



An
Bord
Pleanála

Inspector's Report ABP313046-22

Development

The development will consist of the demolition of existing shed, proposed new two storey dwelling house and all associated works at the site adjacent to no. 20 Abbey Street within an Architectural Conservation Area.

Location

20 Abbey Street, Howth, Dublin D13 AO27.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F21A/0710.

Applicant(s)

Blanaid Ring.

Type of Application

Permission.

Planning Authority Decision

Grant subject to condition.

Type of Appeal

Third Party.

Appellant(s)

Lara Marlowe.

Observer(s)

N/A.

Date of Site Inspection

21.07.2022.

Inspector

Mary Mac Mahon.

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1.0 Site Location and Description

- 1.1. The site is located on Abbey Street, which is the road leading uphill from the harbour to Main Street in Howth. The street is curved in alignment. The eastern side of the street is mainly residential in character, consisting of a number of terraces. The terraces are not uniform and there is a mix of modern and historic buildings on the street. The land rises steeply behind the buildings and the private open space of some dwellings is located above ground floor.
- 1.2. The site is located on the eastern side of the street. It is vacant, save for a small shed. No. 20 Abbey Street is on the northern side of the landholding, outside of the site. It is situated circa 0.24 metres lower than the site and is the last house in a terrace. The site has a western aspect. To the south of the site is the dwelling where the Third party lives. That dwelling is on slightly higher ground and has two first floor windows that overlook the site, towards the graveyard and the sea. Private open space is visible on the higher ground behind the house. It is unclear if this space is in the ownership of No. 21.
- 1.3. The site area is stated as 0.024 ha.

2.0 Proposed Development

- 2.1. The proposed development is the demolition of a 16 square metre, single storey shed and the construction of a three bedroom, two storey detached dwelling house of contemporary idiom. Like its neighbour to the north, No. 20 Abbey Street, it utilises a double pitch roof, with two no. chimney stacks. The ground floor of the front elevation steps forward and with a cantilever with a landscaped plinth and fins to provide privacy to the large ground floor front window. The first floor three windows mimic No. 20.
- 2.2. The rear of the proposed development steps away from No. 21 and then provides a flat roofed area, leading to a first floor terrace. Rails (1.8 metres in height) are used on the terrace to provide safety and allow light to penetrate to the rear of No. 20. A lower set of rails are provide on the southern side. An external set of steps lead up the higher part of the garden. The gross floor space is stated 146 square metres.
- 2.3. Drainage is to utilise the side passage of No. 20, where the services already exist.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 12 no. conditions.

Condition 2 requires the proposal to be amended by reducing the depth of the proposed development at ground floor by 3 meters and at first floor by 700mm, so as the rear elevation is flush and the first floor terrace is omitted. The reason is in the interest of residential amenity.

Condition 5 requires that the development shall not impact on the north-western boundary wall unless otherwise agrees with the adjoining neighbouring landowners.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report notes the town centre zoning of the site and its location in the Howth Village Architectural Conservation Area. Development plan policy is supportive of the development of infill sites, where the character of the area and environment are protected. Contemporary and innovative design is promoted where it respects the character and architectural heritage of the area. Pre-planning consultation had been undertaken. The objections to the proposed development are noted. The development of the land for residential use is consistent with its zoning. The form and fenestration proportions of No. 20 have been incorporated into a modern design, which introduce timber louvers and planting at ground level. It is considered visually acceptable. The proposed development meets minimum floor areas, rooms sizes and widths. No significant impact on the light of No. 21 is expected, due to the path of the sun and orientation of that dwelling. Any impacts will be experienced by No. 20.

The main concerns arise from the interaction with the stability of the mound to the rear of the site and the degree of overbearance on No. 21. No engineering detail has been submitted, such as retaining walls. The properties in the vicinity do not encroach on the mound area. The depth of the proposed dwelling, particularly at first floor level, would overbear the rear elevation of No. 21. The terrace is considered unacceptable. These issues can be dealt with by way of condition, to reduce the depth of the first

floor and omit the terrace. The loss of car parking for the existing dwelling and the proposed dwelling can be dealt with by way of reliance on on-street car parking.

3.2.2. Other Technical Reports

Water Services Department – grant subject to condition.

Transport Planning Section – concerned that the proposed development would give rise to a deficit of four car parking spaces.

Irish water – no objections.

Conservation Officer – The site is within the Howth Historic Core Architectural Conservation Area. The Statement of Character recognises that new buildings do not need to directly imitate earlier styles, but should be designed with respect for their context. Good quality modern design that is complimentary to the character of the Architectural Conservation Area may be acceptable. Pre-planning consultation occurred. The Conservation Officer is of the opinion that the proposed development is respectful of the context of Architectural Conservation Area. The proposed front elevation is sensitive in its design, scale and proportions and reads as a contemporary insertion. The proposed development respects the existing building lines and follows the historic pattern of two storey two or three bay wide houses set behind small gardens.

4.0 Planning History

No recent planning applications on the site.

In the vicinity of the site:

PL06F.231516 F08B/0493 No. 21 Abbey Street - permission for new external stairs from first floor level to existing flat roof and erection of safety railings around the proposed terrace refused. The proposed terrace was considered to be visually incongruous and damaging to the character of the Architectural Conservation Area and would seriously injure the amenities of adjoining property by reason of overlooking and would set an unacceptable precedent.

5.0 Policy and Context

5.1. Project Ireland 2040: National Planning Framework (2018)

The first National Strategic Outcome expected of the National Planning Framework is compact growth. Effective densities and consolidation of urban areas is required to minimise urban sprawl and is a top priority. 40% of future housing delivery is to be within the existing footprint of built up areas (National Policy Objective 3a).

National Policy Objective 35 -

Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.2. Architectural Heritage Protection Guidelines For Planning Authorities (2011)

3.10.1 When it is proposed to erect a new building in an Architectural Conservation Area, the design of the structure will be of paramount importance. Generally it is preferable to minimise the visual impact of the proposed structure on its setting. The greater the degree of uniformity in the setting, the greater the presumption in favour of a harmonious design. However, replacement in replica should only be contemplated if necessary, for example, to restore the character of a unified terrace and should be appropriately detailed. Where there is an existing mixture of styles, a high standard of contemporary design that respects the character of the area should be encouraged. The scale of new structures should be appropriate to the general scale of the area and not its biggest buildings. The palette of materials and typical details for façades and other surfaces should generally reinforce the area's character. In certain circumstances, it may be appropriate to require a written assessment of the impact of the proposed structure on the character of the area.

5.3. Development Plan

The *Fingal Development Plan 2017-2023* applies. The TC - Town Centre and District Centre – “Protect and enhances the special physical and social character of town and district centres and provide and/or improve urban facilities.”

Objective PM44: Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.

Objective PM45: Promote the use of contemporary and innovative design solutions subject to the design respecting the character and architectural heritage of the area.

Building Lines: The Council will generally seek to ensure that development is not carried out in front of established building lines, or in a position that would be in conflict with a building line. In deciding where a building line should be located, the form of development to which it is related will be considered.

Objective DMS29 Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units.

Objective DMS39 New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

Objective DMS87 Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:

- 3 bedroom houses or less to have a minimum of 60 sq m of private open space located behind the front building line of the house.*
- Houses with 4 or more bedrooms to have a minimum of 75 sq m of private open space located behind the front building line of the house. Narrow strips of open space to the side of houses shall not be included in the private open space calculations.*

The site is located in Howth Historic Core Architectural Conservation Area.

Table 12.11 - Direction for Proposed Development within Architectural Conservation Areas

Alterations and New Build

Development proposals for new build need to follow a sensitive design approach that respects the established character of the architectural conservation area in terms of the scale, massing, bulk, plot sizes, proportions and materials of the adjoining buildings to the development site. Direction can be taken from traditional forms and

dimensions that are then expressed in a contemporary manner or with contemporary elements rather than an exact copy of a historic building style. Where a totally contemporary design approach is taken the detailing, materials and overall design must be carefully handled and of a high quality to ensure the proposal does not compromise the integrity and character of the area

Objective DMS157: Ensure that any new development or alteration of a building within or adjoining an architectural conservation area positively enhances the character of the area and is appropriate in terms of the proposed design, including: scale, mass, height, proportions, density, layout, materials, plot ratio, and building lines.

Objective DMS158 All planning applications for works in an Architectural Conservation Area shall have regard to the information outlined in Table 12.11.

Objective HOWTH: 1 Ensure that development respects the special historic and architectural character of the area.

5.4. Natural Heritage Designations

I am satisfied that having regard to minor scale and the foreseeable emissions from the proposed development 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.

5.5. EIA Screening

I am satisfied that having regard to residential nature and minor scale of the proposed development, its location on a brownfield site in a built-up urban area where public water supply and public sewerage are available and in light of the foreseeable emissions therefrom it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

6.0 The Appeal

6.1. This Third Party appeal was prepared by Paul Keogh Architects and is accompanied by drawings. The drawings show how the proposed development could be carried out if the proposed development was to form part of the terrace with No. 20 and the fins to the front removed, as well as other modifications. This would increase separation distances and ground floor open space. The grounds of the appeal are summarised below.

6.2. Grounds of Appeal

- Notwithstanding the Third Party's general support for an infill house at this location, the proposed development as currently designed will detract from the Architectural Conservation Area and impact on the residential amenity of No. 21 Abbey Street.
- The description of development refers to the dwelling being adjacent to No. 20 – the dwelling is actually detached and this is not referred to in the site notice. Furthermore, the dwelling is only 925mm from the first floor window of No. 21, blocking light and aspect to this room.
- It contravenes specific objectives in the Fingal Development Plan in relation to separation distances and building lines. The proposed development is circa 925 mm distant from No.21, when the development plan requires a 2.3 metre separation distance under Objective DMS29 – and similarly applies to the distance with No. 20.
- The ground floor projecting beyond the building line would contravene development plan policy and is inappropriate in an Architectural Conservation Area. It fails to enhance the character of the Architectural Conservation Area, as required under Objective DMS157, and to be appropriate in terms of building line. Contrary to that objective, it does not enhance the character of the ARCHITECTURAL CONSERVATION AREA.
- Objective DMS39 requires that new infill development respect the height and massing of existing development.

- The application fails to meet specific requirements of the Planning and Development Regulations, 2001, as amended. Case law has found that an application cannot be considered if there are deficiencies in the plans and particulars lodged.
- Modifications are proposed to omit the side passage between No. 20 and the proposed development, so as the proposed development becomes part of the terrace and the separation distance between the gable of the proposed house and rear window is increased. This would increase the open space from 10.5 square metres to 14 square metres – well below the requirement for 60 square metres in the development plan under Objective DMS87.
- These modifications were suggested to the applicant's agent, but were rejected on grounds of cost.
- The proposed development violates the right to light of the first floor study, which has been enjoyed by the house since it was constructed.
- The proposed development should be terraced, due to its location in an Architectural Conservation Area.
- The proposed first floor deck would diminish light to the rear of No. 21 and its garden. A similar roof terrace was refused by An Bord Pleanála to the Third Party under PL06F.231516.
- Objective DMS40 requires that infill development should have regard to their relationship with impact on the amenities of neighbouring residents. Any reduction in light to the north facing window will seriously affect the daylight received by the room. While the condition to limit the depth of the proposed development to prevent overbearance on No. 21, is welcomed, it does not deal with the real concern of the proximity to the windows.
- The Third Party works from home. Artificial lighting will be required at all times if the proposed development is permitted.

6.3. Applicant Response

The First Party's agent, Darragh Lynch Architects, response is summarised below. The response includes drawings.

- The existing side passage of No. 20 provides access to the rear of the dwellings for bins, storage, maintenance and underground drainage services. It also takes the roof surface water for No. 19. A terrace is not acceptable and the works are outside the red line and so cannot be dealt with as part of this application.
- A similar sized access route is provided for the proposed dwelling house, some 925mm at its narrowest point.
- The 2.3 separation distance in the development plan is really a 1.1metre side passage with a 0.1 metre boundary wall. The side access provided is justly slightly below this. Given the site is an infill development with existing site restrictions, this is considered acceptable. Fingal County Council did not consider it a material contravention of the development plan.
- The design of the proposed development is contemporary insertion that respects the existing historic streetscape. It is similar in scale, fenestration and external finishes. This has been acknowledged by both the planner and Conservation Officers. The front face is in line with No. 20 and the eaves height sits between No.s 20 and 21.
- Of the three windows in the bedroom / study, in No. 21, only one is affected. This is unavoidable if the site is to be developed. The degree of impact is limited, as acknowledged by Fingal County Council.
- The elevations of the buildings on Abbey Street are mixed and not a uniform street façade. There are precedent projecting bay windows on the street. The front projection adds to the ground floor area and provide a contemporary feature of interest while reducing the view of the gable wall.
- Private open space exceeded 100 square metres at application stage and only 60 square metres is required.
- The application is not invalid as there are adequate dimensions for all parties to assess the application. The case referred to related to piling structures up to 15 metres high. The description of development is accurate.

6.4. Planning Authority Response

- No further comments in relation to the appeal and requests that the decision is upheld. Condition 12, regarding development contributions, should be attached to the decision to grant.

6.5. Further Responses

The Third Party's agent, Paul Keogh Architects, responded and includes a letter from the Third Party. The response is summarised as follows:

- The Third Party has a right to light.
- Loss of privacy to the bedroom and bathroom.
- Material contravention of development plan policies.
- Ground floor fenestration is unsightly and unsuitable.
- The proposal to terrace the new house is appropriate and would minimise impact on No. 21.
- The absence of a side passage is the norm in the area. Refusing to make the changes because of impact on the value of the applicant's property, while expecting the Third Party to accept such a devaluation deserves little sympathy.
- The separation distance to No. 21 is required as structural works have had to be undertaken in the past.
- Due to the topography of the site, little light is received and the proposed development will exacerbate the situation. The rear garden is minimal and the proposed development will overbear on it.
- There will be overlooking from the first floor terrace and stairs and similar was refused for the Third Party's property previously.
- An earlier iteration of the plans are included which show a dwelling that more closely resembles No. 20, which is considered more appropriate.

7.0 Assessment

- 7.1. The proposed development of a dwelling house on a vacant site in the town centre of Howth is in accordance with the zoning and acceptable in principle. The site is an infill site, which is constrained by topography. That topography has influenced the established pattern of development in area. Furthermore, the site is located in an Architectural Conservation Area. These impose constraints on the site, which are not applicable to green field suburban housing – for which many of the development plan policies are targeted to. Therefore, I consider that the proposed development must respond in a site specific way to its location and the general development management policies in the plan can be relaxed, without giving rise to material contravention issues, as DMS39 requires that infill development shall retain the physical character of the area.
- 7.2. The main issues in this appeal, in my opinion, are the design of the proposed development within the context of Howth Architectural Conservation Area and its impact on adjoining property. The Third Party has also raised validation issues.
- 7.3. The planning authority has also imposed conditions to protect residential amenity – omitting the first floor terrace and reducing the depth of the dwelling. This condition are considered appropriate and necessary. The First Party did not appeal this condition.
- 7.4. The proposed development is a detached dwelling. I note that very few buildings on Abbey Street, save for the Abbey Tavern, are standalone buildings. The buildings step up the hill in terraces. There has been infill, modern developments on Abbey Street, but these also have adopted the terrace approach. The proposed development is a relatively small domestic building for private occupation. I do not see a strong argument from a design perspective for the building to disrupt this general pattern of terraced buildings. I am concerned that the detached nature of the building gives it an undue prominence in the Architectural Conservation Area.
- 7.5. The detached nature does not appear to be necessary from a servicing perspective. In relation to the need to relocate services etc. that run down the side of No. 20, these need not have to be relocated if a passageway was retained and not constructed over, while the terrace is continued. The issue, in my opinion, is to retain the continuity of

the terrace from the street elevation, as part of the character of the Architectural Conservation Area.

- 7.6. The First Party considers that this matter cannot be conditioned, as the area is not within the red line. Article 22 (2) (b) (ii) of the Planning and Development Regulations, as amended, states:

“any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land which is the subject of the application in blue.”

There are a number of reasons for the submission of the blue line in planning applications. One is to enable planning authorities or An Bord Pleanála to impose conditions that are necessary for the proposed development on lands within the ownership and/or control of the applicant. Therefore, the power to impose a condition to revise the proposed development to ensure that the façade of the dwelling house forms a terrace, while allowing for a side passageway is available to An Bord Pleanála. However, in the circumstances where it is indicated that such a condition is unacceptable, I would recommend to the Bord that a refusal of planning permission is more appropriate.

- 7.7. The ground floor of the proposed development projects forward of No. 20. It forms a midway position between No. 20 and No. 21, (the building line of which pivots away from the street). There is the opportunity for this site to come forward of No. 20. This stepping has occurred at other locations on the street. I would consider that the staggering of the building line is acceptable in principle at this location.
- 7.8. The existing pattern of development is generally that the ground and first floors of buildings on the street are flush. Internally, if the ground floor building line is brought back to the first floor line, the sitting room would be 2.8 metres in depth. This depth would be very tight in terms of circulation, after furniture has been added to the room. Its usability is questionable.
- 7.9. The use of the large single window with timber fins and planting is an interesting approach to providing privacy for dwellings located in close proximity to the public footpath and main road. The approach has much to commend it. Such an approach is more associated with commercial buildings, rather than private domestic buildings. The residential nature of the proposed development is lost through combination of

detached building, the projection forwards at ground level and use of fins. The location of the site within an Architectural Conservation Area, in my opinion, requires an approach which is less forceful and more discrete.

- 7.10. The *Architectural Heritage Protection Guidelines* recommend in Architectural Conservation Areas, that replacement in replica should only be contemplated, where there is a unified terrace. That does not apply in this instance. Where there is a mixture of styles, a high standard of contemporary design is recommended, that respects the character of the area. The Fingal Development Plan recommends a sensitive design approach, that respects the established character, expressed in a contemporary manner or with contemporary elements. The proposed development has brought in some of the aspects of the residential dwellings in the Architectural Conservation Area, in terms of the roof and chimneys, upper floor fenestration and palette of materials. However, I am unconvinced of the detached building, ground floor projection, fins and landscaping are suitable this location.
- 7.11. Having considered the design of the proposed development in the context of the Architectural Conservation Area, I will now assess the proposed development in terms of its impacts on the residential amenity of the area.
- 7.12. The proposed development is located north of No. 21. The proposed development will therefore not give rise to overshadowing of that dwelling house. It will give rise to overshadowing of No. 20, which is in the ownership of the applicant. I consider this acceptable as the owner has consented to the design of the proposed development.
- 7.13. The two storey proposed development will extend behind No. 21 for circa 4 metres, at a distance of circa 0.95 metres. The yard space of No. 21 is positioned at this section. After this point, the proposed development steps away from the boundary with No. 21. The proposed development will create new circumstances for No. 21, which has been open to the north up to this point in time. I would consider that the proposed development will give rise to overbearance of the yard space of No. 21. More could be done in terms of the layout of the proposed development to minimise the impact on the immediate yard space of No. 21.
- 7.14. The Third Party refers to the 2.3 metre separation distances between dwelling houses and that the absence of the requisite distance is a material contravention of the development plan. I note that DMS39 requires infill development to retain the physical

character of the area. The physical character of the area, even where new build has been constructed, does not provide for development plan separation distances. I consider that the policy applies to new build, estate housing and not infill development, therefore no material contravention arises.

- 7.15. The Third Party is concerned that the proposed development would give rise to loss of light to the first floor study in No. 21. There is no right to light in Irish planning law. This is a civil right. In planning terms, the impact of the proposed development on the light the room received has to be considered. As a rule of thumb, the reduction in light to a room (not a window) of the order of 20% is generally considered within the bounds of acceptability. The study is lit by three windows. Two of the windows remain completely unobstructed. The west facing window on the front elevation is the largest and most significant window in terms of providing light to the room. The other two, north facing windows, are secondary. The proposed development has not obstructed the first of these two windows. The second window will be obstructed. I do not consider that the appeal site can be developed without some loss of light to that window. However, I do not consider that this is a reason to refuse permission, because to do so would be to seriously restrict development on site. This would be contrary to sustainable development, national and county development plan policy. The degree of loss of light to this window can be mitigated through condition, to require light coloured finishes to the render to reflect daylight to the affected window.
- 7.16. The Third Party is concerned about overlooking. The council has conditioned the removal of the first floor terrace and I would concur with this. The Third Party is also concerned about overlooking from the steps up to the garden area. I would consider that these steps are necessary to facilitate access to the lands and would not give rise to undue overlooking. I note that properties in the vicinity have utilised the upper gardens for private amenity space and it is part of the pattern of development in the area. I would accept that the rear of the site can be counted towards private open space.
- 7.17. The validation issues referred to by the Third Party relate to the description of development and dimensions on drawings. An Bord Pleanála is not the validation agency for the planning application – only for the planning appeal. I note the court case referred to by the Third Party's agent, but that related to an application made directly to An Bord Pleanála, who was the validating agency. This does not apply to

the current case. Therefore, I do not consider it is in the remit of An Bord Pleanála to retrospectively invalidate a planning application made to a planning authority. I note, however, that the main party impacted by the proposed development is well informed of the nature of the development and so has not been disadvantaged by the description or the lack of a dimension from the proposed development to the site boundary. I would agree with the planning authority that more information on retaining structures would be of benefit to all parties.

- 7.18. The proposed development is for a dwelling house in an infill situation in a sensitive location with a number of unusual constraints. It is suitable for development but in my opinion, the design needs to be more cognitive of its setting and its impact on neighbouring dwellings.

8.0 Recommendation

- 8.1. I recommend refusal for the proposed development.

9.0 Reasons and Considerations

1. The proposed development is located in an Architectural Conservation Area where terraced development predominates and building form is generally simple in style. Having regard to the detached design of the proposed development and the complexity of the front elevation, it is considered that the proposed development would be out of character for the area and would be unduly prominent. The proposed development, would therefore, be visually incongruous and detract from the visual amenities of the area and the Architectural Conservation Area. The proposed development is therefore contrary to the proper planning and sustainable development of the area.
2. Having regard to the layout of the proposed development, it is considered that the proximity of the proposed two storey development, adjacent to the immediate rear area of open space associated with No. 21, would be overbearing and would seriously injure the residential amenities of property in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Mary Mac Mahon

Planning

Inspector

15 August, 2022