outcomes for occupants. This is in the interest of public good and achieving sustainable qualitative residential outcomes.

- 7.2.16. Section 12.2 of the Development Plan sets out the common principles for all planning applications determined by the subject Planning Authority. Of additional relevance to this application is Development Plan Objective DMS24 of the Development Plan which requires that all new residential units comply with or exceed the minimum standards as set out under Tables 12.1, 12.2 and 12.3. With Table 12.2 being applicable to the development sought under this application due to it relating to apartments. In relation to 1 bed dwelling type apartments. It requires the following:

Table 1 – Extract of the Applicable Quantitative Standards set out under Table 12.2 of the Development Plan

| Dwelling Type | Minimum Gross Floor Area (sq.m.) | Aggregate Living Area (sq.m.) | Aggregate Bedroom Area (sq.m.) | Storage Area (sq.m.) |
|----------------------|---|--------------------------------------|---------------------------------------|-----------------------------|
| 1 bed | 45 | 23 | 11.4 | 3 |

- 7.2.17. In relation to the apartment unit sought for retention permission it provides:

Table 2: Quantitative Standard of the Apartment Sought under this Application

| Dwelling Type | Minimum Gross Floor Area (sq.m.) | Aggregate Living Area (sq.m.) | Aggregate Bedroom Area (sq.m.) | Storage Area (sq.m.) |
|----------------------|---|--------------------------------------|---------------------------------------|-----------------------------|
| 1 bed | 36.51 sq.m. | 14.4 sq.m. | 11.2 sq.m. | 0 sq.m. |

- 7.2.18. The following table sets out the shortfall in meeting the minimum standards required under Table 12.2 of the Development Plan.

Table 3: Compliance with Quantitative Standards of 12.2 of the Development Plan

| Dwelling Type | Minimum Gross Floor Area (sq.m.) | Aggregate Living Area (sq.m.) | Aggregate Bedroom Area (sq.m.) | Storage Area (sq.m.) |
|----------------------|---|--------------------------------------|---------------------------------------|-----------------------------|
| 1 bed | Shortfall of: 8.49 sq.m. | Shortfall of: 8.6 sq.m. | Shortfall of: 0.2 sq.m. | Shortfall of: 3 sq. m. |

| | | | | |
|--|--|--|--|--|
| | | | | No dedicated internal storage area provided. |
|--|--|--|--|--|

- 7.2.19. Based on the above considerations, the retention of the ground floor level of No. 23 The Old Vicarage as a one-bedroom apartment dwelling unit would be contrary to Development Plan Objective DMS24 and the shortfall of overall gross floor area of the unit, the significant shortfall in aggregate living area, the shortfall in meeting the aggregate bedroom area and the lack of adequate dedicated storage area one result in poor residential amenities for existing and future occupants.
- 7.2.20. In relation to the Sustainable Urban Housing Design Standards for New Apartment, Guidelines for Planning Authorities, issued under Section 28 of the Planning and Development Act, 2020, as amended, sets out quantitative standards for apartment units under Appendix 1. In this regard, it sets out a minimum gross floor area for a one-bedroom apartment dwelling unit as Table 12.2 of the Development Plan. It also notes that the minimum gross floor area of such dwelling units was a more modest 38 sq.m. in 1995. The gross floor area of the unit therefore did not meet the minimum standards either at the time it was constructed. Of further note the minimum aggregate bedroom floor area and dedicated storage area is the same as that set out under Table 12.2 of the Development Plan.
- 7.2.21. It sets out that the aggregate floor area of living/dining/kitchen area is 30 sq.m. for one bedroom apartment types and it provides a variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas. As said the apartment does not meet the minimum overall floor area for a one-bedroom apartment type and there is a 15.6 sq. m. living/dining/kitchen aggregate floor area shortfall.
- 7.2.22. Of additional concern minimum floor areas for private amenity space for one bedroom apartment type is 5 sq. m. None is provided within the floor area of this dwelling unit. The minimum floor area for communal amenity space is 5 sq.m. It is not clarified that the scheme provides a communal amenity space provided at The Old Vicarage that includes the additional 5 sq. m. for the additional dwelling unit proposed. Through to the applicant has not demonstrated in the drawings provided that the minimum floor-to-ceiling height required under Building Regulations of 2.4m and as advocates in the said Guidelines as a minimum is provided given the situation where the design and

layout of the unit in relation particularly to the bathroom requires mechanical ventilation/extraction yet no clarification of the same has been provided.

- 7.2.23. Alongside this there is effectively only one normal sized window to provide light and ventilation of the overall apartment unit with the window serving the bedroom being modest in its width and height through to the two windows that are present are all on one aspect and open onto a space that it is highly probable that access to adequate ventilation through to light is restricted due to the lower basement location and the configuration of buildings, structures, ground levels, aspect etc in which it is sited.
- 7.2.24. Of further note there is no indication provided in the drawings to suggest that there is any mechanical extraction or otherwise for the kitchen area.
- 7.2.25. Given the documentation provided I am not satisfied that adequate floor-to-ceiling heights have been provided within this apartment unit or that the design has provided qualitative light and air penetration.
- 7.2.26. Moreover, this proposal effectively seeks to provide an additional dwelling unit within The Old Vicarage Scheme and there is no evidence to support that this together with the two required car parking space under Condition No. 6 under P.A. Ref. No. F97A/0507 would be reduced. In my considered opinion this matter has not been clarified by any robust evidence. Notwithstanding, I note the location is one that is highly accessible and well served by public transport and given that local through to national planning policy provisions support a modal shift away from private vehicle usage as part of climate resilience this concern is not one that would substantiate refusal of retention permission.
- 7.2.27. Based on the foregoing, I concur with the Planning Authority's reason for refusal, which is based on the substandard residential amenity for existing and future occupants of this one-bedroom unit which falls significantly short of qualitative and quantitative standards for such a development in a manner that is contrary to local through to national planning policy provisions and guidance. I also consider that to permit the proposed development would also result in an undesirable precedent for similar developments. Therefore, I conclude that the retention of this dwelling unit would be contrary to the proper planning and sustainable development of the area.

7.3. Other Matters Arising:

- 7.3.1. **Visual Amenity Impact:** As no external alterations or additions are proposed I concur with the Planning Authority that no serious visual amenity impact would arise from the development sought under this application nor would any adverse impacts arise to the setting of buildings and structures of architectural and archaeological merit in its surrounds.
- 7.3.2. **Overdevelopment:** Based on the information provided with this application and on appeal together with a review of the planning history of the site and The Old Vicarage residential scheme I raise a concern that due to the substandard qualitative and quantitative standards of the dwelling unit sought for retention relative to the permitted unit it forms part of, i.e., No. 23 The Old Vicarage, that this development, if permitted, would result in overdevelopment as well as piecemeal and uncoordinated development.

7.4. Appropriate Assessment

- 7.4.1. The development sought under this planning application relates to a lower ground floor level of a residential building located at the northern end of The Old Vicarage residential scheme. It includes no excavations, demolition and/or construction works as it is already *in situ*. It is also a residential scheme that is fully serviced and forms part of an established, historic urban scape with a significant lateral separation distance between it and the nearest European Sites of Malahide Estuary SAC (Site Code: 000205) and Malahide Estuary SPA (Site Code: 004025) which at their nearest points are located c1.4km to the north east, with no direct or indirect pathway in between.
- 7.4.2. Against this context together with having regard to the nature and scale of the development sought under this application, 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

- 8.1. I recommend that retention permission be **refused**.

Reasons and Considerations

1. The overall floorspace of the unit is below the minimum required standard (45 sq. m.) for a self-contained one-bedroom apartment dwelling unit. The aggregate floor areas of the bedroom and combined kitchen/dining/living room are below the minimum required aggregate areas for such rooms as set out in Table 12.2 of the Fingal Development Plan and Appendix 1 of the Ministerial Planning Guidelines on Sustainable Urban Housing: Design Standards for New Apartments 2020. Accordingly, the proposed development would contravene materially Objective DMS24 of the Fingal Development Plan 2017-2023 and would be contrary to the Ministerial Guidelines issued to Planning Authorities under Section 28 of the Planning and Development Act 2000, as amended. The proposed development would therefore be contrary to the proper planning and sustainable development of the area and would set an undesirable precedent for substandard residential development in this established residential area.

Patricia-Marie Young
Inspector

30th day of August, 2022.