



An
Bord
Pleanála

Inspector's Report

ABP-313325-22

Development

Permission for proposed demolition of existing detached 2-storey dwelling and re-build with new replacement 2-storey, 5-bed dwelling to include 2 No. dormer windows to the front and rear elevations, increased eaves and ridge heights and with associated site works.

Location

Hainault Lodge, Hainault Road,
Foxrock, Dublin 18, D18 XV00

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

D21A/0646

Applicant(s)

Declan and Ethel O'Connell

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Declan and Ethel O'Connell

Observer(s)

None on file

Date of Site Inspection

13/10/2022 and 08/11/2022

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located on the northern side of Hainault Road, Foxrock, Co. Dublin. The junction of Hainault Road and Westminster Road is located to the west of the subject site. Hainault Road is generally characterised by large residential detached properties, of varying styles, on relatively large plots. A number of newer residential developments have been constructed in recent times with some infill development evident.
- 1.1.2. The subject site, which has a relatively narrow road frontage relative to other properties in the vicinity, currently contains a two-storey, detached dwelling. Two detached 2-storey dwellings on substantial plots are located on either side of the appeal site, Hainault House to the east and 'Voewood' to the west. The appeal site is located within a Conservation Area but is outside of the Foxrock ACA.

2.0 Proposed Development

- 2.1. On the 15th July 2021 planning permission was sought for the demolition of an existing dwelling (125sq.m.) and the construction of new two storey dwelling of 349sq.m.) on a site of 0.0756ha.

3.0 Planning Authority Decision

3.1. First Planning Authority Reports

- 3.1.1. **Surface Water Drainage Report:** Further information required: a proposal showing all surface water run-off being infiltrated or reused locally and all hardstanding areas a permeable surfaces.
- 3.1.2. **Planning Report:** No structural defects are readily apparent and it is not apparent that the house is beyond repair, in accordance with section 8.2.3.4 of the development plan. Applicant should be requested to provide a strong justification for the demolition of the house. Previous decisions permitted demolition are not relevant as they were made under previous development plans. Size and scale of proposed development would have an overbearing impact on adjoining Hainault House. Planning Authority are not in favour of the proposed first floor due to its depth. Applicant should be requested to provide contiguous elevations, to include the recently granted development at Voewood.

3.2. Request for Further Information

3.2.1. On the 6th September 2021 the applicant was requested to provide the following further information:

- 1 The applicant is requested to provide a justification/rationale for the demolition of the existing house, in accordance with Section 8.2.3.4 (xiv) of the County Development Plan 2016-2022. The justification provided shall address to the satisfaction of the Planning authority, inter alia, why the refurbishment and extension of the existing dwelling is not an option.
2. The applicant is invited to examine the scale of the first floor proposed. The Planning Authority are not in favour of the first floor as proposed due to its depth which creates an overbearing appearance and will negatively impact the residential and visual amenities of Voewood and Hainault House. In this regard, the applicant is requested to submit existing and proposed contiguous floorplans at ground and first floor level. The applicant should include the recently granted planning permission under reference D20A/0149 at Voewood. Furthermore, the provision of windows serving the study and bedrooms on the eastern and western elevations are not acceptable and will negatively impact the residential of Voewood and Hainault House. The applicant is invited to submit revised drawings addressing these concerns.
3. The applicant is requested to submit a proposal showing all surface water run-off generated by the extension, or equivalent area, being infiltrated or reused locally, in accordance with Section 5.1.1.8 Policy EI8: Sustainable Drainage Systems of the County Development Plan 2016-2022. This can be a soakaway, rain garden, rainwater harvesting system, etc. The proposed system shall not have an overflow connecting to the public surface water network.
4. The applicant is requested to submit a proposal that shows all proposed hardstanding areas as permeable surfaces, such as gravel or a specifically designed permeable paving stone/asphalt system, in accordance with Section 8.2.4.9 of the DLRCC County Development Plan 2016-2022.

3.3. Response to Further Information

3.3.1. On the 1st March 2022 the applicant responded to the Planning Authority request for FI as follows:

- 1 Engineering report indicating that the existing structure cannot be safely maintained. BER report showing a rating of D1.
- 2 Contiguous elevations demonstrating that the site has capacity for the proposed development
- 3 Details of half surface water run-off discharging into a rainwater butt & soakaway and half into the existing surface water system.
- 4 Details of landscaping and permeable areas

3.4. Reports on File following submission of FI

3.4.1. **Drainage Planning:** Three conditions recommended.

3.4.2. **Planning Report:** The planner states that it is clear that the existing dwelling is not beyond repair and that it is the extent and design of the development proposed that is impacting on the integrity of the existing structure. A reduced level of intervention could result in the satisfactory reuse of the existing structure. Planning Authority retains concern regarding the overbearing impact on the adjoining Hainault House from the depth of the proposed development. The proposed angled louvered cladding on the first-floor side windows as a mitigation measure will impact the light available to these rooms and are a clear indication of over development of the site. The report concludes that as the house is not beyond repair, the proposed development is not in compliance with section 8.2.3.4(xiv) of the County Development Plan. Refusal recommended on two grounds.

3.5. Decision

3.5.1. On the 16th March 2022, the Planning Authority issued a notification of their intention to REFUSE planning permission for the following reasons:

- 1 The Planning Authority is not satisfied that on the basis of the information provided by the Applicant the existing dwelling is beyond repair due to structural defects. Therefore, the requirements of section 8.2.3.4 (xiv) of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 in relation to demolition and replacement dwellings. The proposed development would,

therefore, not be in accordance with the proper planning and sustainable development of the area.

- 2 The proposed depth of the dwelling and its positioning adjacent to the boundary with Hainault House, would negatively impact the residential amenities of Hainault House by way of creating an overbearing impact. Furthermore, the provision of the angled louvered cladding on the first-floor side windows which are proposed to mitigate overlooking, will negatively impact the quality of visual amenity and sunlight and daylight which will be afforded to the 2 no. impacted bedrooms and office at first-floor level and are a clear indication of the overdevelopment of the site. The angled louvered windows are not in keeping with the proposed dwelling and as a result are considered to negatively impact the visual amenity of the streetscape. The proposed development would therefore fail to accord with the site's zoning objective, which seeks 'to protect and/or improve residential amenity'. The development is therefore, not be in accordance with the proper planning and sustainable development of the area.

3.6. **Prescribed Bodies**

- 3.6.1. None on file

3.7. **Third Party Observations**

- 3.7.1. Submissions to the Planning Authority refer to the excessive scale, mass, increase in height and impact on the residential amenity and amenity of adjoining properties.

4.0 **Planning History**

- 4.1.1. **PL06D.233843** (Planning Authority reg. ref. D09A/0153): Planning permission was granted for the demolition of the existing dwelling Hainault Lodge and the construction of a replacement dwelling.
- 4.1.2. **PL06D.240847** (Planning Authority reg. ref. D09A/0182): Planning permission granted for alterations to previously approved application D09A/0182 (PL06D.233843) consisting of new basement, increase to ground and first floors, attic, ridge and eaves height and alterations to elevations at Hainault Lodge, Hainault Road, Foxrock, Dublin 18.

- 4.1.3. **Planning Authority reg. ref. D08B/0309:** Planning permission was refused for a development comprising (1) 2-storey front extension (2) 2-storey and single storey rear extensions (3) Increased eaves and ridge heights to facilitate attic conversion (4) New dormer windows to the front and rear elevations and (5) Internal alterations and associated site works.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown County Development Plan

- 5.1.1. The 2022 Dun Laoghaire Rathdown development plan came into effect on the 21st April 2022, after the assessment of the subject application by the Planning Authority.
- 5.1.2. The zoning of the subject site did not change in the 2022 plan and it retains an Objective A Residential zoning. Under the 2022 plan this has the stated objective 'to provide residential development and improve residential amenity while protecting the existing residential amenities'. Residential use is permitted in principle in such zones
- 5.1.3. **Policy Objective PHP19: Existing Housing Stock – Adaptation:** It is a Policy Objective to: Conserve and improve existing housing stock through supporting improvements and adaption of homes consistent with NPO 34 of the NPF. Density existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods
- 5.1.4. **Policy Objective CA6** refers to the Retrofit and Reuse of Buildings. It states "It is a Policy Objective to require the retrofitting and reuse of existing buildings rather than their demolition and reconstruction where possible recognising the embodied energy in existing buildings and thereby reducing the overall embodied energy in construction as set out in the Urban Design Manual (Department of Environment Heritage and Local Government, 2009). (Consistent with RPO 7.40 and 7.41 of the RSES)."
- 5.1.5. **Section 12.3.9** of the Plan refers to Demolition and Replacement Dwellings. It states that the Planning Authority has a preference for and will promote the deep retro-fit of structurally sound, habitable dwellings in good condition as opposed to demolition and replacement unless a strong justification in respect of the latter has been put forward by the applicant. The Planning Authority will assess single replacement

dwellings within an urban area on a case by case basis and may only permit such developments where the existing dwelling is uninhabitable.

5.2. **Natural Heritage Designations**

- 5.2.1. The subject site is approx. 6.4km from the Rockabill to Dalkey Island SAC (003000), Dalkey Islands SPA (004172), 3.9km from the South Dublin Bay and River Tolka Estuary SPA (004024) & South Dublin Bay SAC (000210) and 6.9km from the Wicklow Mountains SAC (002122) and SPA (004040).

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. The appeal submission provides details of the site location and description, planning history, the proposed development, the 2016-2022 County Development Plan and planning issues accepted by DLRCC as having been addressed.
- 6.1.2. The grounds of the appeal can be summarised as follows:

Reason no. 1

- Planning permission for the demolition of the existing dwelling has been granted twice (PL06D.233843 and PL06D.240847). The principle of the demolition of the dwelling has been established by both Board decisions.
- The condition of the dwelling is now worse than during the previous assessments. The dwelling has no historic or architectural value. There is nothing new that would have changed the position of Dun Laoghaire Rathdown County Council. The proposed dwelling is a sustainable form of development.

- A detailed report submitted with the application concludes that in the interest of structural stability, it is not recommended that the older structure whose blockwork is in poor condition, be extended. Demolition is the safer option.
- The existing structure is poorly insulated and energy inefficient. This was accepted by both the Board and Dun Laoghaire Rathdown County Council. The dwelling is not beyond repair but is energy inefficient and of no architectural merit.
- Section 8.2.3.4(xiv) of the 2016 development plan states that it will “sometimes” be preferable to retain a single house. This was not referenced in the previous two permissions.
- The policy on demolition does not state that DLRCC “will only” but states that it “may” permit and therefore this is not a fundamental policy. The appellant submits that this is contrary to the National Energy & Climate Plan 2021-2030. This plan wants houses of BER2 rating by 2030.
- The applicant has submitted a strong justification for the demolition, in accordance with section 8.2.3.4(xiv). The Dun Laoghaire Rathdown County Council reason for refusal citing section 8.2.3.4(xiv) is not justified.
- An Bord Pleanála and the Planning Authority have accepted that the existing dwelling does not make any particular contribution to the streetscape. The proposed elevation is similar to the existing elevation. Policy AR5 Buildings of Heritage does not apply to the dwelling.
- It is not possible to achieve an A1 rating on the existing dwelling. It is not possible to safely extend the dwelling without demolition. A new application to permit an almost total re-build with some of the structure retained would be dishonest and would run contrary to the best interests of the property.
- In accordance with the development management guidelines the Planning Authority should not have requested further information unless it considered the proposal could be permitted.
- The Planning Authority have ignored the planning history of the site. The demolition of the house should be permitted.

Reason no. 2

- The adjoining dwelling at Hainault house received planning permission (Planning Authority reg. ref. D21A/0761) for an extension. The proposed extension is 8.5m beyond the existing Hainault Lodge rear building line, includes a 13.45m long extension with a new first floor of windows facing Hainault Lodge. It is unreasonable for these new side windows to be used to prevent an extension to the subject dwelling.
- The impact of this extension on Hainault Lodge is greater than the impact of the currently proposed dwelling on Hainault House. The permitted extension to Hainault House later the context against which the development of Hainault Lodge should be assessed.
- The current proposal seeks an increase of 3.45m at ground floor and 7.2m at first floor over that previously permitted under PL06D.240847. This is a reasonable proposal relative to the 13.345m extension to the rear of Hainault House.
- The first floor building line of the extended Hainault House matches the proposed first floor building line of the applicants proposed dwelling.
- The subject house Hainault Lodge is 1m from the shared boundary with Hainault House. The proposed dwelling is suitably scaled when context is considered.
- The current proposal for Hainault Lodge is the maximum development potential of the site.
- The proposed development should be assessed with the most recent grant of permission as a starting point. The increase in scale is far less.
- The proposed development would not cause any impact on the large and permitted extended Hainault House.
- The proposed development at 9.075m is lower than the permitted 9.22m dwelling. the proposed pitched roof slopes away from Hainault House.
- The boundary treatment between the two houses screens much of the ground floor.
- Hainault House does not rely on its side elevation for its visual or residential amenities.

- The 2009 Residential Density Guidelines and the 2018 Building Height Guidelines state that two-store dwellings on large sites cannot restrict the densification of adjoining sites.
- The proposed development is low density, low site coverage and low plot ratio, with over 20m of garden undeveloped.
- The proposed development will; increase the applicant privacy from the new extension to Hainault House.
- The 1m area between the two sites is not for recreation.
- It is submitted that the Planning Authority have given too great consideration to Hainault House over than afforded to Hainault Lodge. Little regard has been given to the significant overlooking of the applicants site from the permitted extension to Hainault House.
- All but one of the windows on the elevation facing Hainault House will be of obscured glazing. No direct overlooking will arise from Hainault Lodge, despite overlooking occurring from Hainault House into the subject site.
- Following a request for further information, the first floor bedroom window was revised to be a box window with clear glazing on the north and southern sides. An Bord Pleanála has accepted this form of development multiple times.
- The applicant does not accept the suggestion that the windows indicate over development. They are a proportionate response as used along an entire apartment block elevation in the SHD TA06D.311287.
- The box windows will not have a negative visual impact, instead adding visual interest.
- The Board is requested to grant the proposed development.

6.2. Planning Authority Response

- 6.2.1. The Board is referred to the previous Planners Report. The grounds of the appeal do not raise any new matter which in the opinion of the Planning Authority would justify a change of attitude to the proposed development.

6.3. Observations

6.3.1. None on file.

7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local 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
- Impact on Adjoining Properties.

7.2. Principle of Development

7.2.1. The appellant requests the Board to take into account the planning history of the subject site – notably that the principle of the demolition of the existing dwelling and its replacement with a larger property has been accepted by the Board under PL06D.233843 and PL06D.240847.

7.2.2. The previous decisions were made by the Board in 2009 and 2012, under the 2004-2010 Dun Laoghaire Rathdown County Development Plan and the 2010-2016 County Development Plan respectively. The 2012 application (PL06D.240847) comprised minor alterations to the permitted 2009 development and so the principle of demolition was not comprehensively addressed. Under the first application in 2009 (PL06D.233843), in assessing the proposed demolition against policy AR5 of the 2004 County Development Plan, the planning report the Inspector noted that “a well-designed new building, which would have a more energy efficient design and which would be better use of building materials and resources”.

7.2.3. A considerable amount of time – and two development plans – have elapsed since the principal of demolishing the existing house was last assessed. The environmental impact of demolition and re-build was not as acutely understood or as pressing an issue in 2004 as it is now. Policy Objective CA6 of the current 2022 development plan recognises the inherent sustainability of retention and refurbishment, compared with the whole life energy costs and waste impacts that would result from demolition and re-build. The re-use of existing structures preserves

the embodied energy expended in the original build, minimises waste and reduces the use of new materials.

- 7.2.4. Given the environmental impact arising, the grounds for the demolition of a building capable of re-use must be robust. The applicant was requested to provide evidence that the existing dwelling was not capable of refurbishment and extension rather than demolition. The applicant resubmitted the report from a firm of Structural Engineers that was submitted with the application. The report states that the extent of the proposed development would result in only “short piers at the corners” remaining and that “stitching of small sections of new blockwork on to existing will result in shrinkage cracks”. The Board will note that no comment on the structural integrity of the existing dwelling is made, other than noting that the existing concrete ground floor slab is not insulated.
- 7.2.5. The applicant has not submitted any evidence that the existing dwelling is not a “structurally sound, habitable dwelling” as required by the development plan. That the existing dwelling is not energy efficient is accepted. That the proposed dwelling would be significantly more energy efficient is also accepted. Those facts, however are not sufficient to justify the demolition of an apparently structurally sound, albeit energy inefficient dwelling, in accordance with development plan policy and best practice. The applicants requirements for a larger, more energy efficient dwelling do not comply with the development plan policy for permitting the demolition of an existing dwelling only where it is uninhabitable.
- 7.2.6. The proposed development is not a densification of a residentially zoned site - it proposes to replace a single-family dwelling with another single family dwelling. Likewise, the proposal cannot be considered to be an “infill house”, as suggested by the appellants agent.
- 7.2.7. I note that the floor plan of the attic floor level has not been submitted with the current application. The front elevation drawing (drawing no. 183-(P)008) shows two dormer windows at attic level, indicating a habitable space, perhaps similar to that in the previously permitted application. The proposal to provide velux windows to a number of the rooms at first floor level however would impede the use of the attic level as proposed in the previous applications.

7.3. Impact on Adjoining Properties

- 7.3.1. The subject site is of sufficient size to accommodate a dwelling of greater scale, height and mass than currently exists.
- 7.3.2. The separation distance to the west (towards Voewood) is sufficient to prevent any overlooking of that adjoining property. To the west, towards Hainault House, there is currently a 1m gap between the existing Hainault Lodge and the shared boundary. Hainault House has received permission for an extension (D21A/0761) at ground and first floor level. At first floor, facing the Hainault Lodge, the single additional window is obscured.
- 7.3.3. The depth of the proposed dwelling requires the use of windows on the side elevations. Four of the five windows proposed on the eastern elevation (towards Hainault House) are for bathrooms and are proposed to be of obscured glazing. The fifth window is for bedroom no. 5 and is proposed to be a box window with louvres on the eastern side to prevent overlooking. On the western elevation, both of the windows (to bedroom no. 2 and the study) are proposed to be box windows with louvres on the main / largest pane of glass. I share the concern of the Planning Authority that the quality of light and thus the residential amenity of the rooms would be negatively affected by such a design feature. The appellants agent submits that such a feature has been permitted by the Board in the SHD at Frankfort Castle (TA06D.311287 refers) and should be permitted in the subject proposal. The Board will note that the depth of the box window permitted in the Frankfort Castle development far exceeds that of the proposed Hainault Lodge windows and as such, would provide a greater penetration of light and therefore residential amenity. I do not accept that the SHD provides a comparable example.
- 7.3.4. I agree with the finding of the Planning Authority that resorting to mitigation measures such as louvres is an indication of over development of the site. The Board will note that conditions attached to the two previous decisions on site required the use of obscured glazing on side elevations.

8.0 Recommendation

- 8.1. I recommend permission be REFUSED for the following reasons and considerations:

- 1 The proposed development which comprises the demolition of a dwelling which has not been demonstrated to be structurally unsound or uninhabitable, is contrary to Policy Objective CA6 and section 12.3.9 of the 2022-2028 Dun Laoghaire Rathdown County Development Plan and policy RPO 7.40 of the Regional, Spatial and Economic Strategy for the Eastern and Midland Regional Area 2019-2031 which encourage the retrofitting and reuse of existing buildings rather than their demolition and reconstruction. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

- 2 The extent of the proposed development at first floor level and the proximity of the proposed dwelling to the adjoining dwellings to the east and west requires the introduction of mitigation measures to avoid overlooking of the adjoining properties, particularly the dwelling to the east. The proposed measure would compromise the light available and therefore the residential amenity of the rooms. The proposed development would therefore fail to accord with the site's zoning objective, which seeks 'to provide residential development and improve residential amenity while protecting the existing residential amenities'. The development is therefore considered to be contrary to the proper planning and sustainable development of the area.

Gillian Kane
Senior Planning Inspector

10 November 2022