



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312729-22

<b>Development</b>	Amendment to granted planning permission D20A/0040 for development. The amendment to the development will consist of the: 1. New first floor window in the south elevation with associated overhang and screening.
<b>Location</b>	Site to the rear, Stonehenge, Killiney Avenue, Killiney, Co. Dublin
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D21A/1026
<b>Applicant(s)</b>	Suzanne & Johnny Bennett
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Suzanne & Johnny Bennett
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26/03/2022
<b>Inspector</b>	Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. The subject site is located in the mature residential area of Killiney Heath, in the south Dublin suburb of Killiney. The site formerly comprised the side garden of a large, detached dwelling 'Stonehenge'; to the north. To the south-west is a single storey dwelling 'Cloonbeg'. The site is bound to the road by a stone wall of approx. 1.5m in height. Planning permission has been granted for a dwelling on the subject site, the dwellings has been constructed to first floor level. The site falls from the north (adjoining Stonehenge) to the south (Cloonbeg).
- 1.1.2. The wider area is characterised by detached dwellings on generous plots, in varying styles and designs.

## **2.0 Proposed Development**

- 2.1.1. On the 12<sup>th</sup> November 2021 planning permission was sought to install a new first floor window in the south elevation, with associated over hang and screening. The application was accompanied by a planning letter and a photographic
- 2.1.2. The planning letter states that the proposed window was conditioned out of a previous grant D20A/0040 and is over 11m from the neighbouring property.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 17<sup>th</sup> January 2022, the Planning Authority issued a notification of their intention to REFUSE permission, for the following reason:
  - 1 The proposed window, by reason of its proximity to site boundaries and relative position to adjacent properties, would adversely impact on the residential amenity of adjacent properties by reason of overlooking, and would thus be contrary to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. Furthermore, the proposed development would contravene materially a condition attached to an existing permission for development at the subject site, Condition no.2 of D20A/0040. The proposed development would, therefore, be contrary to the to the proper planning and sustainable development of the area.

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

3.2.1. **Drainage:** No objection subject to standard conditions.

3.2.2. **Planning Report:** Site is located in a O/0 zoned but development refers to a dwelling granted permission under D20A/0040. Condition no. 2 of the parent permission required the omission of 'the proposed side first floor (southwest) window removed. Proposed window is 11.4m from neighbouring dwelling at 'Cloonbeg' and would not be served by any screening. Proposed development is materially unchanged from that omitted under the previous application. Planning Authority is not satisfied that the proposed window would not adversely impact the amenities of Cloonbeg by way of overlooking. Propose development cannot be considered as it would materially contravene a condition attached to an existing permission. Recommendation to refuse permission.

### 3.3. **Prescribed Bodies**

3.3.1. None on file.

### 3.4. **Third Party Observations**

3.4.1. None on file.

## 4.0 **Planning History**

4.1.1. Planning Authority reg. ref. **D19A/0602:** Permission REFUSED for the: 1.

Construction of a new detached house in the rear garden. 2. The proposed house will be a 4 bedroom detached flat roof house. 3. The majority of the house will be single storey with a split level two storey portion to the rear. 4. New splayed vehicular entrance and pedestrian entrance off Killiney Avenue. 5. Alterations to boundary walls, landscaping, soakaway, drainage works and ancillary and associated works.

1 The subject site is located within the Killiney Architectural Conservation Area, as set out in the Dun Laoghaire- Rathdown County Development Plan 2016-2022. The existing granite wall along the roadside boundary of the site creates a sense of enclosure, which is an intrinsic part of the character of the Architectural Conservation Area. Having regard to the proposal to remove sections of the granite wall, to lower the level of the remaining granite wall in conjunction with the proposed slat timber roadside boundary, it is considered that the proposed works

would combine to result in an unsympathetic alteration of an intrinsic element of the character of the Architectural Conservation Area. Accordingly, the proposed development would not be in accordance with Policy AR 12, of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 and would, therefore, be contrary to the proper planning and sustainable development of the area.

- 2 The proposed development would give rise to an unacceptable amount of overlooking of the adjacent property to the southwest of the site, arising from the first floor fenestration of the proposed dwellinghouse and would not be in accordance with Section 8.2.3.4 'Additional Accommodation in Existing Built-up Areas' (vii) Infill, of the Dun Laoghaire-Rathdown County Development Plan (2016-2022). The development as proposed, would seriously injure the residential amenity and depreciate the value of the adjoining property and would therefore be contrary to the proper planning and sustainable development of the area.

4.1.2. Planning Authority reg. ref. **D20A/0040**: Permission GRANTED for the construction of a new detached house in the rear garden. 2. The proposed house will be a 4 bedroom detached flat roof house. 3. The majority of the house will be single storey with a split level two storey portion to the rear. 4. New splayed vehicular entrance off Killiney Avenue. 5. Alterations to boundary walls, landscaping, soakaway, drainage works and ancillary and associated works. Condition no. 2 states:

2. Prior to the commencement of development, the applicant shall submit for the written agreement of the Planning Authority revised drawings to include plans and elevations, which shall show the proposed side first floor (southwest) window removed. **Reason:** In the interests of residential amenities.

## 5.0 Policy Context

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

- 5.1.1. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned objective A – to protect and/or improve residential amenity.
- 5.1.2. The subject site is located in the Killiney ACA and an area subject to the O/O zoning objective (section 8.2.3.4(vii) of the development plan refers).

- 5.1.3. The Board will note that the Dun Laoghaire Rathdown Draft County Development Plan 2022-2028 was adopted by the Elected Members at a Special County Development Plan meeting held on the 10th March 2022. The adopted Plan will come into force 6 weeks after it was adopted, namely the **21st April 2022**.

## **5.2. Natural Heritage Designations**

- 5.2.1. The South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024) are to the north of the subject site.

## **5.3. EIA Screening**

- 5.3.1. Having regard to nature and scale of the proposed development and the urban location of the site 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 agent for the applicant has submitted a first party appeal against the decision of the Planning Authority to refuse permission only. The grounds of the appeal can be summarised as follows:
- The reason the Planning Authority attached condition no. 2 to the parent permission (D20A/0040) was due to previous planning history on the site (D19A/0602), namely a large corner window. This was resolved in the 2020 application during the further information stage and subsequently resulted in the permitted dwelling.
  - It was decided not to appeal condition no.2 of the parent permission (D20A/0040), notwithstanding that it removed all fenestration on that elevation.
  - The overall design of the dwelling is simple and modern. The removal of all fenestration on the south west elevation results in a stark elevation, without the relief and interest of a window. Further, the proposed window would provide a view towards the Dublin Mountains.

- A 3D image taken from the proposed height and location of the southwest fixed window, demonstrates no overlooking of Cloonbeg. Cloonbeg is a single storey dwelling at a lower ground level. With the result that the only view from the proposed window is the roof of Cloonbeg and a glimpse of their conservatory.
- The owners of Cloonbeg have not objected to the subject application.
- The setback of 11.4m complies with section 8.2.3.4(ii) of the development plan – it is 11.4m from the boundary and has no opposing window in Cloonbeg. There is no overlooking of private space. There will be no loss of residential amenity.
- The decision to omit the window under D20A/0040 was an over-interpretation of the planning issues raised under D19A/0602. It is submitted that the spirit of D19A/0602 was a reduction in glazing, rather than a complete removal of all glazing.
- The Board is requested to grant permission for the proposed window. Should the Board consider it necessary, the applicant is willing alter the proposed window by way of an angled timber screen for 600mm of the proposed window or reduce the window size by 600mm.

## **6.2. Planning Authority Response**

6.2.1. None on file.

## **6.3. Observations**

6.3.1. None on file.

## **6.4. Further Responses**

6.4.1. None on file.

## **7.0 Assessment**

7.1.1. I have examined the file and the planning history, considered all policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development

## **7.2. Principle of Development**

- 7.2.1. The subject site is located in an area zoned to protect and / or improve residential amenity. The principle of the proposed development is acceptable, subject to other planning considerations.
- 7.2.2. The planning history of the subject site is relevant to the appeal before the Board. In 2019, (D19A/0602) planning permission was sought for a dwelling on the site. During the course of the assessment by the Planning Authority, further information was requested, which amongst other things requested the applicant to address overlooking of the dwelling to the southwest 'Cloonbeg'. Ultimately, permission was refused for that development, with the second reason for refusal referring to the 'unacceptable amount of overlooking of the adjacent property....arising from the first floor fenestration'.
- 7.2.3. A subsequent application for a dwelling on the site was lodged in 2020 (D20A/0040 refers). During the course of that assessment, the planner noted that a large corner window was proposed on the south-western elevation. She noted that the Planning Authority considered this would result in overlooking of Cloonbeg and given that the room in question would be illuminated by windows on the other elevation, it was reasonable to omit the south-western elevation window.
- 7.2.4. The application before the Board now, seeks to reinstate a window in the south-western elevation. The submission made in the appeal is that the difference in ground level and the separation distance between the two properties is such that no overlooking will occur. I am minded to agree. The proposed dwelling site sits on higher ground than the adjoining Cloonbeg – a single storey dwelling. The proposed window is over 14m from the elevation of Cloonbeg. With the result that there will be no overlooking directly into the dwelling or its private open space.
- 7.2.5. Notwithstanding the previous planning history on the site, as it stands on its own merits, the proposed south-western elevation window at first floor is acceptable, will not cause overlooking of the adjoining dwelling at Cloonbeg and will not cause injury to the residential amenity of that property. I note that the residents of Cloonbeg have not objected to the proposed window.
- 7.2.6. Regarding the appellants submission to alter the window, it is considered that the gain from such an amendment is not significant enough to warrant an amendment.

- 7.2.7. I am satisfied that the proposed development is acceptable, and in keeping with the proper planning and sustainable development of the area.

### 7.3. **Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development proposed in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## 8.0 **Recommendation**

- 8.1.1. I recommend permission be GRANTED for the following reasons and considerations and subject to the following conditions:

## 9.0 **Reasons and Considerations**

- 9.1 Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed window, would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which permission is sought 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><b>Reason:</b> In the interest of clarity.</p>
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Gillian Kane  
Senior Planning Inspector

26 March 2022