



An
Bord
Pleanála

Inspector's Report

ABP-312941-22

Development	Omit Condition 3 attached to the permission granted under Reg. Ref. F05A/1172 to permit residential use in lieu of caretaker, storage or similar use at the existing single-storey, detached, 1 bedroom lodge building.
Location	Sutton Castle Hotel, Red Rock, Sutton, Dublin 13
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0682
Applicant(s)	Sutton Castle Developments Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Sutton Castle Developments Ltd.
Observer(s)	A and MT Bailey
Date of Site Inspection	30 th of September 2022.

Inspector

Karen Hamilton

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1.0 Site Location and Description

- 1.1. The site is located within the grounds of Sutton Castle, Sutton, Dublin 13. Sutton Castle has been converted into residential units and modern units have also been development within the rounds of the castle as part of the redevelopment of the site. Sutton Castle is a Protected Structure. Access into the site is private and gated from the Shielmartin Road.
- 1.2. The subject site is located at the entrance of the site and consists of single storey dwelling. This building is the caretakers lodge and is set within an area of open space. There is shared parking along the front of the site, storage space attached to the side of the dwelling and a separate garage type building to the east.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - Omit Condition No 3, attached to Reg Ref F05A/1172 (use of the building as a caretaker's lodge),
 - To permit residential use in lieu of caretaker, storage and similar use at the existing single storey detached 1 bedroom lodge building.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for two reasons listed below:

1. The proposed development would materially contravene condition number 3 attached to an existing planning permission for the development granted under planning register reference number F05A/1172, and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The subject site is zoned under Objective HA-High Amenity within the Fingal Development Plan 2017-2023. The applicant has not demonstrated satisfactorily to the Planning Authority compliance with the Rural Housing Policy as set out within Table RF03 of the Fingal Development Plan 2017-2023. The proposed development would therefore materially contravene the

Objective RF31, Objective 34, and Objective RF39 of the Fingal Development Plan 2017-2023.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and is summarised below:

3.2.2. Compliance with zoning objective

- Residential development in HA zoning is only permitted in restricted circumstances for those with rural-generated housing need.
- There is a range of policies and objectives in the development plan which restricts house to rural generated housing.
- The structure was previously permitted as a caretaker's lodge.
- The same proposal was refused by the Board (ABP 307719-20 Reg Ref F20A/0143) and there has been no change in circumstances of the applicant.
- The applicant is sole reliant on the Inspectors Report which the Board did not accept.
- Having regard for precedence and the material contravention of the development plan it is recommended the proposal is refused.

3.2.3. Procedural Issue

- A submission has raised the legal interest of the subject building.
- Section 5.13 of the Development Management Guidelines notes that the planning system is not designed to resolve disputes over title to land.
- This issue is a civil matter and does not form part of this application.

3.2.4. Design, Visual and Residential Amenity

- The proposal includes internal amendments and connection into the store to provide an additional bedroom, en-suite and utility.
- The alterations are minor and visually acceptable.

- Adequate open space is provided for the dwelling.

3.2.5. Other Technical Reports

Transportation Planning Section: No objection to the proposal

Water Services: No objection to proposal.

Conservation Officer: No objection to proposal.

Parks and Green Infrastructure: No objection to proposal.

3.3. Prescribed Bodies

Iris Water: No objection subject to condition

3.4. Third Party Observations

One third party submission was received from a resident of Sutton Castle on behalf of the Sutton Castle Management Company. The third party has also submitted an observation to the appeal and the issues are similar and summarised below.

4.0 Planning History

ABP 307719-20 (Reg Ref F20A/0143)

Permission refused for the use of the “caretakers lodge” approved under Reg. Ref F05A/1172 as an open residential use. The permission was refused for two reasons listed below:

1. The proposed development would contravene a condition attached to an existing permission for development, (condition no. 3 of F05A/1172) and as such would be contrary to the proper planning and sustainable development of the area.
2. The subject site is zoned under Objective HA-High Amenity within the Fingal County Development Plan 2017-2023. The applicant has not demonstrated satisfactorily compliance with the Rural Housing Policy as set out within Table RF03 of the Fingal County Development Plan 2017-2023. The proposed development would therefore materially contravene the Objective RF31, Objective RF32 and Objective 34 of the current Development Plan.

In deciding not to accept the Inspector's recommendation to grant permission, the Board considered that the intent of the original granting of permission under F05A/1172 clearly linked the current and future use/occupancy of the caretaker's lodge to the parent apartment development complex on the grounds of the former Sutton Castle Hotel, and that it would be inappropriate to alter the terms of this condition, which might undermine this related use

Reg Ref F05A/1172

Permission granted for revisions to a previously approved residential development at Sutton Castle, comprising minor alterations to the approved car parking layout and the erection of a single storey caretaker's lodge with storage shed to side, and 1 staff car parking space.

Condition 3 states:

3. The 'caretakers lodge' shall remain under ownership of the applicant – Sutton Castle Development Ltd. and shall be used as a residence for a caretaker who is employed by the company maintaining the site. It shall not be used otherwise or sub-divided from the company by any way of sale, letting or otherwise. When the structure is no longer required for use as a 'caretakers lodge' by the applicant, its use shall revert to that of storage or other use related to the overall site.

Reason: To ensure that the lodge is used for a caretaker only and in the interests of residential amenities and the proper planning and sustainable development of the area.

Reg Ref F05A/0569

Retention permission granted for revisions to approved residential development, including minor alterations to apartments, revised landscaping, amended parking layout and associated development.

Reg Ref F05A/0171

Retention permission granted for revisions to approved residential development, consisting of minor alterations to apartments.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

Land Use Zoning

The site is located on lands zoned as 'HA', High Amenity, where it is an objective to 'Protect and enhance high amenity areas.'

Rural Housing

Objectives RF26: Ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community

Objective RF31: Permit houses in areas with zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.

5.2. Howth Special Amenity Area Order

The site is in an area designated as "Other Areas". Schedule 3, Part 2, Objective 3.4 seeks the prevention and limitation of development in "Other Areas" and to 'preserve the beauty and distinctive character of the natural, semi-natural and open areas within the special amenity area.'

Schedule 3, Part 2 identifies that in this location, 'the conversion of an existing building which is in good condition to a residential structure', is open for consideration.

5.3. Natural Heritage Designations

The site is located c.40m to the east of Howth Head SAC (site code 000202) and Howth Head p NHA (site code 000202) and c. 200m to the east of North Bull Island SPA (004006) and North Dublin Bay SAC.

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development 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

The grounds of appeal are submitted by and agent on behalf of the applicant in relation to the refusal from the planning authority (PA).

6.1.1. Background

- The applicant/ liquidator questions the legal basis by which there is a restriction on the building for use as a caretaker's lodge.
- The proposal makes the most efficient use of a residential home.
- Only one permission made a submission to the application whilst the remaining residents did not raise a concern.
- The site location and description of works are provided.
- A background to the planning history is provided.
- The Conservation Officer found the scheme acceptable.

6.1.2. Reason for refusal No.1

- The proposal is now to alter Condition No. 3 of an existing permission and can be contravened upon approval.
- The first reason for refusal has no legal basis.
- There was no unauthorised use on the site.
- There is no change of use on the site.
- The residents will not experience any loss.
- The Chief Executive report refers incorrectly to converting the lodge into a 2 bedroom. This is not proposed as part of this application and calls into the question the validity of this application.
- The storage will continue to be used for the use by the residents and the wider Sutton Castle Development.

6.1.3. Reason for refusal No. 2

- Objective RF28 encourages the reuse and adoption of other building types where practical.
- The Inspectors report on the previous application considered the proposal did not represent a material contravention of the development plan as there was already a residential use in the property.
- The site is a suitable location of a house.
- The proposal does not include a new dwelling and Objective RF 32, or Objective RF34 is not applicable.
- Objective RF39 is not applicable as the site is not located within land use zonings RU or GB.

6.1.4. Planning Context

- There is no longer a need for a full-time caretaker on the site and the management of the site is outsourced to a private company.
- The building is currently vacant.
- There will be no change of the residential use of the lodge in practice.
- The use as a house would not undermine the overall use on the site and there are no internal layouts proposed.
- There is ample car parking on the site and the original permission included a staff parking space.
- The proposal complies with the national, regional and local planning policies for relevant for residential development.

6.1.5. Material Contravention

- Should the Board consider the proposal contravenes the development plan then the applicant requests they have regard to Section 37 (2) (a) and (b) whereas there are conflicting objectives in the development plan or objectives not clearly stated.
- There are conflicting objectives between the Howth SAAO and the development plan where Schedule 3, Part 2 of the Howth SAAO states that

the conversion of an existing building in good condition will be considered for a residential structure.

- There is also a contradiction between the HA zoning and the Howth SAAO document as between Objectives RF34 and RF64 whereas RF64 supports the replacement of vernacular buildings with modern structures.
- There is already a planning precedent for a similar development (PL06F.246363, Reg Ref F15A/0605) in the land use zoning of HA and subject to the Howth SAAO.

6.1.6. Environmental and Engineering Considerations

- An Appropriate Assessment screening has been undertaken and it has been concluded that the proposal would not have a significant impact on the qualifying criteria of any European Sites.
- The need for an EIA has been screened out as it is subthreshold although limited in scale and nature and can be excluded at preliminary examination.

6.1.7. Appendix

- Book of Title- Management Agreement
- Copy of Fingal County Council Decision under Reg Ref F21A/0682

6.2. **Applicant Response**

The applicant is the appellant.

6.3. **Planning Authority Response**

A submission has been received from the PA and states the following:

- The proposal is a repeat application as refused under ABP-307719-20
- There has been no amendment to policy since the previous application.
- The selling of the site and liquidation is not a planning consideration.
- The planning system is not designed to resolve legal disputes.

6.4. Observations

An observation has been received from the owners of Apartment No. 3, Sutton Castle, and the issues raised are summarised below:

- When apartment No 3 was purchased, the caretaker resided in the gate lodge.
- It was understood that the gate lodge was to be transferred (common area) to the Sutton Castle Management company on sale of the last apartment.
- Sutton Management Company have instructed their solicitors to undertake legal proceedings, these are ongoing.
- The change of use from caretake/ storage area/ use by residences to a private residential unit.

7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Planning History
- Reason for Refusal No. 1- Condition No. 3
- Reason for Refusal No. 2- Rural Housing Need
- Material Contravention of the Fingal Development Plan 2017-2023
- Ownership of the Building
- Appropriate Assessment

Planning History

7.2. The proposed development relates to a removal of Condition No.3 from the parent permission (Reg Ref F05A/1172). This condition restricted the use of the building for a caretaker's lodge. It is proposed that the caretakers lodge would be used as a standalone residential use, not specific to the use for a caretaker for the Sutton Castle residential estate.

7.3. The Board recently refused an application for a proposal like this ABP 307719-20 (Reg Ref F20A/0143) for two reasons which were similar to the PA reason for refusal of the proposed development. The proposal under ABP 307719-20 included internal

works to remove an attached storage area and convert this area for a second bedroom and en-suite. The proposal now before the Board also includes the removal of Condition no.3 with the restriction for the caretaker's lodge but does not include the same internal configuration. The storage unit at the side of the building is to remain in use for the overall residential estate.

- 7.4. The area planner's report from the planning authority (PA) noted the proposal submitted, which they considered the same as the previous refusal. The PA did not consider the circumstances of the applicant, or the policies and objectives of the development plan, had changed of such a significance which would now warrant a grant of permission for the same proposal.
- 7.5. The grounds of appeal refer to the proposal now submitted, which includes a different configuration of the internal floor layout. They note the PA report refers to the incorrect internal alterations, do not consider the PA have adequately assessed this new proposal, and therefore the Chief Executive report is not valid.
- 7.6. I note the main proposal relates to the removal of the condition, caretakers use, for residential use. The internal alterations are minor changes from the previous proposal, and I do not significantly alter the overall proposed development. I note the Board comments in the previous application related to the occupancy of the unit rather than the internal alterations.
- 7.7. Having regard to the alterations proposed, I consider the substantive development proposal remains the same and therefore the Boards previous reasons for refusal remains relevant in the assessment of this proposal. This aside, I have provided an assessment of those issues raised in the grounds of appeal below.

Reason for Refusal No 1- Condition No. 3

- 7.8. The first reason for refusal refers to Condition No.3 and the material contravention of same, as listed below:

The proposed development would materially contravene condition number 3 attached to an existing planning permission for the development granted under planning register reference number F05A/1172, and would, therefore, be contrary to the proper planning and sustainable development of the area.

- 7.9. The grounds of appeal consider this reason for refusal (which is the same as the previous reason) is unfounded and illegal. The grounds of appeal refer to the

Inspector's Report on ABP 307719-20, which recommended a grant of permission as it was not considered the proposed use as residential would undermine the overall use on the site and did not represent a material contravention of the land use zoning.

- 7.10. I note the Board did not agree with the Inspector's recommendation to grant permission as it considered it would be inappropriate to remove the use of the building as a caretaker's lodge as this would undermine the overall development on the Sutton Castle Hotel. Therefore, I do not consider the previous Inspector's report is relevant in the assessment of this proposal.
- 7.11. The grounds of appeal state that the building is no longer used as a caretaker's lodge as the management of the services has been outsourced to a private company. It is stated that the building is vacant and not currently used as a caretaker's lodge.
- 7.12. The storage unit, which forms part of the building, is to remain as a storage unit for the overall Sutton Castle residential. Part of the building would remain for use ancillary to the management of the overall residential use. I note the caretaker's lodge is positioned at the entrance to the site, located accessible for the residents. I consider this caretakers lodge would operate as an ancillary support/amenity for the entire residential development. In this regard, I am of the opinion that the proposed development and the subsequent removal of Condition No 3 would contravene the parent permission (F05A/1172).
- 7.13. Having regard to the location, design, and original intended use of the lodge, I consider the previous reason for refusal remains the same, the proposal does not comply with the original intended use and should be refused or reasons of contravention of the parent permission.

Reason for refusal No. 2- Rural Housing Need.

- 7.14. Reason for refusal No. 2 refers to the applicant's qualification to live at this location as listed below:

The subject site is zoned under Objective HA-High Amenity within the Fingal Development Plan 2017-2023. The applicant has not demonstrated satisfactorily to the Planning Authority compliance with the Rural Housing Policy as set out within Table RF03 of the Fingal Development Plan 2017-2023. The proposed development would therefore materially contravene the

Objective RF31, Objective 34, and Objective RF39 of the Fingal Development Plan 2017-2023.

7.15. The grounds of appeal note the use of the building as residential, within a residential estate and do not consider the rural housing policies are applicable at this location.

The policies referred in the second reason for refusal are listed below:

- Objective RF31: Permit a maximum number of one incremental house for those who meet the relevant criteria set out in this chapter within areas with the zoning objective HA or GB plus one house for a person with exceptional health circumstances.
- Objective RF34: Permit up to two additional dwellings per farm family in areas with the zoning objectives, RU and one additional dwelling per farm family within areas with the zoning objective, GB or HA, where the applicant demonstrates their direct participation in running the family farm and is considered to have a demonstrated need related to the working of the farm to reside on the family farm.
- Objective RF39: Permit new rural dwelling in areas which have zoning objectives RU, or GB, on suitable sites where the applicant meets the criteria set out in Table RF03 (qualifying criteria).

7.16. The site is located on lands zoned as HA, High Amenity, where it is an objective to protect and enhance high amenity areas. Residential development is strictly controlled in these areas due to their sensitive nature and high visual amenity character. I note the only instances where housing is permitted relates to exceptional circumstances such as rural housing, where there is a determined need to live in these highly sensitive areas, which I consider reasonable. I note Objective RF39 relates to lands zoned for RU and GB rather than the land use zoning on the site HA (High Amenity).

7.17. The Boards previous refusal (ABP 307719-20) referred to Objectives RF31, RF32 and RF34. Objective RF32 refers to housing need qualification based on their involvement in farming or exceptional circumstances.

7.18. Whilst the grounds of appeal consider the building is currently in residential use, I note the intended use restricts the occupation as ancillary to the overall redevelopment of Sutton Castle rather than an independent residential unit. It is clear

from those policies of the development plan relating to development in HA, High Amenity zoned lands, that residential use is strictly controlled. I do not consider the applicant has provided any new planning considerations which change the previous determination by the Board and as such I consider the restrictions for qualifying need remain relevant to the case before the Board.

- 7.19. Therefore, having regard to the design of the building, the original grant of permission (F05A/1172) and the location of the site within an area designated as a High Amenity area, it is considered the applicant does not qualify to live at this location and the proposed development should be refused for noncompliance with Objectives RF31, RF32 and RF34 of the Fingal Development Plan 2017-2023.

Material Contravention of the Fingal County Development Plan 2017-2023.

- 7.20. The two reasons for refusal both refer to a material contravention where the first refers to a condition on the parent permission whilst the second refers to the objectives of the development plan, both assessed above.
- 7.21. The applicant considers the Board may materially contravene the development plan under Section 37 (2) (a) and (b) as they consider there are conflicting objectives between the Howth SSAO and the development plan and conflicting objectives in the development plan.
- 7.22. In this first instance the applicant notes Schedule 3, Part 2 of the Howth SSAO states that residential development, which comprises “the conversion of an existing building which is in good condition to a residential structure” is open for consideration. As discussed above, the use of the building is discussed in detail and the need to qualify in HA amenity areas, I do not consider there is any conflict with Schedule 3, Part 2 of the Howth SSAO.
- 7.23. In the second instance the applicant considers Objectives RF34 and RF64 conflict with each other. Objective RF34 allows only one dwelling for a farm family in areas with the zoning HA and Objective RF64 supports the revitalisation and re-use of vernacular buildings. I do not consider there are any conflicting objectives between these policies as Objective RF34 relates to the rural housing policy for the county while Objective RF64 relates to the reuse of vernacular building in the countryside. This aside, I note the building is a relatively new structure developed as part of the redevelopment of Sutton Castle and, in my opinion, is not a vernacular building. Therefore, Objective RF64 is not applicable to the proposed development.

7.24. To conclude, I do not consider there are any policies and objectives, which relate to this proposal, which conflict with each other and I do not consider the proposed development would warrant a material contravention of the development plan.

Ownership of the Building

7.25. An observation has been submitted by a residential in the Sutton Castle, on behalf of the resident's association. It is stated that an agreement remains in place that all common areas are transferred to the Sutton Castle Management Company as agreed in 2007. The grounds of appeal have submitted a Book of Title (Management Agreement) as an appendix to state that they may alter the unit, subject to planning permission.

7.26. The report of the area planner noted the third-party submissions, Section 5.13 of the Development Management Guidelines (resolving disputes over land) considered these were not relevant in the assessment of the application as this was a civil matter.

7.27. I consider this issue is a legal matter outside the remit of this planning appeal and I am satisfied, based on this information, that the applicant has demonstrated sufficient legal interest to make this application. As in all such cases, the caveat provided for in Section 34(13) of the Planning and Development Act 2000, as amended, applies which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development. I also note the provisions of Section 5.13 of the Guidelines for Planning Authorities, Development Management, 2007 in this regard.

Appropriate Assessment

7.28. The proposed development is not connected to the management of any European Site and is located on lands currently associated with and serviced for residential development. There are currently no pathways between the site and any European Sites and having regard to the scale of the proposal I do not consider there is any potential for any significant effects on any European Site.

7.29. Having regard to nature, scale, and location of the proposed development it is concluded that no Appropriate Assessment issues arise as 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. I recommend the proposed development is REFUSED, for the reasons and considerations listed below.

9.0 Reasons and Considerations

1. The proposed development would contravene a condition attached to an existing permission for development, (condition no. 3 of F05A/1172) and as such would be contrary to the proper planning and sustainable development of the area.
2. The subject site is zoned under Objective HA-High Amenity within the Fingal County Development Plan 2017-2023. The applicant has not demonstrated satisfactorily compliance with the Rural Housing Policy as set out within Table RF03 of the Fingal County Development Plan 2017-2023. The proposed development would therefore materially contravene the Objective RF31, Objective RF32 and Objective 34 of the current Development Plan.

Karen Hamilton
Senior Planning Inspector

13th of October 2022